



# Issue Paper

**DATE:**

December 13, 2023

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve a sales contract with Lightspeed Systems for Twenhofel Middle School, Turkeyfoot Middle School, Summit View Middle School, Woodland Middle School and Dixie High School for the 2023-2024 school year.

**APPLICABLE BOARD POLICY:**

01.1 - Legal Status of the Board

**HISTORY/BACKGROUND:**

Lightspeed is a system to filter student internet access provided by KDE. Lightspeed Management is an extension of this service that provides teachers real-time visibility of student activity and oversight of their online workspaces. Teachers can see student screens, close distracting tabs, enable screen sharing for collaboration between students, and push URLs to all students to keep students focused on the intended content. Lightspeed provides visibility of edtech usage to teachers and administrators to ensure programs are being used as intended.

**FISCAL/BUDGETARY IMPACT:**

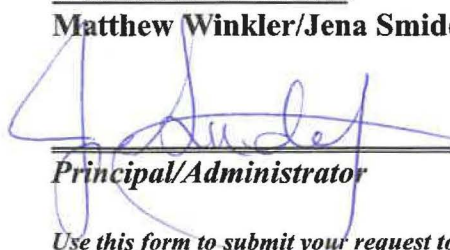
\$4,187.50 (School Instructional Funds-7000, Title I, ESSER)

**RECOMMENDATION:**

Approve a sales contract with Lightspeed Systems for Twenhofel Middle School, Turkeyfoot Middle School, Summit View Middle School, Woodland Middle School and Dixie High School for the 2023-2024 school year.

**CONTACT PERSON:**

Matthew Winkler/Jena Smiddy

  
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.



Thank you for choosing CDW. We have received your quote.

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## QUOTE CONFIRMATION

**MATTHEW WINKLER,**

Thank you for considering CDW•G for your technology needs. The details of your quote are below. **If you are an eProcurement or single sign on customer, please log into your system to access the CDW site.** You can search for your quote to retrieve and transfer back into your system for processing.

For all other customers, click below to convert your quote to an order.

**Convert Quote to Order**

QUOTE #	QUOTE DATE	QUOTE REFERENCE	CUSTOMER #	GRAND TOTAL
NRHF620	12/13/2023	CLASSROOM 1/9-6/30	1647073	\$4,187.50

### QUOTE DETAILS

ITEM	QTY	CDW#	UNIT PRICE	EXT. PRICE
<b>Lightspeed Classroom Management - subscription license (1 year) - 1 license</b>	3350	6380377	\$1.25	\$4,187.50
Mfg. Part#: CLRM-1				
Electronic distribution - NO MEDIA				
Contract: Kentucky Association of Educational Cooperatives (022-G)				

<b>SUBTOTAL</b>	\$4,187.50
<b>SHIPPING</b>	\$0.00
<b>SALES TAX</b>	\$0.00
<b>GRAND TOTAL</b>	<b>\$4,187.50</b>

PURCHASER BILLING INFO	DELIVER TO
<b>Billing Address:</b> KENTON COUNTY BOARD OF EDUCATION ACCTS PAYABLE 1055 EATON DR FT WRIGHT, KY 41017-9655 <b>Phone:</b> (859) 344-8888 <b>Payment Terms:</b> NET 30 Days-Govt/Ed	<b>Shipping Address:</b> KENTON COUNTY BOARD OF EDUCATION GARY CRAWFORD 1055 EATON DR FT WRIGHT, KY 41017-9655 <b>Shipping Method:</b> ELECTRONIC DISTRIBUTION
	<b>Please remit payments to:</b>  CDW Government 75 Remittance Drive Suite 1515 Chicago, IL 60675-1515



### Sales Contact Info

**Rich McLean** | (866) 668-9495 | [richmcl@cdw.com](mailto:richmcl@cdw.com)

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This order is subject to CDW's Terms and Conditions of Sales and Service Projects at

<http://www.cdw.com/content/terms-conditions/product-sales.aspx>

For more information, contact a CDW account manager.

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## **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.

