

## Contract Rider between Vestal Central School District

And

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- a. \_\_\_\_\_ (Vendor) acknowledges that the Vestal Central School District (Customer) is a public education governmental unit pursuant to the laws of the State of New York.
- b. This Rider is hereby incorporated into the Agreement between Vendor and Customer. Notwithstanding any other language in the Agreement, including any referenced documents as well as otherwise incorporated documents, to the contrary, the language of this Rider has been individually negotiated and supersedes any other language that conflicts with the provisions of this Rider.
- c. No part of this Agreement can be changed or modified as relates to Customer, without Customer's prior written notice and written agreement of the proposed changes to the Agreement.
- d. Vendor agrees to defend, indemnify, and hold harmless Customer and Customer's officers, employees, volunteers, Users, agents, and other representatives (collectively Indemnitees) from any and all losses, costs, liabilities, damages, and expenses (including but not limited to reasonable attorneys' fees and reasonable attorneys' fees in seeking to enforce its rights pursuant to this Agreement) arising out of intellectual property claims brought by third parties based upon any intellectual property supplied to Indemnitees by Vendor or Vendor's affiliates or licensors pursuant to this Agreement.
- e. No defense, indemnification, or hold harmless provision of the Agreement shall applied against Customer except to the extent Vendor also provides that identical provision protecting Customer and Customer's officers, employees, volunteers, agents, authorized users and other representatives.
- f. Vendor waives and releases Customer from any claim of reimbursement of legal fees relating to its enforcement of the Agreement except to the extent the relevant provision of the Agreement provides that the prevailing party is entitled to such fees on the disputed matter following the decision and judgment of a Court of law finally deciding the matter.
- g. Customer general liability. No limitations, exclusions, disclaimers or other language seeking to reduce or eliminate Vendors legal or financial duties shall apply to its duties under this subparagraph of the Rider.

- h. *No limitations shall apply to Vendor's duty to defend, indemnify, or hold harmless pursuant to subsection d above. For all other liabilities, Vendor's liability to Customer shall be the greatest of the amount and kind provided for in the agreement, or,*
  - a. *One year's fees payable by Customer to Vendor pursuant to Agreement, or*
  - b. *Vendor's applicable insurance coverage.*
- i. *The Parties agree that this Agreement shall be governed by the laws of the State of New York, without regard to its conflict of laws principles. The parties agree that exclusive jurisdiction to resolve any conflicts relating to this Agreement shall be in the State and Federal Courts with venue in Broome County New York. The Parties consent to personal jurisdiction in such Courts. Arbitration is expressly prohibited. There is no waiver of class action suits against Vendor.*
- j. *No assignment shall be authorized against a Customer without its written consent.*
- k. *No Service of Process against Customer by electronic means is permitted.*
- l. *Vendor acknowledges that Customer is subject to New York State Freedom of Information Law. Confidential Information does not include any information required to be produced pursuant to law, or a lawfully issued subpoena or other judicially enforceable demand. Customer does not have to provide advance notice to Vendor prior to complying with such lawful demands for information.*
- m. *No limitation of time in the Agreement shall shorten Customers' time period to seek redress from the Vendor and where not satisfied, bring an action or special proceeding against Vendor as otherwise provided by applicable law.*
- n. *Vendor's rate of interest on any unpaid amounts due from Customer shall be 3% annual.*
- o. *This Rider shall survive termination of the Agreement.*

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*Vestal Central School District*

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*Date*

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*Vendor*

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*Date*

## **Exhibit A**

### **DATA PRIVACY RIDER FOR ALL CONTRACTS INVOLVING PROTECTED DATA PURSUANT TO EDUCATION LAW §2-C AND §2-D**

District and Vendor agree as follows:

1. Definitions:

(1) Protected Data means personally identifiable information of students from student education records as defined by FERPA, as well as teacher and Principal data regarding annual professional performance reviews made confidential under New York Education Law §3012-c and §3012-d;

(2) Personally Identifiable Information (PII) means the same as defined by the regulations implementing FERPA (20 USC §1232-g);

2. Confidentiality of all Protected Data shall be maintained in accordance with State and Federal Law and the [District's Data Security and Privacy Policy](#);

3. The Parties agree that the District's Parents' Bill of Rights for Data Privacy and Security are incorporated as part of this agreement, and Vendor shall comply with its terms;

4. Vendor agrees to comply with Education Law §2-d and its implementing regulations;

5. Vendor agrees that any officers or employees of Vendor, and its assignees who have access to Protected Data, have received or will receive training on federal and State law governing confidentiality of such data prior to receiving access;

6. Vendor shall:

(1) limit internal access to education records to those individuals that are determined to have legitimate educational interests;

(2) not use the education records for any other purposes than those explicitly authorized in its contract. Unauthorized use specifically includes, but is not limited to, selling or disclosing personally identifiable information for marketing or commercial purposes or permitting, facilitating, or disclosing such information to a third party for marketing or commercial purposes;

(3) except for authorized representatives of the third party contractor to the extent they are carrying out the contract, not disclose any personally identifiable information to any other party:

(i) without the prior written consent of the parent or eligible student; or

(ii) unless required by statute or court order and the party provides notice of the disclosure to the department, Board of Education, or institution that provided the information no later than the time the information is disclosed, unless providing notice of the disclosure is expressly prohibited by the statute or court order;

