

TERMS OF USE AGREEMENT

This Terms of Use Agreement (the "Agreement") is entered into between TransACT Communications, Inc., a Washington corporation ("TransACT") and _____ ("DISTRICT").

DISTRICT understands and agrees that by clicking "I agree" below, or by accessing the Service Materials (defined below), DISTRICT consents to the terms and conditions contained herein, and creates a binding legal agreement with TransACT that governs DISTRICT'S access to and use of TransACT's proprietary Internet-based resource, the TransACT[®] Compliance & Communication Center ("TransACT C3").

TERM. This Agreement shall become effective on the date that DISTRICT first accesses the Service (defined below) (the "Effective Date") and shall remain in effect for one (1) calendar year thereafter (the "Initial Term"). The Agreement shall automatically renew for additional one-year terms (each a "Renewal Term") unless and until terminated as set forth below.

SUBSCRIPTION FEE. DISTRICT shall pay TransACT \$ _____ per year for the Service (the "Annual Subscription Fee"). The Annual Subscription Fee for the Initial Term shall be paid in full to TransACT no later than thirty (30) business days after the Effective Date. Unless invoiced and collected by TransACT, DISTRICT is responsible for the payment of all applicable local, state, and federal taxes arising in connection with this Agreement; including but not limited to all privilege, value-add, use, and/or sales taxes.

The Annual Subscription Fee shall be effective for the two (2) consecutive Renewal Terms following the expiration of the Initial Term. **TransACT reserves the right to increase the Annual Subscription Fee for any Renewal Term(s) thereafter upon sixty (60) days written notice to DISTRICT prior to the expiration of the then current term.**

The Subscription Fee for Renewal Terms shall be invoiced to DISTRICT no later than sixty (60) days prior to the expiration of the then current term, and shall be paid in full to TransACT prior to commencement of the Renewal Term.

In the event that DISTRICT fails to timely pay any Subscription Fee when due (including the Initial Payment), DISTRICT shall be deemed to be in breach of this Agreement. DISTRICT shall cease any and all access to the Service and use of the Service Materials (as provided below). TransACT shall have the immediate right to pursue any and all rights and remedies available to it pursuant to this Agreement and under the law.

PERMITTED USE. Subject to DISTRICT'S compliance with all terms and conditions of this Agreement, TransACT grants DISTRICT a limited, nontransferable, and nonexclusive license to access and use TransACT's proprietary Internet-based resource, TransACT C3 (individually or collectively, the "Service"), which provides access to a variety of resources including multilingual No Child Left Behind (NCLB) parent notices; multilingual IDEA parent notices; documents in English and selected foreign languages for School Site Administration, Health and Medical, National School Lunch Programs, and Special Services; accountability and compliance materials and publications for use by school administrators; as well as the TransACT[®] EduPortal[®] eLibrary (collectively, the "Service Materials").

Under this license, DISTRICT and its employees, agents and representatives, and member schools (individually or collectively, the “Authorized Users”) may access and use the Service, and may print, photocopy, and distribute print versions/hard copies of the Service Materials for use within DISTRICT boundaries (provided that TransACT’s copyright statement shall be included on all such copies), solely for non-commercial purposes such as school administration, communications, compliance, document and information management, and similar activities in furtherance of DISTRICT’S educational mission, in compliance with all applicable laws and regulations, any copyright, trademark, and other proprietary rights of TransACT or third parties, and the terms and conditions of this Agreement (the “Permitted Use”).

RESTRICTIONS. DISTRICT shall use the Service Materials only for the Permitted Use. District shall not sell, rent, lease, license, sub-license, transfer, disclose or distribute the Service Materials to anyone other than a Permitted User without TransACT’s express written consent. DISTRICT is prohibited from copying or distributing the Service Materials to a computer, LAN/WAN, Internet-based or other electronic system owned or operated by someone other than a Permitted User.

PROPRIETARY RIGHTS. TransACT[®], TransACT[®] C3, TransACT[®] Compliance & Communication Center, TransACT[®] NCLB Parent Notifications, TransACT[®] IDEA Parent Notifications, TransACT[®] GenEd Parent Notifications, and TransACT[®] EduPortal[®] eLibrary are trade/service marks registered to TransACT. The absence of a product, service/trade mark, or logo on Service Materials offered but not listed herein does not constitute a waiver of TransACT’s rights with respect to such Materials.

DISTRICT acknowledges and agrees that no title to TransACT intellectual property is transferred under this Agreement. TransACT retains all right, title, and interest in and to all Service Materials.

PROTECTION OF TransACT INTELLECTUAL PROPERTY. Upon expiration or termination of this Agreement, or upon DISTRICT’S breach of a material term of this Agreement (including DISTRICT’S failure to timely pay its Subscription Fee), DISTRICT shall immediately cease all use of the Service Materials. Unauthorized use of the Service Materials (including but not limited to modifications and derivatives of the Service Materials, or use of the Service Materials or any other TransACT copyrighted material in DISTRICT or third-party documents in DISTRICT’S possession) shall constitute a violation of state and federal copyright and/or trademark laws. TransACT shall prosecute violators to the full extent of the law.

