



**NORTH CAROLINA ASSOCIATION FOR PUBLIC CHARTER SCHOOLS**

## **NCAPCS Website Terms of Use**

Updated December 15, 2018

**BY ACCESSING OR USING OUR WEBSITE, APPLICATIONS OR OTHER PRODUCTS OR SERVICES (TOGETHER, [www.ncpubliccharters.org](http://www.ncpubliccharters.org)), YOU AGREE TO BE BOUND BY ALL TERMS DESCRIBED HEREIN AND ALL TERMS INCORPORATED BY REFERENCE (“TERMS”). IF YOU DO NOT AGREE TO ALL OF THESE TERMS, YOU WILL BE ABLE TO ACCESS THE WEBSITE BUT WILL NOT BE ABLE TO HAVE A USER ACCOUNT TO CONTRIBUTE CONTENT TO THE WEBSITE.**

**YOU AND YOUR SCHOOL / COMPANY / ORGANIZATION (“you”, “your”) ACKNOWLEDGE AND AGREE THAT THERE ARE RISKS ASSOCIATED WITH UTILIZING A WEBSITE AND INTERACTING WITH OTHER USERS ONLINE AND OFFLINE.**

These Terms apply to your access to and use of the Website provided by The North Carolina Association for Public Charter Schools (NCAPCS) (“NCAPCS,” “the Association,” “we” and “us”). Additional terms (including, but not limited to, the terms of social media services, third-party payment processors, and third-party fulfillment providers) may apply to certain functionalities related to the Website (“Website”).

### **1. Eligibility**

**ONLY ASSOCIATION SCHOOL, ASSOCIATION BUSINESS MEMBERS, AND JOB BOARD CANDIDATES (“Users”) MAY REGISTER TO BE USERS AND CONTRIBUTE CONTENT TO THE WEBSITE.** Only one account is allowed per User and the account must be used for purposes authorized by the Association. Accounts remain active until the User’s expiration date or 180 days of non-use. A user registration fee may be changed at the discretion of the Association. Additional accounts created under the same user name may result in action including, but not limited to, terminating all accounts under the User’s name without refund. Users are not permitted to contribute content to the Website deemed by the Association as untrue, inappropriate, unlawful, or irrelevant to the charter school sector.

### **2. Account Registration and Security Responsibilities**

Members must first create a user account (an “Account”). In connection with creating an Account, the school must provide certain information (“Registration Data”) and answer all questions or fields marked “required.” You agree to: (a) provide true, accurate, current and complete Registration Data; (b) maintain and update such Registration Data to keep it true, accurate, current and complete; (c) maintain the security of your Account, including confidentiality of your login credentials; and (d) consent to allow NCAPCS to contact you for the purpose of confirming some or all of your Registration Data, to conduct research and to resolve disputes.



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### NCAPCS Website Terms of Use (cont.)

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#### 3. User Content

In the course of using the Website, you may transmit or otherwise make available certain content, including information about yourself, your school, content, messages, materials, data, information, text, photos, graphics, code or other items or materials (“User Content”) through interactive areas or services, such as posting events, posting jobs, or other areas or services. User Content may be publicly viewable in some instances (e.g. the list of sale postings). NCAPCS reserves the right, but does not have the obligation, to remove, screen, or edit any User Content posted, transmitted, or stored on the Website at any time and for any reason without notice. You will not (and will not allow or authorize any third-party to) post, upload to, transmit, distribute, store, create, solicit, disclose, or otherwise, publish through the Website any of the following:

- Content that is, in the judgment of NCAPCS, disrespectful or may expose the Association, users, or others to harm or liability;
- Content that may infringe the patent, trademark, trade secret, copyright, intellectual, privacy or proprietary right of any party;
- Private information of any third parties, including addresses, phone numbers and payment card information;
- Viruses, corrupted data or other harmful, disruptive, or destructive files; or
- Content that inhibits any other person from using or enjoying the Website.

You are solely responsible for creating backup copies of and replacing your User Content at your sole cost and expense. You acknowledge and agree that NCAPCS is not responsible for any errors or omissions that you make in connection with the Website. By submitting or posting User Content, you hereby grant to NCAPCS a non-exclusive, transferable, royalty-free, perpetual, irrevocable, sublicensable right to use, reproduce, modify, adapt, publish, translate, sell, create derivative works from, distribute, perform, and display the User Content, and your name, company name, location and any other information you submit with the User Content, in connection with the Website. The use of your, your school, or any other User’s name, likeness, or identity in connection with the Website does not imply any endorsement thereof unless explicitly stated otherwise. The Association also has the right to disclose your identity to any third party who is claiming that any content posted by you constitutes a violation of their intellectual property rights, or of their right to privacy.



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### NCAPCS Website Terms of Use (cont.)