**Lightspeed Solutions, LLC dba Lightspeed Systems**

Vendor Name

12013 Fitzhugh Road, Austin, TX 78736

Vendor Address

737.205.2500

Vendor Telephone

[privacy@lightspeedsystems.com](mailto:privacy@lightspeedsystems.com)

Vendor Email Address



Kevin Chiang (Dec 15, 2023 08:32 CST)

Signature by Vendor's Authorized Representative

Kevin Chiang – VP, Finance

Print Name

Dec 15, 2023

Date





# Kenton County School District\_Lightspeed Systems\_Data Security & Breach Protocols\_20231215

Final Audit Report

2023-12-15

Created:	2023-12-15 (Central Standard Time)
By:	Fiona Wright (fwright@lightspeedsystems.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAQu-eNJX_KKTeGeoUCBgJPCtC9N9KWlnz

## "Kenton County School District\_Lightspeed Systems\_Data Security & Breach Protocols\_20231215" History

-  Document created by Fiona Wright (fwright@lightspeedsystems.com)  
2023-12-15 - 8:21:36 AM CST
-  Document emailed to Kevin Chiang (kchiang@lightspeedsystems.com) for signature  
2023-12-15 - 8:22:30 AM CST
-  Email viewed by Kevin Chiang (kchiang@lightspeedsystems.com)  
2023-12-15 - 8:29:35 AM CST
-  Document e-signed by Kevin Chiang (kchiang@lightspeedsystems.com)  
Signature Date: 2023-12-15 - 8:32:51 AM CST - Time Source: server
-  Agreement completed.  
2023-12-15 - 8:32:51 AM CST

# Terms of Use

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## Terms of Use

Revised: April 16, 2021

### 1. Acceptance of Terms

Lightspeed Solutions, LLC ("[Lightspeed](#)", dba "Lightspeed Systems") enables schools and other educational bodies to make learning safe, managed and mobile through access to and use of its proprietary online platform accessible from the website and associated domains of <https://www.lightspeedsystems.com/> ("[Platform](#)") and Lightspeed's mobile applications ("[Mobile Apps](#)") and other locally-installed software ("[Smart Agents](#)") related to the Platform (the Platform together with the Smart Agents and the Mobile Apps, including Safety Check, the "[Lightspeed Offering](#)"). Any access to or use of the Lightspeed Offering is subject to the terms and conditions in this Terms of Use ("[TOU](#)"). Lightspeed may, at its discretion, update the TOU at any time without any prior notice. You can access and review the most current version of the TOU at the URL for this page or by clicking on the "Terms of Use" link within the Lightspeed Offering or as otherwise made available by Lightspeed.

PLEASE REVIEW THE TOU CAREFULLY. BY REGISTERING FOR AN ACCOUNT OR OTHERWISE ACCESSING OR USING THE LIGHTSPEED OFFERING (OR ALLOWING END USERS TO ACCESS OR USE THE LIGHTSPEED OFFERING), YOU AGREE TO BE BOUND BY THE TOU, INCLUDING ANY UPDATES OR REVISIONS POSTED HERE OR OTHERWISE COMMUNICATED TO YOU. IF YOU ARE ENTERING INTO THE TOU ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED AND LAWFULLY ABLE TO BIND SUCH ENTITY TO THE TOU, IN WHICH CASE THE TERM "YOU" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THE TOU, YOU MAY NOT ACCESS OR USE THE LIGHTSPEED OFFERING.

You represent and warrant that you are: (i) over eighteen (18) years of age or the age of majority in your jurisdiction, whichever is greater; (ii) of legal age to form a binding contract; and (iii) not a person barred from using the Lightspeed Offering under the laws of your country of residence or any other applicable jurisdiction.

### 2. Other Agreements

In addition to these TOU, your access to and use of the Lightspeed Offering is subject to the Lightspeed [Privacy Policy](#), any terms agreed to in writing by Lightspeed and you regarding the scope of access to and use of the Lightspeed Offering and/or Lightspeed's provision of support services to you, and any usage or other policies relating to the Lightspeed Offering posted or otherwise made available to you by Lightspeed (collectively, "[Additional Terms](#)"). The Additional Terms are part of the TOU and are hereby incorporated by reference and you agree to be bound by the Additional Terms.

### 3. Grant of Rights

- (a) Lightspeed grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to access and view pages within the Platform.
- (b) To the extent that the Platform provides access to any online software, applications or other similar components, Lightspeed grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to access and use such components only in the form within the Platform.
- (c) Lightspeed grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to install, run and use the Mobile Apps on a mobile device that you own and control (which term shall include any device owned by you that you lend to end users), in executable, machine-readable, object code form only.

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material respects with the terms and conditions of the Usage Rules set forth in the iTunes App Store Terms of Service.

