

# KERN ENTREPRENEURIAL ENGINEERING NETWORK (KEEN) PLATFORM TERMS OF SERVICE

**Last Updated: December 20, 2017**

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**By accessing or using the Platform, you agree on behalf of yourself and any institution or company that you represent (together, “you”) that you have read and understand these Terms and our [Privacy Policy](#). If you do not agree with these Terms or our [Privacy Policy](#), do not access or use the Platform.**

**We reserve the right to modify these Terms at any time. All changes will be effective immediately upon posting to the Platform and, by accessing or using the Platform after changes are posted, you agree to those changes. Material changes will be conspicuously posted on the Platform or otherwise communicated to you.**

- 1. Privacy Policy.** We may collect certain information from your use of the Platform as described in our [Privacy Policy](#), which is incorporated into these Terms by this reference. Your use of the Platform constitutes your consent to the information collection, use, and sharing described in our [Privacy Policy](#).
2. Provided you comply with these Terms, Kern grants you a limited, revocable, nonassignable, nontransferable, nonsublicensable, nonexclusive license to access and use the Platform solely for your own educational and research purposes, including to copy, reproduce, display, distribute, publish, modify, make derivative

works of, implement, and use the downloadable educational materials made available on the Platform's Cards, provided that under no circumstances may you sell or otherwise commercialize those materials. All access to and use of the Platform must be in furtherance of the missions of KEEN and the entrepreneurial mindset.

- 3. Intellectual Property Rights.** The Platform, including its text, audio, video, graphics, charts, photographs, interfaces, icons, software, computer code, data, trademarks, logos, slogans, names of products and services, documentation, other components and content, and the design, selection, and arrangement of content is exclusively the property of Kern or, as applicable, its suppliers and licensors, and is protected by copyright, trademark, and other intellectual property laws. Any unauthorized use of any trademarks, trade dress, copyrighted materials, or any other intellectual property belonging to Kern or any third party is strictly prohibited and may be prosecuted to the fullest extent of the law. The Platform may contain references to third-party marks and copies of third-party copyrighted materials, which are the property of their respective owners. Except as expressly described in these Terms, no licenses or other rights, express or implied, are granted by Kern to you under any patent, copyright, trademark, trade secret, or other intellectual property right of Kern. **Copyright © 2017 The Robert D. and Patricia E. Kern Family Foundation, Inc. All rights reserved.**
- 4. Compliance with Laws.** You are responsible for complying with all local, state, and federal laws and regulations that apply to your use of the Platform, including without limitation anti-spam laws and privacy laws.
- 5. Restrictions on Your Use of the Platform.**

- You may download and print one copy of the Platform's visible content for your own internal use, provided you do not modify or delete any copyright, trademark, or other proprietary notices.
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- Except as expressly described above, you may not otherwise copy, reproduce, display, duplicate, publish, distribute, modify, translate, adapt, or create derivative works of the Platform or any part of the Platform without the prior written consent of Kern.
- You may not access, use, or copy any portion of the Platform, including any of its content, through the use of indexing agents, spiders, scrapers, bots, web crawlers, or other automated devices or mechanisms.
- You may not use the Platform to post or transmit any material that contains any viruses, Trojan horses, worms, time bombs, cancelbots, malware, adware or other computer programming routines that may damage, interfere with, surreptitiously intercept, or expropriate any system, data, or personal information.
- User activities that aim to render the Platform or associated services inoperable or to make their use more difficult are prohibited.
- You may not submit inaccurate information via the Platform (including misrepresenting your qualifications or affiliations with any institution), commit fraud or falsify information in connection with your use of the Platform, or act maliciously against the business interests or reputation of Kern.
- You may not impersonate or attempt to impersonate another user or person.
- You may not create an account for any person other than yourself without that other person's permission.
- You may not create more than one account.

- You may not use a user profile image other than a headshot-style photograph.
- You may not engage in data mining or similar data gathering or extraction activities.
- You may not retrieve data or other content from the Platform for purposes of creating or compiling that content for any purpose other than your authorized use of the Platform as permitted by these Terms.
- You may not harass, annoy, intimidate, or threaten any Kern employees, contractors, agents, or representatives engaged in providing the Platform.
- You may not collect usernames or email addresses of other Platform users by electronic or any other means for purposes of sending unsolicited emails or other communications or of creating accounts for individuals other than yourself.
- You may not post or send unsolicited messages, chain letters, spam, or junk mail.
- You may not sell or otherwise transfer your Platform account.
- You may not use the Platform for unlawful purposes.

