TECHSMITH KNOWMIA® TERMS OF SERVICE

These Terms of Service (the “Terms”) are a legally binding agreement by and between TechSmith Corporation, a Michigan Corporation whose principal address is 2405 Woodlake Drive, Okemos, MI 48864 (“TechSmith”) and you in your individual capacity (“Customer”).

1. Definitions.
   a. “Customer Content” refers to any video, audio, data, quizzes, reports, student data, metadata, personally identifiable information and other nonpublic information, or any other data output or other data input in electronic form collected through the Service by or from Customer and/or its authorized users.
   b. “Service” refers to TechSmith’s TechSmith Knowmia® service as provided by TechSmith and updated from time to time, in its sole discretion.
   c. “TechSmith Materials” refers to written and graphical content provided by or through the Service by TechSmith or its licensors, including, without limitation, text, quiz and report templates, photographs, illustrations, and designs.

2. License Grant.
   Subject to your compliance with these Terms, TechSmith grants to you a limited, non-exclusive, non-transferable, license to access and use the Service solely for business, educational, or personal purpose. Customer is permitted to install, on an unlimited number of machines, the TechSmith Capture component of the Service. These Terms govern your access to and use of the Service. You acknowledge and agree that but for these Terms, you would have no rights or access to the Service.

3. Service Availability.
   TechSmith operates the Service 24 hours a day, 7 days a week, excluding periods when the Service is interrupted or temporarily unavailable for maintenance, upgrades and emergency repairs or may be unavailable due to the failure of dependent telecommunications links, hardware, software, and other services that are beyond the control of TechSmith. TechSmith will take reasonable steps to (1) minimize such disruption where it is within the reasonable control of TechSmith, and (2) provide Customer with at least seventy-two (72) hours prior notice of scheduled maintenance, updates, enhancements, modifications and/or other circumstances which will result in an outage or an inability of a Customer to access the Service. TechSmith shall not be liable for any unavailability, suspension or discontinuance of the Service. Additionally,
TechSmith reserves the right to modify or terminate the Service for any reason and without notice at any time.

4. **Intellectual Property Rights.**
TechSmith retains all right, title, and interest in and to the TechSmith Materials and the Service, including, without limitation, all software used to provide the Service and all TechSmith or its licensors’ logos and trademarks reproduced through the Service. These Terms do not grant Customer any intellectual property rights in or to the Service or any of its components. The TechSmith Materials are protected by copyright, trademark, and other intellectual property laws. Customer does not acquire any right, title, or interest in or to the TechSmith Materials except the limited and temporary license to use them as necessary for Customer’s use of the Service.

Customer agrees not to: (a) copy or duplicate such software other than as expressly permitted herein; (b) reverse engineer, de-compile, or disassemble such software; or (c) modify or make derivative works of such software. Customer agrees not to use the Service after termination of these Terms without obtaining a valid license from TechSmith.

5. **Customer Warranty.**
Customer warrants, represents and acknowledges that Customer: (i) has provided accurate information in Customer’s account credentials and will maintain the accuracy of such information; (ii) shall be responsible for the use and security of its TechSmith ID and password; (iii) is an individual 18 years or older; and (v) shall comply with all applicable federal and state and local laws, rules, regulations, policies, guidelines, best practices, including but not limited to, FERPA.

6. **Limited Warranty and Disclaimer.**
TechSmith warrants that the Service will substantially conform to the applicable documentation and specifications and will be in good working order for the Term of this Agreement. This warranty does not apply if the Service: (i) has been altered, except by TechSmith or its authorized representative, (ii) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by TechSmith, or (iii) has been subjected to misuse, negligence, or accident.

EXCEPT AS EXPRESSLY SET FORTH IN THE PARAGRAPH ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TECHSMITH AND ITS SUPPLIERS, AND LICENSORS DISCLAIM ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, QUIET ENJOYMENT, NON-INFRINGEMENT OF THIRD PARTY RIGHTS.
7. Limitation of Liability.
In no event will TechSmith be liable for the following, regardless of the theory of liability or whether arising out of the use or inability to use the Service or otherwise, even if TechSmith has been advised of the possibility of such damages: (a) indirect, incidental, exemplary, special or consequential damages; (b) loss or corruption of data or interrupted or loss of business; or (c) loss of revenue, profits, goodwill or anticipated sales or savings.