(b) With respect to any iOS Mobile App, the parties acknowledge that the TOU is concluded between you and Lightspeed only, and not with Apple Inc. ("Apple"), and Apple is not responsible for iOS Mobile Apps and the contents thereof. Apple has no obligation whatsoever to furnish any maintenance and support services with respect to iOS Mobile Apps. Lightspeed, not Apple, is responsible for addressing any claims from you or any third party relating to iOS Mobile Apps or your possession and/or use of iOS Mobile Apps, including product liability claims, any claim that iOS Mobile Apps fail to conform to any applicable legal or regulatory requirement and claims arising under consumer protection or similar legislation. Apple and Apple's subsidiaries are third-party beneficiaries of the TOU with respect to iOS Mobile Apps, and Apple shall have the right (and will be deemed to have accepted the right) to enforce the TOU against you as a third-party beneficiary hereof with respect to iOS Mobile Apps. Lightspeed, not Apple, shall be solely responsible for the investigation, defense, settlement and discharge of any intellectual property infringement claim attributable to iOS Mobile Apps.

### 5. Third Party Software

Some components of the Lightspeed Offering may be provided with or have incorporated into them third-party software ("Third-Party Software"), which may include software licensed under "open source" or other licenses approved by the Open Source Initiative. All Third-Party Software are subject to their own license terms available at <https://help.lightspeedsystems.com/s/article/Third-Party-Software>. If you do not agree to abide by the applicable terms for any Third-Party Software, you should not install or use the applicable components. You acknowledge and agree that: (i) Lightspeed has no proprietary interest in any Third Party Software; (ii) to the extent permitted by applicable law and notwithstanding the rest of the TOU, any Third Party Software is provided "AS IS" with all faults and neither the licensor of such Third-Party Software nor any Lightspeed Party shall be liable for any damages, claims, liabilities or expenses (whether direct, indirect, incidental, special, exemplary, punitive or consequential) related to such Third Party Software or the use thereof; and (iii) such Third-Party Software may be subject to separate license restrictions and obligations set forth in the respective license agreements related to such software.

### 6. Support

Lightspeed will use commercially reasonable efforts to provide the support services agreed to by the parties pursuant to the applicable Additional Terms. Otherwise, the TOU does not entitle you to any support for the Lightspeed Offering.

### 7. Registration; Account

(a) Lightspeed may enable you to access and browse the Lightspeed Offering without registering, but some features may not be accessible unless you register. In registering for the Lightspeed Offering, you agree to: (i) provide true, accurate, current and complete information about yourself as prompted by the Lightspeed Offering's registration form (the "Registration Data"); and (ii) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or Lightspeed reasonably suspects that you have done so, Lightspeed may suspend or terminate your account.

(b) You may not share your account or password with anyone. You are fully responsible for all activities that occur under your account, whether or not you authorized the particular use or user, and regardless of your knowledge of such use. You agree to notify Lightspeed immediately of any unauthorized use of your account or password or any other similar breach of security.

(c) If your account remains inactive for three months or longer, Lightspeed reserves the right to suspend or terminate your account, with or without notice to you, and delete Your Content (as defined in Section 8(a)), all without liability to you.

### 8. Responsibility for Content

(a) You acknowledge and agree that all information, data, data records, databases, text, software, music, sounds, photographs, images, graphics, videos, messages, scripts, tags and other materials accessible through the Lightspeed Offering, whether publicly posted or privately transmitted ("Content"), are the sole responsibility of the person from whom such Content originated. This means that you, and not Lightspeed, are entirely responsible for all Content that originates from or through you, or that is collected by you or on your behalf, including any Content that you or any of your users upload, post, email, transmit or otherwise make available through the Lightspeed Offering (collectively, "Your Content").

