

CURRIKI SUBSCRIPTION AGREEMENT

This SUBSCRIPTION AGREEMENT (the “**Subscription Agreement**”) is entered into by and between Curriki, (“**Curriki**”) and you (“**Subscriber**” or “**you**”), each, a “**Party**”, and collectively, the “**Parties**,” and sets forth the terms and conditions under which Curriki will provide Subscriber access to the Curriki Solution (defined below) for Non-Commercial Purposes (defined below) only. BY CLICKING “I ACCEPT” OR BY ACCESSING OR USING THE SOLUTION, YOU AGREE THAT YOU HAVE READ AND UNDERSTOOD, AND AS A CONDITION TO YOUR USE OF THE SOLUTION, YOU AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS. THIS SUBSCRIPTION AGREEMENT INCORPORATES BY REFERENCE THE CURRIKI TERMS OF SERVICE AVAILABLE AT <https://library.curriki.org/terms-of-service>. IF YOU ARE NOT ELIGIBLE, OR DO NOT AGREE TO THE TERMS OF THIS SUBSCRIPTION AGREEMENT, THEN YOU DO NOT HAVE OUR PERMISSION TO USE THE SOLUTION. YOUR USE OF THE SOLUTION, AND CURRIKI’S PROVISION OF THE SOLUTION TO YOU, CONSTITUTES AN AGREEMENT BY CURRIKI AND BY YOU TO BE BOUND BY THE TERMS OF THIS SUBSCRIPTION AGREEMENT.

1. DEFINITIONS.

1.1 “**Confidential Information**” means any and all information disclosed by either Party to the other which is designated as confidential, or which should otherwise be understood to be confidential, including but not limited to, the Solution, the Documentation, financial information, product plans, business plans, trade secrets, technology, or any other proprietary information, whether transmitted orally, in writing, or by any other media. Confidential Information does not include information the receiving Party can demonstrate was: (a) publicly available through no fault of the receiving Party, or (b) obtained from third parties not under confidentiality restrictions.

1.2 “**Documentation**” means any and all materials provided by Curriki, relating to the Solution.

1.3 “**Effective Date**” means the date on which Curriki first provides Subscriber access to the Solution.

1.4 “**Intellectual Property Rights**” means all worldwide trade secrets, patents, copyrights, mask work rights, trademarks, service marks, moral rights and other intellectual property and proprietary rights, and all applications and registrations therefore

1.5 “**Non-Commercial Purpose**” means that Subscriber does not have the right to use the Solution for commercial purposes and must make any Outputs available pursuant to the licenses set forth in Section 4.

1.6 “**Solution**” means the software that Curriki provides to Subscriber hereunder, currently contemplated to comprise Curriki’s service known as Curriki Studio, which permits users to create interactive content for lessons and other educational purposes (“**Outputs**”).

2. ACCESS.

2.1 Access to Solution. Subject to the terms and conditions of this Subscription Agreement, including

Section 4, and once the Solution is available for use, at Curriki’s sole discretion, Curriki will provide Subscriber access to the Solution through the Internet. Subscriber’s access is non-exclusive, non-transferable, non-sublicensable, limited use of the Solution for Subscriber’s Non-Commercial Purposes and internal use only.

2.2 Restrictions. Subscriber shall not, and shall not permit any third party to: (i) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Solution by any means, or disclose any of the foregoing, (ii) modify or create any derivative works based on the Solution, any software provided by Curriki, the Documentation, or any portion thereof; (iii) reproduce the Solution or Documentation; (iv) sublicense, distribute, sell, lend, rent, lease, transfer, or grant any rights in or to all or any portion of the Solution, any software provided by Curriki, or the Documentation, or provide access to the Solution to third parties on a service bureau basis or otherwise; or (v) use the Solution or Documentation or any Outputs or derivative works therefrom for any purpose other than a Non-Commercial Purpose, or otherwise use the Solution or Documentation other than as expressly provided herein.

2.3 Ownership. Curriki retains all right, title and interest in and to the Solution and Documentation, including all Intellectual Property Rights therein. Subscriber acknowledges that this Subscription Agreement is not a sale and does not transfer to Subscriber title or ownership of the Solution or Documentation, but only provides for limited use for Non-Commercial Purposes as contemplated herein. ALL RIGHTS NOT EXPRESSLY GRANTED HEREUNDER ARE RESERVED TO CURRIKI.

3. COMMERCIAL AGREEMENT.

This Subscription Agreement does not provide a commercial license. If Subscriber wishes to license the

Solution for any purposes other than Non-Commercial Purposes, and Curriki desires to provide such license, the Parties will negotiate an agreement therefor in good faith, although neither Party shall be obligated to enter such agreement.

