

**DATE:**

7/27/2023

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve a sales contract with Frog Street for the district preschool program for the 2023-24 school year.

**APPLICABLE BOARD POLICY:**

01.1-Legal Status of the Board

**HISTORY/BACKGROUND:**

Frog Street is a Pre-K curriculum that provides a comprehensive, dual-language program designed to meet the needs of diverse learners while supporting key developmental learning domains.

**FISCAL/BUDGETARY IMPACT:**

\$12,850.00 Preschool Program)

**RECOMMENDATION:**

Approval of the sales contract with Frog Street for the district preschool program for the 2023-24 school year.

**CONTACT PERSON:**

Ellen Zimmer

  
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.



Company Address      Frog Street Press, LLC 530 S. Nolen Drive  
Southlake, Texas 76092  
United States

Quote Number      00029753  
Expiration Date      9/25/2023

Quote PDF (Created Date)      08/22/2023

Sales Consultant      Elaine Pardieck  
Sales Consultant Email      elaine@elainepardieck.com

Contact Name      Ellen Zimmer  
Title      Director of Early Childhood  
Email      Education  
Phone      ellen.zimmer@kenton.kyschools.us  
+1 859-344-8888

Bill To Name      Kenton County School District  
Bill To      1055 EATON DR  
FT WRIGHT, KY 41017  
United States

Ship To Name      Kenton County School District  
Ship To      1055 EATON DR  
FT WRIGHT, KY 41017  
United States

Product	Product Description	Quantity	Sales Price	Subtotal	Discount	Total Price
TP2020	Pre-K Teacher Portal (Per Classroom, Yearly Subscription)	1	\$ 100.00	\$ 100.00		\$ 100.00
DBV2R	Pre-K Digital Bundle Renewal One Year (Teacher Resource Portal, ABCMouse Activities, Pre-K at Home)	25	\$ 500.00	\$ 12,500.00		\$ 12,500.00
FSABC8000	Custom Implementation Services	1	\$ 250.00	\$ 250.00		\$ 250.00

Shipping and Handling price reflects shipping to one location  
A 3% fee will be added for credit card payments over \$50,000.  
Estimated tax is based on ship-to address.  
Prices are subject to change.

Total Price      12,850.00  
Grand Total      \$ 12,850.00

To place an order, please submit your Purchase Order to:  
customer@frogstreet.com or send via Fax:  
(800) 759-3828.

To order with a check or credit card, call Customer Care:  
(800) 884-3764.



Company Address      Frog Street Press, LLC 530 S. Nolen Drive  
Southlake, Texas 76092  
United States

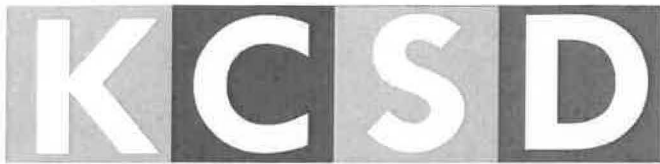
**Primary Contacts**

Billing Contact

ECE Director

PD Manager

Platform Admin (IT)



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.



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.

\_\_\_\_Frog Street Press\_\_\_\_  
Vendor Name

530 S Nolen Drive, Southlake, TX  
76092\_\_\_\_\_  
Vendor Address

\_\_\_\_800-884-3764\_\_\_\_\_  
Vendor Telephone

support@frogstreet.com\_\_\_\_\_  
Vendor Email Address

  
\_\_\_\_\_  
Signature by Vendor's Authorized Representative

Linda Luo, Chief Growth and Strategy Officer\_\_\_\_  
August 16, 2023\_\_\_\_\_  
Date

**Frog Street Press**  
**Terms of Service**  
**Last Updated: May 25<sup>th</sup>, 2023**

Frog Street Press, LLC, the "Company", shall provide Client access to its proprietary Physical & Print Content Products and Digital Content & Platforms (s) (the "Content and Services"), subject to the Terms set forth herein.

**1. Agreement to Terms.** By using our Services, you agree to be bound by these Terms. If you are accessing and using the Services on behalf of a company (such as your employer), organization or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to these Terms. In that case, "you" and "your" will refer to that company or other legal entity.