## **6. Your Account and User Profile; Cards, Subnets, and Forums.**

**a.** You will be required to set up an online Platform account in order to become a member of KEEN, to submit educational materials and other User-Generated Content, and to otherwise use the Platform. You will be required to submit certain information in order to set up your account and will be required to establish a username and password. You are responsible for maintaining the confidentiality of any information you use in connection with the Platform, including your username and any password. You are responsible for all activity on your account. If you believe someone else has accessed your account, please change your password and notify us immediately at [info@kffdn.org](mailto:info@kffdn.org). In connection with your access and use of the Platform and that of any person authorized by you to access and use the Platform, you are responsible for complying with all applicable laws, regulations and policies of all relevant jurisdictions, including all applicable local rules regarding online conduct.

**b.** You warrant that all information you provide to us in connection with your access to and use of the Platform is true, accurate, and complete to the best of your knowledge and belief. If you submit the personal information of any person other than yourself in using the Platform, you warrant that you have that person's permission to provide us with that information.

**c.** You understand that any person can create a Platform account and that all Platform users will be able to view your Platform user profile and any Cards, Subnets, Forums, and other pages that you create, join, or participate in. You may invite other Platform users to create an account on the Platform and to collaborate with you on Cards by selecting that option on the Platform. You may message other Platform users, and receive messages from other Platform users, via the Platform. You may categorize and create groups of other Platform users using the "My Community" feature.

**2. Training Materials.** You may be required to view specified entrepreneurial mindset ("EM") training videos or otherwise complete certain EM trainings through the Platform before you are permitted to create Cards, Subsets, or access certain other functionality of the Platform. You may not mark any training materials as completed unless you have in fact viewed and participated in (if applicable) those training materials in their entirety.

**3. Event Registration Fee Payment Information.** Purchases of event tickets through the Platform must be made by credit or debit card. Information about our collection and use of payment-related information is described in our [Privacy Policy](#). If the credit or debit card information that you submit is incorrect or invalid, your payment will not be processed. We have no responsibility or liability if your credit or debit card is declined by your financial institution. Payments are processed by our PCI-compliant third-party payment processor. Refunds, if available, are the responsibility of Kern and are at Kern's sole discretion.

- 4. Account Suspension, Deactivation, and Termination.** Kern may, in its sole discretion, suspend, deactivate, or terminate your account and your use of the Platform for any reason, without notice or liability, including if you breach these Terms, upon any unauthorized use of your username or password, if you act in an abusive manner, if you act in a manner inconsistent with local, state, or federal laws or regulations, if your account is inactive, or if it becomes no longer commercially viable to provide the Platform to you. If we suspend, deactivate, or terminate your account, you may not create another account without our prior written permission. You may terminate your account at any time by selecting that option on the Platform, but you understand that any User-Generated Content (as defined below) you have provided will both remain in our archives and will continue to be accessible by other Platform users (for example, through Cards that you have created or to which you have contributed materials). If you terminate your account, your user profile will no longer be viewable.
- 5. Program, Product, and Service Availability.** Any programs, products, or services (for example, events) that may be mentioned on the Platform are subject to availability. Kern may change the programs, products, and services mentioned on the Platform at any time without notice.
- 6. NO WARRANTY.** THE PLATFORM IS PROVIDED “AS IS,” “AS AVAILABLE,” AND WITHOUT ANY WARRANTY OF ANY KIND. KERN MAKES COMMERCIALY REASONABLE EFFORTS TO ENSURE THAT ALL MATERIAL, INFORMATION, AND DATA ON THE PLATFORM (EXCLUDING ANY USER-GENERATED CONTENT) IS ACCURATE AND RELIABLE, BUT NEITHER ACCURACY NOR RELIABILITY CAN BE GUARANTEED. KERN DOES NOT GUARANTEE THE QUALITY, COMPLETENESS, TIMELINESS, OR AVAILABILITY OF THE PLATFORM. KERN DOES NOT WARRANT THAT THE PLATFORM

