



TE21 TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1 "Agreement" has the meaning set forth in the Quote/Order Agreement form.
- 1.2 "Customer" is the party identified as the customer on the Quote/Order Agreement form.
- 1.3 "Effective Date" means the date of the last signature affixed to the Quote/Order Agreement form.
- 1.4 "Master Terms and Conditions" means these Master Terms and Conditions.
- 1.5 "Quote/Order Agreement form" means the quote and order form document executed by the parties which references these Master Terms and Conditions.
- 1.6 "Subscription Term" means the period set forth on the Quote/Order Agreement form as the start and end date for the CASE Item Bank.
- 1.7 "TE21" means TE21, Inc.
- 1.8 "TE21 Content" means questions, item bank items, benchmark assessments, either individual items or collectively compiled, or materials associated with such items including reading passages and graphics.
- 1.9 "Term" means the period starting on the Effective Date and running for the full term of the Subscription Term/period as specified in the Quote/Order Agreement form.

2. TE21 SUPPORT SERVICES.

In connection with Customer's purchase of TE21 Content specified on the Quote/Order Agreement form, TE21 will provide support relative to the product content. TE21 will use commercially reasonable efforts to provide support for requests from the Customer's primary contact relative to assessments, items, or item bank content. Customer will designate one of its employees as the primary contact for submitting content-related support request.

Support Contact Numbers:	1-877-628-3860 (toll free) 1-919-226-0380
Support Hours:	8:00am - 5:00pm EST
After Hours Support:	support@te21.com ; response no later than following regular support hours
Support Communication:	Feedback is provided to person reporting the issue via phone or email. Service tickets are created and monitored for timely completion.

Escalation Process:

<u>Support Issue</u>	<u>Resolution</u>	<u>Escalation Process</u>
Benchmark Content issues	2 hours via tier-1	Immediate escalation to tier-2 with 8 hour resolution time
Item Bank Content issues	2 hours via tier-1	Immediate escalation to tier-2 with 24 hour resolution time
Reporting & general user issues	2 hours via tier-1	Assigned to an engineer and tracked by support for timely resolution

3. PROFESSIONAL DEVELOPMENT SERVICES.

3.1 Performance. Professional development service offerings specified on the Quote/Order Agreement form (the "Professional Development") will be performed by TE21 in a manner substantially in accordance with its published descriptions for such Professional Development. The parties will agree upon a mutually-convenient time to schedule the Professional Development. All Professional Development must be scheduled for performance within twelve (12) months after the Effective Date, and TE21 will not have any obligation to perform any Professional Development that is



not scheduled to be performed within such twelve (12) month period. All Professional Development will be deemed accepted upon completion of performance.

3.2 Webinars. For Professional Development that is designated as “virtual” in the applicable published descriptions, TE21 will provide such Professional Development remotely via webinar. Customer will be responsible for providing its own computers, web browser software, and internet connections sufficient to facilitate the receipt of such webinar.

3.3 On-Site. For Professional Development that is designated as “onsite” in their applicable published descriptions, TE21 will provide such Professional Development on-site at Customer’s facility. No more than thirty (30) attendees of Customer may participate in each Professional Development session. Customer will be responsible for providing access to a suitable meeting site at its facility (including without limitation audiovisual equipment and network access).

4. CASE ITEM BANK LICENSE.

CASE Item Bank is a computerized database of questions that simulate the testing questions used in various states for testing students’ knowledge in various academic subjects. If Customer elects to purchase a subscription license to CASE Item Bank, such will be specified on the Quote/Order Agreement form and the following license terms apply.

4.1 Subscription: TE21 grants to Customer a limited, non-exclusive, non-transferable right and license to access CASE Item Bank to provide noncommercial access to and use of any or all of the items from CASE Item Bank (or individual items, materials associated with the items such as reading passages and graphics, and scoring materials from CASE Item Bank) to students registered within the Customer’s schools/districts for the sole purpose of performing formative assessments of those students during the period of the Subscription Term. Unless otherwise specified in the Subscription Term, such right shall last for one (1) year from the date of the Agreement. Customer’s right to access and use CASE Item Bank shall be limited to use in Customer’s classrooms and **shall not include any right to reproduce questions from CASE Item Bank, distribute copies of the questions, export questions for inclusion in any other delivery platforms or electronic storage devices, upload any question to any platform partner “community boards”, prepare derivative works of the questions, or publicly display the questions outside Customer’s classrooms.**

4.2 No Ownership/Intellectual Property: Customer acknowledges that it has no ownership claims in the CASE Item Bank, the questions contained therein, and all rights related thereto. The Customer acknowledges that TE21 retain all rights under copyright and all other intellectual property rights in and to CASE Item Bank, all TE21 Content included therein, all revisions, modifications, translations, or other adaptations or transformations of CASE Item Bank or TE21 Content, and other derivative works created there from (collectively the “Derivative Works”). Nothing in the Agreement shall give Customer any right, title, or interest in CASE Item Bank, the questions it contains, or any TE21 Content, other than the rights specifically granted in the “Subscription” paragraph above. Customer agrees that it will not make any claim of ownership of the CASE Item Bank formative assessment builder or any of the questions it contains.

4.3 CASE Item Bank License Restrictions: In addition to any restrictions set forth in the CASE Item Bank license grant above, Customer agrees not to: (a) modify, change, adapt, alter, translate, or create derivative works from CASE Item Bank or TE21 Content (b) sublicense, lease, rent, loan, or otherwise transfer its CASE Item Bank license rights in and to CASE Item Bank to any third party; or (c) otherwise use, copy, or distribute CASE Item Bank or any TE21 Content except as expressly allowed under the CASE Item Bank license terms and conditions set forth herein.

