

**DATE:**  
6/13/2023

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve of the renewal to Fireplace, Inc. for the newsletter software Smore utilizing a teams account for Twenhofel, Beechgrove, White's Tower, Summit View, Fort Wright, Taylor Mill, Caywood, and Piner.

**APPLICABLE BOARD POLICY:**

01.1 Legal Status of the Board

**HISTORY/BACKGROUND:**

Fireplace, Inc. newsletter software Smore is used by several schools for weekly and monthly newsletter creation. Consolidating the renew allows for a district cost savings and includes enhanced features for each school that is using the product. The schools will pay for the software but will be combined on a single PO to Fireplace, Inc.

**FISCAL/BUDGETARY IMPACT:**

\$974.25 (School Instructional Funds)


**RECOMMENDATION:**

Approval of the renewal to Fireplace, Inc. for the newsletter software Smore utilizing a teams account for Twenhofel, Beechgrove, White's Tower, Summit View, Fort Wright, Taylor Mill, Caywood, and Piner.

**CONTACT PERSON:**

Matthew Winkler, Director of Technology

  
Principal/Administrator

  
District Administrator

  
Superintendent

*Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.*

*Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.*

## Quote 26409

**Smore Team Account**  
**Kenton County**  
Matthew Winkler  
matthew.winkler@kenton.kyschools.us  
+1 859 957 2612



**FIREPLACE INC**  
PO BOX 105603 PMB 18769  
ATLANTA GA. 30348-5603

**Smore Contact:**  
Sales: katie.beswick@schoolstatus.com  
Billing: ar@schoolstatus.com

### Description

Smore Team Account

Includes: Collaboration + Template Sharing, Newsletter Translation, MNS Export, Management Dashboard to add/remove staff, and dedicated Customer Success Manager.

### Details

Date: 05.23.23  
Sent to: matthew.winkler@kenton.kyschools.us  
PAYMENT DUE UPON RECEIPT OF INVOICE

### Products

Description	Qty	Duration (years)	Unit price	Disc	Price
<b>Smore Team Account - Starter (6-10 users)</b> <i>Discounted to reflect a pro-rated amount of the current Educator accounts</i>	1	1	\$1,299.00	25%	\$974.25
<b>Smore Team Account - Basic (11-15 users)</b> <i>Discounted to reflect a pro-rated amount of the current Educator accounts</i>	1	1	\$1,799.00	19%	\$1,457.19
<b>Smore Team Account - Essential (16-30 users)</b> <i>Discounted to reflect a pro-rated amount of the current Educator accounts</i>	1	1	\$2,499.00	15%	\$2,124.15

### W-9

Click [here](#) to access a downloadable PDF of our W-9.

#### NEW PAYMENT ADDRESS:

Check Payment Address:  
Fireplace Inc (Smore)  
PO Box 771470, St. Louis, MO 63177-9816.

#### ACH/Bank Transfer:

Stifel Bank 8000 Maryland Avenue Ste 100, Clayton, Missouri 63105  
Account Number: 16763887  
Routing Number : 081018998

### Notes

If you need to present the quote to other decision-makers, simply forward them the email containing the quote or copy and paste the link to share it.

## Terms and Conditions- Smore for Teams

**UPDATED August 6th, 2020**

These Smore for Teams ("License Terms") are entered into by and between Fireplace, Inc. ("Fireplace," "Smore," "we/our") and the party using any of Smore's cloud-based services (the "Services") via a multi-user account (the "Services"). These License Terms shall be effective upon Customer's use of any Smore Services (the "Effective Date"). Any quote or written document specifying Customer's purchase of Services, defined below, and if applicable, as further stated in the Admin Account page (each referred to herein as an "Order") and any exhibits thereto, shall form part of these License Terms, and together with the [Terms of Service](#) and any written policies or terms requiring Your acceptance or that expressly apply to your use of the Services, including without limitation, the [Educator Hive Guidelines](#) (if applicable), shall constitute the "Agreement". Customer's use of the Services shall be governed by the Agreement. In the event of a conflict between these License Terms, the Terms of Service, an Order or an exhibit, the following order of precedence will govern for purposes of the conflicting subject matter (and provided that the remainder of the non-conflicting License Terms shall remain in effect): these License Terms, the Terms of Service, the Order, and then the other exhibits, if any. All License Terms that are capitalized herein but not defined shall have the meaning set forth in the Terms of Service.

