



## Digital Rights for

### The Framework for Teaching Evaluation Instrument (2011)

*The Framework for Teaching Evaluation Instrument (2011)* is available in a PDF format from the Danielson Group website. Any educator may download this file for use in his or her own setting, and practitioners may incorporate it into their own systems for their own use.

However, the *Framework for Teaching Evaluation Instrument (2011)* may not be incorporated into a commercial product. Charlotte Danielson has entered into an exclusive agreement with Teachscape for the digital rights to publish and distribute the *Framework for Teaching Evaluation Instrument (2011)*. As such, Teachscape and only Teachscape can incorporate the content of the *Framework for Teaching Evaluation Instrument (2011)* in its software products. Any direct or indirect attempts by any other company to publish this instrument would constitute a violation of Teachscape's contractual rights, and be deemed to be an illegal expropriation of Charlotte Danielson's intellectual property rights.

The complete Teachscape End User Agreement is attached.

## END USER LICENSE AGREEMENT

### 1. LICENSE

#### 1.1 Grant

Subject to the terms and conditions of this End User License Agreement (the "Agreement"), including without limitation the payment of any required license fees by the Licensee referred to below or a master licensee on such Licensee's behalf (e.g., a school district), Teachscape, Inc. ("Teachscape"), grants to the authorized end-user licensee accepting this Agreement (the "Licensee") a non-exclusive, non-transferable license to use, (A) with respect to the Teachscape Reflect™ products, for the purposes of the professional development of the teachers in the licensed Districts only, or, (B) with respect to Teachscape's other products, for the Licensee's personal professional development only: (i) Teachscape's designated software in object code form only, whether installed on the Licensee's computer ("Installed Software") or accessed remotely via Teachscape's Internet site or otherwise; (ii) any content or materials, whether in the form of video, interactive materials, text or any other media, whether accessed by means of such software or otherwise provided by Teachscape; (iii) any associated authorization key (the "Key"); and (iv) all related documentation (collectively referred to as the "Licensed Property").

In the event that the Licensed Property includes any Installed Software, the Installed Software may be installed only on a single unit of the Licensee's computer equipment (the "Equipment"), although Licensee may make one (1) backup copy of the Installed Software. In the event that Licensee requires use of the backup copy, Licensee must contact Teachscape for the Key that will permit the backup copy to run.

#### 1.2 Restrictions on Use and Intellectual Property Ownership

Licensee acknowledges that the Licensed Property and its structure, sequence, organization, content, and source code constitute valuable intellectual property and/or trade secrets of Teachscape and its suppliers. Licensee shall not provide his/her password to, or otherwise provide access to the Licensed Property to, any other individual. Except as expressly provided in the master license agreement or group access agreement, Licensee shall not, and shall not permit any third party to: (i) modify, adapt, alter, translate, or create derivative works from the Licensed Property; (ii) merge the Licensed Property with other software or other content, whether online or otherwise; (iii) sub-license, distribute, sell, provide for service bureau use, lease, rent, loan, or otherwise transfer the Licensed Property (or access to the Licensed Property) to any third party; (iv) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Licensed Property; (v) remove or alter any notices in the Licensed Property; or (vi) otherwise use on any other Equipment or copy the Licensed Property except as expressly permitted. Without limiting the foregoing, the restrictions on use of the Licensed Property shall also apply to any Licensed Property supplied to Teachscape by its suppliers and licensed to Licensee hereunder.

Teachscape shall own and retain all right, title and interest in and to any content, technology, software, know-how, tools, processes, methodology, designs, discoveries and inventions (whether or not protected, registered or recognized under any statute or regulation) techniques and skills relating thereto developed, created, acquired or otherwise used in its technology-assisted training programs, including the provision of services relating to such programs. Teachscape shall own any suggestions, ideas, enhancement requests, feedback, recommendations, data, content, or other information provided by Licensee (collectively, "Comments"), except as provided in the final paragraph of this Section 1.2. Such disclosure, submission or offer of any Comments shall constitute an assignment to Teachscape of all worldwide rights, titles and interests in all copyrights and other intellectual properties in the Comments.