**2. Changes to Terms or Services.** We may update the Terms at any time. If you continue to use the Content and Services after we have posted updated Terms, you are agreeing to be bound by the updated Terms. If you don't agree to be bound by the updated Terms, then, except as otherwise provided in Section 18(e) "Effect of Changes on Arbitration," you may not use the Services. Because our Services are evolving over time we may change or discontinue all or any part of the Services, including any Products offered for purchase, at any time and without notice, at our sole discretion.

**3. Privacy Policy.** Please refer to our Privacy Policy for information on how we collect, use and disclose information from our users. You acknowledge and agree that your use of the Services is subject to our [Privacy Policy](#).

**4. Ownership of Frog Street Press, LLC Services, and Content.** Unless explicitly stated in these Terms, all Content and Services included in or otherwise a part of the Digital platform or Physical product, including past, present and future versions, domain names, source and object code, text, graphics, images, music, software, audio, video, courses, training materials, works of authorship of any kind, other materials that are posted, generated, provided or otherwise made available through the Services, and the "look and feel" of the Content and Services are owned, controlled and/or licensed by the Company, and are protected from unauthorized use, copying and dissemination by copyright, trademark, patent, and other laws, rules, regulations and treaties. Content may not be downloaded, printed, copied, reproduced, duplicated, modified or used to create derivative works, downloaded, displayed, published, transmitted, distributed, sold or exploited in any way, in whole or in part, without the express permission of Company, unless and except as is expressly provided in these Terms. You agree not to remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Content and Services.

**5. Authorized Users; Limited License.** Authorized Users are hereby granted a limited, non-exclusive, non-transferable, revocable license to access and use the Content and Services, subject to and in accordance with full compliance with these Terms.

You agree to use the Content and Services only for lawful purposes and in accordance with these Terms. You may not reproduce, duplicate, copy, sell, publish, transmit, distribute, display, modify, create derivative works from, sell or exploit in any way Services or the Content without the express written permission of Company. You may not utilize framing to enclose any trademark, logo, contents or other proprietary information contained on the Digital platform without the express written permission of Company. You may not use spiders, robots, data mining techniques or other automated devices or programs to catalog, download or otherwise reproduce, store or distribute Content available on the Digital platform. You may not use any meta tags or any other "hidden text" utilizing Company's name or trademarks without the express written permission of Company. You further agree not to alter or tamper with any information or materials on or associated with the Services or Content that you have not entered. You agree not to disrupt, modify, or interfere with the Services or Content or associated software, hardware and servers in any way and you agree not to impede or interfere with others' access to and/or use of the Services or Content.

You are granted a limited, revocable, and nonexclusive right to create a hyperlink to the Services, provided that the link does not, without the express prior written consent of Company: (i) use any Company logo or other proprietary graphic or trademark as part of the link; (ii) imply that Company or Services is endorsing or sponsoring any third party or its products or services; (iii) portray Company, the Services, or any other of Company's products or services, or those of Company's parents, affiliates or third party service providers in a false, misleading, derogatory, or otherwise offensive manner; or (iv) contain content that could be construed as distasteful, offensive or controversial or otherwise objectionable (in Company's sole discretion). Notwithstanding anything to the contrary contained in these Terms, Company reserves the right to prohibit linking to the Site for any reason, at any time, in our sole and absolute discretion.

Access to or use of the Services and Content may require you to meet certain minimum hardware and software system requirements ("Minimum Requirements"). If you do not meet these Minimum Requirements, you may not be able to use all or part of the Services or some or all of the Content may be inaccessible or not fully functional.

ALL RIGHTS NOT EXPRESSLY GRANTED IN THESE TERMS ARE RESERVED BY COMPANY. Nothing contained in these Terms shall be construed as conferring any additional license or right, by implication, estoppel or otherwise without the express written permission of Company.

