



License and Service Agreement

The SOCS Partner identified and signing below approves the terms and conditions of this agreement between the Partner and FES.

Partner: Mid-Ohio Educational Service Center Address: 890 West 4 th Street Mansfield, OH 44906 Student Enrollment: N/A	Agreement Term Dates: 10/14/2019 – 10/13/2020 Special Terms: Supersedes all previous agreements. Option to redesign your website at no charge – see page 7 for pricing details.
URL (web address): https://www.moesc.net/ Website Champion: Candy Bores Ph: 419-774-2501 Email: bores.candy@moesc.net Network Administrator: Candy Bores Ph: 419-774-2501 Email: bores.candy@moesc.net Superintendent: Kevin Kimmel Email: kimmel.kevin@moesc.net FES Partner Representative: Karen B. Mullins Ph: 800-850-8397, ext. 6926 Email: karenm@fes.org Fax: 402-479-6691 Partnership: Contract Type: School-related Sales Tax Exempt: No___; Yes___ (Provide copy of exemption certificate or request form) Purchase Order attached: Yes___; No___	

***I attest that I have read this document and am authorized to sign on behalf of:**

Mid-Ohio Educational Service Center

By: 

(Signature)

(Date)

Kevin D. Kimmel
(Please print full name)

Title: Superintendent

For: FES

1300 O Street
Lincoln, NE 68508

By: _____

Dan Kunzman, Vice President

(Date)

PLEASE FILL IN INFORMATION ON PAGES 1, 7, & 8, THEN RETURN A SIGNED, COMPLETED COPY TO DIANNA WATERS AT diannaw@fes.org

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LICENSE AND SERVICE AGREEMENT

Simplified Online Communication System ("SOCS")

This License and Service Agreement (the "Agreement") made by and between FES, a Nebraska nonprofit corporation located in Lincoln, Nebraska and Mid-Ohio Educational Service Center ("Licensee").

THE PARTIES AGREE AS FOLLOWS:

1. **License.** FES grants to Licensee a limited, nonexclusive and nontransferable license to the Simplified Online Communication System ("SOCS") web hosting service (collectively the "Licensed Service"). Exclusive proprietary title to all rights, patents, trademarks, copyrights, source code, graphic design and images created by FES and trade secrets in the Licensed Service shall remain with FES and no title to or ownership interest in the Licensed Service shall be transferred to Licensee.
2. **Installation, Training, Technical and Support Services.** FES shall provide certain technical services to Licensee associated with the installation, management and administration of the Licensed Service. One time set up fee does not include graphic design services. Graphic design services for the website are included in the license fee and limited to 3 mockup designs prior to site installation. Additional graphic services will be charged at the current hourly rate. FES shall provide updates and certain enhancements to the Licensed Service without charge during the term of this Agreement and any renewals. Basic instruction and support services shall be provided at no extra cost as a part of the initial delivery of the Licensed Service. Other technical assistance relating to subsequent technical client network support, configuration, and/or guidance, content creation and/or the transfer of existing content, or on-site training are not part of the license agreement and are subject to a separate charge. Those services and the related charges are noted on page 7 of this Agreement.
3. **Charges, Payments, and Taxes.** Licensee shall pay the royalty fees for the Licensed Service and related services and costs as set forth on the included pricing summary. All annual royalty fees shall be due on the date identified on the Exhibit; for any exercised renewal terms, the annual fee shall be due on the anniversary date of the original payment, unless otherwise agreed to by the parties. FES shall direct bill Licensee for all royalty fees, services, and support, including additional charges for technical assistance in accordance with the terms and rates set out the attached schedule. Interest shall accrue at the rate of one and one-half percent (1.5%) per month for any invoice balance outstanding for more than thirty (30) days. Each party shall be responsible for its own obligations associated with any federal, state, local or other taxes required with the delivery of the Licensed Service.
4. **Obligations of Licensee.** In addition to the covenants provided by Licensee within this Agreement, Licensee specifically agrees to the following:
 - a. ***Logos and Branding.*** Permit FES or its designees and assigns to place a logo at a reasonable location on the site, with a link to the website of FES and/or its designee, if so requested by FES.
 - b. ***Utilization of Site.*** Permit FES or its designees and assigns to utilize Licensees' site and corresponding content in sales demonstrations, marketing materials and/or other venues to highlight Licensed Service to existing and/or potential Licensees.
 - c. ***Implementation Team.*** Identify an initial SOCS implementation team to work directly with FES in the implementation of SOCS for Licensee.

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5. Warranties and Representations. FES hereby warrants that the Licensed Service (including enhancements and modifications) will perform in all material respects during the term of this Agreement. FES shall, at no additional charge to Licensee, undertake to correct any Licensed Service which does not perform substantially in accordance with the representations of FES. If a defect in the Licensed Service cannot be adequately remedied, the sole and exclusive remedy for any breach of this limited warranty will be restricted to (i) the replacement of the Licensed Service by FES or (ii) refund by FES to Licensee the annual royalty payment which applies to the year in which the defect occurred.