4. OUTPUT LICENSE.

4.1 Outputs. As a condition to the rights granted to Subscriber herein, Subscriber must post all Outputs to the Curriki web site and online services (“**Curriki Site**”) for hosting, sharing, and/or publishing. Subscriber understands that whether or not such Outputs are published, Curriki does not guarantee any confidentiality with respect to any submissions.

4.2 License Grant to Curriki to Host. By creating Outputs through use of the Solution, in addition to the Default License (defined below), Subscriber hereby grants to Curriki a worldwide, non-exclusive, transferable, assignable, fully paid-up, royalty-free, perpetual, irrevocable right and license to host, transfer, display, perform, reproduce, distribute and re-distribute, and otherwise exploit Subscriber’s Outputs, in whole or in part, in any media formats and through any media channels (now known or hereafter developed), in order for Curriki to provide the services offered on the Curriki Site and through the Solution. Subscriber acknowledges and agrees that Curriki may make minor edits:

- (a) to its Outputs if it becomes aware of spelling or grammatical errors within such Outputs; and
- (b) to the description Subscriber provides of its Outputs in order to improve the search functionality associated with the Outputs on the Curriki Site.

4.3 License Grant to Curriki for Commercial Use. When Subscriber uploads an Output, Subscriber will have the option to grant Curriki the right to exploit its Output for commercial purposes. If Subscriber chooses this option when it uploads its Output, in addition to the Default License, Subscriber is granting Curriki a worldwide, non-exclusive, transferable, assignable, fully paid-up, royalty-free, perpetual, irrevocable right and license to host, transfer, display, perform, reproduce, distribute and re-distribute, and otherwise exploit Subscriber’s Outputs, for commercial purposes, in whole or in part, in any media formats and through any media channels (now known or hereafter developed).

4.4 Limited License Grant to Other Curriki Users. All Outputs must also be shared on the Curriki Site under a Creative Commons Attribution Non-commercial license, which can be found at <http://creativecommons.org/licenses/by-nc/3.0/> (the “**Default License**”). If Subscriber does not have the necessary rights to grant Curriki and other Curriki users the Default License as set forth above, when uploading an Output, Subscriber must choose the license from the list provided by Curriki that enables Subscriber to

license to Curriki and other Curriki users the rights it does have.

4.5 Commercial Licenses. Provided that Subscriber complies with each of the requirements set forth in Sections 4.1-4.4, and makes all Outputs available on the Curriki Site pursuant to the Default License, Subscriber may, in its discretion, also make the Outputs available on commercial terms through other platforms.

5. Third Party Products.

Curriki may make third party products available to Subscriber in connection with the Solution. The use of such products may be governed by the applicable third party terms. Subscriber is solely responsible for any third party products Subscriber installs or uses in connection with the Solution, and hereby indemnifies Curriki for any liabilities or claims with respect thereto. If Subscriber installs or uses any third party products, then Subscriber is solely responsible for directing and controlling use of such products. Subscriber may not install any third party products in a way that would subject any Curriki technology or intellectual property to obligations beyond those set forth in this Subscription Agreement. The Solution may also contain software that is licensed under a license approved by the Open Source Initiative (“**Open Source Software**”). Any such Open Source Software is governed by the applicable open source license terms.

6. FEEDBACK.

Curriki may periodically request that Subscriber provide, or Subscriber may elect to provide to Curriki, feedback regarding the use, operation and functionality of the Solution (“**Feedback**”). Such Feedback shall include, without limitation, any information about operating results, known or suspected bugs, errors or compatibility problems, suggested modifications, and user-desired features. Curriki is hereby granted a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, fully paid-up, fully sublicensable and transferable right and license to use and incorporate Feedback into the Solution and any other products and services, to make, use, sell, offer for sale, import, and otherwise exploit such products and services, and to otherwise use, copy, distribute, and otherwise exploit the Feedback without restriction.

7. TERM AND TERMINATION.

7.1 Term. This Subscription Agreement will commence as of the Effective Date and will remain in full force and effect for so long as Curriki provides Subscriber with access to the Solution. Either Party may terminate this Subscription Agreement immediately for convenience, for any reason or no reason, at any time before or after the Effective Date by giving ten (10) days prior written notice to the other Party. Curriki may terminate this Subscription Agreement immediately if

Subscriber breaches any provision contained herein. Subscriber may terminate this Subscription Agreement at any time by deactivating its account for the Solution.

7.2 Effects of Termination. Upon expiration or termination of this Subscription Agreement for any reason (including if Subscriber deactivates Subscriber's account): (i) the rights granted to Subscriber hereunder will immediately terminate; (ii) Subscriber shall immediately discontinue any use of the Solution and shall return or destroy all Documentation under its control; (iii) each Party shall promptly return or destroy all Confidential Information and property of the other Party; (iv) any Outputs will remain on the Solution unless and until removed by Curriki, for use by Curriki or other users; and (v) Sections 1, 2.3, 3, 4, 6, 7.2, 8, 9, 11, and 12 will survive.

