



Kenton County School District | *It's about ALL kids.*

**THE KENTON COUNTY BOARD OF  
EDUCATION**

1055 EATON DRIVE, FORT WRIGHT, KENTUCKY  
41017

TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531

WEBSITE: [www.kenton.kyschools.us](http://www.kenton.kyschools.us)

Dr. Henry Webb, Superintendent of Schools

**KCSD ISSUE PAPER**

**DATE:**

September 25, 2019

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve a software services agreement with Terrace Metrics, Inc. to administer the Resiliency/Risk Survey to students in grades 5-10 for the 2019-20 school year.

**APPLICABLE BOARD POLICY:**

Legal Status of the Board 01.1

**HISTORY/BACKGROUND:**

Kenton County School District, in partnership with Terrace Metrics, will provide a service to students, families, and schools through the use of the Resiliency/Risk Survey. The survey is designed to assess the social/emotional strengths and needs of participating students in grades 5-10. The survey has been administered to over 30,000 students across multiple school districts. Research shows schools play an important role in raising healthy children through the measurement and teaching of social emotional skills. Data from this comprehensive survey gives us the ability better identify students with strong social-emotional development. We can also better detect students who may need interventions. The additional data will further the schools with the ability to design, implement, and evaluate interventions to address student needs. This survey and data will be another resource for our schools to examine the needs of the whole student,

**FISCAL/BUDGETARY IMPACT:**

\$5,000 will be paid by the Kenton Fiscal Court. The remaining cost will be paid by district funds and will not exceed \$7,000

**RECOMMENDATION:**

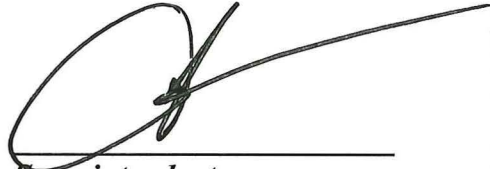
Approval of contract with Terrace Metrics, Inc. to administer the Resiliency/Risk Survey to students in grades 5-10 for the 2019-20 school year.

**CONTACT PERSON:**

Shawna Harney

\_\_\_\_\_  
Principal

  
\_\_\_\_\_  
District Administrator

  
\_\_\_\_\_  
Superintendent

*Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.*

*Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.*

**Kenton County Board of Education**

Board Members: Carl Wicklund, Chairperson Karen L. Collins, Vice Chairperson Carla Egan Shannon Herold Jessica Jehn  
"The Kenton County Board of Education provides *Equal Education & Employment Opportunities.*"

## SOFTWARE AND SERVICES AGREEMENT

This Software and Services Agreement is entered into between Terrace Metrics, Inc., an Ohio corporation (the “*Company*”) and Kenton County School District, Kenton County, Kentucky (the “*Client*”), and is effective as of September 15, 2019 (the “*Effective Date*”). Each of Company and Client may be referred to individually herein as a “*Party*” and collectively as the “*Parties*.”

### RECITALS

A. The Company is the owner and/or licensee of certain data, algorithms, methodologies, software and other Company Proprietary Technology utilized in assessing resiliency and risk indicators of individuals based on responses and other information provided about that individual.

B. Company desires to provide to Client, and Client desires to access and use, the Company Proprietary Technology and Services pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1 **Definitions.** As used in this Agreement and accompanying Order Form(s), the following terms shall have the following meanings:

1.1 “*Agreement*” means this Software and Services Agreement, and any Order Forms executed by the parties in connection herewith.

1.2 “*Authorized User*” means any person or class of people who is/are specifically authorized to input or provide Client Data to the Company, either directly or at the Site, as set forth on the Order Form.

1.3 “*Client Data*” means all information or data provided to the Company by Client and Authorized Users.

1.4 “*Commercial Use*” means any use of the Company Proprietary Technology, Services or Reports with the objective of generating revenue or with the objective of otherwise commercially exploiting any of the foregoing.