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- 7. LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL KERN, ITS AFFILIATES, OR ITS OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES, CONSULTANTS, AGENTS, SUPPLIERS, OR LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL LOSS OR DAMAGE, OR ANY OTHER LOSS OR DAMAGE OF ANY KIND, ARISING OUT OF OR IN CONNECTION WITH THE PLATFORM OR YOUR ACCESS TO OR USE OF, OR INABILITY TO ACCESS OR USE, THE PLATFORM (INCLUDING THE INPUT OF PERSONALLY IDENTIFIABLE AND OTHER INFORMATION INTO THE PLATFORM), WHETHER THE CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, WARRANTY, OR OTHERWISE, AND EVEN IF KERN HAS EXPRESS KNOWLEDGE OF THE POSSIBILITY OF THE LOSS OR DAMAGE. YOUR SOLE AND EXCLUSIVE REMEDY IS TO STOP ACCESSING AND USING THE PLATFORM. WITHOUT LIMITING THE FOREGOING, IN NO EVENT WILL KERN'S LIABILITY TO YOU EXCEED \$100, EVEN IF THIS REMEDY FAILS OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO SOME OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.
8. You will indemnify, defend, and hold harmless Kern, its affiliates, and its and their respective directors, officers, employees, contractors, representatives, consultants, agents, suppliers, and licensors from and against all losses, claims, liabilities, demands, complaints, actions, damages, judgments, settlements, fines, penalties, damages, expenses, and costs (including reasonable attorneys' fees) that arise out of or in connection with your access to or use of the Platform, your misuse of any material, data, or other information downloaded or otherwise obtained from the Platform, or your violation of these Terms. We reserve, and you



grant to us, the exclusive right to assume the defense and control of any matter subject to indemnification by you.

## **9. User-Generated Content.**

**a.** The Platform allows you to create, post, transmit, upload, publish, distribute, broadcast, submit, or otherwise provide comments, data, text, images, video, audio, and other content and material via the Platform and to respond to content provided by others (together, “**User-Generated Content**”). “User-Generated Content” includes any Materials that you may provide pursuant to the [KEEN Materials License Agreement](#) (as that term is defined therein). By providing any Materials via the Platform, you agree that you have read and understood the [KEEN Materials License Agreement](#). To the extent any provision of these Terms pertaining to Materials conflict with any provision in the [KEEN Materials License Agreement](#), the [KEEN Materials License Agreement](#) will control.

**b.** User-Generated Content is neither generated nor controlled by Kern. Kern is not responsible for any User-Generated Content. You are responsible for all User-Generated Content that you provide and for the legality, originality, and appropriateness thereof. By providing User-Generated Content you warrant that you are the creator or owner of that User-Generated Content or that you otherwise have the rights, permissions, and consents necessary to provide that User-Generated Content to us and to allow us to use that User-Generated Content as permitted by these Terms and that any User-Generated Content you provide will not cause Kern to violate any law or regulation. By providing User-Generated Content, you agree not to claim that any use of that User-Generated Content by us or any third party infringes or violates your or any other person’s intellectual property rights, rights of privacy, rights of publicity, or other right. You retain any copyright or other intellectual property right you may have in User-Generated Content that you provide, subject to the license granted to Kern below.

**c.** Please keep in mind that any User-Generated Content that you provide may be publicly available, either via the Platform or otherwise. You must maintain a polite, pleasant, and respectful environment. User-Generated Content that harasses, abuses, stalks, threatens, or otherwise violates the legal rights of others is prohibited. User-Generated Content must be relevant to the applicable topic. User-Generated Content that is defamatory, indecent,

pornographic, obscene, or otherwise objectionable or harmful is prohibited. You may not create a false identity, hide your true identity, or impersonate or represent any person other than yourself. You may not provide any other person's private or confidential information without that person's permission.

**d.** User-Generated Content may not be monitored. Kern reserves the right, but does not have the obligation, to review User-Generated Content and its submission. Kern also reserves the right, but does not have the obligation, at any time for any reason (including due to violation of these Terms), to prescreen User-Generated Content, to edit, redact, and otherwise modify User-Generated Content, to reorganize and recategorize User-Generated Content, and to delete User-Generated Content from the Platform. Kern has no obligation to archive or otherwise store any User-Generated Content. Kern reserves the right to impose limits on Platform features (e.g., the ability to provide User-Generated Content) and to restrict your access to all or parts of the Platform at any time for any reason, including violation of these Terms.

**e.** If you delete User-Generated Content that you have provided (where that option is available), you understand that it will remain in our archives and that users who have accessed that User-Generated Content may continue to have access to and use it.

**f.** As between you and Kern, you own all User-Generated Content that you provide. If you provide User-Generated Content, you grant Kern an unlimited perpetual, irrevocable, transferable, assignable, sublicensable, royalty-free, fully paid-up, worldwide license to copy, reproduce, implement, modify, adapt, reformat, translate, excerpt, prepare derivative works of, store, publish, perform, display, license, sell, exploit, and otherwise use and distribute (in all media and methods now known or later developed) for any purpose, including developing, manufacturing, and marketing products and services. You understand that we may modify User-Generated Content that you provide. For more information on how we use and share User-Generated Content, please review our [Privacy Policy](#).

**g.** If you believe that anything on the Platform infringes any copyright that you own or control, please follow the process described below. If you believe that anything on the Platform violates another law or regulation or any provision of these Terms, please notify us of that violation at [info@kffdn.org](mailto:info@kffdn.org).