**6. User Account Registration.** Access to online Services via paid subscription, will require that each user is registered to an account through the Company ("User Account"). These Terms apply equally to users with, or without a User Account. To establish a User Account, you will be required to provide Company with certain information, including without limitation, your first and last name, e-mail address, title, telephone number, organization name, organization address and zip code. You agree that you will supply true, accurate, current, and complete information to Company when requested, and that you will update that information as necessary to maintain its truth and accuracy. Please review our [Privacy Policy](#) for more details about the information we collect and use your Personal Information and other information.

You may not share, transfer or sublicense your User Account or the Login Information with anyone other than as expressly set forth in these Terms. You are responsible for protecting the confidentiality of the Login Information, and you will be responsible for all use of your User Account accessed with your Login Information. Any unauthorized access, use, distribution or transfer of your User Account or Login Information may result in suspension, termination, or cancellation of your User Account. If you become aware of or suspect unauthorized use of your User Account or Login Information or any other breach of security, you agree to immediately notify Company and take all reasonable measures to safeguard your User Account and Login Information.

By creating a User Account, you understand and consent to us sending you (including via e-mail) information such as notices regarding your use of the Services, your User Account, or information regarding Company's other products or services. You may opt out of marketing and promotional communications by contacting [info@frogstreet.com](mailto:info@frogstreet.com).

YOU AGREE THAT YOU HAVE NO OWNERSHIP OR OTHER PROPERTY INTEREST IN YOUR USER ACCOUNTS, AND THAT ALL RIGHTS IN AND TO THE USER ACCOUNTS ARE AND SHALL FOREVER BE OWNED BY AND INURE TO THE BENEFIT OF COMPANY.

**7. Subscription; Services; Shipping; Terms of Sale; Payment Terms.** If you are approved for credit, and submitted a Purchase Order via email, USPO, or fax, you will be invoiced for each Physical & Print Product and for each digital subscription period without further authorization from you, unless and until you cancel your subscription or your account is deactivated due to non-payment.

**(a) Subscription Period.** A Subscription is required to access the Services. A Subscription is granted after receipt of the Purchase Order. This Subscription offers continuous Services for the school term (August 1 – July 31<sup>st</sup>). The Subscription is automatically renewed at the conclusion of each period (a “Subscription Period”). You will be notified 60 days prior to the upcoming renewal term to make adjustments. All fees for your Subscription must be paid within 30 days of invoice date and are not refundable. All paid Subscriptions are subject to our additional Payment Terms, set forth below.

**(b) Free Trial Subscription.** Company may from time to time offer a free trial subscription for new subscribers, subject to these Terms (“Free Trial”). Free Trial Subscriptions are made available in Company’s sole discretion and may be denied or cancelled at any time, for any reason. Some Content may not be available, and additional Terms and Restrictions may apply to the Free Trial. Some Paid Subscription Periods may not come with a Free Trial option. In such instances, payment is due within 30 days of invoice date.

**(c) Pricing.** All pricing for Subscriptions will be provided via a quote or otherwise communicated to you before you place an order. Unless otherwise expressly stated, all pricing is stated in USD. We reserve the right to adjust pricing of any Subscription or any components or contents thereof in any manner and at any time, as we may determine in our sole and absolute discretion. Except as otherwise expressly provided for in these Terms, any price changes to your Subscription will take effect following e-mail notice to you prior to purchase or prior to the Subscription Period end date.

**(d) Shipping - Physical Products.** Physical Products require shipping to the customer’s location specified on the Purchase Order “ship to” address. Frog Street’s standard shipping process is within 7-10 days from receipt of the order. During high-volume seasons (Back to School), order processing may take longer. Shipping carriers are determined by Frog Street unless specifically specified by the customer and the customer is paying the freight carrier directly. The transit time for orders is approximately an additional five days to anywhere in the United States (with the exception of delays due to bad weather). Any order that includes 5 boxes or more is shipped on a pallet, banded and wrapped. Orders under 5 boxes are shipped via UPS. Orders are shipped from the Frog Street Warehouse location: 423 Bank Street, Suite 100, Southlake, Texas 76092. Customers may pick-up their order at the warehouse location in lieu of shipping. Customers are responsible for payment of all shipping costs at the shipping current rate. Please schedule shipping dates with [customercare@frogstreet.com](mailto:customercare@frogstreet.com).