1.5 “*Company Proprietary Technology*” means: (a) all software, specifications, designs, algorithms, methodologies, trade secrets, surveys, websites, and any other data or technology that was created or acquired by the Company, whether before or after the effective date of this Agreement including, without limitation, any such items created from Services; (b) any materials, research results, analytical results, reports, data, developments, improvements, inventions (whether or not patentable or reduced to practice), designs, algorithms, methodologies, trade secrets and other data or technology that the Company prepares, makes, conceives, or devises, solely or jointly with Client, pursuant to this Agreement and/or any Order Form; and (c) all Modifications made to the Company Proprietary Technology or derivative works derived from the Company Proprietary Technology, whether prior to or subsequent to the date of this Agreement, and whether made by the Company or the Client. The Parties acknowledge and agree that if, during the course of the Company's delivery of Reports and/or performance of the Services or other obligations under this Agreement, the Company repairs errors in, enhances, improves, creates or Modifies the Company Proprietary Technology, such repairs, enhancements, improvements, or Modifications shall be deemed to be a part of the Company Proprietary Technology, even if paid for by Client. Notwithstanding the foregoing, Company Proprietary Technology shall not include Client Data.

- 1.6 **"Fees"** means the fees payable by Client for access to the Services and Company Proprietary Technology as the same are specified in the Order Form.
- 1.7 **"Modify"** means to modify, improve, enhance, add to, alter or translate (including translation into different computer languages), and **"Modification"** means a modification, improvement, enhancement, addition, alteration or translation.
- 1.8 **"Order Form"** means one or more order forms executed by Company and Client specifying the Services, Reports, Fees, Authorized Users and other terms and conditions which shall be the subject of and part of the Agreement.
- 1.9 **"Proprietary Rights"** means all patent, patent application, copyright, trademark, trade secret, mask work, and any other intellectual property rights, throughout the world.
- 1.10 **"Report"** means any document or analyses (whether physical or electronic) which is generated by the Company Proprietary Technology based on the Client Data input thereto.
- 1.11 **"Services"** means the services provided by Company to Client as identified on an Order Form, which may include, without limitation, Report(s), access rights to the Site and specific Company Proprietary Technology, consulting services, support services and other services or technology provided or made available to Client.
- 1.12 **"Site"** means the website listed on an Order Form through which Client obtains access to the Services.

## 2 License

- 2.1 License Grant. Company hereby grants Client a nontransferable, non-assignable, non-exclusive, worldwide right and license to access and use the Company Proprietary Technology and use the Services, as specified on the Order Form during the term of this Agreement for Client's internal purposes only (the **"License"**), subject to the terms of this Agreement, including the payment of all Fees. Client shall have no right to sublicense, transfer or assign its rights with respect to the License granted herein, without Company's prior written consent, which may be withheld in Company's absolute discretion. All rights in the Services not expressly granted to Client hereunder are reserved by Company.
- 2.2 Medical Diagnosis. CLIENT ACKNOWLEDGES THAT THE SERVICES (INCLUDING, WITHOUT LIMITATION, ANY REPORTS GENERATED IN CONNECTION THEREWITH) ARE NOT DESIGNED TO, AND DO NOT, PROVIDE MEDICAL, PSYCHOLOGICAL OR PSYCHIATRIC ADVICE OR DIAGNOSIS, AND ARE NOT DESIGNED FOR ANY USE IN WHICH FAILURE OR INACCURACY MIGHT CAUSE MISDIAGNOSIS, PERSONAL INJURY OR DEATH TO ANY PERSON, AND CLIENT IS SPECIFICALLY PROHIBITED FROM USING THE SERVICES OR ANY PART THEREOF FOR ANY SUCH PURPOSE (EACH OF THE FOREGOING, A **"MEDICAL USE"**).
- 2.3 Restrictions. Neither Client, its Authorized Users nor any other person accessing the Services through Client may use the Services in any manner or for any purpose other than as expressly permitted by this Agreement. Neither Client, its Authorized Users nor any other person accessing the Services through Client may, or may attempt to: (a) modify, copy, recreate, duplicate, alter, tamper with, repair, reverse engineer or otherwise create derivative works of any part of the Services; (b) reverse engineer, disassemble, or decompile the Company Proprietary Technology or any other part of the Services, or apply any other process or procedure to derive the source code of the Company Proprietary Technology, any other part of the Services or the Site; (c) access or use the Services in a way intended to avoid incurring Fees; (d) resell the Services; (e) copy, modify or create a derivative work from the Company