- (4) maintain reasonable administrative, technical and physical safeguards to protect the security, confidentiality and integrity of personally identifiable student information in its custody;
- (5) use encryption technology to protect data while in motion or in its custody from unauthorized disclosure using a technology or methodology specified by the Secretary of the United States Department of Health and Human Services in guidance issued under Section 13402(H)(2) of Public Law §111-5;
- (6) adopt technology, safeguards and practices that align with NIST Cybersecurity Framework;
- (7) impose all the terms of this rider in writing where the Vendor engages a subcontractor or other party to perform any of its contractual obligations which provides access to Protected Data.
- (8) If any terms of the foregoing agreement conflict with any terms of this exhibit, the terms of this exhibit, New York Education Law §2-d and the regulations shall control.”

**Exhibit B**  
**PARENTS' BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY**

The District, in compliance with Education Law §2-d, provides the following:

**DEFINITIONS:**

As used in this policy, the following terms are defined:

**Student Data** means personally identifiable information from the student records of a District student.

**Teacher or Principal Data** means personally identifiable information from District records relating to the annual professional performance reviews of classroom teachers or Principals that is confidential and not subject to release under the provisions of Education Law §§3012-c and 3012-d.

**Third-Party Contractor** means any person or entity, other than a District, that receives student data or teacher or Principal data from the District pursuant to a contract or other written agreement for purposes of providing services to the District, including, but not limited to, data management or storage services, conducting studies for or on behalf of the District, or audit or evaluation of publicly funded programs. Such term shall include an educational partnership organization that receives student or teacher or Principal data from a school district to carry out its responsibilities pursuant to Education Law §211-e and is not a District, and a not-for-profit corporation or other nonprofit organization, other than a District.

**Parent** means a parent, legal guardian, or person in parental relation to a student. These rights may not apply to parents of eligible students.

**Eligible Student** means a student 18 years and older.

1. Neither student data, nor teacher or Principal data will be sold or released for any commercial purpose;
2. Parents have the right to inspect and review the complete contents of their child's education records. Procedures for reviewing student records can be found in the Board Policy entitled *Student Records: Access and Challenge (#7240)*.
3. Security protocols regarding confidentiality of personally identifiable information are currently in place and the safeguards necessary to protect the confidentiality of student data are maintained at industry standards and best practices as defined below. The safeguards include, but are not limited to, encryption, firewalls, and password protection. As required by Education Law §2-d (5), the National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1 (NIST Cybersecurity Framework or NIST CSF) is adopted as the standard for data security and privacy;

4. New York State maintains a complete list of all student data collected by the State and the data is available for public review at <http://www.p12.nysed.gov/irs/sirs/NYSEDDataElements2018.xlsx>, or by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234;

5. Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed to the District's Data Protection Officer at 607-757-2211.

Complaints may be also be submitted to NYSED online at [www.nysed.gov/data-privacy-security](http://www.nysed.gov/data-privacy-security), by mail to Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, NY 12234; by email to [privacy@nysed.gov](mailto:privacy@nysed.gov); or by telephone at 518-474-0937.

6. Parents have the right to be notified in accordance with applicable laws and regulations if a breach or unauthorized release of their student's personally identifiable information occurs.

7. Educational agency workers that handle personally identifiable information will receive annual training on applicable state and federal laws, the educational agency's policies, and safeguards associated with industry standards and best practices that protect personally identifiable information.

8. The District will promptly acknowledge receipt of complaints, commence an investigation, and take the necessary precautions to protect personally identifiable information.

- Following its investigation of a submitted complaint, the District shall provide the parent or eligible student with its findings within a reasonable period, but no more than 60 calendar days from receipt of the complaint;
- Where the District requires additional time, or where the response may compromise security or impede a law enforcement investigation, the District shall provide the parent or eligible student with a written explanation that includes the approximate date when the District anticipates that it will respond to the complaint;
- The District will require complaints to be submitted in writing;
- The District will maintain a record of all complaints of breaches or unauthorized releases of student data and their disposition in accordance with applicable data retention policies, including the Records Retention and Disposition Schedule LGS-1.

9. This policy will be regularly updated with supplemental information for each contract the District enters into with a third-party contractor where the third-party contractor receives student data or teacher or Principal data. The supplemental information must be developed by the District and include the following information:
- the exclusive purposes for which the student data or teacher or Principal data will be used by the third-party contractor, as defined in the contract;
  - how the third-party contractor will ensure that the subcontractors, or other authorized persons or entities to whom the third-party contractor will disclose the student data or teacher or Principal data, if any, will abide by all applicable data protection and security requirements, including, but not limited to, those outlined in applicable State and federal laws and regulations (e.g., FERPA; Education Law §2-d);
  - the duration of the contract, including the contract's expiration date and a description of what will happen to the student data or teacher or Principal data upon expiration of the contract or other written agreement (e.g., whether, when and in what format it will be returned to the District, and whether, when and how the data will be destroyed);
  - if and how a parent, student, eligible student, teacher or Principal may challenge the accuracy of the student data or teacher or Principal data that is collected;
  - where the student data or teacher or Principal data will be stored, it will be described in such a manner as to protect data security and the security protections taken to ensure that such data will be protected and data security and privacy risks mitigated; and how the data will be protected using encryption while in motion and at rest will be addressed.
10. This policy shall be published on the District's website. This policy shall also be included with every contract the District enters with a third-party contractor where the third-party contractor receives student data or teacher or Principal data.