**(e) Damages, Missing Parts, Returns – Physical Products.** Please notify Frog Street within 3 days of receipt of your order if you are a) missing a component from your physical curriculum; b) missing a shipper box of curriculum; c) received a damaged product or shipper box (provide photograph of damage); requesting a return due to an error by Frog Street; or any questions regarding your order. Send your request to [customercare@frogstreet.com](mailto:customercare@frogstreet.com) or call 800-884-3764.

**(f) Professional Development Services Terms. See Exhibit A.**

**(g) PAYMENT TERMS.** PLEASE READ THESE PAYMENT TERMS CAREFULLY AND IN THEIR ENTIRETY.

If approved for credit with Frog Street, you will be invoiced for your Product Content and/or Services. All invoices for Frog Street Services and Product are due within 30 days of Invoice date. Payments can be via credit card, ACH or check. Subscription plans are also payable by credit card, ACH or check, and have an automatic renewal feature in which you will be invoiced on a recurring basis at the start of each new annual Subscription Period until cancelled or terminated. You may cancel your Subscription or terminate your use of the Services at any time, but you will not receive a refund or credit for any fees previously paid. For paid Subscriptions, upon cancellation, you will retain access to your Subscription Account for the remainder of the subscription period for which you previously paid.

Company will send an invoice or bill the credit card then associated with your User Account on the first day of the new Subscription Period, unless and until you cancel. To avoid charges for the next Subscription Period, you must cancel your automatically renewing Subscription before the expiration of the then-current Subscription Period.

You are solely responsible for timely updating your billing and contact information. If using a credit card and the credit card is declined or we are not able to process your credit card, we will notify you via email or phone and if no response, terminate your Subscription and you will retain access to the Services only for the remainder of the Subscription Period for which you previously paid. Company, at its option, limit the type of payment cards accepted. You may update your payment method or contact information, or cancel your subscription, at any time by sending an email to [support@frogstreet.com](mailto:support@frogstreet.com).

Company may modify these Payment Terms or change the pricing (or add additional fees) at any time. You agree that we may notify you of the updated Payment Terms by posting them on our support website so that they are accessible via a link on the home page. The updated Payment Terms will be effective on the date posted unless otherwise specified and your use of the Services after we have posted the updates constitutes your agreement to any updated Payment Terms or pricing. For users with an active automatically renewing subscription at the time of change and for whom we have a current email address, we may also communicate changes to the Payment Terms via email. The new fees and/or Payment Terms will go into effect upon your next renewal following posting of the updated Payment Terms unless otherwise stated.

BY ENTERING INTO THIS AGREEMENT, YOU ACKNOWLEDGE THAT YOUR SUBSCRIPTION HAS AN INITIAL AND RECURRING PAYMENT FEATURE AND YOU ACCEPT RESPONSIBILITY FOR ALL RECURRING CHARGES PRIOR TO TERMINATION OR CANCELLATION. COMPANY MAY SUBMIT PERIODIC CHARGES CONSISTENT WITH YOUR THAT YOU WISH TO TERMINATE THIS AUTHORIZATION OR WISH TO CHANGE YOUR PAYMENT METHOD OR DELIVERY ADDRESS. SUCH NOTICE WILL NOT AFFECT CHARGES SUBMITTED BEFORE COMPANY REASONABLY COULD ACT.

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**(j) Descriptions of Services, Subscriptions and Content.** We try our best to make the information regarding the Services, and associated Content thorough, accurate, and helpful to our customers. Nonetheless, there may be times when certain information may be incorrect, incomplete, inaccurate, or appear inaccurate. We apologize in advance for any such errors that may result in an incorrect price, inaccurate description, item unavailability or otherwise affects your order. We reserve the right to correct errors (whether by changing information or by informing you of the error and giving you an opportunity to cancel your order) or to update the information at any time without notice.



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You can remove your User Content by specifically deleting it. However, in certain instances, some of your User Content (such as posts or comments you make) may not be completely removed and copies of your User Content may continue to exist on the Services. We are not responsible or liable for the removal or deletion of (or the failure to remove or delete) any of your User Content.