### 1. SERVICES AND LICENSE

1. **Services.** Fireplace hereby grants Customer the right to access the Services as made available at the Fireplace website (the "Website") in accordance with the Agreement, including without limitation the Service Level Agreement attached hereto as Exhibit A and incorporated herein, for use by Customer and its Authorized Users (as defined in Section 2.3) and for Customer's internal business purposes.
2. **Modification.** The Services are subject to modification from time to time at Fireplace's sole discretion provided that Fireplace does not reduce or remove any material functionality.
3. **Content.** Customer hereby grants to Fireplace a limited, non-exclusive, non-transferable (except as permitted in Section 10), royalty-free license during the Term to reproduce, translate, encode, and use the Content for the purpose of providing or improving the Services for Customer and to fulfill Fireplace's obligations under these License Terms; provided, however, Fireplace may only use Content on an aggregated and anonymized basis to improve the Services.

### 2. RESPONSIBILITIES

1. **Privacy.** Both parties hereby agree to only process, use, store, upload and/or provide Personal Data under this Agreement in accordance with the [Smore Privacy Policy](#), as

well as the California Consumer Protection Act (CCPA) and the European General Data Protection Regulation (GDPR), if and as applicable. Customer hereby warrants it has read, understands and agrees to the Privacy Policy through its use of the Services.

2. **Restrictions.** Customer shall not: (i) reverse engineer, decompile, decrypt, extract, disassemble or otherwise attempt to discover the source code of the Services, (ii) modify, translate, or create derivative works of, or based on, the Services, (iii) alter, modify, change, remove, or otherwise transform or vary any copyright, trademark, or other intellectual property notices included in the Services; (iv) use the Services for timesharing or service bureau purposes unless permitted by Fireplace in the applicable Order; or (v) use the Services in violation of any applicable laws or regulations, including but not limited to the CAN-SPAM Act of 2003.
3. **Customer Data.** Customer shall be exclusively responsible for any creation, modification, submission, upload, entry or re-entry into the Services of all material, data, or information, including without limitation, files, text, music, graphics, audio files, photographs, videos, images, linked or embedded content, websites or webpages, whether of Customer, its Users or any third party, (collectively, "Content") as further set forth in the Terms of Service.
4. **Access.** Customer shall be solely responsible for creating its administrative account ("Admin Account"). Once Customer has created an Admin Account, Customer will be permitted to create up to the total number of user accounts specified in the Order (each, a "User Account"). User Account subscriptions can be used concurrently by and up to the number of paid User Accounts identified in the Order. Each person who accesses an Admin Account or User Account must be an employee, consultant, contractor or agent of Customer (each, an "Authorized User"). Customer shall be fully responsible for any and all use of the Services by its Authorized Users in accordance with the Agreement as well as any activity in its Admin Account or a User Account. Customer will immediately notify Fireplace in the event Customer has reason to believe that the security of its Admin Account or any User Account has been compromised.
5. **Permissions.** Customer shall be exclusively responsible for obtaining all required permission from a parent and/or guardian of all students using the Website and for student access to the Website or Services through the "Classroom" feature, as well as the right to submit student information in or through the Services. Customer will be responsible for handling all requests from a student's parent for updating, changing, or removing, any Content. Customer will immediately notify Fireplace in the event that assistance is required to permanently remove a student's information which was explicitly requested by the student's parent or guardian.