Proprietary Technology or any other part of the Services; (f) remove any proprietary notices of Company on or in the Services; (g) sublicense, make available, or allow any person or entity who is not an Authorized User, including any of Company's competitors, to use or access the Services without Company's prior written consent; (h) use the Services or any Reports for a Commercial Use; or (i) use the Services or any Reports for a Medical Use (each of (a) through (i), inclusive, a ***"Prohibited Use"***). Any Prohibited Use by Client, its Authorized Users or any other person utilizing the Services through Client under this Section is considered a material breach of this Agreement and will result in the automatic and immediate termination of all licenses and other rights of Client to utilize or access any Services.

### **3 Ownership of Proprietary Rights**

**3.1 Company Proprietary Technology.** The Company shall own the Company Proprietary Technology, all Modifications made thereto and all derivative works derived therefrom, regardless of who makes such Modifications or creates such derivative works, and all Proprietary Rights in and to the Company Proprietary Technology, all Modifications thereto and all derivative works created therefrom. In addition, the Company shall own all Proprietary Rights in and to any information, data, software (in source or object code form), designs, algorithms, technology and documentation which it held or created either prior or subsequent to the date hereof, and any data which is derived from Services to be consolidated and aggregated with other data so long as such data is not specifically identifiable with Client or any Authorized User. To the extent Client has or purports to have any ownership interest in any Company Proprietary Information, Client hereby assigns any and all right, title and interest in such Company Proprietary Technology to the Company.

**3.2 Reports.** Client shall own the physical media upon which any Report is prepared by the Company and delivered as part of the Services; provided, however, that because the Report shall also contain intellectual property and confidential information of Company, Company shall own the content of the Reports (other than the Client Data) Client acknowledges that it shall have the License to use such Report in accordance with Section 2 above. Client hereby acknowledges Company's exclusive ownership rights with respect to the contents of any Reports (other than any Client Data, if any, that may be included in a Report) and any other work product produced or created by Company in the course of performing the Services including, but not limited to, any ideas, applications, software, principles, algorithms and methods; all of which shall be considered to be Confidential Information of the Company, subject to applicable law, including but not necessarily limited to obligations Client may have under the Kentucky Open Records Act, KRS 61.870 et seq., and the Family Education Rights and Privacy Act ("FERPA"), 20 USC 1232g and 34CFR Part 99.. Subject to the Company's obligations of confidentiality under Section 8, below, nothing in this Agreement shall restrict Company from developing and using in the course of its business any techniques, ideas, concepts, information or know-how relating to methods or processes of general application or which may be developed in connection with the preparation of the Reports. Nothing in this Agreement or any other agreement between the parties shall be interpreted to restrict Company in any way from providing similar services to other clients.

**3.3 Client Data.** Client shall own all rights in and to the Client Data; provided, however, that Client acknowledges that certain information regarding Client and its use of the Services, as well as Client Data, may be used by Company for statistical, analytical, marketing or other purposes, and Client hereby grants to the Company a non-exclusive, worldwide, fully paid-up, royalty-free license, with right of sublicense, to utilize such information for the purposes specified herein. Client shall have the right to designate on an Order Form whether Company is required to anonymize any Client data to eliminate any reference to names or

other personally identifying information in its use thereof, and, if so designated, the Company agrees that any use or retention of Client Data shall be anonymized to eliminate reference to such personally identifying information. Notwithstanding anything in this section 3.3 or any other provision of the Agreement to the contrary, and except as required by law, Company agrees that it will not personally disclose personally identifiable student information as defined by FERPA without Client's express prior written consent, as further explained in Section 8.

