

KinderTEK Application End User License Agreement

This KinderTEK Application End User License Agreement (“Agreement”) is between You and University of Oregon and its affiliates (“UO”). This Agreement governs your use of the KinderTEK Application and any and all related documentation, and updates and upgrades that replaces or supplements the software in any respect and which are not distributed with a separate license (collectively the “Application”). By accepting the Agreement and/or using the Application, you agree to be bound by the Agreement.

BY INSTALLING OR USING THE APPLICATION YOU AGREE TO THE TERMS OF: 1) THIS AGREEMENT; AND 2) KinderTEK® DATA SERVICES TERMS OF USE (if applicable) AND AGREE TO BE BOUND BY THEM. If you do not agree to the terms of this Agreement and /or the data services Terms of Use if you intend to use UO’s data services, then do not install or use the application.

1. Incorporation.

1.1 This Agreement incorporates by reference the Licensed Application End User License Agreement (The “LAEULA”) published by Apple, Inc. (located online at <http://www.apple.com/legal/itunes/appstore/dev/stdeula/>). For purposes of this Agreement, UO is considered the “Application Provider” as defined in the LAEULA. If any terms of this Agreement conflict with the terms of the LAEULA, the terms of this Agreement shall control.

1.2 This Agreement incorporates by reference KinderTEK’s Privacy Policy published by CTL at <https://dibels.uoregon.edu/help/privacy> and if you use data services, the KinderTEK data services terms of use. This Agreement will supplement the KinderTEK data services terms of use if you use KinderTEK data services.

2. Grant.

2.1 Commencing on the Effective Date, and provided you conform to the terms and conditions of this Agreement, UO hereby grants and You accept a limited, non-exclusive license to use the Application.

2.2 You shall not distribute, publish, sell, import or otherwise transfer or allow to be transferred the Application or copies thereof, in whole or in part, to third parties without the prior written permission of UO.

2.3 The Application and its contents are intended solely for the personal, non-commercial, educational use and may only be used in accordance with the terms of this Agreement whether used alone or with KinderTEK data services. You shall abide by all copyright notices, trademark rules, information, and restrictions contained in any Content accessed or submitted through use of the Application.

2.4 In the course of using the Application, You and other users may provide information, which may be used by UO in connection with the Application or KinderTEK data services.

3. Your Obligations

3.1 If you are accepting this Agreement on behalf of a minor, you represent and warrant that you have the authority to enter into this Agreement on behalf of that minor. You also certify that you are legally permitted to use and access the Application and KinderTEK data services. The Agreement is void where prohibited by law.

3.2 Student profiles should not be shared by multiple users. Students' mastery and progress is reliable and valid only when students work independently and this Agreement restricts your use to one user per student account.

3.3 KinderTEK data is, by default, accessible only on the device on which it was created.

3.4 It is your responsibility to keep the device you installed KinderTEK on secure and safe so that your data is secure.

3.5 Students may productively use KinderTEK on multiple devices ONLY if KinderTEK data services are activated and regularly communicating with devices.

3.6 If your device crashes or is stolen or if KinderTEK is deleted, all KinderTEK data will be lost irrecoverably.

4. Access

4.1 The Application is available for download in the iTunes App Store. The Application may be used with or without hosting (e.g., online data storage and access).

4.2 Hosted services require You to have an established KinderTEK data services account and access through your Organization (School, School District, or other qualified entity).

4.2.1 From the device and Application, You may only access basic student management and reporting features. Advanced and group-level features are accessible through Your KinderTEK data services account.

4.2.2 You acknowledge that when you use this Application, your wireless carrier may charge you fees for data, messaging, and/or other wireless access. **YOU ARE SOLELY RESPONSIBLE FOR ANY COSTS YOU INCUR TO ACCESS THIS APPLICATION FROM A MOBILE DEVICE.**

4.3 In the event You experience difficulties accessing or using the Application with your iOS Computer Device contact KinderTEK@uoregon.edu.

5. Personal Information.

5.1 Use of the application's hosted services requires you to send your user name, password, and email address (collectively "Your Information") connected with your account to the Apple Computing Device used to access the Application.

5.2 UO makes no warranty that a third party cannot decrypt Your Information should a third party come into possession of your Device.

6. Term.

6.1 Provided that the Agreement is not otherwise terminated as provided below, and that You agree to UO's amendments and changes to this Agreement from time to time, this Agreement shall be in effect for as long as UO provides access to KinderTEK using the Application.

7. Termination

7.1 You may terminate this Agreement at any time by deleting both your KinderTEK data services account and your device(s)' KinderTEK application. Contact KinderTEK@uoregon.edu if you experience any technical difficulties in deleting your accounts.

7.2 UO may immediately terminate this Agreement or any and all of Your accounts at its discretion, upon written notice (email) if You are in breach of this Agreement. UO's right to terminate under this clause is in addition to any and all other legal remedies which UO may have for the enforcement of any and all terms thereof, and do not in any way limit any other legal remedy UO may have.

7.3 Termination of this Agreement will terminate all rights and licenses granted to You relating to the Application.

8. Disclaimer of Warranties.

8.1. YOU EXPRESSLY AGREE THAT APPLICATION IS PROVIDED ON AN 'AS IS' BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NONINFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER APPLICABLE LAW.

8.2. IN NO EVENT SHALL UO BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS OR PROFITS, DATA, OR USE OF KINDERTEK OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL DAMAGES, ARISING

OUT OF THE USE OF, OR INABILITY TO USE KINDERTEK, EVEN IF ORGANIZATION WAS PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY OTHER CLAIM BY YOU OR ANY OTHER PERSON.

9. Indemnification

9.1 To the extent allowed by controlling law, You shall indemnify and hold harmless UO and its officers, faculty, employees, students and agents, against any and all third party claims, suits, losses, damages, costs, fees and expenses resulting from Your use of the Application (“University Claims”), including but not limited to any damages, losses or liabilities whatsoever with respect to death or injury to any person and damage to any property. This indemnification clause shall survive the termination of this Agreement.