

Contract Committee Review Request
MUST BE COMPLETED IN FULL

Date: 9.1.21

Contract/Agreement Vendor: Smore
 Name of Vendor
Tyler Hsin
 Contact Person Phone Number
 Address
 City State Zip
tyler@smore.com
Email address
 Date of services

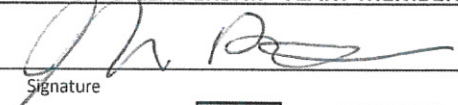
IS THIS A NEW VENDOR? IF SO, PLEASE PROVIDE : W9 _____
 And _____
Vendor Registration

Person Submitting Contract/Agreement for Review: Jennifer Peterson ESC
Name Site

Reason for Review: (New Agreement, Renewal...): New Agreement

Audience/Group to benefit from Contract/Agreement: _____

Routing Approval: PLEASE SEND TO APPROPRIATE LEADERSHIP TEAM MEMBER BEFORE SENDING TO STACIE CHASE

Principal and Director or Administrator: 
Signature

Does this Contract/Agreement utilize technology? No Yes
 Has it been reviewed by the Chief Technology Officer? No Yes

If yes, Approved by: _____
(Signature) Technology /Approval

Leadership Team Member: _____
Signature

Funding Source: _____
Description OCAS Coding

- Process: **PLEASE FOLLOW ALL STEPS**
1. The Contract/Agreement is reviewed and approved by site Principal/ Director/ Administrator.
 2. If Technology related, the Contract/Agreement is reviewed and approved Technology.
 3. Prepare Board Agenda Memorandum and attach to Contract/Agreement.
 4. Begin the requisition process and place a comment in the Notes section that says, "Please hold req pending board approval on _____"
Date of Board Meeting
 5. Attach this form with Contract/Agreement and Board Memo
 6. **The appropriate Leadership Team Member will review and submit to the Contract Committee**
 7. Keep copy for your records

The Contract/Agreement should be received at least 2 weeks prior to a Board Meeting to ensure placement on the Agenda. The Contract Committee meets most Tuesdays at 8:30a.m. All Contracts/Agreements, regardless the amount, must be first approved by the Contract Committee and then presented to the Board of Education for approval and signature. The item will be placed on Electronic School Board for the board agenda by Stacie Chase. By following this process, the liability of entering into an agreement is placed with the district rather than an individual.



MEMORANDUM

To: Dr. Janet Vinson

From: Karla Dyess

Date 9.1.2021

Re: Smore Contract

SUBJECT

Accept and approve the NEW agreement between Broken Arrow Public Schools and Smore. J. Peterson

ENCLOSURE/ATTACHMENTS

Agreement

SUMMARY

Smore is an online application that helps write newsletters. This is for elementary and middle school sites.

FUNDING

Elementary Funds

RECOMMENDATION

Approve

Remaining Balance: \$1,799.00



Quote 18455

Smore Team Account

Broken Arrow

Jennifer Peterson

jpeterson@baschools.org

9182597723

FIREPLACE INC

6425 Living Place 2nd Floor

Pittsburgh, PA 15206

Smore Contact:

Sales: tyler@smore.com

Billing: carole@smore.com

Description

Smore Team Account

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

Details

Created:

08.27.21

Sent to:

jpeterson@baschools.org

PAYMENT

IS DUE UPON RECEIPT OF INVOICE

Products

Description	Smore Team Account - Essential (16- 30 users)
Qty	1
Duration (years)	1
Unit price	\$1,799.00
Price	\$1,799.00

W-9

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

Subtotal:	\$1,799.00
Total:	\$1,799.00 (USD)
Amount Due:	\$1,799.00 (USD)

[Proceed to Invoice](#)

[Decline](#)

Notes

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

Smore Terms of Service

Updated August 6, 2020

The Gist

We (the folks at Fireplace) run an online marketing and newsletter hosting service called [Smore](#) and would love for you to use it. Our basic service is free, and we offer upgrades for advanced features such as domain hosting and custom backgrounds at an additional cost. Our service is designed to give you as much control and ownership over what goes on your newsletters as possible and encourage you to express yourself freely. However, be responsible in what you publish.

If you find a Smore newsletters that you believe violates our terms of service, please [let us know](#).

Introduction

These general terms of service ("Terms" or "Terms of Service") are entered into by and between Fireplace, Inc., d.b.a. Smore ("Fireplace," "Smore," "we/our") and the party using the Fireplace Website and/or Services, defined herein ("Customer" or "you/r"). These Terms, together with Fireplace's operating rules, your account page, policies (including, without limitation, [Smore's Privacy Policy](#)) and procedures that may be published by Fireplace from time to time on its Website collectively form the "Agreement."