#### **4 Term and Termination**

4.1 Term. This Agreement shall commence on the Effective Date and shall continue for the duration of the term or study specified in the Order Form (the "**Term**").

4.2 Termination. This Agreement may be terminated prior to the expiration of the Term only as follows:

4.2.1 Initiated by Client. Client can cancel the Agreement at any time without cause upon 30 days' notice.

4.2.2 Termination for Breach. Either Party shall be entitled to terminate this Agreement: (i) immediately without notice in the event of a non-curable breach, a breach by either Party of its confidentiality obligations hereunder, or a breach by Client of the provisions of Section 2 hereof; or (ii) upon a breach by either Party of any other provision of this Agreement if such Party fails to cure such breach within thirty (30) days of written notice of such material breach from the other Party; provided, however, such termination shall not take effect if the breaching Party cures or corrects the breach within any notice period provided for herein.

4.2.3 By Mutual Consent. This Agreement shall terminate upon the mutual written consent of the Parties at any time.

4.2.4 Bankruptcy. Either Party may terminate this Agreement upon written notice if the other Party (a) terminates or suspends its business, (b) becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute, (c) becomes insolvent or subject to direct control by a trustee, receiver or similar authority, or (d) has wound up or liquidated, voluntarily or otherwise.

4.3 Consequences of Termination. Upon any termination of this Agreement:

4.3.1 License Terminates. All licenses granted to Client under this Agreement, and all rights of Client to utilize the Company Proprietary Technology and the Services shall immediately terminate; provided, however, that, so long as termination is not as a result of the breach of this Agreement by Client, Client's license to utilize the Reports in accordance with the terms of this Agreement shall continue indefinitely so long as it complies with the provisions of Section 2, above; if Client fails to comply with Section 2, above, with respect to such reports, all licenses to utilize the Reports shall immediately and automatically terminate.

4.3.2 Survival. The provisions, rights and obligations provided for in Sections 1, 2.2, 2.3, 3, 4, 5, 6, 7, 8 and 9 shall survive termination of this agreement for any reason.

4.3.3 Effect of Termination. Upon expiration of this Agreement or termination of this Agreement by either party for any reason, Client shall immediately (a) cease all use of the Company Proprietary Technology and the Services provided hereunder; and (b) destroy, delete and expunge such Company Proprietary Technology and any portion or copies thereof which it may have in its possession including, without

limitation, any such Company Proprietary Technology, or any part thereof, which may reside on any of Client's electronic systems; provided, however, that this provision shall not apply to Reports so long as Client retains its License to utilize the Reports in accordance with this Agreement. At Company's request, Client shall certify to Company in writing that Client has fully complied with the foregoing requirements.

## **5 Warranty and Disclaimer**

5.1 Mutual Warranties. Each Party represents and warrants to the other that (i) it has full right, power and authority to enter into this Agreement and to perform all of its obligation hereunder; (ii) the execution, delivery and performance of this Agreement do not and will not result in a breach of any agreement to which it is a party or by which it or any of its properties is otherwise bound; and (iii) when executed and delivered by it, this Agreement will constitute its legal, valid and binding obligation, enforceable against it in accordance with the terms of this Agreement.

5.2 Suitability. The Company does not warrant or represent that the Services or any other Company Proprietary Technology will: (i) meet any of the Client's requirements, including but not limited to, regulatory requirements; (ii) operate uninterrupted or be complete and free of errors. Company makes no representation or warranty of any kind with respect to the Client Data. Company is not responsible for any decisions made in reliance on the Services, the Reports or any other Company Proprietary Technology. Receipt of the Services and use of the Reports and other Company Proprietary Technology does not constitute any form of advice or recommendation by the Company to Client or to any Authorized User and is not intended to be relied upon by Client or any Authorized User in making (or refraining from making) any specific decisions, and Client and each Authorized User shall take its own advice and/or independently verify such information before relying on it. The Services, Reports and other Company Proprietary Technology are provided on an "as is" basis and except for the warranties expressly set forth in this Agreement, Company accepts no liability and offers no warranties in relation to it and expressly excludes all representations, warranties and conditions and other terms otherwise implied (including, without limitation, any implied warranties of merchantability, fitness for a particular purpose or noninfringement) in relation to the Services, the Reports and/or any other Company Proprietary Technology to the extent that such can be excluded by law.