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#### 4. Acceptable Use

When accessing or using the Website, you agree that you will not violate any law, contract, intellectual property or other third-party right or commit a tort. Without limiting the generality of the foregoing, you agree that you will not do, and will not permit any third party to do, any of the following:

- Engage in any unauthorized use of the Website (including, without limitation, political campaigning, advertising, or marketing);
- Transmit or otherwise make available any content that:
  - (1) you do not have the right to provide or transmit using the Website
  - (2) may expose NCAPCS or its affiliates to any harm or liability
  - (3) is harmful, fraudulent, deceptive, threatening, harassing, defamatory, obscene, unlawful, untrue, or otherwise objectionable
- Upload to, transmit, distribute, store, create, or otherwise sell or offer for sale anything that violates our list of prohibited items as shown in our marketplace FAQs.
- Transmit or otherwise make available any content that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- Originate, send, deliver, relay or otherwise transmit unsolicited commercial email or other messages through the Website;
- Copy any portion of the Website or any underlying content or source code;
- Reverse engineer, disassemble or decompile any portion of the Website or otherwise attempt to discover or re-create the source code to any software;
- Distribute the software or source code behind the Website to any third party;
- Make any modification, adaptation, improvement, enhancement, translation or derivative work of or to any portion of the Website;
- Remove, alter, or obscure any copyright or other proprietary notices of NCAPCS or its affiliates in any portion of the Website;
- Obscure or disable any advertisements that appear on or through the Website;
- Use any type of automated means, including without limitation any harvesting bot, robot, spider, script, crawler, scraper or other automated means, to utilize the Website or to collect or extract data;
- Access without authorization any networks, systems, or databases used in providing the Website or any accounts associated with Website, or to access or use any information therein for any purpose;
- Attempt to probe, test, hack, or otherwise circumvent any security measures;
- Violate any requirements, policies, procedures or regulations of any network connected to the Website;
- Use the Website in any manner that could damage, disable, overburden, or otherwise impair the Website (or the networks connected to the Website);



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### NCAPCS Website Terms of Use (cont.)

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- Interfere with or disrupt the use and enjoyment by others of the Website, including without limitation attempting, in any manner, to obtain the password, account, or other security information of any other user;
- Falsely state, impersonate, or otherwise misrepresent your identity;
- Create more than one Account or create an Account on behalf of anyone other than yourself without permission;
- Use or attempt to use another user's Account without authorization;
- Use the Website in any manner to stalk, harass, invade the privacy of, or otherwise cause harm to, any person;
- Use the Website in any manner that exposes the Website to any harm or liability of any nature;
- Use the Website to infringe or violate the intellectual property rights or any other rights of anyone else (including NCAPCS);
- Develop any third-party applications that interact with the Website without the Association's prior written consent;
- Use the Website to engage in any illegal or unauthorized purpose or to engage in, encourage, or promote activities that are unlawful, misleading, malicious or discriminatory, including, but not limited to violations of these Terms, illegal gambling, fraud, money-laundering, or terrorist activities;
- Transfer any rights granted to you under these Terms; or
- Encourage or induce any third party to engage in any of the activities prohibited under this section.

If you violate any of the foregoing, NCAPCS reserves the right to suspend or terminate your right to access and use the Website immediately without notice, and you will have infringed NCAPCS's intellectual property and other rights, which may subject you to prosecution and damages. NCAPCS also reserves the right to take any remedies it deems appropriate under the circumstances if you purchased or sold items that are in violation of these Terms. The Association reserves the right to monitor, review, retain, and disclose any information regarding your use of the Website as necessary to satisfy any applicable law, regulation, legal process or governmental request. You also acknowledge and agree that NCAPCS is not responsible or liable for the conduct of, or your interactions with, any users of the Website online or offline. Your interactions with other users are solely between you and such users. The Association is not responsible or liable for any loss, damage, injury or harm which results from these interactions. Additionally, enforcement of these Terms is solely at our discretion, and the absence of enforcement in some instances does not constitute a waiver of our right to enforce these Terms in other instances. These Terms do not create any private right of action on the part of any third party or any reasonable expectation or promise that the Website will not contain any content that is prohibited by these Terms.



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### NCAPCS Website Terms of Use (cont.)

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#### 5. Moderation

You agree that NCAPCS may moderate access to and use of the Website at our sole discretion through any means (including, for example, blocking, filtering, deletion, delay, omission, verification, and/or termination of your access. Furthermore, the Association has the right to remove any posting you make on the Website if, in our opinion, your post does not comply with the content standards expressed in these Terms, and any other Website rules, including without limitation the FAQs. You agree not to bypass or attempt to bypass such moderation. You further agree that the Association is not liable for moderating, not moderating, or making any representations regarding moderating.

#### 6. Third Party Services and Content

In using the Website, you may view content, utilize services, or otherwise interact with content and services provided by third parties, including, but not limited to, Stripe (our third-party payment processor), links and/or connections to websites, and applications or services of such parties ("Third-Party Content"). NCAPCS does not control, endorse or adopt any Third-Party Content and you acknowledge and agree that the Association will have no responsibility for any Third-Party Content, including without limitation, material that may be misleading, incomplete, erroneous, offensive, indecent or otherwise objectionable. Additionally, your business or other dealings or correspondence with such third parties are solely between you and the third parties. The Association is not responsible or liable for any damage or loss of any sort caused, or alleged to be caused, by or in connection with any such dealings, including the delivery, quality, safety, legality or any other aspect of any good or services that you may sell to or purchase from a third party.