**10. Copyright Policy.** We respect the intellectual property rights of others and we ask that our users do the same. In accordance with the Digital Millennium Copyright Act (“**DMCA**”), located at 17 U.S.C. § 512, and other applicable laws, we strive to expeditiously remove any infringing material from the Platform if we become aware of the same. If you believe that anything on the Platform infringes any copyright that you own or control, please provide our designated agent with a notice that contains the following information:

- A description of the copyrighted work(s) that you claim have been infringed;
- A description of the allegedly infringing material, including its location on the Platform;
- A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
- Your email address, telephone number, and mailing address;
- A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or are authorized to act on the copyright owner’s behalf; and
- An electronic or physical signature of a person authorized to act on behalf of the copyright owner.

Your notice must meet the then-current requirements implemented by the DMCA. Contact information for our designated agent for notice of claims of copyright infringement is:

Clement Mariaselvanayagam  
Kern Family Foundation  
W305S4239 Brookhill Road  
Waukesha, WI 53189  
Phone: (262) 968-6838  
Email: [clementm@kffdn.org](mailto:clementm@kffdn.org)

- 11. Third-Party Web Sites.** The Platform may link to, or be linked to, web sites not maintained or controlled by Kern. Those links are provided as a convenience and Kern is not responsible for examining or evaluating the content or accuracy of, and does not warrant or endorse, any third-party web site or any products or services made available through those web sites. Please take care when leaving the Platform to visit a third-party web site. You should read the terms of use and privacy policy for each web site that you visit.
- 12. Force Majeure.** Kern will not be liable to you for any delay or other failure to perform under these Terms that is due to causes beyond Kern's control, including acts of God, acts of a public enemy, terrorism, civil disorders, acts of the United States of America or any state, territory or political division thereof, fires, floods, earthquakes, blizzards, and other extraordinary elements of nature.
13. Kern and its designated representatives may, at their expense, audit, examine, and make copies of data, documents, information, and other records in your possession or control that relate to or concern the Platform in order to determine your compliance with these Terms.
14. Kern welcomes comments regarding the Platform. If you submit comments or feedback to us regarding the Platform, they will not be considered or treated as confidential. We may use any comments and feedback that you send us in our discretion and without attribution or compensation to you.
15. These Terms are governed by the laws of the state of Wisconsin, without regards for its conflict of law principles. Venue is exclusively in the state or federal courts, as applicable, located in Milwaukee County, Wisconsin, with respect to any dispute arising under these Terms unless otherwise determined by Kern in its sole discretion and the parties expressly agree to the exclusive jurisdiction of those

courts. If there is a dispute, the prevailing party will be entitled to recovery of its costs and expenses, including reasonable attorneys' fees. Any cause of action or other claim with respect to the Platform must be commenced within one year after the cause of action or claim arises.

16. We may assign our rights and delegate our duties under these Terms at any time to any party without notice to you. You may not assign these Terms without our prior written consent.
17. These Terms, including our [Privacy Policy](#) and, as applicable, the [KEEN Materials License Agreement](#), are the entire agreement between you and Kern with respect to your access to and use of the Platform. Kern's failure to enforce any provision in these Terms will not constitute a waiver of that provision or any other provision. Any waiver of any provision of these Terms will be effective only if in writing and signed by Kern. If any provision of these Terms is held invalid, void, or unenforceable, that provision will be severed from the remaining provisions and the remaining provisions will remain in full force and effect. The headings in these Terms are for convenience only and do not affect the interpretation of these Terms. These Terms inure to the benefit of Kern's successors and assigns.
18. Any provisions of these Terms that are intended to survive termination (including any provisions regarding indemnification, limitation of our liability, or dispute resolution) will continue in effect beyond any termination of these Terms or of your access to or use of the Platform.
19. All notices, consents, and other communications permitted or required to be given under these Terms must be in writing and addressed to the recipient and will be deemed given: upon delivery if personally delivered with fees prepaid, including by a recognized courier service; upon receipt if delivered by certified or registered United

States mail, postage prepaid and return receipt requested, as indicated by the date on the signed receipt; or, where you are the recipient, upon delivery by email.

**20. Electronic Communications.** These Terms and any other documentation, agreements, notices, or communications between you and Kern may be provided to you electronically to the extent permissible by law. Please print or otherwise save a copy of all documentation, agreements, notices, and other communications for your reference.

**21. Contact Us.** Please direct any questions and concerns regarding these Terms to us by email at [info@kffdn.org](mailto:info@kffdn.org), by telephone at 262.968.6838, or by mail at The Kern Family Foundation, W305 S4239 Brookhill Road, Waukesha, Wisconsin 53189.