

Ellipsis Education
TERMS OF USE AGREEMENT

Subject to the terms of these Terms of Use, the Ellipsis Education Master Subscription Agreement, and the Ellipsis Education Services Agreement (collectively the “Agreement”), Coder Kids INC, a Delaware corporation doing business as Ellipsis Education (“Ellipsis Education”), hereby authorizes you (a “User”) to use the Ellipsis Education software programs, operating information, content, and materials, including any written or other supplemental materials provided by Ellipsis Education in connection with the same (the “Software”) solely for the purpose of teaching and learning computer programming and coding (the “Permitted Use”).

User acknowledges and agrees that your respective access to and use of the Software is conditioned on the compliance of certain third parties through which Ellipsis Education has agreed to license the Software, such as a school, university, or vocational training provider (an “Educational Institution”) with which User may be associated. User’s rights under the Agreement are conditioned upon the Educational Institution’s compliance with the Agreement. If you are accessing or using the Software on behalf of a company or entity, such company or entity is the “User” and you hereby represent that you have the authority to agree to the Agreement on such company’s or entity’s behalf.

By installing, accessing, or using the Software, User acknowledges User has read, understood, and agrees to be bound by the Agreement. If you do not agree to be bound by the Agreement, including limiting your use of the Software to the Permitted Use, you may not install, access, or use the Software.

1. Access and Use.

- a. **Software.** Subject to the terms and conditions of the Agreement, Ellipsis Education hereby grants the User a personal, non-exclusive, non-transferable right to access and use the Software during the Term.
- b. **Use Restrictions.** The User shall not use the Software for any purposes beyond the scope of the Permitted Use (as offered by the Educational Institution, if applicable) and the access granted in the Agreement, and shall not, at any time, directly or indirectly: (i) copy, modify, or create derivative works of the Software, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software; (iii) “mirror” any material contained in or provide in connection with the Software; (iv) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the Software; (v) remove any proprietary notices from the Software, including software; or (vi) use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law or regulation.
- c. **Reservation of Rights.** Ellipsis Education reserves all rights not expressly granted to the User in the Agreement. Except for the limited rights expressly granted under the Agreement, nothing in the Agreement grants, by implication, waiver, estoppel, or otherwise, to the User or any third party any intellectual property rights or other right, title, or interest in or to the Software.
- d. **Suspension.** Notwithstanding anything to the contrary in the Agreement, Ellipsis Education may temporarily suspend the User’s access to any portion or all of the Software if: (i) Ellipsis Education reasonably determines that (A) there is a threat or attack on any of the Software; (B)

The User's use of the Software disrupts or poses a security risk to other users, Ellipsis Education, or to any third party; (C) the User is in breach of the Agreement; or (D) Ellipsis Education's provision of the Software to the User is prohibited by applicable law. Ellipsis Education will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that User may incur as a result of a suspension of access to the Software.

e. **Aggregated Statistics.** Notwithstanding anything to the contrary in the Agreement, Ellipsis Education may monitor the User's access to and use of the Software and collect and compile information in an aggregate and anonymized manner, including statistical and performance information related to the provision and operation of the Software ("Aggregated Statistics"). As between Ellipsis Education and the User, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Ellipsis Education.

f. **Collection and Use of Information.** All information collected by Ellipsis Education through or in connection with the Software is subject to Ellipsis Education's [Privacy Policy](#), which is hereby incorporated into and made a part of the Agreement.

2. User Responsibilities.

a. **Login.** The User may be required to create a unique password protected and identifying account via the Software as a condition to accessing and using the Software (a "Login").

b. **Access Materials.** The User shall be responsible for providing, at its expense, all communication lines, hardware, other software, services and other materials and technology necessary for the User to access the Software. Ellipsis Education shall have no responsibility for any failure of such items or any failure or limitation of the internet or other computer hardware or software.