### 3. OWNERSHIP

1. **"IP Rights"** means all forms of intellectual property rights and protections throughout the world, including, but not limited to, any (i) patents (including any patent applications, together with all reissuances, continuations, continuations-in-part, revisions, extensions and reexaminations thereof), (ii) copyrights, (iii) Internet domain names, trademarks,



Services marks, and trade dress, together with all goodwill associated therewith, (iv) trade secrets, (v) rights in databases and designs (ornamental or otherwise), (vi) moral rights, rights of privacy, rights of publicity and similar rights, and (vii) and any other proprietary rights and protections, whether currently existing or hereafter developed or acquired, whether published or unpublished, arising under statutory law, common law, or by contract, and whether or not perfected, including all applications, disclosures and registrations with respect thereto.

2. **Ownership by Fireplace.** As between the parties, Fireplace shall retain all right, title and interest in and to the Services and all improvements thereto, including all IP Rights therein.
3. **Removal of Data.** Prior to the last day of the Term, Customer shall be responsible for the removal of all Content from the Services. Customer acknowledges and agrees that Fireplace shall have no liability to Customer or any third party for deletion of any Content from the Services following the date of termination or expiration of Customer's right to access and use of the Services.

#### 4. PAYMENT

1. **Fees.** Customer will pay the fees for the Services agreed to in the applicable Order (the "Fees"). In the event that Customer wishes to increase the number of User Accounts beyond the number authorized in the Order, Customer shall be required to pay additional fees associated with the increased number of Customer User Accounts, pro-rated for the remainder of the Term.
2. **Payment.** All payments will be made in accordance with the payment schedule described in the applicable Order and will be due within forty-five (45) days of Customer's receipt of the invoice.

#### 5. CONFIDENTIAL INFORMATION

1. **"Confidential Information"** means any and all non-public or proprietary information prepared, accessible or delivered to the receiving party by the disclosing party or its representatives that is marked as confidential, or should be known to a reasonable person given the facts and circumstances of the disclosure, as being confidential.
2. **Confidentiality.** Each party agrees to keep the Confidential Information of the other party confidential and to take reasonable precautions designed to protect against the unauthorized access, use or disclosure of the disclosing party's Confidential Information. The receiving party shall not disclose or use the disclosing party's Confidential Information for any purpose, except as is necessary to perform its obligations hereunder. The receiving party may disclose the Confidential Information only to those employees, consultants, contractors, advisors, counsel, agents and subcontractors who have a legitimate business reason to have such access or that require access for the purpose of performing its obligations under these License Terms, and are subject to a

non-disclosure agreement related to such Confidential Information or confidentiality obligations substantially similar to those herein.

3. **Exclusions.** Confidential Information does not include information (i) that is published or available to the public other than by breach of these License Terms; (ii) otherwise rightfully received by the non-disclosing party from a third party without obligations of confidentiality; (iii) independently developed by the non-disclosing party having no access to the disclosed information; or (iv) known to the non-disclosing party before receiving the Confidential Information from the disclosing party under this or any prior agreement of the parties; (v) disclosed by the disclosing party to a third party without restrictions. In addition, the receiving party may disclose the disclosing party's Confidential Information to the extent such disclosure is required by applicable law or order of a court; provided the receiving party will provide prompt written notice of such required disclosure and reasonably assist the disclosing party, at the disclosing party's request and expense, to seek an appropriate protective order.

## **6. Limitation of Liability**

1. In no event will Fireplace, or its suppliers or licensors, be liable with respect to any subject matter of this Agreement under any contract, negligence, strict liability or other legal or equitable theory for: (i) any special, incidental, punitive or consequential damages; (ii) the cost of procurement for substitute products or services; (iii) for interruption of use or loss or corruption of data; (iv) any use of, or submission of Content in the Services; or (v) for any amounts that exceed the Fees paid by you to Fireplace under this Agreement during the twelve (12) month period prior to the date the cause of action arose. The foregoing shall not apply to the extent prohibited by applicable law.
2. A party whose performance is illegal, impossible, impracticable or otherwise materially impaired as the result of a Force Majeure Event shall be excused from performance of its obligations hereunder, provided that such party provides prompt notice to the other party thereof and that the impacted party uses commercially reasonable efforts to resume performance upon the resolution of the Force Majeure Event. "Force Majeure Event" means an unforeseeable act or cause beyond a party's reasonable control such as war, Internet outages, work stoppage, fire, epidemic, infection disease outbreak (e.g., COVID-19), weather events, orders or acts of any federal, state or local government, acts of God, fires, floods, wars or riots. Should a Force Majeure Event prevent or materially impair a party's performance under this Agreement for fifteen (15) days or more, either party may terminate this Agreement and Customer shall owe Fireplace the Fees for the Services pro-rated through the date of termination.
3. EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THE WEBSITE AND SERVICES ARE PROVIDED "AS IS". FIREPLACE AND ITS SUPPLIERS AND LICENSORS HEREBY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NEITHER FIREPLACE NOR ITS SUPPLIERS OR LICENSORS, MAKES ANY WARRANTY THAT THE WEBSITE WILL BE