All liability of TechSmith, its affiliates, officers, directors, employees, agents, suppliers and licensors collectively, whether based in warranty, contract, tort (including negligence), or otherwise, shall not exceed the fees paid by Customer for the Service in the twelve months prior to the event that gave rise to the claim. This limitation of liability is cumulative and not per incident. Nothing in this Agreement limits or excludes any liability that cannot be limited or excluded under applicable law.

TechSmith disclaims any responsibility or liability to Customer or any third party for any use of the Service by any users, or for the accuracy, completeness, appropriateness, legality or applicability of any Customer Content and Customer hereby waives any legal or equitable rights or remedies Customer may have against TechSmith with respect thereto.

8. Data Management.

a. Access, Use, & Legal Compulsion. Unless it receives Customer’s prior written consent, TechSmith: (i) will not access or use Customer Content other than as necessary to facilitate the Service; and (ii) will not give any third party access to Customer Content other than as necessary to facilitate the Service. Notwithstanding the foregoing, TechSmith may disclose Customer Content as required by applicable law or by proper legal or governmental authority. To the extent legally permissible, TechSmith will give Customer notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer’s expense.

b. Customer’s Rights and Grant of License. Customer possesses and retains all right, title, and interest in and to Customer Content and Customer shall have access to all Customer Content hosted by TechSmith upon request. Customer hereby grants to TechSmith a limited non-exclusive, worldwide, royalty-free license to use, display, technically modify and redistribute the Customer Content only as necessary for TechSmith to provide the Service.

c. Content Storage. TechSmith will store certain Customer Content according to the Service features subscribed to by Customer, for up to sixty (60) days following the Term. However, TechSmith will have no responsibility or liability for maintaining any other Customer Content on its servers, and Customer is solely responsible for backing
up all Customer Content. If Customer installs or enables third-party applications for use with the Service, TechSmith shall not be responsible for any disclosure, modification or deletion of Customer’s Content, resulting from any such access by such third-party application providers.

d. Excessive Use. If Customer’s bandwidth usage exceeds 2TB of data bandwidth per calendar month, TechSmith reserves the right in its sole discretion to suspend or limit Customer’s access to the Services.

9. Term and Termination.

a. Term. The term of this Agreement shall be equivalent to the subscription period Customer has purchased.

b. Suspension of Access. TechSmith may terminate, suspend, or limit Customer’s access to the Service in the event Customer fails to comply with any of the terms of this Agreement, or the terms of Customer’s subscription or order for the Services.

c. Effect of Termination. Upon termination of this Agreement: (i) the rights granted by one party to the other will cease immediately (except as set forth in this Section); The following provisions will survive termination of this Agreement: (i) any obligation of Customer to pay for Service rendered before termination; (ii) Sections 4, 7, and 8 of this Agreement; and (iii) any other provision of this Agreement that must survive termination to fulfill its essential purpose.

10. Service Availability.

TechSmith shall endeavor to respond to a Customer access issue within 24 hours of being notified by Customer and shall use commercially reasonable efforts to resolve the Service availability issue. In the event that 3 or more independent Service Failures occur during any calendar month, Customer may terminate the Agreement as provided by providing written notice to TechSmith. A “Service Failure” is defined as a period of 48 continuous hours where TechSmith has verified the Service has been unavailable to Customer.

11. Indemnification.

a. Indemnification from Customer. To the extent permitted by applicable law, Customer shall indemnify and hold TechSmith, its licensors and subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all costs, damages, losses, liabilities and expenses (including attorneys’ fees and costs) to the extent arising out of or in connection with any third-party claim alleging that the Customer’s Content, infringes or violates any third-party right, including without limitation, any copyright, patent, trademark or other intellectual property right, or publicity, confidentiality, property or privacy right.
b. **Indemnification from TechSmith.** TechSmith shall indemnify and hold Customer harmless from and against any and all costs, damages, losses, liabilities and expenses (including attorneys’ fees and costs) to the extent arising out of or in connection with any third-party claim alleging that the Service infringes or violates any third-party right, including without limitation, any copyright, patent, trademark or other intellectual property right, or publicity, confidentiality, property or privacy right.

c. **Indemnification Procedure.** Customer’s indemnification obligation in the above Section (a), and TechSmith’s indemnification obligation in the above Section (b) is subject in each instance to the indemnifying party (i) promptly giving notice of the claim to the party seeking indemnification; (ii) giving the indemnifying party sole control of the defense and settlement of the claim (provided that the indemnifying party may not settle such claim unless such settlement unconditionally releases the party seeking indemnification of all liability and does not adversely affect said party’s business); and (iii) providing to the indemnifying party all available information and reasonable assistance.

