

Subscriber Agreement

Last Updated: May 5, 2016

This Premium Subscriber Agreement (the “Subscriber Agreement”) is between The Kendrick Group, LLC., a Delaware LLC (“Kendrick Group”) and the organization agreeing to these terms (“Customer”). This Subscriber Agreement governs Customer’s access to Kendrick Group’s Educationrate management service (the “Service”) and its associated applications and website. By clicking “I Agree,” attaching this Subscriber Agreement to a purchase order or similar order form, or using the Service as a paid subscriber, Customer agrees to the terms of this Subscriber Agreement. If an individual is entering into this Subscriber Agreement on behalf of an organization such organization shall be deemed the Customer hereunder and such individual hereby represents and warrants that he has the power and authority required to bind such organization to this Subscriber Agreement.

1. **The Service.** Customer and users of the Service under Customer’s account (the “End Users”) may access and use the Services in accordance with this Subscriber Agreement and Kendrick Group’s Acceptable Use Policy. Kendrick Group may update or modify the Services from time to time. If, in Kendrick Group’s reasonable judgment, any such modification to the Service materially reduces the Service’s functionality, Kendrick Group will inform Customer via the email address associated with Customer’s account no less than twenty (20) days prior to such change.

Kendrick Group will use industry standard technical and organizational security measures in connection with the storage, processing and transfer of Customer Data that are designed to protect the integrity of Customer Data and to guard against the unauthorized or unlawful access to, use of or processing of such Customer Data. For purposes hereof, the term “Customer Data” shall mean the structured data and any files or attachments submitted to the Service by Customer, as well as the account and contact information submitted to the Service by Customer and its End Users.

2. Customer Obligations.

1. **Administration of Customer’s Account.** Customer may specify one or more administrators (each an “Administrator”) to manage its account. Administrators have the ability to access, monitor, use, export and disclose all content posted by End Users. Customer is responsible for: (i) the selection of its Administrator(s); (ii) maintaining the confidentiality of passwords and Administrator accounts; (iii) managing access to Administrator accounts; and (iv) ensuring that each Administrator’s use of the Service complies with this Subscriber Agreement. Kendrick Group shall not be held liable for any actions on the part of Customer’s Administrator(s).
2. **End User Conduct; Compliance.** Customer is responsible for use of the Service by its End Users and for their compliance with Kendrick Group’s Acceptable Use

Policy. Customer is also responsible for providing any notice and obtaining any consents and authorizations necessary: (i) to allow the Administrator to access, monitor, use and disclose the content posted by the End Users on the Service; and (ii) to allow Kendrick Group to provide the Administrator with access to such End User content. The Service is not authorized for use by persons under the age of 18 and Customer will ensure that it does not allow any person under 18 to use the Service. Customer will promptly notify Kendrick Group if it becomes aware of any unauthorized access to Customer's account or the Service.

3. **Restrictions.** Customer will not: (i) rent, sell, resell or lease the Service to any third party; (ii) use the Service for any purpose where either the use or the failure of the Service might lead to personal injury, death or physical damage; or (iii) disassemble, decompile or reverse engineer the Service or attempt or assist anyone else to do so, unless such restriction is prohibited by law.
4. **Suspension.** Kendrick Group may request that Customer suspend the account of any End User who: (i) violates this Subscriber Agreement or Kendrick Group's Acceptable Use Policy; or (ii) is using the Service in a manner that Kendrick Group reasonably believes may cause a security risk, a disruption to others' use of the Service, or liability for Kendrick Group. If Customer fails to promptly suspend or terminate such End User's account, Kendrick Group reserves the right to do so.
3. **Customer's Use of Third Party Services.** Kendrick Group does not warrant or support any third party service and will not be responsible for any act or omission on the part of such third party or its service.
4. **Intellectual Property Rights.**
 1. **Limited License to Use Customer Content.** Customer hereby grants to Kendrick Group a limited, non-exclusive and non-transferable (except in connection with the sale or transfer of its business) license to access, use, copy, reproduce, process, adapt, publish, transmit and display content submitted to the Service by the End Users (the "Customer Content") for the limited purpose of (i) providing the Service and associated customer support to Customer; (ii) displaying the Customer Content to the End Users; and (iii) analyzing and improving the Service.
 2. **Reservation of Rights.** Except as expressly set forth herein, this Subscriber Agreement does not (i) grant Kendrick Group any rights or interest in or to the Customer Content or any Customer Intellectual Property; or (ii) grant Customer any rights or interest in or to the Service or any Kendrick Group Intellectual Property. For purposes hereof, the term "Intellectual Property" shall mean any current or future worldwide rights under any patent, copyright, trademark, or trade secret; any moral rights or any similar rights.
 3. **Use of Customer Suggestions.** Kendrick Group may incorporate into the Service any suggestions or feedback received from Customer without any obligation to Customer and any such modifications to the Service shall be the sole and exclusive property of Kendrick Group. Kendrick Group may also share and publish aggregate, anonymized data about the use of our Service by our customers.