#### 7. Feedback

Any comments or materials sent to us, including, but not limited to, ideas, questions, comments, suggestions, feedback or the like regarding the Website or any other products or services of NCAPCS (collectively, "Feedback"), is non-confidential and will become our sole property. The Association will have no obligation to you of any kind, monetary or non-monetary, with respect to such Feedback and will be free to reproduce, use, disclose, exhibit, display, transform, create derivative works from and distribute the Feedback to others without limitation or obligation. You waive any rights you may have to the Feedback (including any copyrights or moral rights). Further, you agree not to submit any feedback that is defamatory, illegal, offensive or otherwise violates any right of any third party or breaches any agreement between you and any third party.



## NORTH CAROLINA ASSOCIATION FOR PUBLIC CHARTER SCHOOLS

### NCAPCS Website Terms of Use (cont.)

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#### 8. Copyright Policy

**A. Repeat Infringer Policy.** In accordance with the [Digital Millennium Copyright Act](#) (“DMCA”) and other applicable law, NCAPCS has adopted a policy of terminating, in appropriate circumstances and at the Association’s discretion, users who are deemed to be repeat infringers. We also may, at the Association’s discretion, limit access to the Website and terminate access of any users who infringe any intellectual property rights of others, whether there is any repeat infringement.

**B. Copyright Complaints.** If you believe that anything on the Website infringes upon any copyright that you own or control, you may submit notification to [josh@ncpubliccharters.org](mailto:josh@ncpubliccharters.org). Please see [17 U.S.C. § 512\(c\)\(3\)](#) for the requirements of a proper notification. If you knowingly misrepresent in your notification that the material or activity is infringing, you may be liable for any damages, including costs and attorneys’ fees, incurred by NCAPCS or the alleged infringer as the result of the Association’s reliance upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing.

#### 9. Trademarks

NCAPCS graphics, logos, page headers, buttons, icons, scripts, and service names are trademarks, registered trademarks, or trade dress of NCAPCS may not be copied, imitated, or used, in whole or in part, without The Association’s prior written consent. You will not use any trademark, product or service name of NCAPCS without our prior written permission, including without limitation any metatags or other “hidden text” utilizing any trademark, product or service name of NCAPCS. All other registered trademarks and service marks are used for reference purposes only and remain the property of their respective owners. Reference to any products, services, processes or other information, by name, trademark, manufacturer, supplier or otherwise does not constitute or imply an endorsement, sponsorship or recommendation by NCAPCS.

#### 10. Intellectual Property Rights

Unless otherwise indicated, the Website and all content, materials, information, functionality and other materials displayed, performed, contained or available on or through the Website, including, without limitation, the NCAPCS logo, and all designs, text, graphics, pictures, information, data, sound files, images, illustrations, software, other files, and the selection and arrangement thereof (collectively, the “Materials”) are the proprietary property of NCAPCS or its affiliates, and are protected by U.S. copyright laws and other intellectual property rights laws.



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### NCAPCS Website Terms of Use (cont.)

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Except as otherwise provided, subject to your compliance with all of the terms and conditions of these Terms, and in consideration of your promises reflected herein (and with respect to any services requiring payment of fees, your payment of such fees), we grant to you a revocable, non-exclusive, non-assignable and non-transferable limited license to (i) access and contribute true, appropriate, lawful, and relevant content to the Website, (ii) cause the Materials to be displayed from a computer and/or mobile device and (iii) use the Materials, solely as permitted under these Terms (the "License"). NCAPCS reserves all rights not expressly granted to you in these Terms. You agree that these Terms do not grant you any rights in or licenses to the Website or the Materials, except for the rights expressed in this limited License. You will not otherwise copy, transmit, distribute, sell, resell, license, de-compile, reverse engineer, disassemble, modify, publish, participate in the transfer or sale of, create derivative works from, perform, display, incorporate into another website, or in any other way exploit any of the Materials or any other part of the Website or any derivative works thereof, in whole or in part for commercial or non-commercial purposes. Without limiting the foregoing, you agree not to frame or display the Website or Materials (or any portion thereof) as part of any other website or any other work of authorship without our prior written permission. The License granted under this Section will automatically terminate if we suspend or terminate your access to the Website.

#### 11. Suspension; Termination

NCAPCS may revoke or terminate your License to access or use the Website for any reason without notice at the Association's sole discretion. Without limiting the generality of the foregoing, we may revoke or terminate the License if you: (i) breach any obligation in these Terms or in any other agreement between you and us, (ii) violate any policy or guideline applicable to the Website or any other NCAPCS product or service, or (iii) use the Website other than as specifically authorized in these Terms, without our prior written permission. You will stop accessing or using the Website immediately if NCAPCS suspends or terminates your License to access or use the Website. The Association reserves the right, but does not undertake any duty, to take appropriate legal action including the pursuit of civil, criminal, or injunctive redress against you for continuing to use the Website during suspension or after termination. NCAPCS may recover its reasonable attorneys' fees and court costs from you for such action. These Terms will remain enforceable against you while your License to access or use the Website is suspended and after it is terminated.