**9. General Prohibitions and Company's Enforcement Rights.** You agree not to do any of the following:

- (a) Post, upload, publish, submit or transmit any Content that: (i) infringes, misappropriates or violates a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (iii) is fraudulent, false, misleading or deceptive; (iv) is defamatory, obscene, pornographic, vulgar or offensive; (v) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (vi) is violent or threatening or promotes violence or actions that are threatening to any person or entity; or (vii) promotes illegal or harmful activities or substances;
- (b) Use, display, mirror or frame the Services or any individual element within the Services, Company's name, any Company trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Company's express written consent;
- (c) Access, tamper with, or use non-public areas of the Services, Company's computer systems, or the technical delivery systems of Company's providers;
- (d) Attempt to probe, scan or test the vulnerability of any Company system or network or breach any security or authentication measures;
- (e) Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Company or any of Company's providers or any other third party (including another user) to protect the Services or Content;
- (f) Attempt to access or search the Services or Content or download Content from the Services through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by Company or other generally available third-party web browsers;



- (g) Send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation;
- (h) Use any meta tags or other hidden text or metadata utilizing a Company trademark, logo URL or product name without Company's express written consent;
- (i) Use the Services or Content, or any portion thereof, for any commercial purpose or for the benefit of any third party or in any manner not permitted by these Terms;
- (j) Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Services or Content to send altered, deceptive or false source-identifying information;
- (k) Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Services or Content;
- (l) Interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Services;
- (m) Collect or store any personally identifiable information from the Services from other users of the Services without their express permission;
- (n) Impersonate or misrepresent your affiliation with any person or entity;
- (o) Violate any applicable law or regulation; or
- (p) Encourage or enable any other individual to do any of the foregoing.

Although we're not obligated to monitor access to or use of the Services or Content or to review or edit any Content, we have the right to do so for the purpose of operating the Content and Services, to ensure compliance with these Terms and to comply with applicable law or other legal requirements. We reserve the right, but are not obligated, to remove or disable access to any Content, at any time and without notice, including, but not limited to, if we, at our sole discretion, consider any Content to be objectionable or in violation of these Terms. We have the right to investigate violations of these Terms or conduct that affects the Services. We may also consult and cooperate with law enforcement authorities to prosecute users who violate the law.

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**DMCA Notice of Alleged Infringement ("Notice")**

- a) Identify the copyrighted work that you claim has been infringed, or - if multiple copyrighted works are covered by this Notice - you may provide a representative list of the copyrighted works that you claim have been infringed
- b) Identify the material that you claim is infringing (or to be the subject of infringing activity) and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material, including at a minimum, if applicable, the URL of the link shown on the Site(s) and Services where such material maybe found.
- c) Provide your organization name, mailing address, telephone number, and, if available, email address.
- d) Include both of the following statements in the body of the Notice:
  - "I hereby state that I have a good faith belief that the disputed use of the copyrighted material is not authorized by the copyright owner, its agent, or the law (e.g., as a fair use)."
  - "I hereby state that the information in this Notice is accurate and, under penalty of perjury, that I am the owner, or authorized to act on behalf of the owner, of the copyright or of an exclusive right under the copyright that is allegedly infringed."

Provide your full legal name and your electronic or physical signature. Deliver this Notice, with all items completed, to Company's Designated Copyright Agent:

General Counsel  
c/o Frog Street Press, LLC  
530 S Nolen Drive  
Southlake, Texas 76092  
E-mail: [support@frogstreet.com](mailto:support@frogstreet.com)

**12. Links to Third Party Websites or Resources.** The Services may contain links to third-party websites or resources. We provide these links only as a convenience and are not responsible for the content, products or services on or available from those websites or resources or links displayed on such websites. You acknowledge sole responsibility for and assume all risk arising from, your use of any third-party websites or resources. You understand that it is your responsibility to review the applicable Terms of Service and Privacy Policy for those third-party websites or resources.