8. CONFIDENTIALITY.

8.1 Non-Use and Non-Disclosure. Each Party agrees: (i) to use Confidential Information of the other Party solely in accordance with the provisions of this Subscription Agreement; and (ii) not to disclose, or permit to be disclosed, either directly or indirectly, Confidential Information of the other Party to any third party without the other's prior written consent. Each Party shall safeguard the Confidential Information of the other Party using the same measures it uses to protect its own Confidential Information, but in no event shall either Party use less than reasonable care in safeguarding the Confidential Information of the other Party. Either Party may disclose Confidential Information of the other Party which is required to be disclosed by law or order of a court or other governmental entity; provided that such Party provides the other Party with prompt notice of such requirement, assists the other Party in seeking a protective order or other protection, and only discloses that portion of the Confidential Information that is required to be disclosed, and provided further that any information so disclosed retains its confidentiality protections for all other purposes.

8.2 Use of Solution. Subscriber is responsible for maintaining the secrecy of any passwords or codes that provide access to the Solution as the Confidential Information of Curriki, and the Parties hereby acknowledge and agree that the Solution, any software provided by Curriki to Subscriber, and the Documentation are the Confidential Information of Curriki notwithstanding any failure to designate such materials as "Confidential."

8.3 Remedy. If either Party breaches, or threatens to breach the provisions of this Section 8, each Party agrees that the non-breaching Party will have no adequate remedy at law and is therefore entitled to immediate injunctive and other equitable relief, without bond and without the necessity of showing actual money damages.

9. WARRANTY DISCLAIMER,

RESPONSIBILITY AND LIMITATION OF LIABILITY.

9.1 WARRANTY DISCLAIMER. THE SOLUTION AND DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. CURRIKI MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE SOLUTION AND DOCUMENTATION INCLUDING THEIR CONDITION, OR CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, AND CURRIKI SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

9.2 RESPONSIBILITY FOR USE. SUBSCRIBER, AND NOT CURRIKI, SHALL BE SOLELY RESPONSIBLE FOR SUBSCRIBER'S USE OF THE SOLUTION, INCLUDING ANY USE OF THE OUTPUTS OF THE SOLUTION AND DECISIONS MADE OR ACTIONS TAKEN BASED ON THE SOLUTION.

9.3 LIMITATION OF LIABILITY. EXCEPT FOR A BREACH OF SECTIONS 2.2, 2.3, 4, AND 8, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, SPECIAL OR OTHER CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS OR USE OR LOSS OF DATA, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, ARISING OUT OF OR RELATED TO THIS SUBSCRIPTION AGREEMENT WHETHER IN AN ACTION IN CONTRACT, TORT, OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. **THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN.** IN NO EVENT SHALL CURRIKI'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS SUBSCRIPTION AGREEMENT EXCEED ONE HUNDRED DOLLARS (\$100), WHETHER AN ACTION IN CONTRACT, TORT, OR OTHERWISE. THE PARTIES AGREE THAT THE FOREGOING LIMITATIONS REPRESENT A REASONABLE ALLOCATION OF RISK UNDER THIS SUBSCRIPTION AGREEMENT.

10. PAYMENT.

10.1 Fees. Subject to Subscriber's compliance with the terms and conditions of this Agreement, the Solution shall be provided to Subscriber free of charge. If at any time Subscriber desires to use the Solution to make a profit or for any purpose other than Non-Commercial

Purposes, then Subscriber will notify Curriki, this Subscription Agreement will automatically terminate with respect to any such commercial use, and the Parties shall negotiate a commercial agreement in accordance with Section 3.

10.2 Expenses. Subscriber shall bear its own expenses in connection with the use of the Solution.

11. DISPUTE RESOLUTION AND ARBITRATION.

11.1 Generally. In the interest of resolving disputes between the Parties in the most expedient and cost effective manner, the Parties agree that every dispute arising in connection with this Subscription Agreement will be resolved by binding arbitration. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of this Subscription Agreement, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of this Subscription Agreement. SUBSCRIBER UNDERSTANDS AND AGREES THAT, BY ENTERING INTO THIS SUBSCRIPTION AGREEMENT, SUBSCRIBER AND CURRIKI ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

11.2 Exceptions. Despite the provisions of Section 11.1, nothing in these this Subscription Agreement will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (c) seek injunctive relief in a court of law; or (d) to file suit in a court of law to address an intellectual property infringement claim.

11.3 Arbitrator. Any arbitration between the Parties will be settled under the Federal Arbitration Act, and governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, “**AAA Rules**”) of the American Arbitration Association (“**AAA**”), as modified by this Subscription Agreement, and will be administered by the AAA. The AAA Rules and filing forms are available online at www.adr.org, by calling the AAA at 1-800-778-7879, or by contacting Curriki.