You may also terminate your License to access or use the Website by closing your Account at any time. You may either request your account to be closed by emailing [josh@ncpubliccharters.org](mailto:josh@ncpubliccharters.org) or if you do not log into your account for 180 days, it will be automatically deleted.



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**NCAPCS Website Terms of Use (cont.)**

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**12. Disclaimer of Warranties**

A. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, AND EXCEPT AS EXPRESSLY PROVIDED TO THE CONTRARY IN WRITING BY NCAPCS, THE WEBSITE, THE MATERIALS, THE PAID SERVICES, AND ANY ITEMS SOLD BY USERS THROUGH THE WEBSITE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW. THE ASSOCIATION EXPRESSLY DISCLAIMS, AND YOU WAIVES, ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT AS TO THE WEBSITE, INCLUDING THE INFORMATION, CONTENT AND MATERIALS CONTAINED THEREIN, AND ANY ITEMS SOLD THROUGH THE WEBSITE.

B. WITHOUT LIMITING THE FOREGOING, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER NCAPCS NOR ANY OF ITS AFFILIATES, NOR THE RESPECTIVE OFFICERS, DIRECTORS, LICENSORS, EMPLOYEES OR REPRESENTATIVES OF SUCH PARTIES (COLLECTIVELY, THE "NCAPCS") REPRESENT OR WARRANT (I) THAT THE WEBSITE, MATERIALS OR ITEMS SOLD THROUGH THE WEBSITE WILL MEET YOUR REQUIREMENTS OR BE ACCURATE, COMPLETE, APPROPRIATE, RELIABLE OR ERROR FREE; (II) THAT THE WEBSITE, MATERIALS OR ITEMS SOLD THROUGH THE WEBSITE WILL ALWAYS BE AVAILABLE OR WILL BE UNINTERRUPTED, ACCESSIBLE, TIMELY, RESPONSIVE OR SECURE; (III) THAT ANY DEFECTS WILL BE CORRECTED, OR THAT THE WEBSITE, MATERIALS OR ITEMS SOLD THROUGH THE WEBSITE WILL BE FREE FROM VIRUSES, "WORMS," "TROJAN HORSES" OR OTHER HARMFUL PROPERTIES; (IV) THE ACCURACY, RELIABILITY, TIMELINESS OR COMPLETENESS OF ANY MATERIALS AVAILABLE ON OR THROUGH THE WEBSITE; (V) ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR USAGE OF TRADE OR; (VI) THAT THE ASSOCIATION WEBSITE, MATERIALS OR ITEMS SOLD THROUGH THE WEBSITE ARE NON-INFRINGEMENT;

C. YOU ACKNOWLEDGE THAT INFORMATION YOU STORE OR TRANSFER THROUGH THE WEBSITE MAY BECOME IRRETRIEVABLY LOST OR CORRUPTED OR TEMPORARILY UNAVAILABLE DUE TO A VARIETY OF CAUSES, INCLUDING SOFTWARE FAILURES, PROTOCOL CHANGES BY THIRD PARTY PROVIDERS, INTERNET OUTAGES, DISASTERS, SCHEDULED OR UNSCHEDULED MAINTENANCE, OR OTHER CAUSES OUTSIDE OF OUR REASONABLE CONTROL. YOU ARE SOLELY RESPONSIBLE FOR BACKING UP AND MAINTAINING DUPLICATE COPIES OF ANY INFORMATION YOU STORE OR TRANSFER THROUGH THE WEBSITE.





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**NCAPCS Website Terms of Use (cont.)**

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**13. Limitation of Liability**

A. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL NCAPCS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF PROFITS, OR LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH: (I) USE OF THE WEBSITE OR MATERIALS, INCLUDING, BUT NOT LIMITED TO, ANY DAMAGE CAUSED BY ANY RELIANCE ON, OR ANY DELAYS, INACCURACIES, ERRORS OR OMISSIONS IN, ANY OF THE WEBSITE OR MATERIALS, (II) ANY INABILITY TO USE THE WEBSITE OR MATERIALS FOR WHATEVER REASON, OR (III) ANY GOODS OR SERVICES DISCUSSED, PURCHASED OR OBTAINED, DIRECTLY OR INDIRECTLY, THROUGH THE WEBSITE, EVEN IF NCAPCS IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION ANY DAMAGES CAUSED BY OR RESULTING FROM (IV) RELIANCE BY ANY BUYER ON ANY INFORMATION OBTAINED FROM SELLER OR VICE VERSA, OR (V) THAT RESULT FROM EVENTS BEYOND NCAPCS'S REASONABLE CONTROL, SUCH AS SITE INTERRUPTIONS, DELETION OF FILES OR EMAIL, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT RESULTING FROM A FORCE MAJEURE EVENT, COMMUNICATIONS FAILURE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO NCAPCS RECORDS, PROGRAMS OR SERVICES.

B. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF NCAPCS ARISING OUT OF OR RELATING TO THE USE OF, OR INABILITY TO USE THE WEBSITE OR OTHERWISE RELATING TO THESE TERMS EXCEED THE GREATER OF (I) ANY COMPENSATION YOU PAY, IF ANY, TO NCAPCS FOR ACCESS TO OR USE OF THE WEBSITE OR MATERIALS DURING THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY; OR (II) \$50 U.S. DOLLARS.

C. THE LIMITATIONS SET FORTH IN THIS SECTION 13 WILL NOT LIMIT OR EXCLUDE LIABILITY FOR NCAPCS GROSS NEGLIGENCE, INTENTIONAL, WILLFUL, MALICIOUS OR RECKLESS MISCONDUCT OR FRAUD.



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### NCAPCS Website Terms of Use (cont.)

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#### 14. Indemnity

You agree to hold harmless, defend and indemnify NCAPCS from all liabilities, losses, damages, deficiencies, claims, causes of action, demands and expenses, (including, but not limited to, reasonable attorneys' fees), that are due to, arise from or otherwise relate to your conduct or your use or misuse of the Website, including, without limitation, any actual or threatened suit, demand or claim made against the Association: (i) any intellectual property rights or other proprietary rights of any third party, (ii) your breach of these Terms including without limitation your breach of any of your representations and warranties; (iii) your use of the Website or Materials; (iv) any content that you store on or transmit through the Website; or (v) any items that you mail or ship in connection with the Website. The Association may assume exclusive control of any defense of any matter subject to indemnification by you, and you agree to cooperate with the Association in such event.

#### 15. Arbitration

**A. Binding Arbitration.** Except for any disputes, claims, suits, actions, causes of action, demands or proceedings (collectively, "Disputes") arising out of or related to a violation of these Terms or Disputes in which either party seeks to bring an individual action in small claims court or seeks injunctive or other equitable relief for the alleged unlawful use of intellectual property, including, without limitation, copyrights, trademarks, trade names, logos, trade secrets or patents, you and NCAPCS agree (1) to waive your and the Association's respective rights to have any and all Disputes arising from or related to these Terms, the Website or the Materials, resolved in a court, and (2) to waive your and NCAPCS's respective rights to a jury trial. Instead, you and NCAPCS agree to arbitrate Disputes through binding arbitration (which is the referral of a Dispute to one or more persons charged with reviewing the Dispute and making a final and binding determination to resolve it instead of having the Dispute decided by a judge or jury in court).

**B. No Class Arbitrations, Class Actions or Representative Actions.** You and NCAPCS agree that any Dispute arising out of or related to these Terms or the Website will be resolved solely through individual arbitration and will not be brought as a class arbitration, class action or any other type of representative proceeding. You and NCAPCS agree that there will be no class arbitration or arbitration in which an individual attempts to resolve a Dispute as a representative of another individual or group of individuals. Further, you and NCAPCS agree that a Dispute cannot be brought as a class or other type of representative action, whether within or outside of arbitration, or on behalf of any other individual or group of individuals.



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**C. Federal Arbitration Act.** You and NCAPCS agree that these Terms affect interstate commerce and that the enforceability of this Section 19 shall be both substantively and procedurally governed by and construed and enforced in accordance with the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (the “FAA”), to the maximum extent permitted by applicable law.

**D. Notice; Informal Dispute Resolution.** You and NCAPCS agree that each party will notify the other party in writing of any arbitrable or small claims Dispute within thirty (30) days of the date it arises, so that the parties can attempt in good faith to resolve the Dispute informally. Notice to NCAPCS shall be sent by certified mail or courier to The North Carolina Association for Public Charter Schools ATTN: Website Agent, P.O. Box 4877, Asheboro, NC 27204. Your notice must include (1) your name, postal address, telephone number, the email address you use(d) for your Account, and, if different, an email address at which you can be contacted, (2) a description in reasonable detail of the nature or basis of the Dispute, and (3) the specific relief that you are seeking. Our notice to you will be sent to the email address you used to register for your Account, and will include (a) our name, postal address, telephone number and an email address at which we can be contacted with respect to the Dispute, (b) a description in reasonable detail of the nature or basis of the Dispute, and (c) the specific relief that we are seeking. If you /your school and NCAPCS cannot agree how to resolve the Dispute within thirty (30) days after the date notice is received by the applicable party, then either you or NCAPCS may, as appropriate and in accordance with this Section 19, commence an arbitration proceeding, or to the extent specifically provided for in section 20(A), file a claim in court.