5. CASE BENCHMARK ASSESSMENTS

TE21 creates and develops benchmark assessment tests (“CASE Assessments”) that simulate the summative end of year tests given by state educational entities in various states for testing students’ knowledge in various academic subjects. Reporting and analysis of the results of the CASE Assessments is an integral element of the product.

5.1 CASE Benchmark Assessments Restrictions: CASE Assessments delivered via paper/pencil format or online through any delivery platform cannot be shared, duplicated, or reproduced in part or in whole without written permission of TE21. Use of CASE Assessments is limited to students registered within the Customer’s schools/districts during the academic year in which the CASE Assessments are initially delivered for the sole purpose



of delivering formative assessments to those students. Customer's right to access and use CASE Assessments in paper or electronic format shall be limited to use in Customer's classrooms and shall be limited to review and instructional purposes for those registered students within such classroom in the academic year of assessment delivery. **The Customer does NOT have any right to reproduce the tests in whole nor to dissect and reproduce any questions from the CASE Assessments individually; distribute copies of the assessments in whole or any individual questions from the assessment; prepare derivative works of the assessments or the questions individually; import or otherwise load the assessments in whole or any of the questions individually to any internal or external item bank or question data warehouse; upload any assessments in whole or questions individually to any platform partner "community boards"; or publicly display the assessments or questions outside Customer's classrooms.**

5.2 No Ownership/Intellectual Property. Customer acknowledges that it has no ownership claims in the CASE Assessments, the questions contained therein, and all rights related thereto. The Customer acknowledges that TE21 retains all rights under copyright and all other intellectual property rights in and to the CASE Assessments in whole and all individual questions on the assessment, as well as all revisions, modifications, translations, or other adaptations or transformations thereof. Nothing the Agreement shall give Customer any right, title, or interest in CASE Assessments or the questions it contains other than the rights specifically granted above

6. DATA

6.1 FERPA. The Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g and 34 C.F.R. Part 99, is a federal law that affords parents and students over the age of 18 the right to consent to the disclosure of student personally identifiable information ("student PII") from education records. TE21 and Customer desire to protect Customer student PII consistent with FERPA and other applicable privacy laws in carrying out all of their respective obligations under the Agreement.

(a) The Customer hereby acknowledges and agrees that TE21 is a "school official" (as defined by FERPA and in accordance with the Customer's internal policies and procedures) and has a "legitimate educational interest" (as defined by the Customer and in accordance with the Customer's internal policies and procedures) to receive student PII without parental consent.

(b) In accordance with the "school official" exception at 34 C.F.R. §99.31(a)(1)(i)(B), TE21 shall use student PII only for the purpose of providing the services specified herein, which may include sharing student PII with third parties that help TE21 provide such services, and shall not redisclose student PII except as authorized or required by law.

(c) Nothing in the Agreement shall be construed to limit TE21's use or retention during and after expiration or termination of the Agreement of education records or information from education records from which all personally identifiable information has been removed such that a student's identity may not reasonably be ascertained.

6.2 Data Usage. TE21 may use the information it obtains relating to Customer, including Customer's IP address, name, mailing address, and email address, for its internal business purposes and for purposes of communicating with Customers regarding TE21 products and services. TE21 will not disclose, sell, or otherwise distribute Customer's information to third parties.

7. TERMS AND TERMINATION.

7.1. Term. This Agreement shall begin as of the Effective Date and run for the school year over which the purchased assessments detailed on the Quote/Order Agreement form are delivered. For purchases of CASE Item Bank, the term will be for the 12 month Subscription Term specified on the Quote/Order Agreement, unless otherwise specified or terminated as provided.



7.2 Fees. Customer shall pay TE21 the fees as set forth in the Quote/Order Agreement form which pricing and quantities reflect Customer's current student enrollment. If the Agreement is longer than 12 months, Customer agrees to pay for any increase in student enrollment for subsequent years.

7.3 Payment Terms. Payment is due in accordance with terms specified on invoice. All payments will be made in U.S. dollars and without any deductions for any reason. Any amounts due to TE21 under the Agreement not received by the date due as indicated on the invoice may be subject to a late fee of 1.5% per month, or the maximum charge permitted by law, whichever is less. All payment obligations are non-cancelable and all amounts paid are nonrefundable. TE21 shall be entitled to withhold performance and discontinue service until all amounts due are paid in full. Customer is responsible for paying any and all withholding, sales, value added or other taxes, duties or charges applicable to the Agreement,

7.4 Termination. Either party may terminate the Agreement effective immediately if the other party is in material breach of any obligation, representation or warranty hereunder and fails to cure such material breach (if capable of cure) within thirty (30) days after receiving written notice thereof from the other party. In addition, either party may terminate the Agreement upon written notice in the event the other party becomes insolvent, files for any form of bankruptcy, has bankruptcy proceedings filed against it that are not dismissed in such party's favor within sixty (60) days, makes any assignment for the benefit of creditors, or dissolves or ceases to conduct business. Notwithstanding the foregoing, Customer's obligation to pay for fees due at the time of termination shall survive termination of the Agreement. Upon termination of the Agreement, Customer's shall have no right whatsoever to access the services or any of its components.

8. INDEMNIFICATION.

(a) TE21 warrants that it is the legal owner of the intellectual property contained in the CASE Assessments and CASE Item Bank. TE21 shall indemnify and hold Customer harmless from any and all claims or causes of action arising out of TE21's provision of services under the Agreement, to include any claims of intellectual property infringement arising from the material contained in CASE Assessments or CASE Item Bank.

(b) Customer warrants that it will use the CASE Assessments and/or CASE Item Bank solely for the purpose and within the restrictions stated above. Customer shall indemnify and hold TE21 harmless from any and all claims or causes of action arising out of any act taken by Customer inconsistent with the purpose as stated, to the extent allowed by applicable law.