Thus, Teachscape will own exclusively all such rights, titles and interests and shall not be limited in any way in its use, commercial or otherwise, of any Comments. Teachscape is and shall be under no obligation to (i) maintain any Comments in confidence; (ii) to pay any compensation for any Comments; or (iii) respond to any Comments.

Licensee is solely responsible for the content of any Comments provided to Teachscape by Licensee. Licensee agrees that no Comments submitted to Teachscape will violate any rights of any third party, including copyright, trademark, privacy or other personal or proprietary rights. Licensee further agrees that no Comments submitted to Teachscape will be or contain content that is libelous or otherwise unlawful, abusive, harassing, tortious, defamatory, vulgar, hateful, obscene, or invasive of another's privacy, or that harms minors in any way. Licensee agrees not to submit any content containing unsolicited or unauthorized advertising, chain letters, pyramid schemes, or any other form of solicitation. Licensee further agrees not to submit any content containing software viruses or malware of any kind.

Licensee acknowledges and agree that Teachscape may or may not pre-screen Comments, but that Teachscape and its designees shall have the right, but not the obligation, in their sole discretion, to pre-screen, remove, move, or refuse any Comments, including but not limited to Comments that violate this Agreement. Licensee acknowledges and consents that Teachscape may access, preserve, and disclose your registration information, usage, and Comments if required to do so by law or in a good faith belief that access, preservation, or disclosure is necessary to comply with legal process, respond to claims that Comments violate third party rights, respond to Licensee's requests for customer service, protect the rights, property or personal safety of Teachscape, its users, or the public; to enforce this Agreement; or in the event that all or substantially all of Teachscape's assets are acquired by a third party.

With respect to the Teachscape Reflect™ products only, Teachscape shall not own any right, title, or interest in or to any content and data created by Licensee through the use of the products, services, and related materials provided hereunder (even if such content and data is hosted, stored or transmitted on Teachscape's computers or systems), it being understood that Licensee shall be responsible for determining ownership of such content and data. In the absence of Licensee notifying Teachscape otherwise, Teachscape shall be permitted to assume that Licensee owns all such content and data and Licensee shall hold Teachscape harmless from any actions consistent with that assumption.

### 1.3 Acceptance

During the term of this Agreement, Teachscape may provide to Licensee a Key designed to allow Licensee to use the Licensed Property pursuant to the terms and conditions herein. Licensee's activation and/or use of such Key on any Equipment shall constitute acceptance of all of the terms and conditions of this Agreement. Alternatively, if the Licensed Property is to be accessed via the Internet or otherwise accessed remotely, the Licensee's selection (during the initial registration or any renewal or updating process) of a radio button opposite the words "I accept the terms of this Agreement" (or words to similar effect), and then selecting to continue to the next screen of registration shall constitute acceptance of all of the terms and conditions of this Agreement. Any of the foregoing is referred to as an "Acceptance."

### 1.4 Permitted Use.

If Licensee is making any content or data available to Teachscape, Licensee has the sole responsibility for notifying and obtaining consent from all necessary persons (including but not limited to parents, students, teachers, interns, aides, principals or other administrative personnel, and other classroom visitors), and taking all such other actions as may be necessary, in order to ensure that Licensee's use of the products, services or related materials provided or produced hereunder is in compliance with federal, state, and local laws and regulations as well as school or District policies.

With respect to the Teachscape Reflect™ products only, the products, services and/or related materials provided under this Agreement are provided solely for the purpose of permitting Licensees (who must be at least 18 years old) to capture audio and video images of classroom teaching (for Teachscape products that offer this functionality) and to access videotape and other records of classrooms for legitimate education interests and purposes ONLY. The Teachscape Reflect™ products are licensed on the condition that, UNDER NO CIRCUMSTANCES MAY THE PRODUCT, SERVICE OR RELATED MATERIALS BE USED TO RECORD ANY IMAGES IN BATHROOMS, LOCKER ROOMS, CHANGING AREAS, SLEEPING AREAS, HOTEL ROOMS, GUIDANCE COUNSELOR OFFICES, OR OFFICES WHERE MEDICAL OR PSYCHOLOGICAL COUNSELING SERVICES ARE PROVIDED.