**Vestal Central School District**  
**New York State Education Law 2-D: Supplemental Information**

\*This section to be completed by the Vendor\*

<b>CONTRACTOR</b>	[Vendor Name]
<b>PRODUCT</b>	[Product Name]
<b>SUPPLEMENTAL INFORMATION ELEMENT</b>	<b>SUPPLEMENTAL INFORMATION</b>
Please list the exclusive purposes for which the student data or teacher or Principal data will be used by the third-party contractor, as defined in the contract <i>(or list the section(s) in the contract where this information can be found)</i>	
Please list how the third-party contractor will ensure that the subcontractors, or other authorized persons or entities to whom the third-party contractor will disclose the student data or teacher or Principal data, if any, will abide by all applicable data protection and security requirements, including, but not limited to, those outlined in applicable State and federal laws and regulations (e.g., FERPA; Education Law §2-d) <i>(or list the section(s) in the contract where this information can be found)</i>	
Please list the duration of the contract, including the contract's expiration date and a description of what will happen to the student data or teacher or Principal data upon expiration of the contract or other written agreement (e.g., whether, when and in what format it will be returned to the District, and whether, when and how the data will be destroyed) <i>(or list the section(s) in the contract where this information can be found)</i>	
Please list if and how a parent, student, eligible student, teacher or Principal may challenge the accuracy of the student data or teacher or Principal data that is collected <i>(or list the section(s) in the contract where this information can be found)</i>	
Please list where the student data or teacher or Principal data will be stored, it will be described in such a manner as to protect data security and the security protections taken to ensure that such data will be protected and data security and privacy risks mitigated; and how the data will be protected using encryption while in motion and at rest will be addressed <i>(or list the section(s) in the contract where this information can be found)</i>	

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name & Job Title





# Privacy Policy

This version was last updated on September 15, 2021.

## INTRODUCTION

Welcome to our Privacy Policy for our website, [www.heggerty.org](http://heggerty.org) (<http://heggerty.org>) and its related domains ("Website") of Literacy Resources, LLC, ("Literacy Resources" or "we" or "us") in the United States.

We respect your privacy and are committed to protecting your personal data. This Privacy Policy will inform you as to how we look after your personal data when you visit our Website (regardless of where you visit it from) and tell you about your privacy rights.

By using our Website, **you consent to the data practices described in this Privacy Policy and the Website Terms of Use (<https://heggerty.org/terms-of-service/>)**. If you do not agree with the data practices described in this Privacy Policy or if you do not agree to the Terms of Use agreement, you should not use our Website.

## 1. IMPORTANT INFORMATION AND WHO WE ARE

2. THE DATA WE COLLECT ABOUT YOU
3. HOW WE COLLECT YOUR PERSONAL DATA
4. HOW WE USE YOUR PERSONAL DATA
5. DISCLOSURES OF YOUR PERSONAL DATA
6. DATA SECURITY
7. DATA RETENTION
8. YOUR RIGHTS
9. CALIFORNIA RESIDENT'S PRIVACY RIGHTS

## **1. IMPORTANT INFORMATION AND WHO WE ARE**

The mission of Literacy Resources is to equip teachers with effective and engaging products and professional learning opportunities that help prepare and empower all students to become lifelong readers.

### **Purpose of this Privacy Policy**

This Privacy Policy aims to give you information on how we collect and processes your personal data through your use of this Website, including any data you may provide through this Website when you sign up to our newsletter, or purchase a product or subscribe to a service.

### **Children under Age 13**

This Website and its services are not intended for children and we do not knowingly collect data relating to children consistent with the U.S. Children's Online Privacy Protection Act. If we learn that we have received information directly from a child under age 13 without the parent or legal guardian's verified consent, we will

use that information only to respond to the child/parent/guardian to inform the child that he or she may not use the Website.

It is important that you read this Privacy Policy together with any other Privacy Policy or fair processing notice we may provide on specific occasions when we are collecting or processing personal data about you so that you are fully aware of how and why we are using your data. This Privacy Policy supplements the other policies and is not intended to override them.

## **Literacy Resources Contact Information**

### **Our contact details are:**

Privacy Officer

### **Email address:**

hello@heggerty.org (mailto:hello@heggerty.org)

### **Postal address:**

805 Lake St. #293

Oak Park, IL 60301

## **Changes to this Privacy Policy and Your Duty to Notify Us of Changes**

We will notify you of any changes to this Privacy Policy. It is important that the personal data we hold about you is accurate and current. Please keep us informed if your personal data changes during your relationship with us.

## **Third-Party Links**

This Website may include links to third-party websites, plug-ins and applications. Clicking on those links or enabling those connections may allow third parties to collect or share data about you. We do not control these third-party websites and are not responsible for their privacy statements. When you leave our Website, we encourage you to read the Privacy Policy of every website you visit.

## 2. THE DATA WE COLLECT ABOUT YOU

Personal data, or personal information, means any information about an individual from which that person can be identified.