If Licensee modifies, attempts to modify, or decompiles or attempts to decompile the Licensed Service, fails to implement the changes to the Licensed Service as supplied by FES, or in any other way abuses or tampers with the Licensed Service, the warranty obligations of FES under this section shall be null and void. The limited warranty and restricted remedy contained herein is not applicable to any Licensed Service that has been modified or misused by Licensee.

FES PROVIDES NO WARRANTIES, EXPRESS OR IMPLIED, NOR IS IT OBLIGATED FOR, AND EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR, THE CONTENT DEVELOPED BY LICENSEE OR ITS AGENTS AS ALLOWED BY THE EDIT FEATURES AVAILABLE IN AND UTILIZED THROUGH THE LICENSED SERVICE. FURTHER, NO REPRESENTATIONS OR WARRANTIES ARE MADE CONCERNING THE ACCURACY, COMPLETENESS, TIMELINESS OR RELIABILITY OF ANY INFORMATION CONTAINED IN ANY SITE LINKED THROUGH THE LICENSED SERVICE. FES DOES NOT WARRANT OR GUARANTY UNINTERRUPTED ACCESS TO THE LICENSED SERVICE AS USED THROUGH THE WORLD WIDE WEB AND ANY SITE LINKED TO THE LICENSED SERVICE OR THE AVAILABILITY OF INTERNET E-MAIL LINKS PROVIDED THROUGH THE LICENSED SERVICE. IN NO EVENT SHALL FES, ITS OFFICERS, AFFILIATES, AGENTS, LICENSORS, EMPLOYEES OR INTERNET SERVICE PROVIDERS BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST OR DAMAGED DATA, OR OTHER COMMERCIAL OR ECONOMICAL LOSS, WHETHER BASED IN CONTRACT, TORT, OR ANY OTHER THEORY OF LIABILITY.

FES shall use all reasonable efforts to ensure that the SOCS Service is operating and available to Customers 99.9% of the time in any calendar month. Downtime is considered to be time that the SOCS Network is unavailable due to a failure in the FES network. There may be periods of time that FES schedules maintenance on the SOCS network that requires an interruption of service. Customers will be notified in advance of scheduled maintenance and every effort will be made to schedule this maintenance outside the hours of 7:00 a.m. to 10:00 p.m. Central time. Scheduled maintenance is not considered downtime. FES cannot be responsible for connectivity issues arising from problems in the client's network or internet outages due to such things as environmental disaster, cyber-attack, widespread power outages and other events beyond FES' control.

To protect clients' and FES' networks, FES employs tools that vigorously filters viruses and spam. FES, at its sole discretion, reserves the right to filter content it feels poses a threat to the networks.

Confidentially: Absent the use of encryption, use of the Licensed Service through the Internet is not a secured medium and privacy cannot be assured. Internet e-mail is vulnerable to interception and manipulation of data. FES will not be responsible for any damages to Licensee or any third party suffered as a result of the transmission of information, confidential or otherwise, that may be made through Internet e-mail links provided through this Licensed Service. FES is not responsible for any errors or changes made to any transmitted information. Should Licensee or any third party user transmit information using Internet e-mail resources through the Licensed Service, such individuals do so at their own risk.

Accessibility: FES further acknowledges and warrants that, upon release to Licensee, the Licensed Service is currently in material compliance with relevant federal law and corresponding regulations associated with accessibility of web content and the prohibition of discrimination based on disability (the "Accessibility Standards"). FES agrees to promptly respond to, resolve and remediate any bona-fide complaint regarding accessibility of the Licensed Service under the Accessibility Standards in a timely manner and provide an updated version to Licensee at no cost. If FES, in its judgment, cannot remedy any bona-fide complaint concerning accessibility of the Licensed Service under the Accessibility Standards, then Licensee may terminate this Agreement, but its remedy shall be limited to that set out in Section 7 of this Agreement.

Licensee is entitled to make certain changes to the Licensed Service by adding, editing or

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supplementing content. Licensee is fully responsible for compliance with the Accessibility Standards as to any added content or alterations made to the original content prepared by FES, and Licensee shall indemnify and hold FES harmless for any claims of violation or noncompliance of the Accessibility Standards. In addition, all limited warranties provided by FES in this section shall not apply if the Licensed Service (including all elements of the licensed SOCS system) are: (i) modified or altered by Licensee in any way (other than by FES or with the specific prior written consent of FES); (ii) not timely updated by Licensee with the corrections, patches, fixes, updates, improvements or enhancements that FES may make available from time to time; or (iii) used in any manner or for any purpose by Licensee which is not specifically permitted by this Agreement or the documentation.

