

# Kern Entrepreneurial Engineering Network (KEEN) Materials License Agreement

**Last Updated: December 20, 2017**

This KEEN Materials License Agreement (“**Agreement**”) governs your provision of materials to The Robert D. and Patricia E. Kern Family Foundation, Inc. (“**Kern**,” “**we**,” “**us**,” or “**our**”), whether by uploading those materials using Kern’s online KEEN platform or otherwise.

**By submitting materials to Kern, you agree on behalf of yourself and any institution, organization, or other entity that you represent (together, “you” or “Licensor”) that you have read and understand this Agreement. If you do not agree with this Agreement, do not submit materials to Kern.**

Licensor develops, owns, or otherwise has a right to distribute certain educational content (e.g., syllabi, presentations, activities, handouts, exams, assessments, instructor notes, multimedia files) (together, “**Materials**”). Kern desires to receive a license to the Materials and Licensor is willing to provide that license to Kern in exchange for the opportunity to share ideas and collaborate with other individuals and institutions.

The parties agree:

- 1. License Grant.** Licensor hereby grants to Kern a perpetual, irrevocable, nonexclusive, royalty-free, sublicensable (to any persons and entities, including users of the online KEEN platform) license to copy, reproduce, display, distribute, publish, modify, make derivative works of, implement, and otherwise use the Materials for educational and research purposes. Kern acknowledges and agrees that the license granted above is nonexclusive and that you may allow others to use the Materials in your sole discretion. Kern will not use the Materials except as permitted by this section.
- 2. Ownership.** As between the parties, Licensor is the exclusive owner of the Materials and all intellectual property rights in and to the Materials. As between the parties, Kern is the exclusive owner of all modifications to and derivative works containing the Materials, excluding the Materials owned by Licensor.
- 3. Use of Marks.** Kern may use your names, logos, and trademarks as contained or referred to in the Materials in connection with Kern’s posting, distribution, and sublicensing of the Materials. Kern is under no obligation to attribute the Materials to you or otherwise mention you in connection with its distribution or sublicense of the Materials. You may not, without Kern’s prior written consent, use the names, logos, or trademarks of Kern.

**4. No Compensation.** Each party understands that it is not entitled to any compensation of any kind from the other party or any other person or entity in connection with its performance of this Agreement.

**5. Term; Termination.** This Agreement commences upon your submission of Materials to Kern and will continue in effect unless terminated in accordance with the terms of this Agreement. Either party may terminate this Agreement if the other party materially breaches this Agreement if the breaching party does not cure the breach within 30 days' written notice. Any terms of this Agreement that are intended to survive termination (including the license grant in Section 1 and Sections 2, 7, 8, and 12) will continue in effect beyond any termination of this Agreement.

**6. Licensor Warranties.** You warrant that:

- A. you have all necessary authority to enter into this Agreement, to provide the Materials to Kern, and to grant the above license to Kern;
- B. you have provided Kern with the identities of all other authors and owners of the Materials, and you are authorized to submit the Materials on the authors' or owners' behalf;
- C. if you are entering into this Agreement on behalf of an entity, you are authorized to bind and do so bind that entity;
- D. you have not and will not submit or otherwise provide to Kern any inaccurate information in connection with or related to your submission of the Materials;
- E. neither the Materials nor Kern's use or distribution of the Materials infringes, violates, or misappropriates the patent, copyright, trademark, trade secret, or other intellectual property rights of any third party;
- F. you are under no contractual or legal obligation that will interfere with your ability to perform under this Agreement; and
- G. you will comply with all laws and regulations applicable to your performance under this Agreement.

**7. Indemnification.** 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 (a) a claim that Kern's or any sublicensee's use of the

Materials infringes, violates, or misappropriates the patent, copyright, trademark, trade secret, or other intellectual property rights of any third party, (b) your breach of this Agreement, or (c) your negligence or willful misconduct. We reserve, and you grant to us, the exclusive right to assume the defense and control of any matter subject to indemnification by you.

**8. 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 MATERIALS OR ANY USE OR MISUSE OF THE SAME, 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. 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.

**9. Assignment.** We may assign our rights and delegate our duties under this Agreement at any time to any party without notice to you. You may not assign this Agreement without our prior written consent.

**10. Notices.** All notices, consents, and other communications permitted or required to be given under this Agreement 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.

**11. Electronic Communications.** This Agreement 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.

**12. Dispute Resolution.** Each party will, prior to initiating a legal proceeding under this Agreement, consult with the other party regarding any dispute or controversy arising under this Agreement and will, in good faith, negotiate with the other party in an attempt to resolve the dispute or controversy on an amicable basis. This Agreement is 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 this Agreement unless otherwise determined by Kern in its sole discretion and the parties expressly agree to the exclusive jurisdiction of those courts.

**13. Relationship of the Parties.** The relationship established under this Agreement is that of independent contractors. This Agreement does not create any employment, agency, partnership, or joint venture relationship between the parties.

**14. Interpretation.** This Agreement is the entire agreement between you and Kern with respect to your provision of and Kern's use of the Materials and supersedes all previous agreements and understandings, oral or written, between the parties with respect to the Materials. No amendment or modification to this Agreement will be effective unless it is in writing and signed by both parties. Kern's failure to enforce any term of this Agreement will not constitute a waiver of that term or any other term. Any waiver of any term of this Agreement will be effective only if in writing and signed by Kern. If any term of this Agreement is held invalid, void, or unenforceable, that term will be severed from the remaining terms and the remaining terms will remain in full force and effect. The headings in this Agreement are for convenience only and do not affect the interpretation of this Agreement. This Agreement inure to the benefit of Kern's successors and assigns.

**15. Contact Kern.** Please direct any questions and concerns regarding this Agreement or the Materials to Kern 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.