**E. Process.** Except for Disputes arising out of or related to a violation of these Terms or Disputes in which either party seeks to bring an individual action in small claims court or seeks injunctive or other equitable relief for the alleged unlawful use of intellectual property, including without limitation, copyrights, trademarks, trade names, logos, trade secrets or patents, you and NCAPCS agree that any Dispute must be commenced or filed by you or NCAPCS within 180 days of the date the Dispute arose, otherwise the underlying claim is permanently barred (which means that you and NCAPCS will no longer have the right to assert such claim regarding the Dispute). You and NCAPCS agree that (1) any arbitration will occur within the state of North Carolina, (2) arbitration will be conducted confidentially by a single arbitrator in accordance with the rules of the Judicial Arbitration and Mediation Services (“JAMS”), which are hereby incorporated by reference, and (3) that the state or federal courts of the State of North Carolina and the United States, respectively, have exclusive jurisdiction over any appeals and the enforcement of an arbitration award. You may also litigate a Dispute in the small claims court located in the county of your billing address if the Dispute meets the requirements to be heard in small claims court.



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**F. Authority of the Arbitrator.** As limited by the FAA, these Terms and the applicable JAMS rules, the arbitrator will have (1) the exclusive authority and jurisdiction to make all procedural and substantive decisions regarding a Dispute, including the determination of whether a Dispute is arbitrable, and (2) the authority to grant any remedy that would otherwise be available in court; provided, however, that the arbitrator does not have the authority to conduct a class arbitration or a representative action, which is prohibited by these Terms. The arbitrator may only conduct an individual arbitration and may not consolidate more than one individual's claims, preside over any type of class or representative proceeding or preside over any proceeding involving more than one individual.

**G. Rules of JAMS.** The rules of JAMS and additional information about JAMS are available on the [JAMS website](#). By agreeing to be bound by these Terms, you either (1) acknowledge and agree that you have read and understand the rules of JAMS, or (2) waive your opportunity to read the rules of JAMS and any claim that the rules of JAMS are unfair or should not apply for any reason.

**H. Severability.** If any term, clause or provision of this Section 15 is held invalid or unenforceable, it will be so held to the minimum extent required by law, and all other terms, clauses and provisions of this Section 15 will remain valid and enforceable. Further, the waivers set forth in Section 15(B) are severable from the other provisions of these Terms and will remain valid and enforceable, except as prohibited by applicable law.

**I. Opt-Out Right.** You have the right to opt out of binding arbitration within thirty (30) days of the date you first accepted the terms of this Section 15 by writing to: The North Carolina Association for Public Charter Schools ATTN: Website Agent, P.O. Box 4877, Asheboro, NC 27204. In order to be effective, the opt-out notice must include your full name and clearly indicate your intent to opt-out of binding arbitration. By opting out of binding arbitration, you are agreeing to resolve Disputes in accordance with Section 16.

## 16. Governing Law; Venue

These Terms, your access to and use of the Website and Materials shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina without regard to conflict of law rules or principles (whether of the State of North Carolina or any other jurisdiction) that would cause the application of the laws of any other jurisdiction. Any Dispute between the parties that is not subject to arbitration or cannot be heard in small claims court, shall be resolved in the state or federal courts of the State of North Carolina and the United States.



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### NCAPCS Website Terms of Use (cont.)

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#### 17. Miscellaneous

**A. Entire Agreement; Order of Precedence.** These Terms contain the entire agreement and supersede all prior and contemporaneous understandings between the parties regarding the Website. These Terms do not alter the terms or conditions of any other electronic or written agreement you may have with NCAPCS for the Website or for any other NCAPCS product, feature, service or otherwise. In the event of any conflict between these Terms and any other agreement you may have with NCAPCS, the terms of that other agreement will control only if these Terms are specifically identified and declared to be overridden by such other agreement.

**B. Amendments.** NCAPCS reserves the right to make changes or modifications to these Terms at its sole discretion. If the Association makes changes to these Terms, it will provide you with notice of such changes, such as by sending you an email and/or by posting the amended Terms via the Website and updating the “Last Updated” date at the top of these Terms. All amended Terms will become effective immediately on the date they are posted to the Website unless we state otherwise via our notice of such amended Terms. Any amended Terms will apply prospectively to use of the Website after such changes become effective. Your continued use of the Website following the effective date of such changes will constitute your acceptance of such changes. If you do not agree to any amended Terms, you must discontinue using the Website.

**C. Severability.** If any provision of these Terms is held to be unenforceable for any reason, such provision will be reformed only to the extent necessary to make it enforceable, and such decision will not affect the enforceability of such provision under other circumstances, or of the remaining provisions hereof under all circumstances.

**D. Waiver.** Our failure or delay in exercising any right, power or privilege under these Terms will not operate as a waiver thereof.

**E. Relationship.** NCAPCS is an independent 501(c)3 nonprofit organization for all purposes and is not your agent or trustee. You are not an agent of the Association.

**F. Assignment.** You may not assign or transfer any of your rights or obligations under these Terms without prior written consent from NCAPCS, including by operation of law or in connection with any change of control. The Association may assign or transfer any or all of its rights under these Terms, in whole or in part, without obtaining your consent or approval.

