

## END USER LICENSE AGREEMENT

This End User License Agreement (“EULA”) is made and entered into by the State of Oregon, acting by and through the State Board of Higher Education on behalf of the University of Oregon, an institution of higher education located in Eugene, Oregon, with an address at Office of Technology Transfer, 1238 University of Oregon, Eugene, Oregon, 97403-1238 (“Oregon”), and (**USER**) (collectively the "Parties"). In consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the Parties agree as follows:

### Article 1. Introduction

- 1.1 Oregon through its Technical Assistance and Consulting Services (“TACS”) has developed a database (“Rendezvous”) that states can use to collect and track data on the progress and performance of their Special Education programs. Rendezvous compiles information from the state’s six year State Performance Plan (“SPP”) and can be used to produce and transmit the state’s mandatory Annual Performance Report (“APR”).
- 1.2 This EULA is effective when User accepts this agreement by checking the “Yes” box or upon logging into the Rendezvous database online, provided that TACS reserves the right to determine whether User is eligible to collect and track data on User’s state’s Special Education programs prior to invoicing User.

### Article 2. Definitions

As used in this EULA, the following terms have the indicated meanings:

- 2.1 “Subscription Fee” means the fee for access to Rendezvous as described in Attachment B.
- 2.2 “EULA” means this agreement and any attachments referenced herein.
- 2.3 "Confidential Information" means confidential scientific, business, or financial information that is treated as proprietary or confidential by the disclosing party provided that such information does not include:
  - a) Information that is publicly known or available from other sources that are not under a confidentiality obligation to the source of the information;
  - b) Information that has been made available by its owners to others without a confidentiality obligation; or
  - c) Information that is already known by or available to the receiving Party without a confidentiality obligation;
- 2.4 “SPP/ARR” means your state’s State Performance Plan and Annual Performance Report data management reporting as required by the United States Office of Special Education.
- 2.5 “Rendezvous” means Rendezvous as described in Attachment A, including related documentation.

### Article 3. License

- 3.1 Provided that User has paid the Subscription Fee, Oregon non-exclusively licenses Rendezvous access to User through February 1, 2010 and the associated OSEP week of clarification, solely for User’s use in its SPP/ARR data management program. Oregon licenses Rendezvous for the purposes of providing a tool to help users manage their SPP/ARR needs. User licenses Rendezvous as a tool to assist in managing SPP/ARR. User agrees that use of Rendezvous does not guarantee fulfillment of any required obligations and that User is solely responsible for

fulfilling any reporting obligations.

- 3.2 This EULA does not grant any licenses to Rendezvous beyond February 1, 2010. An opportunity to license access to Rendezvous at Oregon's research partner discount (in effect at the time of licensing) will be given when the full version is available. User acknowledges that elements of Rendezvous are Oregon Confidential Information, and agrees that it will not attempt and will use its best efforts to prevent its staff, employees, or agents from reverse engineering or otherwise attempting to discover the software code of Rendezvous. User will not distribute, publish, or otherwise transfer or allow to be transferred Rendezvous or any modified or unmodified copies thereof, in whole or in part, without prior written permission of Oregon. This EULA in no way restricts User from publishing or distributing reports or graphs of User's data generated following termination or expiration of this EULA.
- 3.3 User gains no ownership in Rendezvous and agrees to retain the copyright, trademark, or other notices pertaining to Rendezvous as provided by Oregon. Rendezvous software is protected by U.S. copyright laws. This EULA does not transfer title, copyright, or ownership of the Rendezvous software to User or any other person. Modification of Rendezvous or copying or using it for other than the licensed purpose is prohibited.

#### **Article 4. Obligations**

- 4.1 **Financial.** User agrees to pay the Subscription Fee prior to accessing Rendezvous (See Attachment B).
- 4.2 **Report.** User agrees to provide formal written reports on Rendezvous as detailed in Attachment C under the schedule in Attachment B. User grants Oregon permission to use any of the feedback or suggestions provided in the report at no charge to Oregon.
- 4.3 **Technical Administration.** Oregon and User agree to provide the technical administration described in Attachment B.