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("COPPA") and Protection of Pupil Rights Amendment ("PPRA"). You represent, warrant, and covenant to Lightspeed, that you will: (i) comply with all applicable provisions of FERPA relating to disclosures to School Officials (as defined in 34 CFR 99.31 (B)) with a legitimate educational interest, including, without limitation, informing parents in their annual notification of FERPA rights, that you define "school official" to include service providers and define "legitimate educational interest" to include services such as the type provided by Lightspeed; and (ii) provide sufficient notice and disclosure of the terms of this TOU and the Additional Terms to, and obtain and maintain all necessary rights and consents, including consents required by applicable state and federal law, rules, and regulations, such as COPPA, from, either each user or, where necessary, each user's parent or legal guardian, to allow Lightspeed to provide and improve the Lightspeed Offering and collect and receive user data in accordance with this TOU and the Additional Terms. Lightspeed relies on consent obtained from schools, acting as an agent of the parent(s) or legal guardian(s) of its students, as permitted by COPPA, for using the Lightspeed Offering in connection with students under thirteen (13) years of age, if any. You must keep all consents on file and provide them to Lightspeed if we request them. We recommend that you provide users and their respective parents/guardians, teacher, and other appropriate school personnel with a copy of Lightspeed's Privacy Policy and COPPA Notice, and any other parental information made available by Lightspeed.

## 9. Notifications and Legal Obligations

Depending on the Lightspeed Offering services you are using, the Lightspeed Offering may utilize proprietary insight and algorithms to identify warning signs of certain dangerous online behavior. In such cases, you understand that:

- (a) Lightspeed may, in its sole discretion, conduct manual review of flagged behavior for further analysis.
- (b) If Lightspeed identifies such warning signs, it may trigger an automated communication from Lightspeed to the email address designated in the Lightspeed Offering.
- (c) The Lightspeed Offering is not designed to flag all dangerous online behavior and Lightspeed cannot guarantee that the designated email address will be notified of every instance that presents a threat.
- (d) You or specific school or district personnel may have a legal obligation to notify law enforcement, first responders, state or federal reporting agencies, such as the National Center for Missing and Exploited Children, or other officials ("Government Officials"), or other individuals of the behavior flagged by the Lightspeed Offering. These obligations, like the identified threats, may be time sensitive, and you agree that the designated email address will be monitored on a regular and consistent basis.
- (e) You agree that Lightspeed's notification to the designated email address satisfies any legal obligation imposed on Lightspeed, but Lightspeed may, in its sole discretion, contact Government Officials to notify them of situations that Lightspeed becomes aware and to provide them with information regarding such situations and that such contact may result in such Government Official taking immediate action based on the provided information.
- (f) Any notification by Lightspeed to the designated email address, other school or district personnel, law enforcement, or other officials does not satisfy your or the school or district's legal obligation to notify law enforcement or other officials of the behavior flagged by the Lightspeed Offering.

## 10. Rights to Content

- (a) Lightspeed does not claim ownership of Your Content. However, you grant Lightspeed and its service providers a worldwide, royalty-free, fully-paid-up, non-exclusive, sublicensable, transferable license to use, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make and have made Your Content (in any form and any medium, whether now known or later developed) as necessary to provide the Lightspeed Offering to you. Additionally, you acknowledge and agree that Lightspeed may collect and use for any lawful purpose Your Content in aggregate form, without identifying individual end users or you.
- (b) You acknowledge and agree that the technical processing and transmission of data associated with the Lightspeed Offering, including Your Content, may require: (i) transmissions over various networks; and (ii) changes to conform and adapt to technical requirements of connecting networks or devices.
- (c) Except with respect to Your Content, you acknowledge and agree that, as between you and Lightspeed, Lightspeed owns all rights, title and interest (including all intellectual property rights) in the Lightspeed Offering and all Content and other materials within the Lightspeed Offering. The Lightspeed Offering is protected by U.S. and international copyright, trademark, patent and other intellectual property

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substantially similar to the Lightspeed Offering or any products or services offered by Lightspeed; (v) rent, lease, lend, sell or sublicense the Lightspeed Offering or otherwise provide access to the Lightspeed Offering as part of a service bureau or similar fee-for-service purpose; (vi) remove or obscure any proprietary notice that appears within the Lightspeed Offering; or (vii) use the Lightspeed Offering in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

### 11. Export Restrictions

You acknowledge that the Lightspeed Offering is subject to U.S. export jurisdiction. You agree to comply with all applicable international and national laws that apply to the Lightspeed Offering, including, but not limited to, the U.S. Export Administration Regulations administered by the U.S. Department of Commerce, Bureau of Industry & Security ("BIS") and sanctions imposed by the U.S. Department of Treasury, Office of Foreign Assets Control ("OFAC"), as well as end-user, end-use and destination restrictions enforced by U.S. and foreign governments.