**13. Termination.** Company has the right at any time for any reason or no reason to change and/or eliminate any aspect of the Services, Subscription and/or Content. Your right to access and use is provided at our discretion, and your User Account may be suspended or terminated at any time and for any reason. Company reserves the right to suspend or interrupt all or any aspect of the Services from time to time with or without prior notice, for any reason including, without limitation, to perform maintenance. You acknowledge that the Services may also be interrupted for reasons beyond the control of Company and that Company cannot guarantee that you will be able to access the Services or your User Account whenever you may wish to do so. You may cancel your Account at any time by sending an email to us at [support@frogstreet.com](mailto:support@frogstreet.com). Upon any termination, discontinuation or cancellation of the Services or your User Account, the following Sections will survive: 9, 14, 15 and 16.

**Warranty Disclaimers.** THE SERVICES AND CONTENT ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" and "WITH ALL FAULTS" BASIS WITHOUT WARRANTY, REPRESENTATION OR ENDORSEMENT OF ANY KIND, EXPRESS OR IMPLIED. WITHOUT LIMITING THE FOREGOING, TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, COMPANY, ITS PARENTS, GRANDPARENTS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND/OR VENDORS, INCLUDING BUT NOT LIMITED TO THIRD PARTY SERVICE PROVIDERS, ("COMPANY PARTIES") EXPLICITLY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, TITLE, SYSTEM INTEGRATION AND FREEDOM FROM COMPUTER VIRUS, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

We make no warranty that the Services will meet your requirements or be available on an uninterrupted, secure, or error-free basis. We make no warranty regarding the quality, accuracy, timeliness, truthfulness, completeness, usefulness or reliability of any Content.

**14. Indemnity.** You will indemnify and hold harmless Company Parties, from and against any claims, disputes, demands, liabilities, damages, losses, and costs and expenses, including, without limitation, reasonable legal and accounting fees arising out of or in any way connected with (i) your access to or use of the Services, or Content, (ii) your User Content, (iii) your violation of these Terms, (iv) your violation of any laws, rules, regulations, codes, statutes, ordinances or orders of any governmental or quasi-governmental authorities, including but not limited to all regulatory, administrative and legislative authorities, and/or (v) Company Parties' use of your information as permitted under these Terms, the Privacy Policy, or any other written agreement between you and Company. You agree to provide reasonable cooperation with the Company Parties in the defense of any claim. Company Parties reserve the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and you will not in any event settle any claim without the prior written consent of a duly authorized officer of Company.

**15. Limitation of Liability.**

(a) NEITHER COMPANY, COMPANY PARTIES, NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES OR CONTENT WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOST PROFITS, LOST REVENUES, LOST SAVINGS, LOST BUSINESS OPPORTUNITY, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SERVICES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES OR CONTENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT COMPANY OR ANY OTHER PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

(b) IN NO EVENT WILL COMPANY'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SERVICES OR CONTENT EXCEED THE AMOUNTS YOU HAVE PAID TO COMPANY FOR USE OF THE SERVICES OR CONTENT OR ONE HUNDRED DOLLARS (\$100), IF YOU HAVE NOT HAD ANY PAYMENT OBLIGATIONS TO COMPANY, AS APPLICABLE.

(c) YOU UNDERSTAND THAT YOU MAY BE WAIVING RIGHTS WITH RESPECT TO CLAIMS THAT ARE AT THIS TIME UNKNOWN OR UNSUSPECTED, AND IN ACCORDANCE WITH SUCH WAIVER, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND, AND HEREBY EXPRESSLY WAIVE, THE BENEFITS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, WHICH PROVIDES AS FOLLOWS, OR ANY SIMILAR LAW OF ANY STATE OR TERRITORY, AS APPLICABLE: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

(d) THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN COMPANY AND YOU.

**Governing Law and Forum Choice.** These Terms and any action related thereto will be governed by the Federal Arbitration Act, federal arbitration law, and the laws of the State of Kentucky, without regard to its conflict of laws provisions. Except as otherwise expressly set forth in Section 18 "Dispute Resolution," the exclusive jurisdiction for all Disputes (defined below) that you and Company are not required to arbitrate will be the state and federal courts located in Kenton County, Kentucky, and you and Company each waive any objection to jurisdiction and venue in such courts.