3. **Term and Termination.** This Agreement continues in force and effect during the User's use of the Software; provided, Ellipsis Education may terminate the Agreement, in its sole discretion, in the event (i) the User breaches the Agreement, (ii) if applicable, the Educational Institution is in breach of the Agreement; or (iii) Ellipsis Education determines it necessary, beneficial, or useful, in its sole discretion, to do so, to comply with applicable law or otherwise. Upon any expiration or termination of the Agreement, the User must immediately cease all use of the Software. Ellipsis Education will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that User may incur as a result of any termination of the Agreement.

4. **Intellectual Property.** As between the User and Ellipsis Education, all intellectual property of every kind and nature in all materials, courses, coursework, and codes provided under or as a part of the Software, including, without limitation, all copyrights, trademarks, and patents of or related to the Software and any enhancements and/or modifications to such materials, courses, coursework, and/or codes made by a User, (the "Intellectual Property") are or shall be owned and held by Ellipsis Education, and, to the extent necessary, are hereby assigned to Ellipsis Education by the User. None of the Intellectual Property may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including, but not limited to, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of Ellipsis Education, which may be withheld, conditioned, or delayed in Ellipsis Education's sole discretion. Permission is granted to display, copy, distribute and download the Intellectual Property for the

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Without limitation, the Software, including all derivatives, improvements, and modifications thereof, is subject to Ellipsis Education's copyright protection.

5. **Confidentiality.** "Confidential Information" shall mean any confidential or proprietary information disclosed to a User or Educational Institution by Ellipsis Education through or in connection with the use of the Software, including, but not limited to, pricing terms, sourcing information, product plans, specifications, software designs and code, user names, passwords, and any related information, materials, or documents. Confidential information shall not include information which: (a) is or becomes generally available to the public through no wrongful act of the User; (b) was in the User's possession prior to the time it was acquired from Ellipsis Education and which was not directly or indirectly acquired from Ellipsis Education; (c) is independently made available as a matter of right to the User by a third party lawfully in possession thereof, and who was not, to the User's knowledge, under an obligation to Ellipsis Education not to disclose it, or (d) is independently developed by or for the User by persons not having exposure to Ellipsis Education's confidential information. The User agrees: (x) not to disclose, directly or indirectly, to any third party any portion of the Confidential Information; (y) to take reasonably necessary precautions to protect the confidentiality of the Confidential Information received hereunder and exercise at least the same degree of care in safeguarding the Confidential Information as the User would with its own confidential information; and (z) to promptly notify Ellipsis Education in writing upon learning of any unauthorized use or disclosure of the Confidential Information.

6. **Warranty Disclaimer, Liability Disclaimer, and Indemnification.**

- a. **Disclaimer of Warranty.** While Ellipsis Education uses commercially reasonable efforts to assure the inclusion of accurate and up-to-date information on the Intellectual Property, and Software, Ellipsis Education makes no warranties or representations as to such information's accuracy. Ellipsis Education assumes no liability or responsibility for any typographical, data input errors, calculation errors or other errors, defects, or omissions associated with the Intellectual Property or Software. THE COMPANY PROVIDES THE SOFTWARE AND INTELLECTUAL PROPERTY AS IS, WHERE IS, AS AVAILABLE, AND WITH ALL FAULTS, WITHOUT ANY WARRANTY OR REPRESENTATION OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY. THE COMPANY SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE COMPANY DOES NOT WARRANT (1) THAT THE SOFTWARE WILL BE CONTINUOUS, UNINTERRUPTED OR SECURE, AND NOTIFIES THE USER THAT OPERATION OF THE SOFTWARE MAY BE INTERFERED WITH BY NUMEROUS FACTORS OUTSIDE OF THE COMPANY'S CONTROL, (2) THAT THE SOFTWARE WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, (3) THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED, OR (4) THAT THE CONTENT WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON IMPLIED

WARRANTIES OR THE LIMITATIONS ON THE APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO SOME OR ALL OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO A SPECIFIC USER.