4. **The Kendrick Group Customer List.** Kendrick Group may include Customer's name in a list of Kendrick Group's Customers online and in print and electronic marketing materials.
5. **Fees and Payment.** Fees are non-refundable except as required by law or as explicitly set forth herein. Customer will pay all applicable fees when due and, if such fees are being paid via credit card or other electronic means, Customer authorizes Kendrick Group to charge such fees using Customer's selected payment method. By default, customer accounts are set to auto-renew and Kendrick Group may automatically charge Customer for such renewal on or after the renewal date associated with Customer's account unless Customer has cancelled the Service prior to its renewal date. Kendrick Group may revise fee rates for the Service from time to time and will provide Customer's designated administrator(s) with email notice of any changes in fees at least thirty (30) days prior to Customer's Service renewal date. Customer is responsible for providing complete and accurate billing information to Kendrick Group. Kendrick Group may suspend or terminate Customer's use of the Service if fees become past due. Customer is responsible for all taxes (excluding taxes on Kendrick Group's net income) and Kendrick Group will charge tax when required to do so by law.

If Customer requires the use of a purchase order or purchase order number, Customer (a) must provide the purchase order number at the time of purchase; and (b) agrees that, except for any amendments to this Subscriber Agreement that are clearly marked as such on the face of the Purchase Order, any terms and conditions on a Customer purchase order that conflict with this Subscriber Agreement will not apply and are null and void.

6. **Term and Termination.** This Subscriber Agreement will remain in effect until Customer terminates its subscription to the Service or until this Subscriber Agreement is otherwise terminated as provided for herein. Customer may terminate this Subscriber Agreement at any time. In addition, either party may terminate this Subscriber Agreement if: (a) the other party is in material breach and fails to cure such breach within twenty (20) days following receipt of written notice from the non-breaching party; (b) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within 90 days. In the event that this Subscriber Agreement is terminated, (i) the rights granted to Customer pursuant to this Subscriber Agreement (except as specifically set forth in this section) will cease immediately; and (ii) any premium features provided to Customer will cease to be provided. The following sections will survive expiration or termination of this Subscriber Agreement: Sections 4(b) and (c), 6-9, and 11.
7. **Confidentiality.**
 1. **Confidentiality.** During the course of their performance under this Subscriber Agreement, each party may make available to the other party information that is not generally known to the public and at time of disclosure is either identified as, or should reasonably be understood by the receiving party to be, proprietary or confidential (the "Confidential Information"). Confidential Information shall include, but shall not be limited to: business plans, strategies, forecasts, projects and analyses; financial information and fee structures; business processes, methods and models; employee, customer and supplier information; sales and

marketing information. With respect to the Customer, Confidential Information also includes the Customer Content.