5.3 Company Warranty Against Infringement; Indemnification. The Company warrants that the Services will not infringe upon the Proprietary Rights of any third party. In the event of a breach of the above warranty, the Company, at its option, will (i) Modify the infringing Services, at the expense of the Company, so that it no longer infringes, or (ii) secure for Client, at no cost to Client, the right to continue to utilize the Services or, if it is not commercially reasonable or economically practical for the Company to implement either of the foregoing, (iii) terminate this Agreement as to such infringing Services and refund to Client the amount Client has paid to the Company for such Services under this Agreement. Subject to the limitations set forth in Section 7, below, the Company agrees to indemnify and hold Client harmless from and against any claims, liabilities, damages, costs, and expenses (including reasonable attorney fees), that Client may incur as a result of any breach of the above warranty. The Company's obligations under this Section shall apply only if Client notifies the Company promptly of any such claim, turns over control of the defense of such claim to the Company, does not settle or compromise any such claim without the prior written consent of the Company, and cooperates in the defense of such claim at the expense of the Company. The above warranty, and the Company's obligations under this Section, shall not apply to infringement arising out of or resulting from (a) any Modifications, updates or



revisions to the Services or other Company Proprietary Technology not done by the Company, or (b) the use of any Services and/or other Company Proprietary Technology in conjunction with items not furnished by the Company (including, without limitation, Client Data), if use of the Services and/or other Company Proprietary Technology without such other items would not infringe, or (c) use or incorporation of any Client Data into any Services, Reports and/or any other Company Proprietary Technology, or (d) use of any Service, Reports or other Company Proprietary Technology in a manner not permitted by this Agreement. The Company's indemnification obligations shall not apply to claims, liabilities, damages, costs, or expenses arising from Client's use or distribution of any Services, Reports or other Company Proprietary Technology more than thirty (30) days after the Company has notified Client that such activities may infringe the Proprietary Rights of a third party, or after Client has otherwise become aware that such is the case. Notwithstanding the provisions of this paragraph, if Client distributes, publishes, or otherwise discloses Company Proprietary Technology or other Company Confidential Information in violation of the terms of this Agreement, or a Prohibited Use occurs, all of the Company's warranties, duties, and covenants under this paragraph shall no longer apply to any Services related to such Company Proprietary Technology, Confidential Information and/or Prohibited Use.

- 5.4 Client Warranty Against Infringement; Indemnity: Client represents and warrants that Client is the owner of or has the full legal right to use and provide to the Company all Client Data and any and all other data, information and technology delivered to or made available to the Company or any of its Services and/or Company Proprietary Technology, and that none of the foregoing will infringe on the Proprietary Rights of any third party. Client further represents and warrants that, in the event any Authorized User is a minor, that Client has received all necessary consents necessary for the Authorized User to provide such Client Data to the Company for providing the Services, and that the provision of such Client Data by Client and/or any Authorized User is fully authorized by law.

## 6 Liability

- 6.1 Subject to Section 7.3, The Company will have no liability whatsoever to Client for any special, punitive, indirect or consequential losses or damages, loss of profit, loss of anticipated revenue, loss of or corruption or damage to data, or other economic loss of Client, howsoever arising, even if advised of the possibility thereof in advance, whether arising in or caused by breach of contract, tort (including negligence) or otherwise.
- 6.2 Notwithstanding anything else in this Section 7 or otherwise in this Agreement to the contrary, Company agrees it will maintain insurance coverage (e.g., Technology Errors and Omissions Liability Insurance) for breaches of personally identifiable student information and data caused by Company, its employees, its systems, or its software, in the amount of \$1 million per occurrence/\$3 million aggregate, and that such insurance shall be available and applied to indemnify Client for damages, penalties, costs, and fees sustained by Client as a result of such data breaches.