- b. **Disclaimer of Liability.** UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, WILL THE COMPANY BE LIABLE FOR (1) ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA OR PROFIT, ARISING OUT OF THE USE, OR THE INABILITY TO USE, THE INFORMATION, INTELLECTUAL PROPERTY, OR MATERIALS ON THE COMPANY'S SOFTWARE, OR ANY ERROR IN OR DEFICIENCY OF THE SOFTWARE EVEN IF THE COMPANY OR A COMPANY AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR (2) ANY COSTS ARISING FROM THE USER'S OR OTHER THIRD PARTY USER'S USE OF INTELLECTUAL PROPERTY AND/OR MATERIALS FROM THE SOFTWARE WHICH RESULTS IN THE NEED FOR SERVICING, REPAIR, OR CORRECTION OF ANY EQUIPMENT OR DATA OWNED BY THE USER OR ANY THIRD PARTY. Ellipsis Education and its employees, officers, directors, members, managers, agents, affiliates, subsidiaries, and independent contractors shall not be liable to the User for any claims, causes of action, costs, expenses, damages, or other liabilities of any nature which may arise from or be asserted against Ellipsis Education as a result of any dispute between Users, arising directly or indirectly from the Software or any other dealings between the User and any third party.
- c. **Indemnification.** The User shall indemnify, defend and hold Ellipsis Education and its employees, officers, directors, members, managers, agents, affiliates, subsidiaries and independent contractors harmless from and against any and all liability, loss, injury, claims, including User Claims, costs, expenses, damages, attorneys' fees, court costs, litigation expenses and related expenses ("Liabilities") which may be brought or asserted against Ellipsis Education by a person, company, or entity, including, but not limited to, other Users or third parties, which Liabilities are based upon or arise, directly or indirectly, from (1) any performance or non-performance by the User under the Agreement or (2) any reliance upon or use by a User or any third party of any information or data provided or transmitted by the User through or during use of the Software.
7. **Relationship of Parties.** The User agrees that no joint venture, partnership, employment, or agency relationship exists between the User and Ellipsis Education as a result of the Agreement or the User's use of the Software.
8. **Arbitration.** Any and all claims or disputes under the Agreement including, without limitation, disputes as to the existence, validity, interpretation, enforcement, breach, or termination of the Agreement and the enforceability of this Arbitration provision shall be resolved exclusively and finally by binding arbitration under the Code of Procedure of The National Arbitration Forum (the "Code") in effect at the time the claim is filed. The Code is available at <http://www.arb-forum.com>. Notwithstanding any choice of law provision included in the Agreement, this arbitration agreement is subject to the Federal Arbitration Act (9 U.S.C. §§ 1-16). Each party shall bear its own cost of any legal representation, discovery, or research required to complete arbitration.

9. Miscellaneous.

- a. **Amendments.** Ellipsis Education may amend, modify, or restate the Agreement by the posting of the amended, modified, or restated agreement on Ellipsis Education's website and notice to the User. Thereafter, the Users continued access to or use of the Software will be deemed acceptance of the amended, modified, or restated agreement.
- b. **Waiver.** No failure to exercise, and no delay in exercising, on the part of Ellipsis Education of any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of that or any other right hereunder.
- c. **Severability.** If any provision of the Agreement is illegal or unenforceable under applicable law, the remainder of the provision will be amended to achieve as closely as possible the effect of the original term and all other provisions of the Agreement will continue in full force and effect.
- d. **Headings.** The headings used in the Agreement are for reference purposes only and shall not affect the construction or interpretation of the Agreement.
- e. **Surviving Provisions.** The provisions of the Agreement which by their nature call for a continuing obligation upon a party beyond the term of the Agreement, shall indefinitely survive the termination of the Agreement.
- f. **Authority.** The User, or the representative accepting the Agreement on behalf of the User, represents that such person or entity has full and complete authority to enter into and bind the User to the Agreement.
- g. **Entire Agreement.** This Agreement embodies the entire agreement relating to the subject matter hereof and supersedes any previous agreements or understandings in effect.