2. **Obligations.** Except as otherwise expressly permitted under this Services Agreement, with the express prior written consent of the disclosing party, or as required by law, the receiving party will not disclose, transmit or otherwise disseminate to a third party any Confidential Information of the disclosing party. The receiving party will use the same care and discretion with respect to the Confidential Information received from the disclosing party as it uses with its own similar information, but in no event less than a reasonable degree of care. Kendrick Group may disclose Customer's Confidential Information to its employees, consultants, agents or advisors who have a strict need to know such Confidential Information solely for the purpose of performing Kendrick Group's obligations under this Agreement and only to those who are obligated to maintain the confidentiality of such Confidential Information upon terms at least as protective as those contained in this Agreement. Customer may disclose Kendrick Group's Confidential Information to its employees, consultants, agents or advisors who have a strict need to know such Confidential Information and are obligated to maintain the confidentiality of such Confidential Information upon terms at least as protective as those contained in this Agreement.
 3. **Exclusions.** The obligations set forth in Section 7(b) above shall not apply to any Confidential Information that the receiving party can demonstrate: (i) the receiving party possessed, without any obligation of confidentiality, prior to disclosure by the disclosing party; (ii) is or becomes publicly available without breach of this Agreement by the receiving party; (iii) is or was independently developed by the receiving party without the use of any Confidential Information of the disclosing party; or (iv) is or was received by the receiving party from a third party that does not have an obligation of confidentiality to the disclosing party or its affiliates. Either party may disclose the terms of this Agreement to potential parties to an acquisition or similar transaction to facilitate due diligence and closing of the transaction, provided that potential party is subject to written non-disclosure obligations and limitations on use only for the prospected transaction. The receiving party may disclose Confidential Information of the disclosing party if legally required to do so in connection with any legal or regulatory proceeding, provided, however, that in such event the receiving party will, if lawfully permitted to do so, notify the disclosing party within a reasonable time prior to disclosure so as to allow the disclosing party an opportunity to seek appropriate protective measures.
8. **Indemnification.**
1. **By Customer.** Customer hereby agrees to indemnify, defend and hold harmless Kendrick Group, its licensees and licensors, and their respective employees, contractors, agents, officers and directors (together, the "Kendrick Group Affiliates"), from and against any and all liabilities, damages, obligations, losses, costs and expenses (including but not limited to reasonable attorney's fees) (together, the "Losses") arising from or as a result of any claim by a third party against Kendrick Group or Kendrick Group Affiliates regarding: (i) use of or access to the Service by Customer or its End Users in violation of this Subscriber

Agreement or our Acceptable Use Policy; or (ii) any data or Customer Content transmitted or received through Customer's account.

2. **By The Kendrick Group.** Kendrick Group hereby agrees to indemnify, defend and hold harmless Customer and its employees, contractors, agents, officers and directors (together the "Customer Affiliates"), from and against any and all Losses arising from or as a result of any claim by a third party against Customer or the Customer Affiliates to the extent based on an allegation that the Service or Kendrick Group's technology used to provide the Service infringes or misappropriates any copyright, trade secret, U.S. patent, or trademark right of the third party. In no event will Kendrick Group have any obligations or liability under this section arising from: (i) use of the Service in a modified form or in combination with materials not furnished by Kendrick Group; (ii) use of any third party app developed using Kendrick Group's API; or (iii) any content, information, or data provided by Customer, End Users, or other third parties. THIS INDEMNITY IS CUSTOMER'S ONLY REMEDY UNDER THIS SUBSCRIBER AGREEMENT FOR ANY VIOLATION BY THE KENDRICK GROUP OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.
3. **Infringement Claims.** If the Service becomes, or in Kendrick Group's reasonable judgment is likely to become, the subject of a claim of infringement, then Kendrick Group may: (i) obtain the right, at Kendrick Group's expense, for Customer to continue using the Service; (ii) provide a non-infringing functionally equivalent replacement; (iii) modify the Service so that it is no longer infringing. If Kendrick Group, in its sole and reasonable judgment, determines that none of the above options are commercially reasonable, then Kendrick Group may suspend or terminate Customer's use of the Service and provide Customer with a pro rata refund of prepaid fees.
4. **Process.** The party seeking indemnification will provide prompt notice concerning the existence of an indemnifiable claim and cooperate fully with the indemnifying party in defending the claim. Failure to give prompt notice shall not constitute a waiver of a party's right to indemnification and shall affect the indemnifying party's obligations hereunder only to the extent that the indemnifying party's rights are materially prejudiced by such failure or delay. The indemnifying party will have full control and authority over the defense of any claim; provided, however, that: (i) the indemnified party may join in the defense at its own expense using counsel of its choice; and (ii) any settlement requiring the party seeking indemnification to admit liability or make any financial payment will require such party's prior written consent, not to be unreasonably withheld or delayed.
9. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT IN CONNECTION WITH THEIR RESPECTIVE INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL EITHER PARTY OR THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES OR SUPPLIERS BE LIABLE UNDER THIS SUBSCRIBER AGREEMENT FOR (I) ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES; OR (II) LOSS OF USE, DATA, BUSINESS REVENUES, PROFITS (IN EACH CASE WHETHER DIRECT OR