**G. Headings.** Headings of sections are for convenience only and will not be used to limit or construe such sections.



**NORTH CAROLINA ASSOCIATION FOR PUBLIC CHARTER SCHOOLS**

**NCAPCS Website Terms of Use (cont.)**

Updated December 15, 2018

**H. Survival.** Sections 15 (Disclaimer of Warranties), 17 (Limitation of Liability), 18 (Indemnity), 19 (Arbitration), 20 (Governing Law; Venue), 21 (Miscellaneous), and any other term that, by its nature, should survive, will survive any termination or expiration of these Terms.

**18. Discontinuance of the Website**

The Association may, in its sole discretion and without liability to you, modify, discontinue, terminate, suspend or shut-down (temporarily or permanently) all or any portion of the Website at any time, without prior notice. Upon any such action by the Association, you must immediately stop using the Website. You may also cancel your Account at any time. If you do not log into your account for 180 days, it will be automatically deleted.



## NORTH CAROLINA ASSOCIATION FOR PUBLIC CHARTER SCHOOLS

### NCAPCS Website Terms of Use (cont.)

Updated December 15, 2018

#### Appendix: Association Marketplace

These terms are more specifically related, but not limited, to the Association Marketplace.

#### A. Purchases from Other Users

**A. Cash and Other Payments Determined by Users.** A buyer may, by agreement with the seller, elect to make payment by cash, check, or other payment method accepted by the seller. Such payments are made directly between the buyer and the seller when they meet or communicate to complete their sale transaction, pursuant to terms they determine. The Association is not a party to such transactions, and does not facilitate such transactions, refunds or returns in any manner.

**Taxes.** It is your responsibility to determine what, if any, taxes apply to each transaction you complete via the Website, including, for example, sales, use, value added, and similar taxes. It is also your responsibility to withhold, collect, report and remit the correct taxes to the appropriate tax authorities. NCAPCS is not responsible for withholding, collecting, reporting, or remitting any sales, use, value added, or similar tax arising from any transaction you complete.

**B. Shipping and Delivery.** NCAPCS is not a party to transactions conducted between users, or to the shipping or delivery of items from sellers to buyers and vice versa. The Association will not be liable for, and you release us from any liability to you for, any losses, damages, or delays related to shipping or delivery. You further warrant that any item you mail or ship contains no weapons, ammunition, explosives, living or infectious biological matter, human remains, pornography, alcohol, prescription drugs, illegal drugs, currency, dangerous goods, hazardous goods, or other goods that may not be shipped or mailed by law. As a seller, you assume full responsibility for compliance with all applicable laws and regulations, including those regarding mailing and shipping. Anyone who sends, or causes to be sent, a prohibited, illegal, or improperly packaged or labeled material can be subject to legal penalties such as civil penalties, fines and/or imprisonment, including but not limited to those specified in [18 U.S.C. § 1716](#) and [39 U.S.C. § 3018](#).

#### B. Terms of Sale for NCAPCS's Paid Services

In some circumstances, the Association may make certain services available for a fee in connection with using the Website ("Paid Services"). The following terms of sale apply solely to your purchase of Paid Services.



## NORTH CAROLINA ASSOCIATION FOR PUBLIC CHARTER SCHOOLS

### NCAPCS Website Terms of Use (cont.)

Updated December 15, 2018

**A. Fees.** Unless otherwise agreed upon by NCAPCS in writing, the fees payable in connection with any Paid Services (“Fees”) will be specified via the Website. All Fees are denominated in U.S. dollars and are exclusive of any applicable taxes.

**B. Payment Method.** You may only pay Fees using valid payment methods acceptable to us, as specified via the Website. You represent and warrant that you are authorized to use the payment method you designate via the Website. You authorize us to charge your designated payment method for the total amount of your purchase, including any applicable taxes and other charges. If the payment method cannot be verified, is invalid or is otherwise not acceptable to us, your order may be suspended or cancelled.

**C. Subscriptions.** CERTAIN OF THE PAID SERVICES PROVIDED BY THE WEBSITE, ACCOUNTS MAY BE OFFERED ON A SUBSCRIPTION BASIS WITH AUTO-RENEWING PAYMENTS (“SUBSCRIPTION SERVICES”). THE BILLING PERIOD FOR EACH TYPE OF SUBSCRIPTION SERVICE WILL BE AS SPECIFIED VIA THE WEBSITE AT THE TIME OF REGISTRATION. WHEN YOU REGISTER FOR ANY SUBSCRIPTION SERVICE, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT (I) NCAPCS (OR ITS DESIGNATED THIRD-PARTY PAYMENT PROCESSOR) IS AUTHORIZED TO CHARGE YOU ON A RECURRING BASIS FOR THE SUBSCRIPTION SERVICE (IN ADDITION TO ANY APPLICABLE TAXES AND OTHER CHARGES) AT THE THEN-CURRENT RATES FOR AS LONG AS THE SUBSCRIPTION SERVICE CONTINUES, AND (II) THE SUBSCRIPTION SERVICE WILL CONTINUE UNTIL YOU CANCEL IT OR WE SUSPEND OR STOP PROVIDING ACCESS TO THE WEBSITE IN ACCORDANCE WITH THESE TERMS.