#### **16. General Terms.**

(a) **Entire Agreement.** These Terms constitute the entire and exclusive understanding and agreement between Company and you regarding the Services and Content, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Company and you regarding the Services and Content. If any provision of these Terms is held invalid or unenforceable by an arbitrator or a court of competent jurisdiction, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect. You may not assign or transfer these Terms, by operation of law or otherwise, without Company's prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null. Company may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

(b) **Notices.** Any notices or other communications provided by Company under these Terms, including those regarding modifications to these Terms, will be given: (i) via email; or (ii) by posting to the Services. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted.

(c) **Waiver of Rights.** Company's failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Company. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.

**17. Contact Information.** If you have any questions about these Terms or the Services, please contact Company at [support@frogstreet.com](mailto:support@frogstreet.com).

## **Exhibit A**

### **Professional Development Services**

The following terms and conditions apply to the Agreement between Frog Street and Customer ("Agreement"). Capitalized terms not defined herein shall adopt the definition set forth in the Agreement.

**Services:** Frog Street will provide professional training and development as outlined in an Agreement's Statement of Work ("Services") subject to these terms and conditions. Services may be provided on-site or digitally, as set forth in the Agreement. The Services agreed to are for Frog Street's existing and proprietary training programs. Any request by Customer for customized training materials or programs may result in additional charges and fees.

**On-Site Services:** Customer understands and agrees that one day equals six (6) hours of consulting and one-half day equals (3) hours of consulting services. Customer further understands that the number of participants outlined in the Agreement is the maximum number of participants permitted to attend the Services for the stated fee, and that there is a maximum number of 50 participants permitted in any On-Site training with one consultant. If the On-Site Services pertain to a Frog Street curriculum training, Customer agrees to provide curriculum components needed for the training, as specified in advance by Frog Street. If Customer is unwilling or unable to provide such curriculum components at the time of On-Site Services, Customer shall be subject to additional fees, including all shipping and handling costs incurred by Frog Street to ship the curriculum to the On-Site Service locations.

**Virtual Services:** Virtual Services will be provided via Webinar. Customer understands and agrees that Frog Street will use a third-party application, such as the Zoom Application, to conduct Webinars and that, to facilitate a secure virtual environment, attendees will be asked to register with the third-party application. At its sole discretion, often in the case of larger and more complex events, Frog Street may utilize and require Customer and registered users to complete a two-step registration process, such as through both Zoom and a third-party online event manager, such as Event Squid. By agreeing to Digital Services, Customer understands and agrees that Customer's decision to access the Services through use or access to third-party application(s) is completely voluntary, that Customer is advised to refer to the third-party application(s) terms of use and/or privacy policy, and that Frog Street makes no warranties and shall have no liability to Customer or any attendee of Customer with respect to any third-party application.

**Certificates:** If Customer requests, Frog Street will send a certificate of attendance template to the Customer to complete for those registered users that attended the training. At Frog Street's discretion, the certificates of attendance may be automated to each individual registrant through a third-party event manager system.

**Intellectual Property:** Limited License; Prohibited Activity: All Services, training and development materials presented by Frog Street, including but not limited to written training materials or presentations, as well as all Curriculum sold and/or created by Frog Street, whether in hard copy, digital or other form, are and shall remain the exclusive property of Frog Street Press, LLC. Customer shall not copy, reproduce, distribute, or otherwise use Frog Street's Services, training and development materials or Curriculum in any manner or to any person or entity, including internally to Customer's employees, without the express written permission of Frog Street. Customer may not videotape, record to use Frog Street's presentations in any manner, without express written permission from Frog Street. Customer is receiving a limited license to use Frog Street's Services, training materials or presentations only as expressly set forth in the Agreement.

**Payment Terms:** Payment to Frog Street Press is due no later than 30 days after the date that services are rendered. If the Agreement contains multiple visits, payment is due after each consulting visit.