You represent and warrants to Lightspeed that You shall not engage in the re-export of the Lightspeed Offering contrary to U.S. and international export control and sanctions regimes. You agree that You shall immediately notify Lightspeed in the event of any suspected or actual violation of U.S. export control and sanctions laws.

You are responsible for any and all activities that occur with the usage of the Lightspeed Offering. You shall ensure that the Lightspeed Offering is not used, transferred, or otherwise exported or re-exported to Crimea, Cuba, Iran, North Korea, Syria, or any other country in which the United States and/or European Union maintains an embargo (collectively, "Embargoed Countries") or to any person or entity on OFAC's List of Specially Designated Nationals or BIS' Entity List ("Designated Person"). These lists of designated persons are subject to change without notice. By using the Lightspeed Offering, You represent and warrant that You are not located in, under the control of, or a national or resident of an Embargoed Country or Designated Person. You agree to obtain any necessary export authorizations for the re-export of the Lightspeed Offering to ensure compliance with U.S. export and sanctions laws.

### 12. User Conduct

In connection with your or any of your end users' access to or use of the Lightspeed Offering, you and they shall not:

- (a) upload, post, email, transmit or otherwise make available any Content that: (i) is illegal, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful or otherwise objectionable; (ii) may not be made available under any law or under contractual or fiduciary relationships (such as confidential or proprietary information learned as part of an employment relationship or under a non-disclosure agreement); (iii) infringes any patent, trademark, trade secret, copyright or other proprietary right of any party; (iv) consists of unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, commercial electronic messages or any other form of solicitation; (v) contains software viruses or any other code, files or programs designed to interrupt, destroy or limit the functionality of any software or hardware; or (vi) consists of information that you know or have reason to know is false or inaccurate.
- (b) impersonate any person or entity, including Lightspeed personnel, or falsely state or otherwise misrepresent your affiliation with any person or entity;
- (c) forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Lightspeed Offering;
- (d) act in a manner that negatively affects the ability of other users to access or use the Lightspeed Offering;
- (e) take any action that imposes an unreasonable or disproportionately heavy load on the Lightspeed Offering or its infrastructure;
- (f) interfere with or disrupt the Lightspeed Offering or servers or networks connected to the Lightspeed Offering, or disobey any requirements, procedures, policies or regulations of networks connected to the Lightspeed Offering;
- (g) use spiders, crawlers, robots, scrapers, automated tools or any other similar means to access the Lightspeed Offering, or substantially download, reproduce or archive any portion of the Lightspeed

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your Suggestions in any form and any medium (whether now known or later developed), without credit or compensation to you.

#### 14. Dealings With Advertisers and Other Third Parties

Your dealings with advertisers and other third parties who market, sell, buy or offer to sell or buy any goods or services on the Lightspeed Offering, including payment for and delivery of such goods or services and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and the advertiser or other third party. You agree that Lightspeed shall not be liable for any damage, liability, expense or loss of any kind incurred as a result of any such dealings.

#### 15. Links and External Materials

The Lightspeed Offering or users of the Lightspeed Offering may provide links or other connections to other websites or resources. You acknowledge and agree that Lightspeed does not endorse and is not responsible for any content, advertising, products, services or other materials on or available through such sites or resources ("[External Materials](#)"). External Materials are subject to different terms of use and privacy policies. You are responsible for reviewing and complying with such terms of use and privacy policies. You further acknowledge and agree that Lightspeed shall not be liable for any damage, liability, expense or loss resulting from or arising out of use of or reliance on any External Materials.

#### 16. Modifications to the Lightspeed Offering

Subject to any Additional Terms, Lightspeed reserves the right at any time to modify the Lightspeed Offering, with or without notice, and Lightspeed shall not be liable to you or any third party for any such modification; provided, Lightspeed shall provide you reasonable prior notice if such modification will materially and adversely affect the functionality of the Lightspeed Offering and you may terminate the TOU by providing written notice to Lightspeed promptly thereafter.

#### 17. Indemnification

You shall indemnify, defend and hold Lightspeed and its affiliates and equity holders, and each of their officers, directors, employees, agents, partners, representatives, advisors and licensors (collectively, "[Lightspeed Parties](#)") harmless from and against any claim, demand, loss, damage, cost, liability and expense, including reasonable attorneys' fees, resulting from or arising out of: (a) Your Content; (b) your violation, or any violation by any of your end users, of the TOU, any law or regulation, or any rights (including intellectual property rights) of another party; (c) your failure to receive any consents or provide any notices required to be received or provided under applicable law; or (d) your use or your end user's use of the Lightspeed Offering (including your failure to use certain aspects of the Lightspeed Offering; your failure to report or take action with respect to actual or potential harmful web activity or harmful actions of end users or information relating to such activity or actions; your decision to act upon information obtained from the Lightspeed Offering; or failure of the Safety Check system to provide information to you or any other person). You may not settle or compromise any indemnified claim without the prior written consent of Lightspeed.