We or our service providers may collect, use, store and transfer different kinds of personal data about you which we have grouped together follows:

- **Identity Data** includes first name, last name, username or similar identifier, job title, date of birth.
- **Contact Data** includes billing address, delivery address, email address and telephone numbers.
- **Financial Data** includes payment card details, account numbers, expiration dates.
- **Transaction Data** includes details about payments to and from you and other details of products and services you have purchased from us.
- **Technical Data** includes internet protocol (IP) address, your login data, browser type and version, time zone setting and location, browser plug-in types and versions, operating system and platform and other

technology on the devices you use to access this Website.

- **Usage Data** includes information about how you use our Website, products and services.
- **Marketing and Communications Data** includes your preferences in receiving marketing from us and our third parties and your communication preferences.

### 3. HOW WE COLLECT YOUR PERSONAL DATA

We use different methods to collect data from and about you including through:

**Direct interactions.** You may give us your personal data by filling in forms or by corresponding with us by post, phone, email or otherwise. This includes personal data you provide when you:

- apply for our products or services;
- create an account on our Website;
- subscribe to our service or publications;
- request marketing to be sent to you;
- conduct a survey; or
- give us some feedback.

**Third-party sources.** We may receive personal data about you from various third parties including our third-party service providers. We employ other companies and individuals to perform functions upon our behalf. Examples include storing and analyzing data, providing search results and links (including paid listings and links), providing customer service, and payment processing. They have access to user information needed to perform their functions, but may not use it for other purposes.

**Cookies and Automatically Collected Information:** We automatically collect certain types of data when you use our site. This automatically collected information may include your IP address or other device address or ID, web browser and/or device type, the web pages or sites that you visit just before or just after you use our site, the pages or other content you view or otherwise interact with on our site, and the dates and times that you visit, access, or use our site. We also may use these technologies to collect information regarding your interaction with email messages, such as whether you opened, clicked on, or forwarded a message. This information is gathered from all users, and may be connected with other information about you.

**Third Party Web Beacons and Third Party Buttons.** We may display third-party content on our site. Third-party content may use cookies, web beacons, or other mechanisms for obtaining data in connection with your viewing of the third party content. Additionally, we may implement third party buttons (such as “like” or “share” buttons) that may function as web beacons even when you do not interact with the button. Information collected through third-party web beacons and buttons is collected directly by these third parties, not by Literacy Resources. Information collected by a third party in this manner is subject to that third party’s own data collection, use, and disclosure policies.

## **International Visitors**

Literacy Resources is located in the United States and use computer systems, servers, and databases located in the U.S. If you reside outside the U.S., your data will be transferred to, stored in, and processed in the U.S.

This means we collect and use your information where:

- We need it to provide you with services requested or to respond to application or inquiry;
- You give us consent to do so for a specific purpose; or
- We need to process your data to comply with a legal obligation.

By using this Website, you consent to such processing and transfer of your information.

#### **4. HOW WE USE YOUR PERSONAL DATA**

We will only use your personal data when the law allows us to. Most commonly, we will use your personal data in the following circumstances: (a) where we need to perform the contract we are about to enter into or have entered into with you; (b) where it is necessary for our legitimate interests (or those of a third party) and your interests and rights do not override those interests; (c) where we need to comply with a legal or regulatory obligation. We use your data in the following ways:

- To register you as a new guest;
- To process and deliver your order, manage payments, fees, and charges;
- To manage our relationship with you;

- To enable you to complete a survey, digital student assessment, or report;
- To administer and protect our Website;
- To deliver relevant Website content and advertisements to you;
- To use data analytics to improve our Website, products/services, marketing, customer relationships and experiences;
- To make suggestions and recommendations to you about goods or services that may be of interest to you.

## **Marketing and Outreach**

We strive to provide you with choices regarding certain personal data uses, particularly around marketing. You can manage the marketing and outreach we provide to you by opting out, which is described in the "Opting Out" section below.

### **Opting Out**

You can ask us to stop sending you marketing messages at any time by replying to a marketing email with "unsubscribe" in the subject line, clicking "unsubscribe" in the marketing email itself, or by contacting us at any time.

## **5. DISCLOSURES OF YOUR PERSONAL DATA**



We do not sell, trade, or otherwise transfer to outside parties your personally identifiable information. This does not include trusted third parties who assist us in operating our site, conducting our business, or servicing you, so long as those parties agree to keep this information confidential. Those trusted third-party partners may:

- Provide you and members with various services
- Provide database maintenance and security
- Help us manage transactions
- Help us process and fulfill orders or requests

We may also release your information when we believe release is appropriate to comply with the law, enforce our site policies, or protect ours or others' rights, property, or safety.

## **6. DATA SECURITY**

We have put in place appropriate security measures to prevent your personal data from being accidentally lost, used or accessed in an unauthorized way, altered or disclosed. In addition, we limit access to your personal data to those employees, agents, contractors and other third parties who have a business need to know. They will only process your personal data on our instructions and they are subject to a duty of confidentiality.

We have put in place procedures to deal with any suspected personal data breach and will notify you and any applicable regulator of a breach where we are legally required to do so.

## **7. DATA RETENTION**

We will only retain your personal data for as long as necessary to fulfill the purposes we collected it for, including for the purposes of satisfying any legal, accounting, or reporting requirements.