Malware: While FES makes reasonable efforts to assure that the Licensed Service as provided through the Internet does not contain computer viruses, Licensee is responsible to take precautions to scan for computer viruses and to ensure that Licensee has a complete current backup of the applicable items contained on its computer system.

Links to Other Sites: The Licensed Service allows for links to other sites through the use of the Internet. These links are provided solely as a service through the Licensed Service. Such linked sites are independently developed by parties other than FES, and FES assumes no liability or responsibility for the accuracy or appropriateness of the information contained in such sites. The inclusion of any link to any other site through the Licensed Service does not imply endorsement by FES. Any mention of another party or its product or service through links offered through the Licensed Service should not be construed as an endorsement of that party or its product or service by FES. If Licensee or any third party decides to access other linked websites, such action is taken at that party's own risk.

Legal Content: The Licensee agrees to comply with all digital rights, copyright, trademark and decency laws. FES reserves the right to remove content that violates these laws or when notified of an ownership dispute. It is the responsibility of the licensee to resolve such disputes and pay associated costs. If client is using the logo or mark of another organization, the client accepts all liability and may be required to demonstrate that permission has been granted to use said logo or mark (i.e. professional sports team logos, NCAA logos, Disney or Olympic logos).

6. **Marketing and Reproduction of Licensed Materials.** Licensee shall only publish, identify or make reference to FES's trade names, trademarks, logos or other identifying materials associated with SOCS or the Licensed Service as approved by FES. If such approval is given, Licensee shall provide complete recognition of FES to the Licensed Service in all forms of advertising, marketing, and related promotional materials. Licensee shall not download, offload nor reproduce, in whole or in part, the Licensed Service, except for archive emergency restart purposes, where relevant and as approved in writing by FES. Licensee shall not use any decompiler programs or devices with respect to the Licensed Service or in any way attempt to decompile the Licensed Service. Licensee shall not remove or destroy any proprietary markings or legends placed upon or contained within the Licensed Service or related materials.

7. **Limitation of Liability.** If FES, in its judgment, is unable to remedy any defects, failure, nonconformity or alleged breach of warranty under the Licensed Service or is otherwise unable to adequately replace the Licensed Service within ninety (90) days after receiving notice from Licensee, FES shall then refund to Licensee the annual royalty payment which applies to the year in which the alleged defect, failure, nonconformity or breach occurred. In no event shall FES be liable to Licensee for loss of profits, sales, goodwill, data or computer programs, or punitive, indirect, tort, economic, special, incidental or consequential damages. Each party agrees to indemnify and hold the other (as well as their respective affiliates, directors, officers, employees and agents) harmless from and against all liabilities, losses, damages, judgments, costs, and expenses of any kind which may be imposed on, incurred by or asserted against a party to this Agreement including, without limitation, attorney fees relating to or arising out of this Agreement or any transaction contemplated hereby, or any amendment, supplement, modification of, or any waiver or consent under or in respect of this Agreement or any transaction contemplated hereby that in each case results from a failure of a party to comply with or perform its obligation under this Agreement or from any act of negligence or willful misconduct on the part of such party.

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8. Term of Agreement and Termination.

- a. Unless otherwise terminated as provided herein, this Agreement shall commence as of the beginning date and terminate on the ending date of the term stated on page one (1) of this Agreement, subject to the terms of automatic extension set out below.
 - b. Notwithstanding the terms of subpart (a) above, Licensee may terminate this Agreement if FES commits a material breach defined as the inability of the system to perform critical functionality (example: article moderation) or that renders the system inoperable and fails to cure that breach within thirty (30) days after receiving written notice from Licensee of that breach; provided, however, that FES shall have thirty (30) business days to cure any defects or breaches associated with its limited warranties associated with the Licensed Service, as set out in Section 7 above.
 - c. Notwithstanding the terms of subpart (a) above, FES may terminate this Agreement (i) if Licensee is delinquent in making any payments due under this Agreement when due and continues to fail to make any such payment for ten (10) days after written notice of such delinquency is sent from FES, or (ii) if Licensee commits any other material breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice of such breach is sent from FES. In the event of such termination by FES, Licensee shall remain liable for all fees incurred to date. Such termination by FES shall be without prejudice to any other remedies FES may have at law or in equity.
 - d. The termination of this Agreement by either party for any reason contemplated herein shall terminate the rights of Licensee to the Licensed Service. Upon such termination, the license and all other rights granted to Licensee under this Agreement shall cease immediately and Licensee shall promptly (i) return all operating manuals, documentation and other material related to the Licensed Service in the possession of Licensee; (ii) purge the Licensed Service and any portion thereof from each and every computer, computer storage device, and every other medium of Licensee which such Licensed Service or any portion thereof may be on; and (iii) certify to FES that Licensee has complied with these provisions.
 - e. At Licensee's request, upon termination of this Agreement by either party, and upon receipt of final payment to FES, FES agrees to return a backup file of client's database plus files uploaded by the client (ie: pictures) within 30 days of termination.
 - f. So long as Licensee is not in default of any terms of this Agreement, then this Agreement shall automatically renew annually after completion of the initial term dates on the anniversary hereof, subject to Licensee's obligation to pay the annual royalty fee as provided for herein and any other obligations as contemplated by this Agreement. Either party may terminate the automatic renewal provision by providing notice to the other, no less than sixty (60) days prior to the anniversary date, of its intent to decline the automatic renewal of the contract term. In the event either party should exercise the termination right, the license rights granted to Licensee shall then cease in accordance with the terms of this section.
 - g. The termination of this agreement before the end date, either by original contract or automatic renewal, will require the Licensee to pay 50% of the remaining total license fee.
 - h. All communications regarding terminating or changing terms of this agreement must be rendered in writing. Phone calls will not be recognized for purposes of this contract.
9. General. Any notice required under this Agreement shall be given in writing to each party at the address identified adjacent to each party's signature. Licensee shall not assign or otherwise transfer this Agreement or any interest therein without the prior written consent of

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FES. This Agreement shall be binding upon the parties hereto, their successors and assigns as permitted. No waiver or any breach of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision of this Agreement. This Agreement may be originally executed in one or more counter-parts, each of which shall be deemed an original. This Agreement shall be governed by the laws of the State of Nebraska and the parties submit and consent to the jurisdiction of the Nebraska courts for any matter associated with this Agreement. No modifications to this Agreement shall be valid unless made in writing and signed by all parties hereto.

10. Compliance with State Laws. In executing this Agreement, Licensee represents that it has secured all necessary consents and approval from relevant governing or oversight boards and related entities as may be required by state or local law. Execution of this Agreement shall constitute acknowledgement of any such confirmation requirements and waiver of any subsequent claims of requiring consent, confirmation or approval as a condition precedent to the implementation or enforcement of this Agreement.

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PRICING SUMMARY

ANNUAL ROYALTIES/FEES:

- **SOCS Web Hosting Service** **\$2,000 per year**
 - Set-up Fee Waived \$1,000 one-time charge
- **Notifier (Text Option)** **\$N/A per year**
 - (Annual fee plus \$50 one-time set-up fee, see below)
- **Mobile App in Stores Maintenance** **\$100 per year**
 - (\$200/yr plus \$350 one-time set-up fee, see below)
- **Additional URL/Domain Registrations** **\$N/A per year**
 - One URL/Domain registration included
 - (# of add'l domains N/A x \$20 per domain)

Total Annual Royalties/Fees **\$2,100 per year**

Payment terms:

- \$2,100 annually

OPTIONAL ONE-TIME SERVICES/FEES:

- **SOCS Web Hosting Set-up (\$1,000)** **\$N/A**
- **Notifier Set-up (\$50)** **\$N/A**
- **Mobile App in Stores Set-up (\$350)** **\$N/A**
- **Add'l Listserv Set-up (\$100) per 10** **\$N/A**

A listserv for each school building plus one for district office is included with hosting service. A district or single school within the district may purchase additional listservs (non-school building, i.e., athletics or alumni).
- **Google Mail for Education Set-up (\$250/domain)** **\$N/A**
- **Content Migration Set-up (\$50/hr) Estimate** **\$N/A**

Migration of existing content on client website to the SOCS hosted site as part of the set-up process. SOCS will estimate hours needed based on publicly available content viewable on the client's existing sites. SOCS reserves the right to adjust this estimate if additional content is to be migrated. If over by 10% or more, client will be consulted. The client will provide a site map demonstrating where, on the SOCS site, the existing content will reside. Existing content will be migrated using copy and paste. It is the responsibility of the client to determine content that is outdated or expired. SOCS will work closely with the client throughout the process.
- **On-line Payment Set-up (TBD)** **\$N/A**

If using on-line payment services that requires set-up, there will be a one-time set-up charge.

Total One-Time Set-up Fees **\$0**

OPTIONAL FEES:

- On-site training is negotiable
- Licensee specific customization services will be made available to Licensee at an hourly programming rate.

SPECIAL BILLING NOTES/ARRANGEMENTS:

- Supersedes all previous SOCS license agreements, effective 10/14/2019.
- Includes option to redesign your website, at no charge.

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Invoices and Billing Statements will be sent to the following address:

Licensee: Mid-Ohio Educational Service Center

c/o: Lorraine Earnest

Title: Treasurer

Street: 890 W Fourth Street

City: Mansfield State: OH Zip: 44906

Phone Number: 419-774-2519

Fax Number: 419-774-5523

Email Address: earnest.lorraine@moesc.net

Agreement Term Dates: From 10/14/2019 – 10/13/2020

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