12. **FERPA.**

“FERPA” refers to the Family Educational Rights Privacy Act and its implementing regulations. To the extent Customer is subject or obligated to comply with the requirements of FERPA, the parties agree to the following additional terms and conditions:

a. The parties acknowledge that (i) Customer Content may include personally identifiable information from education records that are subject to FERPA (“FERPA Records”); and (ii) to the extent that Customer Content includes FERPA Records, TechSmith will be considered a "School Official" (as that term is used in FERPA and its implementing regulations) and will comply with FERPA.

b. TechSmith may use de-identified Customer Content for product development, research or other purposes. De-identified Customer Content will have all direct and indirect personal identifiers removed, which includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. TechSmith and its partners, subsidiaries, or affiliates further agree not to attempt to re-identify de-identified Customer Content.

c. TechSmith will not use any Customer Content to advertise or market to students or their parents. TechSmith, however, shall be permitted to use de-identified Customer Content to advertise or market directly to the Customer.

d. TechSmith shall not use Customer Content other than in (i) in connection with TechSmith’s provision of the Service, (ii) to assist TechSmith in improving the Service, or (iii) as otherwise mutually agreed to by the parties. Customer Content mining or scanning of Customer Content for the purpose of advertising or marketing to a student or their parents is prohibited.
e. Customer acknowledges and understands that TechSmith may rely upon one or more of its partners, subsidiaries, or affiliates to perform services under this Agreement. If TechSmith engages any of its partners, subsidiaries, or affiliates to perform services consistent with the terms, conditions, and restrictions contained in this Agreement, TechSmith shall disclose to Customer the names of such partners, subsidiaries, or affiliates, upon Customer’s request.

f. TechSmith will store and process Customer Content in accordance with best practices. Best practices will include, administrative, physical, and technical safeguards to secure the Customer Content from unauthorized access, disclosure, and use.

g. TechSmith does not monitor, screen, or restrict use of the Service by individual users, or monitor, review or take any other action regarding any individual item of Customer Content. TechSmith does not endorse any Customer Content or any opinion, recommendation or advice expressed therein. While TechSmith is under no obligation to do so, TechSmith reserves the right to remove from the Service any Customer Content which is unlawful, libelous or infringes third party intellectual property rights.

h. Conflicts with FERPA. To the extent there is any conflict between any of the terms and conditions contained in this Agreement and the requirements of FERPA, the requirements of FERPA shall govern.

13. Miscellaneous, Customer's Service

a. Notices. TechSmith may send notices by electronic mail or in another digital form and such notices will be deemed received one (1) day after they are sent. Customer may send notices pursuant to this Agreement to support@knowmia.com, and such notices will be deemed received one (1) day after they are sent.

b. Amendment. TechSmith may amend this Agreement by posting an amended version at its website and providing Customer electronic notice thereof upon accessing the Service. Customer’s continued use of the Service following the effective date of an amendment will confirm Customer’s consent thereto. This Agreement may not be amended in any other way except through a written agreement executed by Authorized Representatives of each party.

c. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any prior or subsequent breach of this Agreement.

d. Force Majeure. To the extent caused by force majeure, no delay, failure, or default will constitute a breach of this Agreement.

e. Assignment & Successors. Neither party may assign this Agreement or any of its rights or obligations hereunder without the other’s express written consent, except that either party may assign this Agreement to the surviving party in a merger of that party into another entity. Except to the extent forbidden in the
previous sentence, this Agreement will be binding upon and inure to the benefit of the respective successors and assigns of the parties.

f. **Choice of Law & Jurisdiction.** This Agreement will be governed solely by the internal laws of the State of Michigan, U.S.A., without reference to such State’s principles of conflicts of law. The parties consent to the personal and exclusive jurisdiction of the federal and state courts that have a presence in Ingham County, Michigan.

g. **Severability.** To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

h. **Certain Notices.** Pursuant to 47 U.S.C. Section 230(d), TechSmith hereby notifies Customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist in limiting access to material that is harmful to minors. Information regarding providers of such protections may be found on the Internet by searching “parental control protection” or similar terms.

i. **Entire Agreement.** This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to the subject matter hereof. Neither party has relied upon any such prior or contemporaneous communications.

June 12, 2020