To determine the appropriate retention period for personal data, we consider the amount, nature, and sensitivity of the personal data, the potential risk of harm from unauthorized use or disclosure of your personal data, the purposes for which we process your personal data and whether we can achieve those purposes through other means, and the applicable legal requirements.

## **8. YOUR RIGHTS**

Under certain circumstances, you have rights under data protection laws in relation to your personal data.

- Request access to your personal data.
- Request correction of your personal data.
- Request erasure of your personal data.

- Object to processing of your personal data.
- Request restriction of processing your personal data.
- Request transfer of your personal data.
- Right to withdraw consent to us processing your personal data.

If you wish to exercise any of the rights set out above, or if you have a complaint please contact us. Literacy Resources commits to resolve complaints about our collection or use of your personal information. Inquiries or complaints regarding the processing of personal data should first be directed to Literacy Resources at [hello@heggerty.org](mailto:hello@heggerty.org) (<mailto:hello@literacyresources.com>).

## **9. CALIFORNIA RESIDENT'S PRIVACY RIGHTS**

In addition to the rights set forth above in Section 8, California residents have additional privacy protections.

We do not respond to Do Not Track (DNT) signals. For more information regarding our tracking activities, see our Cookie and Web Beacon Policies in Section 3 above.

California's "Shine the Light" law permits individual California residents to request certain information regarding our disclosure of certain categories of Personal Information to third parties for those third parties' direct marketing purposes. To make such a request, please contact us at [hello@heggerty.org](mailto:hello@heggerty.org) (<mailto:hello@literacyresources.com>). This request may be made no more than once per calendar year.





# Literacy Resources, LLC Terms of Use

This version was last updated on September 15, 2021.

Effective Date: August 17, 2018

PLEASE READ THIS Literacy Resources, LLC TERMS OF USE AGREEMENT ("AGREEMENT") CAREFULLY. THIS AGREEMENT IS A LEGAL CONTRACT BETWEEN YOU the user of heggerty.org and its related domains (You or User) AND Literacy Resources, LLC located at 805 Lake St. #293 Oak Park, IL 60301 ("Literacy Resources," "COMPANY," "WE," OR "US"). For questions about this Agreement, please contact us at [hello@heggerty.org](mailto:hello@heggerty.org) (<mailto:hello@heggerty.org>).

By placing an order, accessing or using any content, information, services, features or resources available or enabled via this Website (collectively with the Website, the "Services"), you: (1) agree to be bound by this Agreement and any future amendments and additions to this Agreement as published through the Services; (2) represent you are of legal age in your jurisdiction of residence to form a binding contract; and (3) represent that you have the authority to enter into this Agreement personally and, if applicable, on behalf of any company, organization or other legal entity on whose behalf you use the Services. Except as otherwise provided in this Agreement, if you do not agree to be bound by this Agreement, you may not access or use the Services.

Your use of the Services is also subject to our Privacy Policy, and any additional terms, conditions and policies that we separately post on the Services ("Supplemental Terms") which are hereby incorporated by reference into this Agreement. Literacy Resources reserves the right to modify this Agreement or its policies relating to the Services at any time, effective upon posting of an updated version of this Agreement or any applicable Supplemental Terms on the applicable Services. You should regularly review this Agreement, as your continued use of the Services after any such changes constitutes your agreement to such changes.

## **1. Registration**

When registering an account for the Services ("Account"), you agree to provide only true, accurate, current and complete information requested by the registration form (the "Registration Data"). You represent that you are not barred from using the Services under any applicable law and that you will be responsible for all activities that occur under your Account. You agree to monitor your Account to restrict its use by minors and other unauthorized users and agree not to share your Account or password with anyone. You agree to be responsible for all activities that are conducted through your account. You further agree to notify Literacy Resources immediately of any unauthorized use of your password or any other breach of the security of your Account and to exit from your Account at the end of each session. You agree not to create an Account using a false identity or alias. You agree not to create an account if you previously have been banned from using any of the Services. You agree that Literacy Resources will not be liable for any harm that may arise related to the disclosure of your Account details, including your password, or from the use of your Account by anyone else. Literacy Resources reserves the right to remove or reclaim any usernames at any time and for any reason. You acknowledge and agree that you have no ownership or other property interest in your Account and that all rights in and to your Account are owned by and inure to the benefit of Literacy Resources.

## **2. Use of the Services**

**2.1 Acceptable Use of Services.** Literacy Resources owns all rights, title and interest in the Services. The Services are protected by copyright and other intellectual property laws both in the United States and throughout the world. Subject to this Agreement, Literacy Resources grants you a limited, non-exclusive, non-transferable, non-sub-licensable license to use the Services solely for your own non-commercial purposes. Any future release, update or other addition to the Services shall be subject to this Agreement. Literacy Resources, its suppliers and service providers reserve all rights not granted in this Agreement.

**2.2 Acceptable Use of Digital Student Assessment and Reporting Services.** As part of your use of the digital student assessment and reporting services of the Website, you may enter limited student-related data into the Website only to facilitate your use of these Services. You represent that you are not barred from using these Services under any applicable law and that you will be responsible for all activities that occur under your Account. You agree to protect the privacy and security of the student-related data that you enter into the Website. You agree to anonymize the data entered into the Website that could be used to identify a particular student, for example, by utilizing student identification numbers or some other method to protect the identity of students. You agree to provide notice to students regarding the processing of their data as part your utilization of the Services and to obtain all necessary consents to enter the student-related data into the Website. You agree to restrict the sharing of the digital student assessments and reports to only those individuals who are authorized to receive them. You acknowledge and agree that we may review, analyze, and/or aggregate the data you enter into the Website for our own internal purposes as part of providing the Services and to improve the Services.