#### **Article 5. Data Management**

- 5.1 **User Obtains Consent for Use of Data.** User is solely responsible for obtaining any consent necessary under federal or state laws, or other policy, to enable User to enter data into the Rendezvous and to permit the use of data in accordance with the terms and conditions of this EULA.
- 5.2 **Data Collection and Entry.** User is solely responsible for collecting data, maintaining appropriate restrictions for accessing data, generating and interpreting reports of data, and developing, implementing, and evaluating developmental, educational, or other interventions on the basis of the data. User assumes all liability for decisions made using data entered into or reported from Rendezvous.
- 5.3 **Release of Data.** Oregon maintains the data User provides on secure servers at Oregon. Access to User's account is password-protected by Oregon, and restricted by Oregon to those individuals identified by User. Oregon does not release data without User's written permission, except as required by law, regulation, subpoena, or administrative process. It is User's responsibility to maintain security for the user names and passwords within User's account.
- 5.4 **Access to Data for Maintenance.** User grants permission to Oregon and its designers (programmers and technical support personnel) to access data for maintenance purposes. Data accessed for maintenance purposes will be kept private to the extent permitted by law. Maintenance purposes include, but are not limited to, software programming or database engineering for Rendezvous, providing technical support to User, correcting problems within the database, and managing the billing system. Oregon's maintenance designees (programmers and technical support personnel) will have access to the Rendezvous accounts, the raw data within each account, and system-wide administrative functions.

#### **Article 6. Representations and Warranties**

- 6.1 ~~Oregon hereby represents and warrants that the official acceptance of this EULA has authority to do so.~~
- 6.2 User hereby represents and warrants that the official accepting and agreeing to this EULA has the requisite power and authority to enter into this EULA, to perform according to its terms, and to enter into this EULA online.

## **Article 7. Term and Termination**

- 7.1 **Term.** The term of this Agreement begins on the Effective Date and continues through February 1, 2010 and the applicable OSEP week of clarification, or until otherwise terminated in accordance with this Article 7. Upon acceptance of this EULA and receipt of the Subscription Fee, Rendezvous access will be activated.
- 7.2. **Termination.**
- (i) **Termination for Default.** Breach of any material term or condition of the EULA by User constitutes grounds, at Oregon's sole discretion, for immediate termination of this license. In the case of such termination by Oregon, the Subscription Fee is non-refundable. Breach of any material term or condition of this EULA by Oregon constitutes grounds, at User's sole discretion, for immediate termination of this license, and in the case of such termination, User will receive a pro-rated refund of the unused Subscription Fee, such amount to be based on remaining months of access as determined by Oregon.
  - (ii) **Termination for Convenience.** Either party may cancel the EULA at any time by providing the other party with thirty (30) days prior written notice. In the case of such termination by Oregon, User will receive a pro-rated refund of the unused Subscription Fee, such amount to be based on remaining months of access as determined by Oregon. In the case of such termination by User, the Subscription Fee is non-refundable.
- 7.3. **No Use after Termination.** Upon termination of this EULA, User shall cease using any portion of Rendezvous. User may continue to use any of User's data.
- 7.4 **User's Obligations after Termination.** Termination of this EULA shall not extinguish any of User's obligations under this EULA, which by their terms continue after the date of termination.
- 7.5 **New Commitments.** No Party shall make new commitments related to this EULA after a mutual termination or notice of a unilateral termination and shall, to the extent feasible, cancel all outstanding commitments and contracts by the termination date.
- 7.6 **Survivability.** All rights and obligations shall cease upon termination or expiration of this EULA, except for all provisions, which by their nature would survive such termination or expiration.
- 7.7 **Program Renewal.** If Oregon offers an additional term, User may renew the EULA for an additional one year term from February 1, 2010 by payment of an additional Subscription Fee in response to an invoice from Oregon ("EULA Renewal"). Any renewal is subject to the approval of Oregon which may be granted or withheld in its sole discretion. If the EULA Renewal payment is not received within 60 days following the receipt by User of the invoice, User's access to Rendezvous will expire.
- 7.8 The provisions under which this EULA may be terminated are in addition to any and all other legal remedies which either Party may have for the enforcement of any and all terms hereof, and do not in any way limit any other legal remedy such Party may have.

## 8. Access

- 8.1. Passwords and access to Rendezvous will be provided by Oregon following receipt of Subscription Fee. It is the responsibility of User to establish and maintain Internet connections for access to Rendezvous and to provide and install suitable Internet web browsers and any other software necessary to access Rendezvous. User is solely responsible for maintaining the security of its Rendezvous passwords and will immediately notify Oregon if User's password security has been compromised.
- 8.2. Oregon will use reasonable efforts to provide continuous availability of Rendezvous through the Internet. It is understood that availability will be subject to periodic interruption due to maintenance of the server(s), installation or testing of software, the loading of new information files, and downtime related to equipment or services outside the control of Oregon including public and private telecommunications services or Internet nodes or facilities.