## 7 Confidential Information

- 7.1 Non-Disclosure. The Parties acknowledge that, in the course of performing this Agreement, they may find it necessary to disclose to the other Party information deemed to be Confidential Information (as defined in Section 8.2). The Party receiving information (the ***"Receiving Party"***) agrees not to disclose any of the other Party's (the ***"Disclosing Party"***) Confidential Information to any third party without the prior written consent of the Disclosing Party. The Receiving Party further agrees not to disclose any of the Disclosing Party's Confidential Information to any employee or authorized agent of the Receiving Party unless such person both (a) needs to know such information in order to further the authorized use of the

information, and (b) contractually agrees to privacy and confidentiality measures that are equal to or exceed those set forth in this Section 8. In addition, the Receiving Party agrees not to make copies of, or otherwise reproduce any documents or other materials containing the Disclosing Party's Confidential Information, except as authorized by this Agreement, or as otherwise authorized by the Disclosing Party in writing. The Receiving Party agrees not to use any of the Disclosing Party's Confidential Information for any purpose except in connection with activities permitted by this Agreement. The above restrictions on use and disclosure of Confidential Information shall survive any termination of this Agreement.

**7.2 Definition of Confidential Information.** As used in this Agreement, the term ***"Confidential Information"*** means all information disclosed by the Disclosing Party to the Receiving Party or learned by the Receiving Party before or after the date of this Agreement (i) in written or other tangible form, which is marked or labeled "confidential" or "proprietary," or is otherwise marked in a manner indicating the confidential nature of the information or would be understood by a reasonable person as being confidential or proprietary (for example, internal engineering documents or specifications that may not be marked or labeled "confidential" or "proprietary"); (ii) orally, provided the information is described or summarized in a writing (including, without limitation, by e-mail) delivered to the other party within thirty (30) days of such oral disclosure which indicates that such information is confidential or proprietary; or (iii) information otherwise reasonably expected to be treated in a confidential manner under the circumstances of disclosure under this Agreement or by the nature of the information itself. Confidential Information may include matters of a technical nature (such as designs, specifications, data, formulae, computer software and documentation, know-how, secret processes or machines, inventions and research projects) and matters of a business nature (such as information about costs, profits, markets, sales, customers, suppliers, and employees). Notwithstanding the above, information shall not be deemed "Confidential Information" for purposes of this Agreement if: (a) the information is or becomes publicly known through no wrongful act of the Receiving Party or any employee, agent or contractor thereof; or (b) the Receiving Party can demonstrate, by written records pre-dating the disclosure by the Disclosing Party, that the information was already known to the Receiving Party at the time that it was disclosed by the Disclosing Party; or (c) the information is subsequently disclosed to the Receiving Party by a third party as a matter of right and without restriction on further disclosure. Client acknowledges that the data, methodologies and algorithms underlying all Company Proprietary Technology constitutes the Company's Confidential Information and need not be marked or summarized. Company acknowledges that personally identifiable student information, as defined by FERPA, constitutes Client's Confidential Information and need not be marked or summarized. A disclosure of Confidential Information which is (x) in response to a valid order by a court or other governmental body, (y) otherwise required by law, or (z) necessary to establish the rights of either Party under the Agreement, shall not be considered to be a breach of the Agreement or a waiver of confidentiality for other purposes; provided however, that the Party disclosing such information shall provide prompt written notice thereof to the other Party to enable it to seek a protective order or otherwise prevent such disclosure, or in the case of court orders or subpoenas that compel disclosure of personally identifiable student information, to enable Client to provide affected parents with notice as required by 34 CFR 99.31.

**7.3 Return of Confidential Information.** Upon termination of this Agreement for any reason, or upon the request of the Disclosing Party, the Receiving Party agrees to return to the Disclosing Party, or destroy (at the option of the Disclosing Party), all documents and other materials containing the Disclosing Party's Confidential Information, and to certify in writing to the Disclosing Party that it has done so.