**D. Cancellation Policy for Subscription Services.** TO CANCEL ANY SUBSCRIPTION SERVICE, YOU MUST CONTACT US BY EMAIL AT [josh@ncpubliccharters.org](mailto:josh@ncpubliccharters.org) AND FOLLOW THE INSTRUCTIONS IN THE EMAIL WE SEND YOU IN RESPONSE TO YOUR CANCELLATION REQUEST. YOU MUST CANCEL A SUBSCRIPTION SERVICE BEFORE THE START OF THE NEXT BILLING PERIOD IN ORDER TO AVOID CHARGES FOR THE NEXT BILLING PERIOD’S FEES. FOLLOWING ANY CANCELLATION, YOU WILL CONTINUE TO HAVE ACCESS TO THE SUBSCRIPTION SERVICES (SUBJECT TO THESE TERMS) THROUGH THE END OF YOUR CURRENT BILLING PERIOD.

**E. Price Changes.** NCAPCS RESERVES THE RIGHT TO MODIFY THE FEES FOR ANY PAID SERVICES, INCLUDING ANY SUBSCRIPTION SERVICES, IN ITS SOLE DISCRETION. FOR SUBSCRIPTION SERVICES, PRICE CHANGES WILL APPLY TO THE NEXT BILLING PERIOD.

**F. Taxes.** You are responsible for any sales, duty, or other governmental taxes or fees due with respect to your purchase of Paid Services.





## NORTH CAROLINA ASSOCIATION FOR PUBLIC CHARTER SCHOOLS

### NCAPCS Website Terms of Use (cont.)

Updated December 15, 2018

**G. No Refunds.** Except as otherwise expressly agreed upon by NCAPCS, all sales of Paid Services (including any Subscription Services) are final and there are no refunds. THERE ARE NO REFUNDS OR CREDITS FOR PARTIALLY USED SUBSCRIPTION SERVICES PERIODS.

**H. Errors.** In the event of an error in connection with the pricing or charging of Paid Services, we reserve the right to correct such error and revise your order accordingly (including charging the correct price) or cancel the purchase and refund any amount charged. Your sole remedy in the event of a billing error is to obtain a refund for the excess amount charged. To be eligible for such refund, you must provide notice of any such error within 90 days of the date of the billing statement in which such error first appeared.

#### C. Assumption of Risk

A. YOU ACKNOWLEDGE AND AGREE THAT THERE ARE RISKS ASSOCIATED WITH UTILIZING AN INTERNET-BASED SERVICE AND INTERACTING WITH OTHER USERS. NCAPCS DOES NOT INVESTIGATE OR VERIFY ANY BUYER OR SELLER'S REPUTATION, CONDUCT, MORALITY, CRIMINAL BACKGROUND, OR ANY INFORMATION THEY MAY SUBMIT TO THE SERVICES. YOU ARE SOLELY RESPONSIBLE FOR TAKING ALL NECESSARY PRECAUTIONS WHEN INTERACTING WITH OTHER USERS, PARTICULARLY WHEN MEETING A STRANGER IN PERSON FOR THE FIRST TIME. IT IS POSSIBLE THAT OTHER USERS MAY ATTEMPT TO PHYSICALLY HARM OR DEFRAUD YOU OR OBTAIN INFORMATION FROM YOU FOR FRAUDULENT PURPOSES. YOU ARE SOLELY RESPONSIBLE FOR, AND ASSUME ALL RISKS RELATED TO, BUYING AND SELLING THROUGH THE WEBSITE INCLUDING ALL ONLINE AND OFFLINE INTERACTIONS WITH OTHER USERS.

B. **COMMUNITY MEETUP SPOTS.** COMMUNITY MEETUP SPOTS ARE LOCATIONS IN WHICH A THIRD PARTY (SUCH AS A POLICE DEPARTMENT OR LOCAL STORE) HAS AGREED TO POST A COMMUNITY MEETUP SPOT SIGN. WE ENCOURAGE THIRD PARTIES TO PLACE COMMUNITY MEETUP SPOTS IN WELL-LIT LOCATIONS, WITH SURVEILLANCE AND IN GENERALLY WELL-TRAFFICKED AREAS; HOWEVER, NCAPCS DOES NOT INDEPENDENTLY VERIFY THE CONDITIONS AT ANY COMMUNITY MEETUP SPOT, DOES NOT MONITOR COMMUNITY MEETUP SPOTS AND DOES NOT WARRANT THEIR SAFETY OR CONDITION. YOUR USAGE OF COMMUNITY MEETUP SPOTS, AND ANY DISPUTE ARISING OUT OF THAT USAGE, INCLUDING AGAINST ANY THIRD-PARTY POSTING A COMMUNITY MEETUP SPOT SIGN, REMAINS SUBJECT TO THE PROVISIONS IN THESE TERMS OF SERVICE.