INDIRECT), GOODWILL, OR OTHER INTANGIBLE LOSSES. UNDER NO CIRCUMSTANCES WILL THE KENDRICK GROUP BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR CUSTOMER'S ACCOUNT OR THE INFORMATION CONTAINED THEREIN BY ANY THIRD PARTY. THESE LIMITATIONS OF LIABILITY SHALL APPLY REGARDLESS OF WHETHER A PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

EXCEPT IN CONNECTION WITH ITS INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL THE KENDRICK GROUP BE LIABLE TO CUSTOMER FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNT PAID BY CUSTOMER TO THE KENDRICK GROUP HEREUNDER DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

10. **Hosting of the Service; Export Restrictions.** The Service is controlled and operated from facilities in the United States. Kendrick Group makes no representations that the Service is appropriate or available for use in other locations. Customers who access or use the Service from other jurisdictions (or who allow their End Users to do so) do so of their own volition and are responsible for compliance with all applicable United States and local laws and regulations, including but not limited to export and import regulations.

11. **Miscellaneous.**

1. **Modifications.** Kendrick Group may revise this Subscriber Agreement from time to time by posting the modified version on its website at least twenty (20) business days prior to the effective date of the modifications being made; provided, however, that no such modification shall include a reduction in Customer's rights or Kendrick Group's obligations unless affirmatively agreed to by Customer in advance. If, in Kendrick Group's sole and reasonable discretion, the modifications being proposed are material, Kendrick Group will notify Customer of such proposed modifications via email to the email address associated with Customer's account. By continuing to access or use the Service after the posted effective date of modifications to this Subscriber Agreement that do not include a reduction in Customer's rights or Kendrick Group's obligations hereunder, Customer agrees to be bound by such modifications.
2. **Governing Law; Dispute Resolution.** This Subscriber Agreement will be governed by the laws of the State of Delaware without regard to its conflict of laws provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Claims relating to this Agreement or the Service will be resolved through any court in Wilmington, Delaware. Either party may bring suit in the federal or state courts located in Wilmington, Delaware solely for injunctive relief to stop unauthorized use or abuse of the Service or infringement of intellectual property rights and both Kendrick Group and Customer agree to personal jurisdiction there. All disputes will be resolved on an individual basis and customer may not bring a claim in a

class, consolidated or representative action. Class arbitrations, class actions, private attorney general actions, and consolidations with other arbitrators are not allowed under this Subscriber Agreement.

3. **Relationship of the Parties.** The parties are and shall be independent contractors with respect to all services provided under this Subscriber Agreement.
4. **Force Majeure.** Except for payment obligations, neither Kendrick Group nor Customer will be liable for inadequate performance to the extent caused by a condition that is beyond the party's reasonable control, including but not limited to natural disaster, civil disturbance, acts of terrorism or war, labor conditions, governmental actions and interruption or failure of the Internet or any utility service.
5. **Assignment.** Neither this Subscriber Agreement nor any of the rights and licenses granted hereunder, may be transferred or assigned by either party without the other party's express written consent; provided, however, that either party may assign this Subscriber Agreement without the other party's consent to an affiliate or in connection with a merger, acquisition, corporate reorganization or sale of all or substantially all of its assets. Any other attempt to transfer or assign this Subscriber Agreement will be null and void.
6. **Entire Agreement.** This Subscriber Agreement, together with any Customer purchase order or order form associated herewith (as limited by Section 6), constitutes the entire agreement of the parties concerning the subject matter hereof and supersedes and replaces any prior or contemporaneous understandings and agreements, whether written or oral, with respect to the subject matter hereof. If a court of competent jurisdiction deems any provision of this Subscriber Agreement invalid, the invalidity of such provision shall not affect the validity of the remaining provisions hereof, which shall remain in full force and effect.
7. **No Waiver.** No waiver of any term of this Subscriber Agreement shall be deemed a further or continuing waiver of such term or any other term, and a party's failure to assert any right or provision under this Subscriber Agreement shall not constitute a waiver of such right or provision.

For questions about these or any terms or policies, email us at legal@educationrate.com