

TEACHING STRATEGIES, LLC

SUBSCRIPTION SERVICES TERMS AND CONDITIONS

These Subscription Services Terms and Conditions (the "**Agreement**") set forth the terms pursuant to which Teaching Strategies, LLC ("**TS**") will provide Trigg County BOE ("**Subscriber**") access to its subscription services ("**Services**") pursuant to one or more order forms (each an "**Order**") signed by Subscriber. The Services include proprietary content, activities, articles, tools, software applications, databases, and other materials.

1. Services.

- A. *License Grant.* Subject to Subscriber's continued compliance with this Agreement, including payment of all fees, TS hereby grants to Subscriber a limited, non-exclusive, non-transferable license to access and use the Services as provided herein, and to have Authorized Users, as defined below, use and access the Services in accordance with the foregoing grant.
- B. *Delivery and Access.* The Services will be provided through TS's website at www.teachingstrategies.com and such other sites as TS may designate (collectively, "**Website**"). Use of the Website is subject to additional terms and conditions contained within the Terms of Use and Privacy Policy set forth on the Website. Subscriber agrees that it will use the Services only as permitted herein. For the purpose of this Agreement, "**Authorized Users**" will include Subscriber's employees, contractors, consultants, and those auditors, governmental authorities and other individuals and entities who may require access to Subscriber Data, as defined below. Subscriber agrees to be responsible for all use of the Services by its Authorized Users. Any breach of the Agreement by an Authorized User will be deemed a breach by Subscriber. TS will in no event be liable for any misuse by an Authorized User of the rights granted hereunder.
- C. *Prohibited Activities.* Except as expressly authorized in this Agreement, Subscriber will not: (i) rent, lease, sublicense, distribute, transfer, copy, reproduce, display, modify, or timeshare the Services or any portion thereof; (ii) use the Services as a component of or as a base for products or services prepared for commercial sale, sublicense, lease, access, or distribution; (iii) modify, translate, or prepare any derivative work based on the Services; (iv) decompile, disassemble, or otherwise reverse engineer any TS technology; (v) allow any third party or unlicensed user or computer system to access or use the Services; or (vi) remove any proprietary notices or labels attached to the Services. Subscriber agrees to take all reasonable steps to protect the Services from unauthorized access, copying, or use.

2. Administration of Services.

- A. *Subscriber Administrator.* Subscriber may designate one (1) or more of its employees to serve as the administrator(s) for the Services. The administrator is responsible for (i) assigning and administering passwords and usernames to the Authorized Users; (ii) setting

up and maintaining access and permission rights for the Authorized Users; and (iii) where applicable, inputting data regarding the Authorized Users.

- B. *Registration.* Subscriber will assign a unique username and password to all Authorized Users that will allow them to access and use the Services. Passwords and usernames may not be shared or utilized by anyone other than the Authorized User to whom such identification has been assigned. Each Authorized User will need to register his or her username and password with TS through the Website before the Authorized User can access the Services for the first time.
 - C. *Password Protection.* Subscriber is solely responsible for the security of all usernames and passwords issued to Authorized Users. Subscriber agrees to comply at all times with the procedures specified by TS regarding password security. TS may cancel or suspend the use of a username and password in the event that it is misused by Subscriber or an Authorized User. The reissuance or reactivation of any canceled or suspended usernames or passwords will be at TS' sole discretion. Subscriber agrees to ensure that each Authorized User treats his or her username and password as confidential and will use his or her best efforts to prevent any third party from obtaining his or her password. Subscriber will immediately notify TS of any actual or potential unauthorized access to a password or to the Services. TS cannot and will not be liable for any loss or damage arising from Subscriber's or any Authorized Users' failure to comply with these obligations.
 - D. *Instructions.* TS will make instructions regarding use of the Services available in electronic form on the Website, including instructions for accessing the Services, procedures for printing or storing data, and user identification and security procedures.
 - E. *Retrieval of Data.* Upon termination of the Services, Subscriber will have forty-five (45) days to retrieve all Subscriber Data. TS will not be responsible for any Subscriber Data not retrieved within this period.
3. **Length of Services.** The initial term of the Services will be as set forth in an Order (the "Term"). The Term may be renewed by mutual written agreement of the parties via acceptance and execution of a renewal Order.
4. **Subscription Fee.** Access to the Services is subject to TS' receipt of the full amount of the subscription fee as set forth in an Order. Payment may be made by credit card or by check. TS may suspend Subscriber's access to and use of the Services if Subscriber fails to pay any amounts due within thirty (30) days of the execution of an Order. Suspension of the Services does not reduce Subscriber's liability to pay for past due fees. Subscriber is responsible for paying all applicable taxes and duties, including, without limitation, sales, use, excise, value-added, and franchise taxes, associated with its use of the Services and any transactions that result there from, except for taxes based on TS income. This clause will not apply if Subscriber is tax exempt and provides TS with a tax exempt certificate.
5. **Subscriber Data.** As between Subscriber and TS, Subscriber will own all right, title, and interest in and to the data submitted or input by Subscriber into the Services or processed, stored, handled, or analyzed by TS as a part of or to enable or facilitate the provision of the Services ("Subscriber Data"). Subscriber hereby grants TS a limited, non-exclusive right and license to use Subscriber Data to facilitate performance of the Services. Further, Subscriber acknowledges and agrees that during and after the Term, TS may use Subscriber Data in de-identified and aggregated form for purposes of enhancing the Services, analyzing usage trends, aggregated