#### 18. Disclaimer of Warranties

(a) YOUR USE AND YOUR END USER'S USE OF THE LIGHTSPEED OFFERING IS AT SUCH PERSON'S SOLE RISK. THE LIGHTSPEED OFFERING IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LIGHTSPEED PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED OR ARISING FROM STATUTE, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

(b) LIGHTSPEED PARTIES MAKE NO WARRANTY OR REPRESENTATION THAT: (i) THE LIGHTSPEED OFFERING WILL MEET YOUR REQUIREMENTS OR THE LIGHTSPEED OFFERING WILL PROVIDE ALL DESIRABLE OR NECESSARY INFORMATION TO YOU OR YOUR END USERS; (ii) ACCESS TO THE LIGHTSPEED OFFERING WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (iii) THE INFORMATION AND ANY RESULTS THAT MAY BE OBTAINED FROM ACCESS TO OR USE OF THE LIGHTSPEED OFFERING (INCLUDING SAFETY CHECK) WILL BE ACCURATE, RELIABLE, CURRENT OR COMPLETE; OR (IV) THE USE OF THE LIGHTSPEED OFFERING (INCLUDING SAFETY CHECK) WILL PROTECT YOU OR YOUR END USERS OR ANY OTHER PARTY FROM HARM.

(c) ALL CONTENT MADE AVAILABLE THROUGH THE LIGHTSPEED OFFERING IS MADE AVAILABLE

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FORESEEABLE AND (II) IN NO EVENT SHALL LIGHTSPEED PARTIES' TOTAL LIABILITY TO YOU FOR ALL CLAIMS ARISING FROM OR RELATING TO THE TOU OR YOUR ACCESS TO OR USE OF (OR INABILITY TO ACCESS OR USE) THE LIGHTSPEED OFFERING EXCEED THE AMOUNT PAID BY YOU TO LIGHTSPEED FOR ACCESS TO THE LIGHTSPEED OFFERING WITHIN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE APPLICABLE CLAIM AROSE. you may not bring a claim under this TOU more than 6 months after the cause of action arises.

(b) You hereby release AND DISCHARGE the lightspeed parties from all DAMAGES, claims, liabilities, and expenses in connection with: your failure to use certain aspects of the Lightspeed Offering; your failure to report or take action with respect to actual or potential harmful web activity or harmful actions of end users or information relating to such activity or actions; YOUR DECISION TO ACT UPON INFORMATION OBTAINED from THE LIGHTSPEED OFFERING; OR failure of the Safety Check system to provide information to you or any other person.

(c) CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

## 20. Termination

(a) Subject to the Additional Terms, if you violate the TOU, all rights granted to you under the TOU shall terminate immediately, with or without notice to you.

(b) Upon termination of the TOU for any reason: (i) Lightspeed, in its sole discretion, may remove and discard Your Content; and (ii) any provision that, by its terms, is intended to survive the expiration or termination of this TOU shall survive such expiration or termination.

## 21. Governing Law

The TOU shall be governed by and construed and enforced in accordance with the laws of the State of Texas, without regard to conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to the TOU.

## 22. Forum for Disputes

The federal and state courts of Travis County, Texas shall have exclusive jurisdiction over any disputes or legal action arising out of or relating to the TOU or the Lightspeed Offering.

## 23. Legal Compliance

You represent and warrant that you are not: (a) located in an Embargoed Country or a country otherwise designated by the U.S. Government as a "terrorist supporting" country; or (b) a Designated Person.

Depending upon the jurisdiction in which the Lightspeed Offering is licensed or related services are used, this TOU may be subject to certain government export and other restrictions, and You shall comply with all applicable laws in connection therewith. You agree that You will not export or re-export the Lightspeed Offering, reference images or accompanying documentation or use the Lightspeed Offering or related services in any form without the appropriate authorization. Failure to comply with this provision is a material breach of this TOU and shall result in the automatic termination of this TOU, whether or not Lightspeed is aware of the same at the time. The Lightspeed Offering or any software associated with the Lightspeed Offering may not be exported or re-exported a) into any U.S. embargoed countries or b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity list. By using the Lightspeed Offering, You represent that You are not located in such a restricted country or on any such list.