With respect to the Teachscape Reflect™ products only, Licensee hereby grants Teachscape permission to contact Licensee with respect to Licensee's use of the Licensed Property and the content and data created therewith, and Licensee may permit Teachscape to use certain of the content and data created by them for professional learning, educational or product development uses. Licensee further grants Teachscape a limited, royalty-free, non-exclusive license to use any such content or data for the limited purpose of making recommendations to teachers or other end users of other training or professional learning opportunities (including any such opportunities in which Teachscape may have a financial interest).

#### 1.5 Hold Harmless.

Licensee agrees to indemnify and hold harmless Teachscape and its officers, employees, representatives, affiliates and successors from and against any loss, liability, expense or damage incurred by any of them as a result of Licensee's failure to comply with its obligations (x) in this Agreement, or (y) under (1) the Family Educational Rights and Privacy Act; (2) the Children's Online Privacy Protection Act; (3) any other federal, state, local or foreign laws that address privacy, data protection, wire-tapping, videotaping, or other related subjects; or (4) any common law, civil law or other non-statutory theory of liability relating to privacy, data protection or other similar subject matters; or (z) under any employee contracts, union agreements, or contracts with other third parties.

## 2. TERM OF AGREEMENT AND TERMINATION

The term of this Agreement shall automatically commence upon Acceptance by the Licensee and payment of any required license and/or access fees, and shall continue until the earliest of: (i) the termination or expiration of any period for which the Licensee has subscribed to use the Licensed Property, (ii) the termination or expiration of any master license or group access agreement pursuant to which Licensee is permitted to use the Licensed Property, (iii) termination of Licensee's employment with the master licensee or group through which Licensee was provided access to the Licensed Property (except as expressly provided in the master agreement), (iv) termination as otherwise provided herein or (v) Licensee's cessation of use of the Equipment, in the case of any Installed Software.

Teachscape may terminate this Agreement in the event of a material breach by the Licensee of any term or condition of this Agreement upon ten (10) days' prior written notice (which may be provided via E-mail to the E-mail address provided by the Licensee), except in the case of a breach of Section 1.2 or the first paragraph of Section 1.4 hereof, in which case Teachscape may terminate this Agreement immediately upon written notice. In addition, Teachscape may terminate this Agreement immediately if the Licensee becomes insolvent, commits an act of bankruptcy or is subject to a proceeding in bankruptcy.

**3. UPGRADES AND ENHANCEMENTS TO LICENSED PROPERTY**

During the term of this Agreement, Teachscape may provide or make available to Licensee certain upgrades, bug fixes and the like which it makes generally available, at no additional charge (to the extent generally provided at no additional charge). Licensee agrees that Teachscape may provide any of the foregoing by means of making a download available on its Internet site.

**4. LIMITED WARRANTY**

For a period of 90 days after the date of Acceptance, Teachscape will take commercially reasonable steps to modify or replace any Licensed Property which in Teachscape's judgment fails, when properly installed, to conform substantially to the functional specifications set forth in the applicable product user documentation. Alternatively, Teachscape may at its option refund, as applicable, the license fee paid by the Licensee or a ratable share of the license or access fee paid under any master license or group access agreement, with the amount to be refunded in either case being proportionate to the remaining license period. Teachscape does not warrant that the Software Products will meet the Licensee's requirements or that operation of the Software Products will be uninterrupted or error-free.