**Termination:** Either Party may terminate this Agreement for any reason thirty (30) days before the first scheduled date of Services set forth in the Agreement. If Customer terminates this Agreement or otherwise cancels Services within thirty (30) days of the first scheduled event, Customer shall reimburse Frog Street for all out of pocket expenses, including but not limited to travel expenses, incurred related to the Services.

**Force Majeure:** Except with respect to Customer's payment obligations, no Party shall be liable for, nor shall such Party be considered in breach of this Agreement due to, any failure to perform its obligations under this Agreement as a result of a cause beyond its control, including any act of God or a public enemy or terrorist, act of any military, civil or regulatory authority, fire, flood, earthquake, storm or other like event, wide-spread disruption or outage of communications, power, or other utility or third-party application, labor problem, unavailability of supplies, travel restriction or cancellation due to pandemic or other pandemic-related cause, measures taken by any governmental authority (including shelter in place requirements) or any other cause similar to any of the foregoing, which could not have been prevented by such Party with reasonable care (each, a "Force Majeure Event"). In the event of a Force Majeure Event, the time for performance required of the affected Party shall be extended by the period of such delay provided the Party is exercising diligent efforts to overcome the cause of such delay.

**Warranties:** Customer is solely responsible for determining which curriculum and/or Services is appropriate for Customer's needs. Frog Street will perform the Services in a professional manner. Frog Street makes no express or implied warranties regarding any curriculum, Services or third-party applications and expressly disclaims any and all warranties, whether written or oral, express or implied, including but not limited to any warranty of merchantability, fitness for a particular purpose and/or non-infringement.

LIMITATION OF LIABILITY. EXCEPT FOR ANY INFRINGEMENT OF FROG STREET'S INTELLECTUAL PROPERTY, (1) NEITHER PARTY WILL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR LOSS OF PROFITS, OR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES IN CONNECTION WITH THE SERVICES, ANY CURRICULUM OR THE PERFORMANCE OF ANY OTHER OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF IT IS AWARE OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES, AND (2) EACH PARTIES' TOTAL CUMULATIVE LIABILITY TO THE OTHER PARTY FOR ANY AND ALL CLAIMS AND DAMAGES UNDER THIS AGREEMENT, WHETHER ARISING BY STATUTE, CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED TWO (2) TIMES THE FEES ACTUALLY PAID UNDER THE AGREEMENT.

**ADDITIONAL TERMS APPLICABLE IN RELATION TO COVID-19:**

Customer attests that any request for On-Site Services is made with full awareness of the conditions and risks of COVID-19 as set forth in detail the CDC website, <http://www.cdc.gov>. Frog Street's training consultants work nationally, and most likely will travel on an airplane to the location of the On-Site Services. A Virtual alternative for the Services is available upon request. Frog Street and Customer agree to use their reasonable best efforts to comply with the CDC Guidelines on minimizing the risk exposure to COVID-19, found at <http://www.cdc.gov>. Frog Street and Customer, on behalf of themselves and their agents, employees and insurers, recognize that exposure to COVID-19 is a risk that cannot be fully eliminated, and agree that neither party may seek indemnification from the other party with respect to any and all claims (whether first party or third party claims ) related to (i) the impact of Covid-19 on either party's business operations, and/or (ii) the health of or exposure to COVID-19 by a party's agents, employees, trainers, patrons or attendees, as applicable.

**Notice of illness:** Right to Reschedule due to Illness: For each Date of On-Site Services, Customer agrees to provide Frog Street with two alternate dates falling within 60 days of the scheduled date. Customer agrees to notify Frog Street (but not disclose any protected personal identifying information) of any suspected or confirmed COVID-19 exposure at the location of the scheduled On-Site training occurring within one (1) week before the scheduled Date



## Frog Street Press, LLC. Terms of Service

of On-Site Services, in which case Frog Street shall have the option to reschedule to a date mutually convenient for the Parties, or provide the Services Virtually on a date mutually convenient to the parties. Frog Street shall also have the option to reschedule the Date of On-Site Service in the event of illness on the part of any of Frog Street's agents or employees performing the On- Site Services, or in the event of any unanticipated airline-related travel impediments, though in each instance Frog Street will first make a reasonable effort to find a replacement trainer in lieu of rescheduling.