## 24. S. Government Entities

This section applies to access to or use of the Lightspeed Offering by a branch or agency of the United States Government. The Lightspeed Offering includes "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and qualifies as "commercial items" as defined in 48 C.F.R. 2.101. Such items are provided to the United States Government: (a) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3. The United States Government shall acquire only those rights set forth in the TOU with respect to the such items, and any access to or use of the Lightspeed Offering by the

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following information: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (b) a description of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works; (c) a description of the material that you claim is infringing and where that material may be accessed within the Lightspeed Offering; (d) your address, telephone number and email address; (e) a statement by you that you have a good-faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law; and (f) a statement from you that the information in the notification is accurate and, under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. Lightspeed's Agent for Notice of Copyright Claims can be reached as follows:

Agent for Notice of Copyright Claims  
General Counsel  
12013 Fitzhugh Rd. Austin, TX 78736

Phone: 737.205.2500  
Email: [copyright@lightspeedsystems.com](mailto:copyright@lightspeedsystems.com)

## 27. California Users & Residents

In accordance with California Civil Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting such unit in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (800) 952-5210.

## 28. General Provisions

The TOU (together with the Additional Terms) constitutes the entire agreement between you and Lightspeed concerning your access to and use of the Lightspeed Offering. It supersedes all prior and contemporaneous oral or written negotiations and agreements between you and Lightspeed with respect to such subject matter. In the event of any conflict between or among the TOU and any Additional Terms to which the TOU refers, the terms and conditions of the TOU shall take precedence and govern. The TOU may not be amended by you except in a writing executed by you and an authorized representative of Lightspeed. For the purposes of the TOU, the words "such as," "include," "includes" and "including" shall be deemed to be followed by the words "without limitation." You may not assign or delegate any right or obligation under the TOU without the prior written consent of Lightspeed. The failure of Lightspeed to exercise or enforce any right or provision of the TOU shall not constitute a waiver of such right or provision. If any provision of this TOU is held to be invalid or unenforceable under applicable law, then such provision shall be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, without in any way affecting the remaining parts of the TOU. Any prevention of or delay in performance by Lightspeed hereunder due to labor disputes, acts of god, governmental restrictions, enemy or hostile governmental action, fire or other casualty or other causes beyond its reasonable control shall excuse the performance of its obligations for a period equal to the duration of any such prevention or delay.

### **SUPPLEMENTAL TERMS FOR LIGHTSPEED API**

Lightspeed API is an application programming interface (API), an optional component of the Lightspeed Offering, **that enables electronic sharing of Your Content**. These supplemental terms (the "**Supplemental Terms**") augment the TOU and apply to use of Lightspeed API. If these Supplemental Terms are inconsistent with any of the other terms of the TOU, then these Supplemental Terms shall control to the extent of the conflict, but only with respect to Lightspeed API.

#### **1. Authorization and Registration**

If you want to enable electronic sharing of Your Content with a third party via Lightspeed API, then (a) you must complete Lightspeed's authorization form for the third party, and (b) the third party must register with Lightspeed and accept Lightspeed's terms governing third-party access to and use of Lightspeed API. If the requirements described in subsections (a) and (b) are satisfied with respect to a third party, then that third party will become your "Authorized Third-Party Recipient" for purposes of these Supplemental Terms. Lightspeed will only enable electronic sharing of Your Content via Lightspeed API with a third party that is your Authorized Third-Party Recipient.

#### **2. Fees**

Information about the fees for Lightspeed API is available from Lightspeed upon request. You are fully responsible for all Lightspeed API-related fees that are incurred by you or by your Authorized Third-Party



Lightspeed may terminate access to and use of Lightspeed API by you and any one or more of your Authorized Third-Party Recipients for any reason upon fourteen (14) days' prior written notice to you. You may terminate access to and use of Lightspeed API by any one or more of your Authorized Third-Party Recipients upon fourteen (14) days' prior written notice to Lightspeed. These termination rights are in addition to all other rights of termination available under the Terms of Use. Termination shall not affect your obligation to pay any fees that are incurred before the termination becomes effective.



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