statistical analysis, technical support, and other business purposes. TS will handle all Subscriber Data in accordance with the Privacy Policy set forth on the Website.

6. Termination.

- A. *By TS.* TS may terminate this Agreement and Subscriber's access to the Services (i) upon written notice to Subscriber if Subscriber fails to pay or materially breaches a provision of this Agreement and fails to cure such breach within thirty (30) calendar days after receipt of notice; or (ii) immediately if Subscriber files for or has a bankruptcy petition filed against it, ceases to conduct business in the normal course, makes an assignment for the benefit of its creditors, becomes insolvent, or is liquidated or otherwise dissolved.
- B. *By Subscriber.* Subscriber may terminate this Agreement by providing TS written notice of its intent to terminate if TS materially breaches a provision of this Agreement and fails to cure such breach within thirty (30) calendar days after receipt of such notice; or (ii) immediately if TS files for or has a bankruptcy petition filed against it, ceases to conduct business in the normal course, makes an assignment for the benefit of its creditors, becomes insolvent or is liquidated or otherwise dissolved.
- C. *Effect of Termination.* Upon the expiration or earlier termination of this Agreement, Subscriber will promptly discontinue any further use of the Services. Subscriber will not be entitled to any refund of fees paid in the event of termination. This clause does not impact TS' right to collect any amount due hereunder, nor does it limit Subscriber's rights under termination for breach of Agreement by TS.

7. **Intellectual Property Rights.** TS will own and retain all right, title, and interest in and to the Services and any and all improvements, enhancements, or modifications thereto and all intellectual property rights related to any of the foregoing. Additionally, Subscriber agrees that the Services and its components are protected by copyright, patent, trademark, trade secret, and other intellectual property rights and registrations. Subscriber agrees not to remove, obliterate, obscure, or alter any copyright or other proprietary rights notice that appears on any document, web page, or other component of the Services or any related materials or documentation.

8. **Warranties.** TS represents, warrants, and covenants that (i) its use of Subscriber Data during the Term of this Agreement will comply with its posted Privacy Policy; (ii) the Services will operate in substantial accordance with the specifications set forth in the documentation related to the Services; and (iii) it will use reasonable efforts to resolve operational problems related to the Services. Except as set forth herein, TS makes no other warranties and all other warranties, either express or implied, are hereby disclaimed, including but not limited to warranties of merchantability and fitness for a particular purpose. TS will not be responsible for any damages that may be suffered by Subscriber, including loss of data resulting from delays, non-deliveries, or service interruptions by any cause, or due to errors or omissions of Subscriber. TS expressly limits its liability to Subscriber for any non-accessibility time or other down time to the pro-rata daily charge during the system unavailability.

Subscriber represents, warrants, and covenants that (i) it has the right and authority to enter into this Agreement and to use and disclose Subscriber Data; (ii) it has all necessary rights and permissions to grant access to the Services to its Authorized Users; (iii) it will obey all applicable laws, rules, and regulations in its use of the Services and Subscriber Data; (iv) Subscriber Data will not infringe upon any copyright, trademark, privacy right, right of publicity, or other proprietary right(s) of any third party; and (v) Subscriber Data will not

contain any material that is unlawful, hateful, obscene, libelous, threatening, or defamatory. Subscriber acknowledges that TS has no obligation to monitor Subscriber Data. However, in the event that TS becomes aware that any Subscriber Data may or does violate the representations and warranties set forth herein, TS will have the right to remove such item(s) pending resolution.