7.4 Remedies. The Receiving Party acknowledges that the unauthorized disclosure or use of the Disclosing Party's Confidential Information may result in substantial and irreparable harm to the Disclosing party and that monetary damages will be difficult to determine and inadequate to compensate the Disclosing party. Therefore, the Receiving Party agrees that, upon any breach or threatened breach of the obligations in this Section by the Receiving Party, the Disclosing Party shall be permitted to seek and, upon a proper showing to the court, obtain equitable relief such as an injunction or specific performance without the necessity of posting a bond, in addition to monetary damages and any other remedies available to the Disclosing Party at law or in equity.

## **8 General Provisions**

8.1 Independent Contractors. The parties hereto are independent contractors and no agency, partnership, joint venture, or other relationship shall be created or implied by this Agreement.

8.2 Assignment. It is expressly understood and agreed that Client may not, under any circumstances, grant to any person or legal entity whatsoever any sublicense of its rights under this Agreement, or otherwise assign its rights under this Agreement, whether absolutely or by way of security or encumbrance, or otherwise, without the prior written consent of the Company, which consent may be granted or withheld in the Company's sole discretion. Client agrees that its rights under this Agreement are personal to it, and may not be transferred to any party whatsoever, whether by way of security or otherwise, whether in whole or in part, and whether directly or indirectly. The transfer of fifty percent (50%) or more of the voting interest of Client shall be deemed a transfer for purposes of this Section. Client agrees that the failure to strictly comply with the terms of this Section shall constitute a material default of this Agreement without the necessity of notice or opportunity to cure. Subject to the foregoing, the rights and obligations of the parties under this Agreement shall inure to the benefit of, and shall be binding upon, their successors and permitted assigns.

8.3 Amendment and Waiver. This Agreement may not be amended except by a written instrument signed by both Parties. No waiver of a breach or default shall be effective unless evidenced by a writing signed by the Party entitled to the benefit of the provision breached. No waiver of a breach or default shall be deemed a waiver of any subsequent breach or default.

8.4 Entire Agreement. This Agreement, the Order Forms and any document or agreement executed by the Parties pursuant to this Agreement constitute the entire understanding, agreement, and contract of the parties with respect to their subject matter and supersede all prior agreements or understandings, written or oral, between the parties with respect thereto. No party shall be liable or bound to the other in any manner by any warranty, representation, or covenant contained in any such prior agreement, understanding, or contract except as specifically set forth in this Agreement. Notwithstanding the foregoing, in the event the Parties have executed any confidentiality and/or non-disclosure agreement, such confidentiality and/or non-disclosure agreement shall remain enforceable to the extent it contains greater restrictions on a Party's use or disclosure of Confidential Information of the other Party.

8.5 Severability. If the application of any provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, then (i) to the extent feasible, such provision shall be reformed in a manner that makes it enforceable and which accomplishes the intention of the parties as nearly as possible, and (ii) the validity and enforceability of other provisions of this Agreement shall not in any way be affected or impaired thereby.

8.6 No Third Party Beneficiaries. Company and Client agree that, except as otherwise expressly provided in this Agreement, there shall be no third party beneficiaries to this Agreement.