ERROR FREE OR THAT ACCESS THERETO WILL BE CONTINUOUS OR UNINTERRUPTED (EXCEPT AS EXPRESSLY SET FORTH IN EXHIBIT A). CUSTOMER UNDERSTANDS THAT IT DOWNLOADS OR OTHERWISE OBTAINS CONTENT FROM THE WEBSITE AND/OR SERVICES AT ITS OWN DISCRETION AND RISK.

## 7. INDEMNIFICATION

1. **Fireplace.** Fireplace will indemnify, defend and hold Customer and its directors, officer, employees, and agents ("Related Parties") harmless from and against all claims, actions, expenses, losses, and liabilities, including reasonable attorney's fees, arising from or relating to any third party claim that the Services, excluding any Content, infringes any third party's IP Rights.
2. **Customer.** Customer will indemnify, defend and hold Fireplace and its Related Parties harmless from and against all claims, actions, expenses, losses, and liabilities, including reasonable attorney's fees, arising from or relating to any third party claim: (a) alleging that the Content or Fireplace's use thereof in accordance with these License Terms, infringe any third party's IP Rights; (b) resulting from Customer's material breach of the Agreement; or (c) resulting from Customer's gross negligence, willful or intentional misconduct hereunder. The foregoing will shall not apply to the extent prohibited by applicable law.
3. **Process.** The party seeking indemnification pursuant to this Section (the "Indemnified Party") shall provide the party obligated to provide such indemnification (the "Indemnifying Party") with: (i) prompt written notification of any such claim; (ii) sole control and authority over the defense or settlement thereof; and (iii) all available information and reasonable assistance necessary to settle and/or defend any such claim, at the Indemnifying Party's expense, provided that any settlement requires the Indemnified Party's prior written consent. Failure by the Indemnified Party to provide prompt notice of a claim or to provide such control, authority, information or assistance shall not relieve the Indemnifying Party of its obligations under this Section, except to the extent that the Indemnifying Party is materially prejudiced by such failure. The Indemnified Party may have its own counsel present at and participating in all proceedings or negotiations relating to a claim, at the Indemnified Party's own expense.

## 8. Term and Termination

**Term.** These License Terms shall be effective upon the Effective Date and shall continue for the term specified in the applicable Order (the "Term"), unless terminated earlier as permitted herein. Upon expiration of the Term, the Order and this Agreement shall expire.

**Termination for Cause.** Either party will have the right to terminate these License Terms and all Orders for the other party's breach of any material term or condition of these License Terms (or with respect to an Order, a breach of a material term or condition of such Order) and failure to cure such breach within thirty (30) days after written notice thereof.

**Termination for Bankruptcy.** Either party may terminate these License Terms and all Orders upon written notice if: (i) the other party becomes insolvent; (ii) voluntary or involuntary bankruptcy proceedings are instituted against the other party that are not dismissed within ninety (90) days; (iii) the other party makes an assignment for the benefit of creditors; (iv) the other party ceases to operate its business in the ordinary course; or (v) a receiver is appointed for the other party.

**Effect of Termination.** Upon termination or expiration of the Order and this Agreement: (a) Fireplace shall immediately terminate Customer's license to the Services hereunder, provided that Customer may continue to use the free offering of the Fireplace service, which shall remain subject to the Fireplace Terms of Service; (b) in the event of termination for cause by Customer, Customer shall immediately pay any Fees owed through the effective date of termination, and in the event of termination for cause by Fireplace, all Fees shall become immediately due and payable and Fireplace may charge Customer for the outstanding Fees.