**2.3 Restrictions on Use of Services.** The rights granted to you in this Agreement are subject to the following restrictions: (a) you shall not license, sell, rent, lease, transfer, assign, reproduce, distribute, host or otherwise commercially exploit the Services or any portion of the Services; (b) you shall not frame or use framing techniques to enclose any trademark, logo or Services of Literacy Resources, including images, text, page layout or form; (c) you shall not use any metatags or other "hidden text" using Literacy Resources' name or

trademarks; (d) you shall not modify, translate, adapt, merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of the Services except to the extent the foregoing restrictions are expressly prohibited by applicable law; (e) you shall not use any manual or automated software, devices or other processes (including but not limited to spiders, robots, scrapers, crawlers, avatars, data mining tools or the like) to "scrape" or download data from the Services (except that we grant the operators of public search engines revocable permission to use spiders to copy materials from the Website for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials); (f) you shall not access the Services to build a similar or competitive website, application or service; (g) except as expressly stated herein, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means; (h) you shall not remove or destroy any copyright notices or other proprietary markings contained on or in the Services; (i) you shall not interfere with or attempt to interfere with the proper functioning of the Services or use the Services in any way not expressly permitted by this Agreement; and (j) you shall not attempt to harm our Services, including but not limited to, by violating or attempting to violate any related security features, introducing viruses, worms, or similar harmful code into the Services, or interfering or attempting to interfere with use of the Services by any other user, host or network, including by means of overloading, "flooding," "spamming," "mail bombing", or "crashing" the Services. You agree not to use the Services for any purpose prohibited by this Agreement or by applicable law. You shall not (and shall not permit any third-party to) (a) take any action or (b) make available any content on or through the Services that: (i) infringes any patent, trademark, trade secret, copyright, right of publicity or other right of any person or entity; (ii) is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, offensive, or profane; (iii) constitutes unauthorized or unsolicited advertising, junk or bulk e-mail; (iv) involves commercial activities and/or sales without Literacy Resources' prior written consent, such as contests, sweepstakes, barter, advertising, or pyramid schemes; or (v) impersonate any person or entity, including any employee or representative of Literacy Resources. Any unauthorized use of the Services terminates the licenses granted by Literacy Resources in accordance with this Agreement.



### 3. Order Process

**3.1 Order Acceptance.** Each order that you submit to Literacy Resources constitutes an offer to purchase. If you do not receive a message from Literacy Resources confirming receipt of your order, please contact our Customer Service department before re-entering your order. Literacy Resources' confirmation of receipt of your order does not constitute Literacy Resources' acceptance of your order. Literacy Resources is only deemed to have accepted your order once the subscription, product, or products you ordered (each, a "Product") has or have been shipped.

**3.2 Order Issues.** Although we strive to accept all valid orders, Literacy Resources reserves the right to deny any order for any reason, including if: (i) we discover an error in pricing and/or other information about the Product or receive insufficient or erroneous billing, payment, and/or shipping information, (ii) we suspect an order has been placed using stolen payment card information or otherwise appears to be connected to fraud, or (iii) the ordered Product is unavailable due to discontinuance or otherwise. We may also refuse any order that is connected with a previous payment dispute.

**3.3 School District Purchase Orders.** Literacy Resources is proud to work with school districts throughout the United States. For those districts where the necessary agreements are in place, orders can be made with a school district purchase order. Literacy Resources reserves the right to request a copy of a valid purchase order before processing an order. Purchase orders may be sent via email to [orders@heggerty.org](mailto:orders@heggerty.org) (mailto:orders@heggerty.org). All orders placed with a school district purchase order are the responsibility of the ordering party. You will be responsible for all fees and/or charges that accrue due to invalid or duplicate purchase order numbers.

**3.4 Order Cancellation.** If any Product is discontinued or otherwise becomes unavailable, Literacy Resources reserves the right, at Literacy Resources' decision, to (i) cancel your order and provide you a refund for the amount paid for the Product (if the Product is a one-time order), (ii) substitute the Product with a similar Product (if the Product is subject to a subscription) or (iii) issue you a pro rata refund.

**3.5 Resale Restrictions.** Literacy Resources IS THE SOLE PROVIDER OF THE PHONEMIC AWARENESS CURRICULA. TO PROTECT THE COPYRIGHT, TRADEMARK, TRADE SECRET AND ALL OTHER INTELLECTUAL PROPERTY RIGHTS OF Literacy Resources, THE RESALE OF ANY PORTION OF THE SERVICES FOR PERSONAL, BUSINESS, AND/OR ANY OTHER PURPOSES IS STRICTLY PROHIBITED. Literacy Resources RESERVES THE RIGHT TO DECLINE ANY ORDER THAT WE DEEM TO POSSESS CHARACTERISTICS OF RESELLING.