- 8.7 Notices. All notices under this Agreement shall be in writing and shall be deemed given (i) on the same day if delivered in person, or (ii) on the third business day if sent by certified mail, return receipt requested, or (iii) on the next business day if sent by reputable overnight courier; or (iv) upon transmission, if sent by e-mail or facsimile if also sent within one business day of transmission by overnight courier; or (v) upon receipt, if sent in a manner other than as described in (i) through (iv), above, to a party at its address shown in this Agreement. Either party may change its address for notice purposes by notifying the other of the new address in accordance with the above notice procedure. The initial addresses for notices hereunder are as specified on the signature page hereof.
- 8.8 Governing Law. This Agreement shall be construed in accordance with and governed by the internal laws of the State of Kentucky, excluding that body of law known as conflicts of law.
- 8.9 Force Majeure. Neither party will be liable for, or be considered in breach of or default under this Agreement on account of any delay or failure to perform as required by this Agreement (other than an obligation to pay money) as a result of any causes or conditions beyond such party's reasonable control (a "*Force Majeure Event*") including but not limited to fire, earthquakes, storms, flood, strikes, riots, war, and acts, delays or failures to act by the other party or any third party. Any breach of this Agreement shall be excused for the duration of any such Force Majeure Event.
- 8.10 Promotion. Client agrees that, following delivery of the Services to Client, the Company may use Client's name and may disclose the existence of Client as a licensee hereunder in promotional materials, websites and other publications, which may be issued or published from time to time by the Company.
- 8.11 Attorneys' Fees. In the event that any litigation, arbitration, or other proceeding is commenced between the parties hereto or their personal representatives, successors or assigns concerning the enforcement or interpretation of any provision of this Agreement or the rights and duties of any party in relation thereto, the party or parties prevailing in such litigation, arbitration or other proceeding shall be entitled, in addition to such other relief as may be granted, to all attorneys' fees and costs incurred in such litigation, arbitration or other proceeding, and in any appeal or enforcement of any judgment rendered therein.
- 8.12 Jurisdiction and Venue. Any action to enforce terms of this Agreement shall be brought in the Kenton Circuit Court of Kenton County, Kentucky.

**[Remainder of Page Intentionally Left Blank]**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

Terrace Metrics, Inc.



By:

By: Richard Gilman, President

Date: \_\_\_\_\_

Date: 8/28/2019

Address:

Address:  
1122 Herschel Avenue  
Cincinnati, OH 45208

E-mail:

E-mail: rich.gilman@terracemetrics.org

**[Signature Page – Software and Services Agreement]**



## ORDER FORM

### Contact Information:

#### Terrace Metrics, Inc.

Contact Name: Richard Gilman

Address: 1122 Herschel Avenue  
Cincinnati, OH 45208

Telephone No.: (800) 470-4401

E-mail Address:  
richgilman@terracemetrics.org

#### Kenton County School District

[Name]

1055 Eaton Drive  
Ft. Wright, KY 41017

[email]

1. **Term:** The Term for which Services will be provided under this Order Form shall commence on October 8, 2019 and shall continue until August 1, 2020, unless sooner terminated in accordance with the terms and conditions of the Agreement.

2. **Description of Services:** The Client (Kenton County School District) will receive Services provided to its participating schools. Services to participating schools are as follows:

- (a) Participating schools shall be provided access to the Company's proprietary survey
- (b) Upon completion of the survey, the survey will be analyzed utilizing the Company's proprietary analytical software tools.
- (c) Upon completion of the analysis, the Company will provide the following Reports:
  - Individual data for all participants
  - Individual parent report for all participants
  - Individual school report consisting of aggregate data for each student
  - District report consisting of aggregate data for each school
- (d) Access to all resources produced by Terrace Metrics, including comprehensive curricula and community agency database.
- (e) Consultation time with Terrace Metrics Personnel, to include pre-survey setup and training of school team(s), work with school team(s) during active survey collection, and two-week post survey completion (to present aggregate data to district).

3. **Authorized Users:** The individuals authorized to access the Services shall be as follows:

- (a) Select employees, contractors or agents of Client;
- (b) Students in the Kenton County School District who are enrolled and who have been given parent permission (if under age 18) or have provided self-consent (if age 18 or older).

4. **Fees:** All fees will be paid by the Northern Kentucky Educational Cooperative.

IN WITNESS WHEREOF, the Company and Client have executed this Order Form as of the date and year first above written, and intend that it be part of and incorporated into the Agreement.

Terrace Metrics, Inc.

Kenton County School District



Name: Richard Gilman

Name: [Name]

Title: President

Title:

Date: 8/28/2019

Date: