

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("Agreement") is made as of [DATE] ("Effective Date") by and between [REVIEWER'S FULL LEGAL NAME], headquartered at [REVIEWER'S ADDRESS], ("Reviewer") and [Educopia, LLC ("Educopia"), a Delaware corporation with its principal office at 2443 Fillmore Street, Suite 515 San Francisco, CA 94105.

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

**1. Definitions.** For purposes of this Agreement, the following terms shall have the meanings below.

1.1 "Confidential Information" means all information provided by Educopia to Reviewer hereunder that is proprietary and/or non-public related to the past, present and future business activities of Educopia, including, without limitation, all information related to: (a) students and teachers (including all video and audio recordings of classroom teaching, samples of student work, lesson plans and other instructional materials, contact information, individual information regarding name, photograph, voice, gender, age, Social Security numbers, student ID numbers, financial and health information, and information regarding such student's "education records" as that term is defined in the Family Educational Rights and Privacy Act and regulations); (b) Teachscape's software, scoring methodologies, pricing, financial information, methods, processes, code, data, lists (including customer lists), inventions, statistics, programs, research, development, information technology, network designs, passwords, sign-on codes, and usage data; (c) information relating to and/or collected for the purpose of conducting the Ohio Resident Educator Summative Assessment ("RESA"); and/or (d) any other information that is designated as confidential by Educopia. All of Teachscape's Confidential Information, including any derivative works thereof, is, and shall remain, proprietary to Educopia. Confidential Information does not include information that is or was, at the time of the disclosure: (i) generally known or available to the public; (ii) received by Reviewer from a third-party; (iii) already in Reviewer's possession prior to the date of receipt from Educopia; or (iv) independently developed by Reviewer; provided in each case that such forgoing information was not delivered to or obtained by Reviewer as a result of any breach of this Agreement, the Law or any contractual, ethical or fiduciary obligation owed to Educopia. Reviewer may disclose Teachscape's Confidential Information to the extent such disclosure is required by Law, provided that Educopia is given prompt notice of such disclosure requirement, to the extent practicable, so that Educopia has an opportunity to oppose such disclosure.

1.2 "Law" means all applicable Federal, state and local laws, rules, regulations and ordinances, and all binding orders of any court, agency or other governmental body with appropriate authority, as amended.

## **2. Obligations.**

2.1 Business Purpose. Educopia has developed or acquired the Confidential Information. Educopia is willing to disclose the Confidential Information to Reviewer in confidence for the sole purpose of permitting the Reviewer to receive training in the RESA, and to review and score multi-media materials and other written content submitted by Ohio educators as part of the RESA, subject to the terms and conditions of this Agreement.

2.2 Treatment of Confidential Information. At all times Reviewer shall: (a) protect the Confidential Information from unauthorized disclosure; (b) not use Teachscape's Confidential Information other than as necessary to perform its obligations under this Agreement; and (c) not disclose, distribute, or disseminate the Confidential Information to any third-party.

2.3 Privacy and Data Security Laws.

(a) Personal Information. Reviewer shall comply with all Laws governing or relating to privacy, data security and the handling of data security breaches. All individually identifiable information relating to one or more students or teachers ("Personal Information") shall be deemed to be Confidential Information, subject to the obligations and restrictions set forth in this subsection.

(b) Limited Disclosure. Reviewer shall not disclose Personal Information to any third-party or use any Personal Information (i) without Teachscape's prior written approval and (ii) except as permitted by Law, and then only to the extent necessary to carry out its obligations under this Agreement.

(c) Notice. If there is any disclosure or loss of, or inability to account for, or any incident relating to unauthorized access to or acquisition of, any of the Personal Information in Reviewer's possession or control, Reviewer will promptly, at Reviewer's own expense: (a) notify Educopia in writing within forty-eight (48) hours of discovery of such disclosure, loss or incident; (b) take all such actions as may be necessary or reasonably requested by Educopia to minimize the problem; and (c) cooperate in all reasonable respects with Educopia to minimize the problem, to notify affected individuals, and to minimize any resulting damage.

**3. Disclaimer of Warranties; Limitation of Liability. THE CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." EDUCOPIA MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION ANY WARRANTY OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, EDUCOPIA SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT FOR ANY LOSS OF PROFITS OR OTHER ECONOMIC LOSS, OR FOR CONSEQUENTIAL, SPECIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES, EVEN IF EDUCOPIA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**4. Equitable Relief.** In the event of a breach or threatened breach of the provisions of this section, Educopia may have no adequate remedy in money or damages and, accordingly, may seek an injunction against such breach.

**5. Return of Confidential Information.** Upon the written request of Educopia, Reviewer shall return or destroy (and certify such destruction in a signed writing) all Confidential Information of Educopia, including all copies thereof and materials incorporating such Confidential Information, whether in physical or electronic form. The confidentiality obligations set forth in this Agreement shall survive the termination of this Agreement and remain in full force and effect until such Confidential Information, through no act or omission of Reviewer, ceases to be Confidential Information as defined hereunder.

**6. General Provisions.** Reviewer may not assign this Agreement or any rights or delegate any obligations hereunder without the prior written consent of Educopia, and any such attempted assignment without the prior written consent of Educopia shall be void and of no force or effect. This Agreement shall be construed in accordance with and governed by the laws of the State of California. No failure or delay on the part of any party in exercising any right or remedy will operate as a waiver thereof; and each and every remedy will be cumulative and in addition to every other right or remedy provided herein or available at law or in equity. If any portion of this Agreement is invalid or unenforceable, the remainder of the Agreement shall not be affected, and the remaining terms will continue in effect and be binding on the parties. This is the entire understanding between the parties about the Confidential Information. It incorporates and supersedes all prior written and oral communications about the Products. No amendment, waiver or modifications to this Agreement shall be valid or enforceable unless in writing, executed by the authorized representatives of Educopia and Reviewer. If any provision of this Agreement is held to be unenforceable, the parties shall substitute for the affected provision an enforceable provision which approximates the intent and economic effect of the affected provision and the remaining provisions of this Agreement will be unimpaired and will remain in full force and effect.

By signing and dating below, the Reviewer agrees that Reviewer is of legal age and is authorized to enter into this agreement and agrees to be bound by these terms and conditions.

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Signature

Printed Name

Date