11.4 Notice; Process. A party who intends to seek arbitration must first send a written notice of the dispute to the other party by certified U.S. Mail or by Federal Express (signature required) or, only if such other party

has not provided a current physical address, then by electronic mail (“**Notice**”). Curriki’s address for Notice is: Curriki 20660 Stevens Creek Boulevard #332 Cupertino, CA 95014. The Notice must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought (“**Demand**”). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice is received, Subscriber or Curriki may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by Subscriber or Curriki must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the dispute is finally resolved through arbitration in Subscriber’s favor, Curriki will pay Subscriber the highest of the following: (i) the amount awarded by the arbitrator, if any; (ii) the last written settlement amount offered by Curriki in settlement of the dispute prior to the arbitrator’s award; or (iii) \$1,000.

11.5 Fees. If Subscriber commences arbitration in accordance with this Subscription Agreement, Curriki will reimburse Subscriber for its payment of the filing fee, unless its claim is for more than \$10,000, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in Santa Clara County, California, but if the claim is for \$10,000 or less, Subscriber may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephone hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of Subscriber’s billing address. If the arbitrator finds that either the substance of Subscriber’s claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, Subscriber agrees to reimburse Curriki for all monies previously disbursed by it that are otherwise Subscriber’s obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either Party made within 14 days of the arbitrator’s ruling on the merits.

11.6 No Class Actions. SUBSCRIBER AND CURRIKI AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR

REPRESENTATIVE PROCEEDING. Further, unless both Subscriber and Curriki agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

11.7 Modifications to this Arbitration Provision. If Curriki makes any future change to this arbitration provision, other than a change to Curriki's address for Notice, Subscriber may reject the change by sending Curriki written notice within 30 days of the change to Curriki's address for Notice, in which case Subscriber's account with Curriki will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes Subscriber rejected will survive.

11.8 Enforceability. If Section 11.6 is found to be unenforceable or if the entirety of this Section 11 is found to be unenforceable, then the entirety of this Section 11 will be null and void and, in that case, the Parties agree that the exclusive jurisdiction and venue described in Section 12.2 will govern any action arising out of or related to this Subscription Agreement.

12. GENERAL PROVISIONS

12.1 Assignment. This Subscription Agreement may not be transferred or assigned by Subscriber without the prior written consent of Curriki. For purposes of this Section, a sale of assets or stock, merger, or other change of control or reorganization shall constitute an assignment. Any purported transfer or assignment in violation of this Section 12.1 shall be null and void. Curriki may freely assign this Subscription Agreement without Subscriber's prior written consent. This Subscription Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

12.2 Governing Law. This Subscription Agreement and all matters arising out of or relating to this Subscription Agreement shall be governed by the laws of the State of California, excluding its conflict of law provisions, and both Parties consent to the exclusive jurisdiction and venue of the state and federal courts located in the Santa Clara County, California.

12.3 Notices. All notices required to be sent hereunder shall be in writing and shall be deemed to have been given upon (i) the date sent by confirmed facsimile (ii) on the date it was delivered by courier, or (iii) if by certified mail return receipt requested, on the date

received, to the addresses set forth above and to the attention of the signatory of this Subscription Agreement or to such other address or individual as the Parties may specify from time to time by written notice to the other Party.

12.4 Independent Contractors. The Parties are independent contractors. There is no relationship or partnership, joint venture, employment, franchise or agency created hereby between the Parties. Neither Party will have the power to bind the other or incur obligations on the other Party's behalf without the other Party's prior written consent.

12.5 Severability. If any provision of this Subscription Agreement is held to be invalid or unenforceable, the remaining provisions of this Subscription Agreement will remain in full force and effect.

12.6 Waiver. The waiver by either Party of any default or breach of this Subscription Agreement shall not constitute a waiver of any other or subsequent default or breach.

12.7 Force Majeure. Neither Party shall be liable for any delay or failure in performance due to acts of God, earthquakes, shortages of supplies, transportation difficulties, labor disputes, riots, war, fire, epidemics, and similar occurrences beyond its control. Performance times under this Subscription Agreement shall be extended for a period of time equivalent to the time lost because of a delay which is excusable under this provision.

12.8 Entire Agreement. This Subscription Agreement together with any attachments constitutes the complete agreement between the Parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter herein. This Subscription Agreement may not be modified or amended except in writing signed by a duly authorized representative of each Party. No other act, document, usage or custom shall be deemed to amend or modify this Subscription Agreement.

12.9 Claims. THE PARTIES AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS SUBSCRIPTION AGREEMENT MUST COMMENCE WITHIN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.