



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

## Issue Paper

**DATE:**

July 12, 2023

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve the software license agreement for one year between Literacy Resources, LLC (Heggerty) and River Ridge Elementary to offer access to online instructional resources.

**APPLICABLE BOARD POLICY:**

01.1 - Legal Status of the Board

**HISTORY/BACKGROUND:**

myHeggerty provides online support and resources to teach the Heggerty Phonemic Awareness curriculum as a supplement to Amplify CKLA. myHeggerty provides access to a suite of online features, including 175 daily lesson videos spanning the 35 weeks of curriculum, support videos for teachers, digital student assessments and reporting, free resource downloads, and a decodable e-book library. Heggerty will be utilized by our Kindergarten students as a supplement to our core reading program and will be monitored through weekly formative assessment data in reading.

**FISCAL/BUDGETARY IMPACT:**

\$534.00/Title I Funds

**RECOMMENDATION:**

Approval of the software license agreement for one year between Literacy Resources, LLC (Heggerty) and River Ridge Elementary to offer access to online instructional resources.

**CONTACT PERSON:**

Jena Smiddy

  
Principal/Administrator  
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.



Heggerty  
805 Lake Street, #293  
Oak Park, IL 60301  
708-366-5947 (phone)  
orders@heggerty.org  
www.heggerty.org

## Price Quote #287072

<b>Bill To</b> Jena Smiddy Kenton City Schools 1055 Eaton Drive Fort Wright, KY 41017 jena.smiddy@kenton.kyschools.us	<b>Ship To</b> Jena Smiddy River Ridge Elementary School 2772 Amsterdam Road Villa Hills, KY 41017
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Date of Quote: July 13, 2023

Expiration Date: October 11, 2023

ISBN/SKU	Quantity	Product	Unit Price	Price
		myHeggerty		
		• <b>Subscription Length:</b> 1 Year		
500022-1YR	6		89	534
		• <b>Group Registration:</b> Group Name: myHeggerty x 6		
			<b>Subtotal:</b>	\$534
			<b>Tax:</b>	\$0
			<b>Total:</b>	\$534

### Vendor Information

Literacy Resources, LLC  
FEIN: 84-4218337  
District Vendor #: N/A

### **Quote Terms:**

1. This quote does not constitute an order. To place an order, click "accept" on this quote and complete payment, or submit an official district Purchase Order by email to orders@heggerty.org.
2. All contents of the Phonemic Awareness curricula and supplementary materials are fully copyright protected. The reproduction by any means, resale, and/or redistribution of this curriculum is strictly prohibited.
3. LRL is only required to collect sales tax for orders shipped within Illinois. Districts outside of Illinois that are not tax exempt must submit any required sales tax directly to their state.
4. The shipping charge on this quote is only valid if the order is shipping to one single location. If the order is being shipped to multiple locations, or if multiple Purchase Orders are submitted based on this quote, additional shipping fees will apply.
5. For orders shipping outside of the United States: Payment must be made in US funds. Shipping fee does not include

customs duty and taxes. Customs duty and taxes must be paid by the recipient to UPS Brokerage prior to delivery.

ADDENDUM TO LITERACY RESOURCES, LLC TERMS OF USE  
FOR  
Kenton County School District

This Addendum to the Terms of Use (the "Addendum") dated as of July 13th, 2023, by and between Literacy Resources, LLC (the "Company") and Kenton County School District, agree to the following changes to the Company's Terms of Use effective as of August 17, 2018, as amended from time to time (the "TOU"). Capitalized terms used but not defined in this Addendum shall have the same meaning as ascribed to them in the TOU. The parties hereby amend the TOU as follows:

1. Section 11.5 (Governing Law and Venue) is hereby deleted and replaced with the following language:

"This Agreement and any action related thereto is governed by the laws of the State of Kentucky 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 Kentucky or in federal courts located in the Eastern District of Kentucky. The United Nations Convention on Contracts for the International Sales of Goods does not apply to this Agreement."

2. Notwithstanding the foregoing, all remaining terms of the TOU shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their authorized representatives, effective as of the date first set forth above.

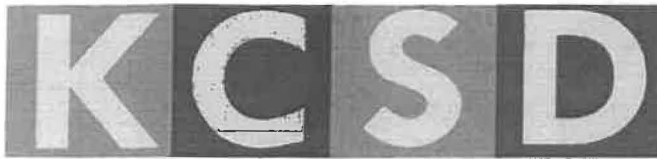
LITERACY RESOURCES, LLC

By: Jonathan Rosa 07/13/2023  
Name: Jonathan Rosa  
Its: Operations Specialist

KENTON COUNTY SCHOOL DISTRICT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_





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

**VENDOR ASSURANCES REGARDING PROTECTION OF  
PERSONAL AND CONFIDENTIAL INFORMATION**

**Data Security and Breach Protocols**

Vendors that receive Personal Information from Kenton County Board of Education (herein referred to as "KCBOE") as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account number, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by any agency as defined under the Act;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" includes any person or entity that has a contract or agreement with the KCBOE and receives (accesses, collects or maintains) personal information from the KCBOE pursuant to the contract or agreement.

The vendor hereby agrees to cooperate with the KCBOE in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, KCBOE, the Commissioner of the Kentucky State Police, the Kentucky Auditor of Public Accounts, the Commonwealth (Kentucky) Office of Technology, and the Commissioner of the Kentucky Department of Education of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)(2) applies and the vendor abides by the requirements set forth in that exception. Notification shall be in writing on a form developed by the Commonwealth (Kentucky) Office of Technology.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor hereby agrees that the KCBOE may withhold payment(s) owed to the vendor for any violation of the Act's notification requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any security breach as defined under the Act in accordance with KRS 61.933.

Upon conclusion of an investigation of a security breach as defined under the Act as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a), the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth (Kentucky) Office of Technology and that are reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

### **Student Data Security**

Pursuant to KRS 365.734, if the vendor is a cloud computing service provider (which is defined pursuant to KRS 365.734(1)(b) as any person or entity other than an educational institution that operates cloud computing services) or, through service to the KCBOE, becomes the equivalent of a cloud computing service provider, the vendor further hereby agrees that:

- The vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Educational Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.
- Pursuant to KRS 365.734, the vendor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

### **Family Educational Rights and Privacy Act, National School Lunch Act and Child Nutrition Act**

If during the course of this agreement, the KCBOE discloses to the vendor any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. sec. 1232g, *et seq.*), and its regulations, and data protected by the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. sec. 1751 *et seq.*), and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. sec. 1771 *et seq.*), the vendor agrees that it is bound by and will comply with the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor agrees that FERPA-protected information is confidential information. FERPA-protected information includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific

student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

The vendor understands and acknowledges that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

The vendor understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

In the event there is a conflict between this agreement and any other agreement between KCBOE and Vendor, the terms of this agreement shall apply.

Literacy Resources, LLC (Trade Name/DBA "Heggerty")

Vendor Name

805 Lake Street, #293  
Oak Park, IL 60301-1301

Vendor Address

708-366-5947

Vendor Telephone

hello@heggerty.org

Vendor Email Address

  
Signature by Vendor's Authorized Representative

Jonathan Rosa, Operations Specialist

Print Name

08 May 2023

Date



(/)

# Literacy Resources, LLC Terms of Use

This version was last updated on April 17, 2023.

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. We will notify you via email or at log in of any material changes to this Terms of Use. 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.