By accessing the Smore website (the "Website") and/or using any Fireplace services and products available at or through the Website, whether a purchased or free service (the "Services"), in whole or in part, you agree to become bound by the terms and conditions of this Agreement, unless the parties enter a signed agreement, in which case that agreement shall govern. If you do not agree to all the terms and conditions of this Agreement, then you must not access the Website or use the Services. Our Website and Services are owned and operated by Fireplace.

Please read this Agreement carefully before accessing or using the Website or Services. If these terms and conditions are considered an offer by Fireplace, acceptance is expressly limited to these terms. If you are entering this Agreement on behalf of an individual under the age of 18 (a "minor"), you hereby represent that you are the parent or legal guardian of that minor and have read, reviewed, and agreed to these terms on their behalf. If you are a minor, you cannot accept these Terms and/or use the Services without approval from a parent or legal guardian. Please speak to your parents and teacher about accessing a student account before proceeding [here](#). If you are an educator or school, you represent that you obtained all necessary consents and/or permissions from your students' parent or guardian for their use of the Website through the "Classroom" feature. If you are accepting these Terms and using the Website and/or Services on behalf of a child, company, organization, government, or other legal entity, you represent and warrant that you are authorized to do so.

We continuously make improvements and changes to the Website and/or to individual features of the Services. These updates may result in the complete removal, restriction, or new limitations to certain parts of the Service (a "Material Modification") at any time, and without notice. In the event of a Material Modification, you have the right to terminate your Account and receive a pro-rata refund of your Fees for the remainder of the Term by providing notice to Fireplace as set forth herein.

Education Usage & Eligibility:

The Smore annual Educator account is only licensed for use by teachers, professors, or other educators and by their students under the educator's direct supervision in accordance with the terms of this Agreement. If you are not a teacher, professor, or educator, you may not use the Smore annual Educator account.

1. Your Smore Account

When you create an account on the Website for use of or access to any Services (an "Account"), you are responsible for maintaining the security and privacy of your Account. Your Account will set out the Services permitted to be used by You under this Agreement and any applicable fees for such use. You must keep your individual Account login credentials and passwords confidential and not authorize anyone else to use your Account on your behalf. You must immediately notify Fireplace of any unauthorized uses of your Account or any other breaches of security of your Account.

2. Use of Services & Content

You shall be solely responsible and liable for your use of the Website and the Services in accordance with the terms of this Agreement. You are also solely responsible and liable for submission and upload into the Services of any material, data, or information, including without limitation, files, text, music, graphics, audio files, photographs, videos, images, or linked or embedded content, including without limitation, third-party materials, websites or webpages (collectively, the "Content"), whether of Customer or any third party. You hereby agree You are the sole owner of the Content and nothing herein shall be construed to grant ownership of such Content to Fireplace. The Services purchased herein shall be non-refundable and non-cancellable, except as set forth in these Terms. Fireplace shall not have any responsibility or liability for any unsuccessful sharing or email attempts to your recipients via the Services that are undelivered, pending delivery, or in any other pending or failed status.

You agree you will NOT use the Services to send any inappropriate messages or Content, or "spam" as defined below. You shall only use the Services based on your applicable subscription (as indicated on your Account page), including without limitation, a maximum number of emails or permitted number of contacts.

By submitting Content to the Website or Service, you grant Fireplace a world-wide, royalty-free, fully-paid, transferable, sublicensable and non-exclusive license to reproduce, modify, adapt and publish the Content solely for the purpose of providing the Services, in order to make any changes or improvements to the Services, or for Smore's internal business purposes. If you delete Content, Fireplace will use reasonable efforts to remove it from the Website, but you acknowledge that caching or references to the Content may not be able to be immediately removed. Notwithstanding the foregoing, Fireplace shall not be obligated to delete or remove any Content from the Services that would be in

Accessibility

 Translate Translated Change

 High Contrast Mode

Aa

Aa

Aa

violation of any applicable law (unless notified of such violation by You or required to do so by a court or governmental order), or that Fireplace is required to maintain in accordance with its retention, privacy or other similar policies.

Without limiting any of the foregoing representations or warranties, Fireplace has the right (though not the obligation) to, review Your Content and delete or remove Your Content (without notice) from any of the Services in its sole discretion. In addition, Fireplace may immediately terminate or deny your access to the Services in the event of any use that is, in Fireplace's reasonable discretion: inappropriate, violates any Fireplace policy, violates any term of this Agreement, violates any applicable law or any right of a third party, or is in any way harmful or objectionable. Fireplace will have no obligation to provide a refund of any amounts previously paid in the event of termination or removal of Content pursuant to this Section.

3. General Representations and Warranties

You represent and warrant that (i) your use of the Website and Services will be in strict accordance with this Agreement, including without limitation, the Fireplace Privacy Policy, and with all applicable laws, rules and regulations (including without limitation any local laws, rules or regulations in your country, state, city, or other governmental area, and including all export laws regarding the transmission of technical data exported from the United States or the country in which you reside).

With regards to your Content, you hereby represent and warrant the following:

- your Content will not violate or infringe upon the rights, including but not limited to the copyright, patent, privacy, publicity, trademark, trade secret, or other personal or proprietary rights of any third party;
- your Content does not violate any applicable law;
- your Content does not contain libelous, defamatory, or otherwise unlawful material;
- you either own or have received all necessary rights to post or make available your Content in accordance with the terms of this Agreement;
- your Content will not breach or conflict with any obligations, such as a confidentiality obligation;
- you have fully complied, and maintain compliance, with any third-party licenses relating to your Content, and successfully passed through such terms to any of your end users who access such Content through the Services;
- your Content does not contain any viruses, worms, malware, Trojan horses or other harmful or destructive content;
- your Content is not "spam," which is defined as machine- or randomly-generated content, containing unethical or unwanted commercial content designed to drive traffic to third party sites or boost the search engine rankings of third party sites, or to further any unlawful acts (such as phishing) or mislead recipients as to the source of the material (such as spoofing);
- your Content is not obscene, pornographic, or contain threats or incite violence;
- your use of the Services does not mislead your readers into thinking that you are another person or company or imply that you represent the opinions of another person or company, and
- you have, in the case of Content that includes computer code, accurately categorized and/or described the type, nature, uses and effects of the materials, whether requested to do so by Fireplace or otherwise.

4. Term

Fireplace offers both free and paid Services. A free account shall commence on the date you create a free account and remain in effect until you use all Services or features made available to you (e.g., three newsletters), or until you purchase a paid subscription plan on the Website (a "Premium Account"). Use of any Premium Account shall be in effect for the initial period (e.g., monthly, or annually) as indicated on your [Account page](#) (the "Initial Term"). Thereafter, your Services shall automatically renew in additional increments of the same period as your Initial Term (each a "Renewal Term" and together with the Initial Term, a "Term"), at Fireplace's then-current price for such Services, unless you notify Fireplace thirty (30) days prior to the end of the applicable Term of your desire not to renew.

Upon notice of non-renewal, all Fees due and owing for your applicable Premium Account, through the remainder of the Term, as well as any taxes, shall be collected by Fireplace using any credit card or other payment mechanism on your account page. If and as necessary, you agree to provide Fireplace with any updated payment information for payment of all remaining Fees.

5. Upgrades and Downgrades

You may Upgrade or Downgrade the Services only as set forth in this Section. Any Upgrade or Downgrade shall not impact the dates of the Term.

An "Upgrade" shall mean you upgrade from a free account to a Premium Account, or from a less expensive to a more expensive Premium Account.

A "Downgrade" shall mean you downgrade its Premium Account to a less expensive Premium Account. A Downgrade specifically excludes any reduction in Services from a Premium Account to a free account, which shall be defined as a cancellation and is not subject to this section.

Upgrades

You may Upgrade your Services at any time via the Website. In the event of an Upgrade, Fireplace shall charge you the difference between the Fees you pre-paid for your current Account (pro-rated through the date of such Upgrade), and the Fees due for the Upgraded Premium Account (pro-rated through the end of the current Term). Your current Services shall be canceled and you will immediately receive access to the applicable Upgraded Premium Account.

Downgrades

You may request a Downgrade of your Services at any time via the Website, provided that the Downgrade shall not take effect until the end of your current Term. Upon the expiration of your current Term, your Downgrade Services will go into effect and you will be charged any remaining Fees for the original Premium Account, pro-rated through the date of such Downgrade, as well as all Fees, upfront and in full, for the cost of the Downgraded Premium Account (pro-rated through the remainder of your current Term).

6. Refunds

You shall be permitted to cancel your Premium Account within thirty (30) days of initially subscribing to your first-time subscription (the "cancellation period"), subject to the following conditions:

1. You cancelled your Premium Account and are only registered with a free Account on the Website, and
2. You requested a refund either by emailing Smore support directly, or by submitting a support request through the Website's Help button.

In the event of cancellation of your Services during the cancellation period, you will receive a refund in full of all pre-paid Fees for the applicable cancelled Services. After the cancellation period, all purchases are final and non-refundable including all renewal fees, except as

expressly provided herein.

One-time charges and Add-on paid features

One-time charges such as newsletter credits and add-on paid features such as the Classroom feature are non-refundable. If you've made a purchase by accident or believe you deserve a refund for a one-time charge, please contact Fireplace support directly.

Currency conversion and extra charges

For technical reasons beyond Fireplace's control, it can only refund the original amount charged, in US Dollars. In some cases, credit card providers or banks may charge an additional fee, making the total expense larger than what Fireplace originally intended to charge. This may happen if you are being billed in their home country's currency, for example. Fireplace is not responsible and is unable to refund these extra fees and charges.

7. Payment

Fireplace shall charge Customer the Fees (if any) for the Services as set forth in your Order. The Fees shall be due upon access to or use of the Website and/or Services and Fireplace shall be authorized to automatically charge the credit card associated with your account.

8. Responsibility of Customers

Fireplace has not reviewed, and cannot review, all of the Content posted to the Website or used in the Services by its visitors or other customers. Fireplace does not represent or imply that it endorses the Content posted, or has reviewed such Content, including without limitation, for its accuracy, lawfulness, or harmfulness. You are responsible for taking precautions as necessary to protect yourself and your computer systems from viruses, worms, Trojan horses, and other harmful or destructive content. Fireplace fully disclaims any responsibility and liability for this Content, including without limitation, related to your access, downloading, or use thereof.

9. Copyright Infringement and DMCA Policy

If you believe that Content located on or linked to in the Smore Services or Website violates your copyright, you are encouraged to notify Fireplace in accordance with the terms of this Agreement by providing our Copyright Agent with the following information: (1) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (2) a description of the copyrighted work that you claim has been infringed; (3) a description of the location on the Website or Services of the Content that you claim is infringing; (4) your address, telephone number and e-mail address; (5) a written statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent or the law; and (6) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner of such Content or authorized to act on the copyright owner's behalf.

10. Intellectual Property

Fireplace owns all right, title and interest in and to the Services, including without limitation, any permitted copy, translation, modification, adaptation or derivation thereof, and any corrections, bug fixes, enhancements, updates or other modifications, including custom modifications, to the Services. This Agreement does not transfer any third-party intellectual property from Fireplace to you. All patents, copyrights, trademarks, trade secrets, service marks, trade names and any other intellectual property of Fireplace (the "Fireplace IP"), shall remain Fireplace's exclusive property. Fireplace reserves the right to display attribution links such as "Powered by Smore" in your Services. Other than if you are a Pro Account user, who may remove the Fireplace attribution embedded in the Services, you agree not to modify, tamper with or remove any such attribution or other Fireplace IP from the Services. Other than as expressly permitted in this Agreement, you may not use the Fireplace IP without the prior written consent of Fireplace. Other trademarks, service marks, graphics and logos used in connection with the Website may be the trademarks of other third parties ("third party marks") and your use of the Website and Services grants you no right or license to reproduce or otherwise use any third-party marks, which shall remain the property of such third party(ies). All rights not expressly granted to you herein are retained by Fireplace.

11. Confidentiality

"Confidential Information" means any and all non-public or proprietary information prepared, accessible or delivered to the receiving party by the disclosing party or its representatives that is marked as confidential, or should be known to a reasonable person given the facts and circumstances of the disclosure, as being confidential.

Confidentiality. Each party agrees to keep the Confidential Information of the other party confidential and to take reasonable precautions designed to protect against the unauthorized access, use or disclosure of the disclosing party's Confidential Information. The receiving party shall not disclose or use the disclosing party's Confidential Information for any purpose, except as is necessary to perform its obligations hereunder. The receiving party may disclose the Confidential Information only to those employees, consultants, contractors, advisors, counsel, agents and subcontractors who have a legitimate business reason to have such access or that require access for the purpose of performing its obligations under these Terms, and are subject to a non-disclosure agreement related to such Confidential Information or confidentiality obligations substantially similar to those herein.

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

12. Advertisements

Fireplace reserves the right to display advertisements in the Services (including without limitation, in its newsletters) unless you have purchased a Premium Account.

13. Domain Names

If you register a domain name or use or transfer a previously registered domain name for use in or related to the Services, you agree to comply with all applicable policies of the Internet Corporation for Assigned Names and Numbers ("ICANN"), including their [Registration Rights and Responsibilities](#).

14. Termination

Without prejudice to any other rights to which it may be entitled, and in addition to Fireplace's rights to terminate as expressly set forth in this Agreement, either party may terminate this Agreement with immediate effect:

1. If the other party commits any material breach of any of the terms herein and (if such breach is able to be remedied) fails to remedy that breach within thirty (30) days of being notified thereof by the other party; or
2. If the other party files a petition in bankruptcy or insolvency or for an arrangement or for the appointment of a receiver or trustee of that Party or of its assets or if the other Party is a party to any dissolution or liquidation, or if the other party shall make an assignment for the benefit of its creditors.

Upon termination of this Agreement, You will cease access to the Services through your Premium Account. Pursuant to termination of this Agreement, all Fees shall become immediately due and payable and Fireplace shall be permitted to charge you for the Fees through the remainder of the Term, except in the event of termination resulting from Fireplace's uncured material breach, in which case you may request a refund of any pre-paid Fees pro-rated from the date of termination through the remainder of the Term.

15. Disclaimer of Warranties

THE WEBSITE AND SERVICES ARE PROVIDED "AS IS". FIREPLACE AND ITS SUPPLIERS AND LICENSORS HEREBY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NEITHER FIREPLACE NOR ITS SUPPLIERS OR LICENSORS, MAKES ANY WARRANTY THAT THE WEBSITE WILL BE ERROR FREE OR THAT ACCESS THERETO WILL BE CONTINUOUS OR UNINTERRUPTED. YOU

UNDERSTAND THAT YOU DOWNLOAD FROM, OR OTHERWISE OBTAIN CONTENT OR SERVICES THROUGH, THE WEBSITE AT YOUR OWN DISCRETION AND RISK.

16. Limitation of Liability

In no event will Fireplace, or its suppliers or licensors, be liable with respect to any subject matter of this Agreement under any contract, negligence, strict liability or other legal or equitable theory for: (i) any special, incidental, punitive or consequential damages; (ii) the cost of procurement for substitute products or services; (iii) for interruption of use or loss or corruption of data; (iv) any use of, or submission of Content in the Services; or (v) for any amounts that exceed the Fees paid by you to Fireplace under this Agreement during the twelve (12) month period prior to the date the cause of action arose. The foregoing shall not apply to the extent prohibited by applicable law.

17. Force Majeure

In no event shall Fireplace be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, pandemics (e.g., COVID-19), orders by any government agency, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that Fireplace shall use reasonable efforts which are consistent with accepted practices in the industry to resume performance as soon as practicable under the circumstances.

18. Indemnification

You agree to indemnify, defend and hold harmless Fireplace, its contractors, and its licensors, and their respective directors, officers, employees and agents from and against any and all liability, damages, costs and expenses, including without limitation, reasonable attorneys' fees, arising out of any third party claims, demands, suits or proceedings arising from: (i) your use of the Website and the Services; (ii) your violation of this Agreement; or (iii) any allegation that your Content infringes or misappropriates the intellectual property rights of any third party. This provision shall not apply to the extent prohibited by applicable law.

19. Privacy and Security

Fireplace shall only process Personal Data hereunder in accordance with the [Smore Privacy Policy](#), which Customer hereby warrants it has read, understands and agrees to through its acceptance of this Agreement and use of the Website and/or Services. "Personal Data" shall have the meaning defined in the Privacy Policy.

20. Arbitration

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, or any claim or dispute between the parties to this Agreement, shall be settled by arbitration administered by JAMS (or any successor organization thereto), pursuant to its Streamlined Arbitration Rules and Procedures for any claims and counterclaims under \$250,000 (exclusive of attorneys' fees and interest), and by JAMS' Comprehensive Arbitration Rules and Procedures for all claims exceeding \$250,000. Judgment upon the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof. All arbitration proceedings shall be held in Seattle, Washington and all arbitrators shall be appointed by JAMS under their rules. Notwithstanding the foregoing, arbitration shall not be required for the following: (1) claims in small claims court if such claims qualify; (2) equitable relief in court for infringement or other misuse of intellectual property rights or (3) as otherwise expressly permitted in this Agreement.

21. Arbitration Process

The Federal Arbitration Act governs the interpretation and enforcement of the arbitration provisions herein. To begin an arbitration proceeding, you must send notice to Fireplace requesting arbitration and describing your claim. If JAMS is not available to arbitrate, the parties will select an alternative arbitral forum. In addition, Fireplace will reimburse all such JAMS's filing, administrative, hearing and/or other fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous. The parties may agree to have the arbitration conducted by telephone or in person in the country where you live or at another mutually agreed location, subject to a party's written request thereof.

22. Authority of Arbitrator

The arbitrator shall have exclusive authority to (a) determine the scope and enforceability of this Agreement and (b) resolve any dispute related to the interpretation, applicability, enforceability or formation of this Agreement including, but not limited to any claim that all or any part of this Agreement is void or voidable. The arbitrator will apply the governing law as set forth herein. The arbitration proceeding will not be consolidated with any other matters or joined with any other cases or parties. If a decision is issued stating that applicable law precludes enforcement of any of this section's limitations as to a given claim for relief, then the claim must be severed from the arbitration and brought into the State or Federal Courts located in King County, Washington. The arbitrator shall have the authority to grant motions dispositive of all or part of any claim. The arbitrator shall have the authority to award monetary damages and to grant any non-monetary remedy or relief available under applicable law, the arbitral forum's rules, and the Agreement. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief that a judge in a court of law would have. The award of the arbitrator is final and binding upon the parties.

23. Waiver of Jury Trial

YOU AND FIREPLACE HEREBY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO SUE IN COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY EXCEPT AS OTHERWISE SET FORTH HEREIN. You and Fireplace are instead electing that all claims and disputes shall be resolved by arbitration pursuant to the terms of this Agreement except as otherwise set forth in Section 20 and 24, or as otherwise mutually agreed by the parties in writing.

24. 30-Day Right to Opt Out

You have the right to opt out of arbitration by sending notice to Fireplace within 30 days after first becoming subject to this arbitration obligation. Your notice must include your name and address, your Fireplace username (if any), the email address you used to set up your Fireplace account (if you have one), and an unequivocal statement that you want to opt out of arbitration. If you opt out of arbitration, all other parts of this Agreement will remain in full force and effect. Opting out of arbitration has no effect on any other arbitration agreements that you may currently have, or may enter in the future, with us.

25. Modification

Fireplace reserves the right, at its sole discretion, to modify or replace any part of this Agreement at any time. It is your responsibility to check this Agreement periodically for changes. Your continued use of or access to the Website or Services following the posting of any changes to this Agreement constitutes acceptance of those changes. Fireplace may also, in the future, offer new services and/or features through the Website (including, the release of new tools and resources). Such new features and/or services shall be subject to the terms and conditions of this Agreement or any supplemental terms and conditions made available by Fireplace.

Notwithstanding any provision in this Agreement to the contrary, if Fireplace makes any future material change to this Agreement, you may reject that change within thirty (30) days of such change becoming effective by providing written notice thereof to Fireplace. Upon Fireplace's receipt of this notice, you and Fireplace agree to reasonably cooperate in good faith to address such concern, provided that the remainder of the Agreement shall continue in full force and effect.

26. Notice

All notices shall be in writing and sent by e-mail to Fireplace at the following address: support@smore.com and to you at the email furnished by you. Notice shall be deemed effective upon transmission.

27. Miscellaneous

This Agreement constitutes the entire agreement between Fireplace and you concerning the subject matter hereof, and may only be modified by a written amendment signed by an authorized executive of Fireplace, or by Fireplace posting a revised version. This Agreement will be governed by, and construed in accordance with, the laws of the state of Washington, U.S.A., excluding its conflict of law provisions. If any term or provision of this Agreement is held invalid or unenforceable by a court or tribunal of competent jurisdiction, such term or provision will be construed to reflect the parties' original intent, and the remaining portions of this Agreement will remain in full force and effect. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, will not be deemed a waiver of any other condition or provision or any subsequent breach thereof. No waiver shall be effective unless made in writing and signed by the waiving party. You may assign your rights under this Agreement to any party that consents to, and agrees to be bound by, this Agreement. Fireplace may assign its rights under this Agreement without condition. This Agreement will be binding upon and will inure to the benefit of the parties, their successors and permitted assigns. All provisions of this Agreement which by their nature should survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

Shree Team
hello@shree.com
We are the folks behind Shree. Drop us a line at hello@shree.com
Contact Shree