CONTACT FOR ALLEGED COPYRIGHT INFRINGEMENT. TransACT respects the intellectual property rights of others. If DISTRICT believes that content contained within the Service Materials has been wrongfully copied or distributed, please notify TransACT at the following email address: bizserv@transact.com.

DISCLAIMER AND LIMITATION OF LIABILITY. TransACT C3 is an Internet information management tool. TransACT has no control over and assumes no responsibility or liability for the reliability or accuracy of the information. DISTRICT is hereby notified that there is necessarily a delay between the time information changes and the time TransACT updates the Service Materials. THE SERVICE MATERIALS ARE PROVIDED “AS IS.”

TransACT MAKES NO, AND DISCLAIMS ANY AND ALL, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE MATERIALS, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE. IN NO EVENT SHALL TransACT BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF INCOME, PROFITS, REVENUE, USE, DATA, OR INFORMATION ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT. TransACT DOES NOT WARRANT THAT FUNCTIONS CONTAINED IN TransACT C3 WILL MEET DISTRICT'S REQUIREMENTS OR THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED. TransACT DOES NOT WARRANT THE ACCESSIBLE DATA TO BE ERROR FREE. TransACT MAKES NO CLAIM TO RENDER LEGAL, POLICY, OR OTHER ADVICE OR SERVICES. IF LEGAL ADVICE OR OTHER EXPERT ASSISTANCE IS REQUIRED, THE SERVICES OF A COMPETENT PROFESSIONAL SHOULD BE SOUGHT. UNDER NO CIRCUMSTANCES WILL TransACT's LIABILITY EXCEED THE AMOUNTS PAID BY THE DISTRICT UNDER THE TERMS OF THIS AGREEMENT. ALL PARTIES SHALL BE RELEASED FROM LIABILITY AND HELD HARMLESS IF UNABLE TO PERFORM UPON THIS AGREEMENT DUE TO WAR, RIOT, ACTS OF GOD, ETC. (FORCE MAJEURE).

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING DISTRICT ACKNOWLEDGES AND AGREES THAT TransACT IS NOT RESPONSIBLE OR LIABLE FOR CONTENT ADDED, OR POSTED, TO THE SERVICE OR THE SERVICE MATERIALS BY A THIRD-PARTY OR BY DISTRICT.

TERMINATION. TransACT or DISTRICT may terminate this Agreement upon written notice to the other no sooner than sixty (60) days, but no later than thirty (30) days, prior to the expiration of a term. Upon termination, TransACT may, in its sole discretion, require DISTRICT'S superintendent to verify in writing that all Service Materials in DISTRICT'S possession have been returned to TransACT or destroyed.

REFUNDS. No refunds shall be given once DISTRICT has accessed the Service Materials. Subscription Fees paid by credit card cannot be disputed once DISTRICT has accessed the Service Materials.

TransACT reserves the rights to refuse access to anyone prior to entering into a use agreement. An enrollee or district that enrolls, pays a subscription fee and is then terminated or cancelled by TransACT shall receive a full or prorated refund of the paid subscription fee.

NOTICES. All notices under this Agreement shall be in writing and shall be deemed given when delivered personally, sent by confirmed facsimile transmission, or sent by certified or registered U.S. mail or nationally-recognized express courier, return receipt requested. If to TransACT, at the following address:

TransACT Communications, Inc.
Attn: Richard Passovoy
8423 Mukilteo Speedway, Suite 100
Mukilteo, WA 98275

Unless directed otherwise in writing by DISTRICT, TransACT shall send all notices to DISTRICT'S billing address.

LAW. This Agreement shall be governed by and construed under the laws of the State of Washington without regard to its conflicts of law principles. The failure of either party to exercise any right provided in this Agreement shall not be deemed a waiver of any other right contained herein. Neither party may bring a lawsuit or other formal legal proceeding for a dispute arising pursuant to or in connection with this Agreement without first making a good faith effort to resolve the dispute through mediation before a third-party neutral mediator trained or certified as such. Unless otherwise agreed to in writing by the parties, any such mediation shall be held in the city where the responding party's main office is located. The parties agree to share equally the cost of mediation; provided, however, that each party shall pay their own attorneys' fees and costs. In the event that the parties are unsuccessful in resolving the dispute through mediation, a lawsuit may be filed. The exclusive jurisdiction and venue for any such lawsuit to interpret or enforce this Agreement shall be a court of competent jurisdiction located in Snohomish County, Washington. DISTRICT hereby consents to the exclusive jurisdiction and venue of the state and federal courts located in Snohomish County, Washington. The prevailing party in any such lawsuit shall be entitled to its reasonable attorneys' fees and costs.

[End of Terms of Use Agreement]