9. **Indemnification.** Subscriber agrees to indemnify, defend, and hold TS harmless from and against any and all liability, damage, loss or expense (including reasonable attorneys' fees) arising out of any claim, demand, or proceeding based on allegations arising as a result of (i) any inaccuracies or errors within the materials, Subscriber Data, and/or other information provided by Subscriber; (ii) breach of this Agreement, including any of the representations or warranties contained herein, by Subscriber or an Authorized User; or (iii) Subscriber's use of the Services in violation of applicable law. TS agrees to indemnify, defend, and hold Subscriber harmless from and against any and all liability, damage, loss or expenses (including reasonable attorneys' fees) arising out of any claim, demand, or proceeding alleging that the Services infringe or violate any United States patent, copyright or trademark. TS acknowledges that Subscriber's liability in any of the above listed circumstances may be limited or eliminated based upon applicable local, state, or federal law.
10. **Limitation of Damages.** NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED TO THE SERVICES WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUBSCRIBER ACKNOWLEDGES THAT THE SERVICES ARE PROVIDED "AS IS" AND "AS DELIVERED," AND CANNOT BE CUSTOMIZED OR MODIFIED. WITHOUT LIMITING THE FOREGOING, AND EXCLUDING THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 9, THE TOTAL LIABILITY OF TS FOR ANY REASON WHATSOEVER RELATED TO THE SERVICES WILL, IN NO EVENT, EXCEED THE FEES PAYABLE BY SUBSCRIBER TO TS IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.
11. **General Terms.**
- A. *Severability.* If any provision of this Agreement is found to be invalid or unenforceable, such provision will be interpreted as to give maximum effect to its intended purpose without affect to the validity or enforceability of any other provision of this Agreement.
- B. *Legal Notice.* TS will provide any legal notice to Subscriber via mail at the address noted below. Subscriber must provide any legal notice to Teaching Strategies, LLC, Attn: Chief Financial Officer, 4500 East West Highway, Suite 300, Bethesda, MD, 20814, USA. Any legal notices provided without compliance with this section will have no legal effect.
- C. *Entire Agreement.* This Agreement, the Order, the Terms of Use, the Privacy Policy effective as of the Order date, and the Addendum to Agreements Reaffirming Prior Data Security Rider constitute the entire, complete, and exclusive agreement between TS and Subscriber regarding the Services ("**Entire Agreement**"). The Entire Agreement supersedes all prior agreements and understandings, whether written or oral, whether established by custom, practice, policy, or precedent, with respect to the subject matter of this Agreement. The terms and conditions of this Agreement will prevail over any conflicting provisions in the Terms of Use.

Trigg County BOE	Teaching Strategies, LLC
By (Signature):	By: 
Name (Print): Beth Sumner	Name: Heather O'Shea
Title: Administrator	Title: Chief Financial Officer
Address: 202 Main Street	Address: 4500 East West Highway, Suite 300
Cadiz, Kentucky 42211	Bethesda, MD 20814
Date:	Date: 8/14/2018

PERMISSION TO PROVIDE ACCESS TO SUBSCRIBER DATA

Teaching Strategies, LLC (“TS”) is providing Trigg County BOE (“Subscriber”) access to its subscription services (“Services”) pursuant to the Subscription Services Terms and Conditions (“Agreement”) and one or more order forms (each an “Order”) signed by Subscriber. As part of the Services, Subscriber submits or inputs data into the Services and TS then may process, store, handle, or analyze the data as a part of or to enable or facilitate the provision of the Services (“Subscriber Data”).

Subscriber gives TS permission to grant Kentucky Department of Education access to Subscriber Data as an Authorized User, as defined in the Agreement. The relationship by and between Subscriber and Authorized User will not affect Subscriber's obligations under the Agreement or any given Order, including, but not limited to, Subscriber's obligation to remit payment to TS for the Services provided under the Agreement.

By signing below, Subscriber agrees to be bound by the provisions contained herein.

Trigg County BOE	Teaching Strategies, LLC
By (Signature):	By: 
Name (Print): Beth Sumner	Name: Heather O'Shea
Title: Administrator	Title: Chief Financial Officer
Address: 202 Main Street	Address: 4500 East West Highway, #300
Cadiz, Kentucky 42211	Bethesda, MD 20814
Date:	Date: 08/14/2018



TeachingStrategies®
for Early Childhood

ORDER

Order #: Q-41732
Date: 08-08-2018
Expiration Date: 11-01-2018

Teaching Strategies, LLC (“TS”)

4500 East West Highway, Suite 300
Bethesda, MD, 20814, US
Phone: (301) 634-0818

Subscriber Name: Trigg County BOE Subscriber Number: 04TRIGG	Contact Name: Beth Sumner Contact Email: beth.sumner@trigg.kyschools.us Contact Title: Administrator
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SALESPERSON	PHONE NUMBER & EXT	EMAIL
Esther Juarez	(800) 637-3652 1273	esther.j@teachingstrategies.com

ITEM CODE	DESCRIPTION	QTY	UNIT PRICE	EXTENDED
KYGOLD	Kentucky GOLD Bundle	1	\$0.00	\$0.00
10GOLDPORT	GOLD™ Online Assessment Portfolios	80	\$11.70	\$936.00
60ARCHIVE	GOLD Archives	800	\$0.00	\$0.00
40OSEP	GOLD OSEP Reporting	80	\$0.00	\$0.00

SUBTOTAL	\$936.00
TAX	\$0.00
TOTAL	\$936.00

Confirm the address listed below, and update any incorrect information.

BILL TO

Billing Client: Trigg County BOE

Billing Street:

Billing City:

Billing State:

Billing Postal Code:

Billing Country:

Select a payment method, and follow the payment instructions.

Payment Type:

Orders will not be processed until a payment method is confirmed. Acceptable payment methods include:

1. Receipt of a valid purchase order;
2. Completed credit card transaction;
3. Receipt of wire transfer; or
4. Receipt of check.

You will receive a follow-up email with instructions on how to submit your payment based on the payment type selected.

Subscription Services Products

This Order is entered into by and between Subscriber identified above and TS. This Order, together with the Subscription Services Terms and Conditions ('Agreement'), the Addendum to Agreements Reaffirming Prior Data Security Rider, and those other documents incorporated by reference into the Agreement, constitute the entire agreement between Subscriber and TS ('Entire Agreement'). The Entire Agreement sets forth the terms pursuant to which TS will provide access to its subscription services ("Services"). Subscriber must sign and deliver a copy of this Order and an executed Agreement (when applicable) to receive access to the Services set forth in this Order.

The subscription period will begin on 11-02-2018 and expire on 11-01-2019 ("Term").

By executing this Order Form, the Subscriber hereby agrees to be bound by the provisions contained herein:

Subscriber Name	Teaching Strategies, LLC
By (Signature):	By: 
Name (Print): Beth Sumner	Name: Heather O'Shea
Title: Administrator	Title: Chief Financial Officer
Address: 202 Main Street	Address: 4500 East West Highway, Suite 300
Cadiz, Kentucky 42211	Bethesda, MD 20814
Date:	Date: 08/14/2018

Addendum to Agreements Reaffirming Prior Data Security Rider

Any and all current and future agreements between the Teaching Strategies, LLC, hereafter Vendor, and Board of Education of Trigg County, Kentucky, hereafter Board, are amended by this Addendum and by the Data Security Rider signed by the Vendor on November 29, 2016 and also signed by the School District on December 12, 2016 and by the amendment signed by the vendor on September 21, 2017 and signed by the School District October 4, 2017 provided however that the Data Security Rider is amended as follows: Inclusion of a term or provision prohibited by said Data Security Rider shall invalidate and make void the specific prohibited term or provision, but shall not invalidate the entire agreement. Any provision requiring the Board to obtain waivers from parents or students, unless reasonable and specific requests are made by the Vendor, shall be invalid and unenforceable.

The parties agree that the terms of this Addendum shall apply to all current and future contracts between the parties. To the extent that the terms of this Agreement and other such contracts conflict, the terms of this Agreement shall control. Notwithstanding the foregoing, the parties agree that the terms of this Agreement may be amended, modified, or canceled in a signed writing of the parties.

Kentucky law may require that claims be brought through the Kentucky Claims Commission and the Board does not waive this requirement. The Board does not waive sovereign immunity or any other limitations on claims or damages against the Board. Further the Vendor shall comply with all applicable Kentucky and Federal law including but not limited to the Family Educational Rights and Privacy Act (20 U.S.C. 1232g) (FERPA), the Protection of Pupil Rights Amendment, (20 U.S.C. 1232h) (PPRA), the data protection provisions of the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq*) (NSLA), the Child Nutrition Act of 1966 (42 U.S.C. 1751 *et seq*) (CNA), KRS 61.931 *et seq*, KRS 365.720 through KRS 365.734 and the applicable regulations for these statutes. Vendor will sign such documents to certify compliance as is required by the Kentucky Department of Education.

Contractor: 

Signed by: Heather O'Shea

Position: Chief Financial Officer

Date: 08/14/2018

Purchaser: Board of Education of Trigg County Kentucky
Signed by: Travis Hamby, Superintendent

Date: _____