EXCEPT AS EXPRESSLY PROVIDED ABOVE, THE LICENSED PROPERTY PROVIDED UNDER THIS AGREEMENT IS PROVIDED ON AN "AS IS" BASIS. TEACHSCAPE MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO ANY OF THE LICENSED PROPERTY PROVIDED UNDER THIS AGREEMENT. TEACHSCAPE DISCLAIMS ALL WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING AND USAGE OF TRADE OR THEIR EQUIVALENTS UNDER THE LAWS OF ANY JURISDICTION. TEACHSCAPE SPECIFICALLY DOES NOT WARRANT THAT THE LICENSED PROPERTY CONFORMS TO ANY RELATED STATUTE OR REGULATION, AND INDICATES THAT NOTHING STATED OR IMPLIED BY TEACHSCAPE, ITS AFFILIATES AND/OR ITS AGENTS OR REPRESENTATIVES IS TO BE CONSIDERED LEGAL COUNSEL. FURTHER, TEACHSCAPE, ITS AFFILIATES AND/OR ITS AGENTS OR REPRESENTATIVES BEAR NO RESPONSIBILITY TO NOTIFY LICENSEE OF ANY REGULATORY CHANGES WHICH MAY LIMIT THE USE OF THE LICENSED PROPERTY.

**5. LIMITATION ON DAMAGES**

THE PROVISIONS OF SECTION 4 REPRESENT TEACHSCAPE'S SOLE WARRANTIES AND THE LICENSEE'S SOLE REMEDIES FOR ANY VIOLATION BY TEACHSCAPE OF ITS OBLIGATIONS HEREUNDER. IN NO EVENT SHALL TEACHSCAPE'S LIABILITY TO THE LICENSEE OR ANY OTHER PARTY ARISING UNDER THIS AGREEMENT OR IN CONNECTION WITH ANY LICENSED PROPERTY EXCEED THE LICENSE FEE PAID BY THE LICENSEE OR A RATABLE SHARE OF THE LICENSE OR ACCESS FEE PAID UNDER ANY MASTER LICENSE OR GROUP ACCESS AGREEMENT.

TEACHSCAPE SHALL NOT BE LIABLE FOR ANY CLAIMS, LOSSES OR DAMAGES OF THE LICENSEE OR ANY OTHER INDIVIDUAL OR ENTITY OR FOR LOST PROFITS OR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, OR FOR LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES ARISING UNDER THIS AGREEMENT OR IN CONNECTION WITH ANY LICENSED PROPERTY, HOWSOEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES BEFOREHAND.

Some jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages. In such jurisdictions, our liability is limited to the greatest extent permitted by law, or \$100.00, whichever is less.

**6. ASSIGNMENT**

Licensee shall not have the right to assign or otherwise transfer its rights or delegate its duties under this Agreement, by operation of law or otherwise, without the express written consent of Teachscape. Teachscape may assign its rights and delegate its obligations under this Agreement to any third party.

**7. TERMS OF USE AND PRIVACY POLICY**

From time to time Teachscape may post on its Internet site or otherwise include in the Licensed Property a Privacy Policy and/or Terms of Use. Any such Privacy Policy and/or Terms of Use, as the same may be amended from Teachscape from time to time, is incorporated by reference as though set forth in its entirety herein. Use of the Licensed Property constitutes Licensee's acceptance of any such Privacy Policy and/or Terms of Use as may be in effect at the time. Any changes to the Privacy Policy and/or Terms of Use will be effective only after the effective date of the change and will not affect any dispute arising prior to the effective date of the change.

**8. MISCELLANEOUS**

This Agreement shall be construed in accordance with the laws of the State of California, without regard to any conflict of law provisions. Any dispute arising under this Agreement shall be resolved exclusively by the state and federal courts of the State of California in San Francisco County.

None of the terms and conditions contained herein may be added to, modified, superseded or otherwise altered except by an instrument executed and delivered on Teachscape's behalf and approved in the same manner as provided with regard to "Acceptance" above. Should any clause or part of this Agreement be declared invalid or unenforceable, such holding shall not invalidate the remainder.

If either party's performance of any obligation under this Agreement, except for the payment of money owed when due, is prevented or delayed by an event beyond such party's reasonable control, that party will be excused from such performance to the extent it is necessarily prevented or delayed thereby.

The failure of Teachscape to exercise or enforce in any respect any right provided for herein shall not be deemed to be a waiver by Teachscape of the same or any other right contained herein in the future. The provisions contained herein which would by their nature survive the termination or expiration of this Agreement shall so survive.