## 9. GENERAL

Neither party may assign or transfer the Agreement or any part thereof without the prior written consent of the other party, except that Fireplace may assign or transfer the Agreement and its rights and obligations thereunder without such consent in connection with a divestiture, reorganization, merger, acquisition, consolidation or similar such transaction. No terms, provisions, or conditions of any purchase order, invoice or similar documentation provided by Customer (a "Purchase Order") will have any effect on the obligations of the parties under this Agreement. A reference to a Purchase Order or other acceptance thereof is solely for Customer's record-keeping purposes. Any associated terms and conditions in a Purchase Order shall be of no force and effect, and shall not in any way be deemed to amend, modify, supersede, alter or supplement this Agreement.

Layout

Edit

delete

add

Smore Team

We are the folks behind Smore. Drop us a line at [hello@smore.com](mailto:hello@smore.com) :)





Kenton County School District | It's about ALL kids

**THE KENTON COUNTY BOARD OF EDUCATION**

1055 EATON DRIVE, FORT WRIGHT, KENTUCKY 41017

TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531

WEBSITE: [www.kenton.kyschools.us](http://www.kenton.kyschools.us)

Dr. Henry Webb, Superintendent of Schools

**VENDOR ASSURANCES REGARDING PROTECTION OF  
PERSONAL AND CONFIDENTIAL INFORMATION**

**Data Security and Breach Protocols**

Vendors that receive Personal Information from Kenton County Board of Education (herein referred to as "KCBOE") as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account number, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by any agency as defined under the Act;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" includes any person or entity that has a contract or agreement with the KCBOE and receives (accesses, collects or maintains) personal information from the KCBOE pursuant to the contract or agreement.

The vendor hereby agrees to cooperate with the KCBOE in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, KCBOE, the Commissioner of the Kentucky State Police, the Kentucky Auditor of Public Accounts, the Commonwealth (Kentucky) Office of Technology, and the Commissioner of the Kentucky Department of Education of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)(2) applies and the vendor abides by the requirements set forth in that exception. Notification shall be in writing on a form developed by the Commonwealth (Kentucky) Office of Technology.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor hereby agrees that the KCBOE may withhold payment(s) owed to the vendor for any violation of the Act's notification requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any security breach as defined under the Act in accordance with KRS 61.933.

Upon conclusion of an investigation of a security breach as defined under the Act as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a), the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth (Kentucky) Office of Technology and that are reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

### **Student Data Security**

Pursuant to KRS 365.734, if the vendor is a cloud computing service provider (which is defined pursuant to KRS 365.734(1)(b) as any person or entity other than an educational institution that operates cloud computing services) or, through service to the KCBOE, becomes the equivalent of a cloud computing service provider, the vendor further hereby agrees that:

- The vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.
- Pursuant to KRS 365.734, the vendor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

### **Family Educational Rights and Privacy Act, National School Lunch Act and Child Nutrition Act**

If during the course of this agreement, the KCBOE discloses to the vendor any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. sec. 1232g, *et seq.*), and its regulations, and data protected by the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. sec. 1751 *et seq.*), and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. sec. 1771 *et seq.*), the vendor agrees that it is bound by and will comply with the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor agrees that FERPA-protected information is confidential information. FERPA-protected information includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific

student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

The vendor understands and acknowledges that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

The vendor understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

In the event there is a conflict between this agreement and any other agreement between KCBOE and Vendor, the terms of this agreement shall apply.

Fireplace Inc

Vendor Name

6425 Living Place 2nd Floor Spaces, Pittsburgh PA. 15206

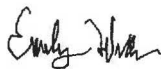
Vendor Address

800-329-7604

Vendor Telephone

support@smore.com

Vendor Email Address



Signature by Vendor's Authorized Representative

Emily Willner

Print Name

10 / 24 / 2022

Date