## **4. Fees and Purchase Terms**

**4.1 Payment.** You agree to pay all fees and/or charges to your Account in accordance with the fees, charges and billing terms in effect at the time a fee and/or charge is due and payable. You also agree to pay all applicable taxes. You must provide Literacy Resources with valid payment information in connection with your orders. By providing Literacy Resources with your payment information, you agree that (i) Literacy Resources is authorized to immediately invoice your Account for all fees and charges due and payable to Literacy Resources hereunder, (ii) Literacy Resources is authorized to share any payment information and instructions required to complete the payment transactions with its third-party payment service providers (e.g., credit card transaction processing, merchant settlement, and related services), and (iii) no additional notice or consent is required for the foregoing authorizations. You agree that, for subscriptions purchased online or orders placed with a school district purchase order, you are responsible for the appropriate use of school district purchase orders, and are ultimately responsible for payment of all fees and/or charges that result from the use of an expired, incorrect, or otherwise invalid school district purchase order number(s). You agree to

immediately notify Literacy Resources of any change in your payment information. Literacy Resources reserves the right at any time to change its prices and billing methods. All prices are listed in United States Dollars.

**4.2 Taxes and Exemptions.** Literacy Resources only charges sales tax for orders that are scheduled to ship within Illinois. But if a valid Illinois State Tax Exemption letter is provided alongside your order, no sales tax will be charged. You acknowledge that you are solely responsible for the proper and correct usage of your organization's tax exempt status. Any fees that may accrue as a result of improper usage of a tax exempt status are your sole responsibility. For orders outside of Illinois, you are solely responsible for paying applicable sales tax directly to the authorized state agency(s), or procuring the applicable exemption(s). For orders outside of the United States, you are solely responsible for paying applicable customs duties and taxes to UPS Customs Brokerage, or third party customs brokerage if applicable.

**4.3 Sales are Final; No Refunds.** All sales of Products are final. Except as set forth in Section 3.4 or in the Literacy Resources Return and Shipping Policy, which is hereby incorporated by reference, all fees are non-refundable.

**4.4 Discounts and Promo Codes.** From time to time Literacy Resources may, in its sole discretion, create discounts and promotional codes that may be redeemed for credit in your Account, or other features or benefits, subject to any additional terms that we establish on a per promotional code basis ("Promo Codes"). Promo Codes may only be used once per person. Only Promo Codes sent to you through official Literacy Resources communications channels are valid. You agree that Promo Codes: (i) must be used for the intended audience and purpose, and in a lawful manner; (ii) may not be duplicated, sold, or transferred in any manner, or made available to the general public (whether posted to a public forum or otherwise), unless expressly permitted by us; (iii) may be disabled by us at any time for any reason without liability to us; (iv) may only be

used in accordance with the specific terms that we establish for such Promo Code; (v) are not redeemable for cash; and (vi) may expire prior to your use. All promotional offers may be discontinued at any time, without prior notice, at our discretion and are only available while supplies last or for the duration noted.

## 5. Copyrights and Trademarks

**5.1 Copyright and Infringement Claims.** Literacy Resources owns all copyrights and related intellectual property in the Services. No Literacy Resources materials may be duplicated without the express written consent of Literacy Resources. Literacy Resources respects the intellectual property of others. If you believe that any content posted on or provided through the Services infringes your copyright or any other intellectual property rights, please provide the following information to our Copyright Agent via email at [hello@heggerty.org](mailto:hello@heggerty.org) (mailto:hello@heggerty.org): (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 of the Services of the material that you claim is infringing; (4) your address, telephone number and e-mail address; (5) a written statement 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 or authorized to act on the copyright owner's behalf. Correspondence to our Copyright Agent regarding notice of claims of copyright and any other intellectual property infringement may also be sent in hard copy via postal mail and should be addressed to: Literacy Resources, LLC, 805 Lake St. #293 Oak Park, IL 60301, Attention: Copyright Enforcement.

**5.2 Trademarks.** All source identifiers that Literacy Resources uses, including but not limited to the Literacy Resources logo, Literacy Resources' stylized name, the words Literacy Resources, LLC, Heggerty Phonemic Awareness, and all other related graphics, logos, service marks and trade names used on or in connection with the Services are the trademarks of Literacy Resources and may not be used without permission in connection with any third-party products or services. Other trademarks, service marks and trade names that may appear

on or in the Services are the property of their respective owners. You will not remove, alter or obscure any copyright notice, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Services.

## **6. Third-Party Links**

The Services may contain links to third-party services such as third party websites, applications, or ads ("Third-Party Links"). When you click on such a link, we will not warn you that you have left the Services. Literacy Resources does not control and is not responsible for Third-Party Links. Literacy Resources provides these Third-Party Links only as a convenience and does not review, approve, monitor, endorse, warrant, or make any representations with respect to them, or any content, products or services accessible through such links. Your use of all Third-Party Links is at your own risk.

## **7. Termination**

At its sole discretion, Literacy Resources may modify or discontinue the Services, or may modify, suspend or terminate your access to the Services, for any reason, with or without notice to you and without liability to you or any third party. In addition to suspending or terminating your access to the Services, Literacy Resources reserves the right to take appropriate legal action, including without limitation, pursuing civil, criminal or injunctive redress. Even after your right to use the Services is terminated, this Agreement will remain enforceable against you and unpaid amounts you owe to Literacy Resources for Products purchased will remain due. All sections which by their nature should survive the termination of this Agreement shall continue in full force and effect notwithstanding any termination of this Agreement.