## Article 9. Risk

- 9.1 **Indemnification.** To the extent permitted by law, User hereby agrees to indemnify and hold harmless Oregon and its officers, directors, agents, volunteers and employees, from and against any and all claims, demands, damages, costs, and other related items ("Claims") arising or in any way connected with the use of or access to Rendezvous by User or by any third party use of or access to Rendezvous through User. User assumes all liability for decisions made using data reported from Rendezvous. This indemnification clause survives termination or expiration of the EULA.
- 9.2 **NO WARRANTY AND LIMITATION OF LIABILITY.** OREGON PROVIDES ACCESS TO RENDEZVOUS ON AN "AS IS" BASIS. USER AGREES TO BEAR ALL RISKS ASSOCIATED WITH THE USE OF RENDEZVOUS. OREGON MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED. BY WAY OF EXAMPLE, BUT NOT LIMITATION, OREGON MAKES NO REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE (EVEN IF OREGON KNOWS OF SUCH PURPOSE), OR THAT THE USE OF RENDEZVOUS WILL NOT INFRINGE ANY PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER RIGHTS OF THIRD PARTIES. USER HEREBY DISCHARGES AND RELEASES OREGON AND ALL OF ITS RESPECTIVE AGENTS, EMPLOYEES AND VOLUNTEERS, FROM ANY AND ALL LIABILITY, CLAIMS, CAUSES OF ACTIONS, DAMAGES OR DEMANDS OF ANY KIND AND NATURE WHATSOEVER WHICH MAY ARISE FROM OR IN CONNECTION WITH USER'S USE OF RENDEZVOUS.
- 9.3 User acknowledges and agrees that Oregon's liability, if any, is subject to the limitations and conditions of the Oregon Tort Claims Act, Oregon Revised Statutes sections 30.260-30.300, and the Oregon Constitution, Article XI, Section 7.
- 9.4 **Force Majeure.** Oregon will not be liable for any unforeseeable event beyond its reasonable control not caused by the fault or negligence of Oregon, which causes Oregon to be unable to perform its obligations under this EULA, and which it has been unable to overcome by the exercise of due diligence. In the event of the occurrence of such a *force majeure* event, Oregon will promptly notify User. Oregon will use its best efforts to resume performance as quickly as possible and will suspend performance only for such period of time as is necessary as a result of the *force majeure* event.

## Article 10. General

- 10.1 **Governing Law.** The construction, validity, performance and effect of this EULA is be governed by and interpreted in accordance with Oregon State law without giving effect to its conflict of laws provisions.
- 10.2 **Entire Agreement.** This EULA constitutes the entire agreement between the Parties concerning the subject matter of this EULA and supersedes any prior understanding or written or oral agreement.
- 10.3 **Waivers.** None of the provisions of this EULA will be considered waived by any Party unless such waiver is given in writing to the other Party. The failure of a Party to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise, any rights provided herein or by law, will not be deemed a waiver of any rights of any Party.
- 10.4 **Severability.** The illegality or invalidity of any provisions of this EULA does not impair, affect, or invalidate the other provisions of this EULA.
- 10.5 **Amendments.** If any Party desires a modification to this EULA, the Parties will, upon reasonable notice of the proposed modification or extension by the Party desiring the change, confer in good faith to determine the desirability of such modification or extension. Such modification will not be effective until and unless a written amendment is signed by the signatories to this EULA or by their representatives duly authorized to execute such amendment.
- 10.6 **Assignment.** Neither this EULA nor any rights or obligations of any Party hereunder will be assigned or otherwise transferred by any Party without the prior written consent of the other Parties.
- 10.7 **Notices.** All notices pertaining to or required by this EULA will be in writing and will be signed by an authorized representative and will be delivered by hand or sent by certified mail, return receipt requested, with postage prepaid, to the addresses indicated on the signature page for each Party. Any Party may change such address by notice given to the other Party in the manner set forth above.
- 10.8 **Independent Contractors.** The relationship of the Parties to this EULA is that of independent contractors and not agents of each other or joint venturers or partners. Each Party will maintain sole and exclusive control over its personnel and operations.
- 10.9 **Use of Name or Endorsements.** User will not use the name of Oregon in any advertising, press release, or promotional literature, without their prior written consent. Oregon will not use the name of User in any advertising, press release, or promotional literature without prior written consent. Press releases, advertising, or promotional literature that references the testing under this EULA will be made available to the other Party at least ten (10) business days prior to publication for review and comment.
- 10.10 In conducting the activities under this EULA, each Party and its employees and agents will comply with all federal, state, and local laws, ordinances, rules, and regulations applicable to such activities. The use and dissemination of any information, or materials exchanged under this EULA will be in accordance with all federal laws and regulations. Nothing in this EULA will be construed to permit any disclosure in violation of law, regulation, or federal policy.
- 10.11 **Authority of the Parties.** None of the Parties hereto has the authority, express or implied, to bind or commit any of the other Parties to perform or provide in any manner, or to pay money for, services or material with respect to any third party unless authorized in writing by such other Party's designated representative. Nothing contained herein will render any Party liable for any debts or obligations of the other Parties, except as otherwise specifically provided in this EULA.
- 10.12 **No Third Party Beneficiary.** Nothing in this EULA gives, is intended to give, or will be construed to give or provide, any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly

described as intended beneficiaries of the terms of this EULA.

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Mailing Address for Notices:

Technical Assistance and Consulting Services (TACS)  
1268 University of Oregon  
Eugene, OR 97403-1268  
541.346.5641  
<http://www.sppaprendezvous.org>

Technical

Jason LaPier  
[support@sppaprendezvous.org](mailto:support@sppaprendezvous.org)

Administrative

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541.346.0351

## Attachment A SPP/APR Rendezvous™ Description

Rendezvous is a web-based application built for developing Annual Performance Reports and State Performance Plans.

### Main components of the application

- **Indicator Targets**
  - Each Indicator for Part C and Part B requires specific and measurable targets to be identified by the State.
  - Some Indicators have fixed requirements for targets at 100% or 0%; otherwise, States may specify a target for each year.
  - If a State needs to change a target in the future, they have the option to identify which APR year the change was made in and the justification for making the revision.
- **Annual Indicator Data:** Each Indicator for Part C and Part B requires specific raw numbers to be provided. The application automatically performs any calculations necessary and identifies possible errors in data entry.
- **Improvement Strategies:** In Rendezvous, Improvement Strategies are organized separately from APR and SPP data, allowing you to develop activities as part of a strategic plan and then note to which indicators each activity is relevant. Using this format, revising activities and adjusting their timelines and resources is a snap.
  - *Timeline view* – In this view, activities are presented in a Gantt chart based on their planned starting and ending dates. From there, activities can be easily edited or commented on.
  - *Tasks* – Each activity can also contain several tasks, which can be handy for breaking down an activity and tracking its progress. Tasks do not feed into any reports directly, but can be referenced at report time.
  - *Report View* – In this view, all Improvement Strategies are presented in a tabular format. Don't bother copying and pasting activities into one or more indicators – simply attach this handy chart to your APR as an appendix.
- **APR Drafting:** Rendezvous provides an interface for drafting an Annual Performance Report for each indicator. This interface supplies a summary of data and Improvement Strategies relevant to that indicator. The report itself is broken down into narratives, which can be created, edited, reviewed, and finalized individually. The entire report can be previewed in the form of the OSEP-provided template at any time.

### Other notable features of the system

- **Data Versioning and History** – Whenever you make a change to any data in Rendezvous, whether APR data, target data, or improvement strategy details, the existing data is saved as a previous version which can be accessed in a history of changes. The result is never worrying about accidentally overwriting or deleting data.
- **Web-based** – Rendezvous is a web-based application. A modern (and up-to-date) web browser with Javascript enabled and an Internet connection are required to access the site. Since the application is web-based, no additional software is required. A user of the application can access the site from any location and from any computer with an Internet connection. The nature of a web-based system also creates greater opportunity for collaboration. For example, one person can create an improvement strategy, then ask a colleague to review and modify it. Rather than pass word processor documents back and forth via email, the two colleagues can both sign into the system and work on pieces simultaneously or asynchronously.
- **User Account Control** – We can customize your user accounts in Rendezvous to have read and

write or read-only access on a per-indicator basis. For example: If there is one person on staff somewhere that needs to verify the data in a particular indicator, but they should not be able to change those numbers, we can set up their account to have read-only access to that indicator. If that person needs to be able to change the data just for that indicator, we can give them read/write access to it. Of course, we can also give each account access to multiple indicators, and we can change the access settings at any time to meet the needs of the state.

## **Attachment B Payment and Technical Administration**

### **I. Payment**

User agrees to pay to Oregon a fee of ten thousand dollars (\$10,000) for the first (APR) year of use of Rendezvous. Access to Rendezvous will be provided within seven (7) days of payment of the fee and acceptance of the EULA.

~~If Oregon's Rendezvous beta test program continues into the next SPP/ARR term, User may renew this EULA for the same access fee for that term.~~

Oregon will invoice User. User agrees to pay the Subscription Fee to Oregon within 30 days of receipt of the invoice. Any payments provided by User to Oregon will be irrevocable by User, except as provided in Article 7, and will be made in U.S. dollars. User is responsible for completion of all financial administration required by User and any charges, taxes and/or customs duties associated with payments made under this EULA.

### **II. Technical Administration**

#### **User Obligations**

- (Optional) Complete the questionnaire/form in Attachment C to the best of User's ability.
- Minimum configuration on User computers to access and use Rendezvous: an Internet connection and a modern browser with Javascript and cookies enabled. Supported browsers include: Firefox 2, Internet Explorer 7, Safari 3, Opera 9.
- Provide feedback to Oregon on any feature, enhancement and customization recommendations.
- Submit all technical support requests and all bug reports to support@sppapprendezvous.org. Report any bugs as soon as possible.
- Submit final APR to appropriate recipient.
- Post APR results as required.

#### **Oregon Obligations**

- Use: Access to Rendezvous web-based software housed on the TACS server at Oregon through February 1, 2010.
- Training: Oregon will provide one (1) web-based training to any and all invited members of User's state staff.
- Documentation: Oregon will provide any and all documentation to Users as it is published. No documentation, beyond the onscreen instructions and prompts exists as of 7/20/09
- Support: Oregon will provide limited email support for the term of the EULA. Oregon will respond to all User email support requests within 48-hours within the business week.
- Updates: All program enhancements and additional features that are added to Rendezvous as they are published.

### **III. Customization (Optional Amendment)**

On User's request and subject to review and approval by the TACS unit at Oregon as constituting a useful addition/change to Rendezvous, for an additional fee, Oregon will provide customizations specific to User's state's need and requirements. Oregon through TACS will provide a written cost

estimate and will require approval prior to initiation of any customizations. Oregon will work with User staff to put an amendment to the EULA in place to handle customization including a mechanism for working with User during the development of the customization(s) to be sure they meet User's needs.

**This EULA specifically excludes:**

- Access to Rendezvous beyond February 1, 2010 (or beyond the OSEP week of clarification) without license renewal.
- Training beyond the one-time web-based training included above, unless otherwise specified
- Support beyond email support. At its discretion, Oregon may respond to phone calls via email.
- Access to any Rendezvous program code or stand-alone applications.
- Any customizations to the program specific to your state.

**Yes**, I am authorized on behalf of User to enter into this EULA and by checking this box and clicking through, User agrees to the above terms and conditions.

**Attachment C**  
**Rendezvous Questionnaire**

**Functionality/Programming and Interface:**

Did you encounter any error messages while using the application?

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Did you encounter any “glitches”, such as unexpected or unresponsive behavior? For example, unexpected behavior might be: the wrong page was loaded after clicking a link. Unresponsive behavior might be: nothing appeared to happen after clicking a link.

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On a scale from 1-5 with 1 as easiest, please rate how easy or difficult you found it to:

- Enter SPP Data \_\_\_\_\_
- Enter APR Data \_\_\_\_\_
- Enter Improvement Strategies \_\_\_\_\_
- View/Read Gantt Charts \_\_\_\_\_
- Enter Tasks \_\_\_\_\_
- Enter APR Drafts \_\_\_\_\_
- View/Read graphs/reports \_\_\_\_\_
- Edit/revise APR Drafts \_\_\_\_\_
- Navigate the program \_\_\_\_\_

Suggestions for improvements to the interface:

- Navigation around the site:

- Entering Data:

- Presentation of Data:

**Content:**

Were there indicators for which you required more flexibility in entering data and/or drafting reports? If so, please identify them and describe how these needs could be met more effectively.

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Did you access resources while developing the APR that you would like links to in the Rendezvous program? If so, please identify these and indicate if they were state-specific or national.

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How did you use the strategies/tasks features?

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How did you use the specific indicator overview feature?

How effective was Rendezvous in helping develop your APR?

Suggestions for improvement to using the content for managing your data and resources:

- Improvement Strategies/Tasks
  
- APR Drafts
  
- Indicator overview (specific and global)