## **8. Indemnification**

You agree to indemnify, defend and hold harmless Literacy Resources, its corporate parents, subsidiaries, and affiliates, and the officers, directors, employees, agents, representatives, partners and licensors of each (collectively, the "Literacy Resources Parties") from any damages, losses, costs, liabilities and expenses (including reasonable attorneys' fees) relating to or arising out of any claims concerning: (a) your use, or inability to use the Services; (b) your misuse of the Services or violation of any of this Agreement; (c) your violation of any rights of another party; or (d) your violation of any applicable laws, rules or regulations. Literacy Resources reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will fully cooperate with Literacy Resources in asserting any available defenses. You agree that the provisions in this section will survive any termination of your Account, this Agreement or your access to the Services.

## **9. Disclaimer of Warranties and Conditions**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF THE SERVICES AND ANY PRODUCTS OFFERED THROUGH THE SERVICES IS AT YOUR OWN RISK, AND THE SERVICES AND ANY PRODUCTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE Literacy Resources PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT ARISING FROM USE OF THE SERVICES AND PRODUCTS. Literacy Resources MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THE CONTENT PROVIDED VIA THE SERVICE OR THE CONTENT OF ANY THIRD PARTY SITES LINKED TO THE SERVICE AND ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES OR INACCURACIES OF CONTENT, OR (II) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN. Literacy Resources

PARTIES MAKE NO WARRANTY, REPRESENTATION OR CONDITION THAT: (1) THE SERVICES OR ANY PRODUCTS WILL MEET YOUR REQUIREMENTS OR (2) YOUR USE OF THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE FOREGOING DISCLAIMERS, EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

## **10. Limitation of Liability**

**10.1 Disclaimer of Certain Damages.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE Literacy Resources PARTIES SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS OR REVENUE, LOSS OF GOODWILL, ACCURACY OF RESULTS OR FOR INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES OR COSTS DUE TO: THE SERVICES, INCLUDING YOUR USE THEREOF, OR INABILITY TO USE; Literacy Resources CONTENT; ANY ACTION TAKEN IN CONNECTION WITH ANY THIRD-PARTY INTELLECTUAL PROPERTY CLAIMS; LOSS OF DATA; PRODUCTION; OR, BUSINESS INTERRUPTION OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER OR NOT Literacy Resources HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**10.2 Cap on Liability.** UNDER NO CIRCUMSTANCES WILL THE TOTAL AGGREGATE AMOUNT THAT THE Literacy Resources PARTIES ARE LIABLE TO YOU EXCEED ONE UNITED STATES DOLLAR (\$1.00). THE FOREGOING CAP ON LIABILITY SHALL NOT APPLY TO LIABILITY OF A Literacy Resources PARTY FOR (I) DEATH, TANGIBLE PROPERTY DAMAGE, OR PERSONAL INJURY CAUSED BY A Literacy Resources PARTY'S GROSS NEGLIGENCE OR FOR (II) ANY INJURY CAUSED BY A Literacy Resources PARTY'S FRAUD OR FRAUDULENT MISREPRESENTATION.

**10.3 Basis of the Bargain.** THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN Literacy Resources AND YOU.

**10.4 Exclusions.** THE LAWS OF SOME STATES DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE FOREGOING DISCLAIMERS, EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU AND YOU MIGHT HAVE OTHER RIGHTS.

## **11. General Provisions**

**11.1 Electronic Communications.** The communications between you and Literacy Resources use electronic means, whether you visit the Services or send Literacy Resources e-mails, or whether Literacy Resources posts notices on the Services or communicates with you via e-mail. For contractual purposes, you (1) consent to receive communications from Literacy Resources in an electronic form; and (2) agree that all terms and conditions, agreements, notices, disclosures, and other communications and documents that Literacy Resources provides to you electronically will have the same legal effect that such communications or documents would have if they were set forth in "writing." The foregoing sentence does not affect your statutory rights.

**11.2 Assignment.** This Agreement, and your rights and obligations hereunder, may not be assigned, subcontracted, delegated or otherwise transferred by you without Literacy Resources' prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.



**11.3 Force Majeure.** Literacy Resources shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, epidemics, pandemics, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

**11.4 Questions, Complaints, Claims.** If you have any questions, complaints or claims with respect to the Services, please contact our customer service department at [hello@heggerty.org](mailto:hello@heggerty.org) (<mailto:hello@heggerty.org>). We will do our best to address your concerns.

**11.5 Governing Law and Venue.** This Agreement and any action related thereto is governed by the laws of the State of Illinois as to interpretation, enforcement, validity, construction, and effect and in all other respects. Any legal suit, action or proceeding, to the extent they are permitted, will be litigated exclusively in the state courts in Cook County, Illinois or in federal courts located in the Northern District of Illinois. The United Nations Convention on Contracts for the International Sales of Goods does not apply to this Agreement.

**11.6 Waiver.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**11.7 Severability.** Without limiting the severability portions of Section 11, if any portion of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner to reflect, as nearly as possible, the original intention of the parties, and the remaining portions shall remain in full force and effect.

**11.8 Entire Agreement.** This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter.