

SERVICE AGREEMENT

Welcome to New Perspectives On Assessment! These terms and conditions set forth the agreement between us (this “Agreement”) regarding the services that we will provide to you in connection with your use of our website at <http://newperspectivesonassessment.com/>, as well as any mobile sites, mobile applications, successor websites, other Internet points of presence that we make available to you, and any software downloaded from the Site or obtained elsewhere (collectively, the “Site”).

By accessing, downloading any content from, or using the Site, you hereby agree to be bound by this Agreement and represent and warrant that you have the right, authority, and capacity to enter into this Agreement and to abide by all of the terms and conditions set forth herein. You may not use the Site if you are prohibited by law from using the Site or receiving any of the content herein. If you are accessing the Site on behalf of a school, company, entity or organization, you represent and warrant that you are an authorized representative of such school, company, entity or organization with the authority to bind it to this Agreement. If you do not agree with all provisions of this Agreement, you may not access, download any content from, or use the Site.

Please review NPOA’s Privacy Policy and Terms of Use at the Site. The terms of the Privacy Policy and Terms of Use are incorporated into, and considered a part of, this Agreement.

1. General. The terms “we”, “us” and “our” refer to New Perspectives On Assessment, LLC and its subsidiaries and affiliates (collectively, “NPOA”). The terms “you” and “yours” refer to the individual, school, company, entity or organization registering for or using the services offered by us on the Site (the “Services”) in connection with your account with us (“Account”). You are responsible for your own continuous compliance with this Agreement and other guidelines and policies released by us from time to time.

2. Services.

2.1 Subject to the terms and conditions of this Agreement, we will maintain the necessary hardware and software for the purpose of enabling you and certain of your employees, if applicable, to use and operate the applications available on the Site.

2.2 Except as otherwise provided, we will use commercially reasonable efforts to make the Site available 24 hours per day, 365 days per year. Notwithstanding the foregoing, we may schedule downtime for routine maintenance during off-peak hours (6:00 p.m. through 6:00 a.m. prevailing Eastern Time). We will use commercially reasonable efforts to provide you with advance notice of such scheduled downtime. We also reserve the right to suspend your access to the Site and/or the Services for purposes of emergency maintenance work at any time as may be reasonably necessary without notice to you. Notwithstanding the foregoing, we will use reasonable efforts to provide as much prior notice to you as possible under the circumstances.

3. Your Obligations.

3.1 **Generally.** Unless otherwise negotiated and documented between us, you are responsible for obtaining and maintaining all local computers, workstations, third-party equipment, hardware and software required in connection with your use and operation of the Site and the Services.

3.2 **For Users Who Are Individuals.** You will cooperate with us in connection with the performance of this Agreement by making available such information as may be reasonably required and taking such other actions as we may reasonably request. You will provide us with all applicable phone numbers and other contact information in connection with your use of the Site so that we may contact you in connection with any issues related to the Services. You will promptly notify us of any errors or interruptions that arise during the use of the Site.

3.3 **For Users Who Are Organizations.** The following provisions shall apply only if you are a school, company, entity or other organization:

(a) You will cooperate with us in establishing a password or other procedures for verifying that only your authorized employees (“Authorized Users”) access the Site and/or Services.

(b) You will ensure that, and hereby represent and warrant that: (i) all required registration information submitted by or on behalf of your Authorized Users is truthful and accurate; (ii) you will maintain the accuracy of such information; and (iii) the use of the Site by your Authorized Users does not violate any applicable law or regulation or any provision of this Agreement or the Terms of Use.

(c) You agree to notify us immediately if any Authorized User should be added or removed from your Account, including, for example, if a teacher no longer is employed at your school.

(d) You acknowledge and agree that your Authorized Users shall be obligated to agree to the Terms of Use prior to their use of the Site and the Services.

(e) You are solely responsible for any and all use of the Site by your Authorized Users and shall be responsible for the compliance of your Authorized Users with the Terms of Use and other guidelines and policies released by us from time to time.

(f) You will designate a representative (“Authorized Representative”) and provide us with all applicable phone numbers and other contact information of such Authorized Representative. The Authorized Representative will be our primary point of contact in connection with the Site and the Services and will be responsible for all technical matters relating to this Agreement. Without limiting the generality of the foregoing, the Authorized Representative shall be the sole person responsible for conveying any user issues, technical concerns or questions to us in connection with your Account, including any issues raised by your Authorized Users. You may change the individual designated as your Authorized Representative at any time by providing written notice to us of the replacement Authorized Representative. The Authorized Representative will promptly notify us of any errors or interruptions that arise during the use of the Site, including the use of the Site by your Authorized Users.

4. Customer Support and Maintenance.

4.1 For customer support related to the Site, emails should be directed to bbecerra@newperspectivesonassessment.com. Standard Support is available during normal business hours. Normal business hours are between 8:00 AM to 4:00 PM (Eastern Time), Monday through

Friday, excluding NPOA recognized holidays. We will respond to any request for customer support from you or your Authorized Representative (if applicable) no later than two (2) business days following such request. Notwithstanding the foregoing, we will endeavor to provide additional support outside of the above stated normal business hours, at our then prevailing rates, upon your prior advance written notice to us.

4.2 We will perform the following tasks in accordance with this Agreement as part of the maintenance of the Site: (a) monitor server logs for alerts and errors; (b) maintain firewall for proper security; (c) perform periodic disaster recovery; (d) manage data security and redundancy; and (e) bug fixes, error correction and troubleshooting.

4.3 Notwithstanding anything to the contrary contained herein, all updates and minimum software requirements on the Site will be performed, scheduled and determined by us in our discretion. We will use commercially reasonable efforts under the circumstances to remedy any error in the Site until such error is remedied. We will maintain resources sufficient, in our discretion, to restore the Services in a reasonably timely manner based upon the circumstances at hand in the event of a disaster.

5. Thirty-Day Money Back Guarantee. If you are not satisfied with the Services and wish to cancel for any reason, you may do so in the first thirty (30) days and receive a full refund of all amounts paid to us. To receive the refund, please contact us at mbecerra@newperspectivesonassessment.com within your first thirty (30) days of use of the Site, and we will contact you to arrange for a refund.

6. Enforcement by Us. We reserve the right (but have no obligation under this Agreement) to investigate and/or take appropriate action, including legal action, in our sole discretion against you if you violate any provision of this Agreement, including removing your User Content (as defined in the Terms of Use) from the Site (or modifying it), terminating your Account, and/or reporting you to law enforcement authorities. To cooperate with legitimate governmental requests, subpoenas or court orders, to protect our systems and customers, or to ensure the integrity and operation of our business and systems, we may access and disclose any information we consider necessary or appropriate, including your Account, IP addressing and traffic information, usage history, and your User Content.

7. Disclaimers.

7.1 THE SITE (INCLUDING SITE CONTENT) AND ALL RELATED SERVICES ARE PROVIDED “AS-IS” AND AS AVAILABLE. WE EXPRESSLY DISCLAIM ANY WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, AND NON-INFRINGEMENT. WE MAKE NO WARRANTY THAT THE SITE (OR ANY SITE CONTENT) OR SERVICES: (A) WILL MEET YOUR REQUIREMENTS; (B) WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE BASIS; OR (C) WILL BE VIRUS FREE, ACCURATE, RELIABLE, COMPLETE, LEGAL OR SAFE. WE MAKE NO WARRANTY REGARDING THE PRODUCTS AND SERVICES ASSOCIATED WITH THE SITE, INCLUDING ANY OTHER PRODUCTS AND SERVICES AVAILABLE THROUGH LINKS TO THIRD-PARTY SITES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

7.2 WE ARE NOT RESPONSIBLE FOR ANY LOSS OR DAMAGE THAT YOU MAY SUFFER AS A RESULT OF YOU NOT USING THE SITE OR SERVICES CORRECTLY OR IF YOU FAIL TO COMPLY WITH THIS AGREEMENT OR ANY OTHER INSTRUCTIONS GIVEN TO YOU BY US. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SITE IS DONE AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

7.3 REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION YOU MAY HAVE ARISING OUT OF, RELATING TO, OR CONNECTED WITH YOUR USE OF THE SITE OR SERVICES, MUST BE FILED WITHIN TWELVE (12) MONTHS OF THE DATE THE FACTS GIVING RISE TO THE SUIT WERE KNOWN OR SHOULD HAVE BEEN KNOWN BY YOU, OR FOREVER BE BARRED.

8. Limitation on Liability. IN NO EVENT SHALL WE BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOST PROFIT OR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING FROM YOUR USE OF THE SITE (INCLUDING SITE CONTENT) OR THE SERVICES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ACCESS TO, AND USE OF, THE SITE (INCLUDING SITE CONTENT) AND SERVICES ARE AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA RESULTING THEREFROM. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY TO YOU FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT (FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION), WILL AT ALL TIMES BE LIMITED TO THE AMOUNT YOU HAVE ACTUALLY PAID TO US FOR USE OF THE SITE. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OF CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU, AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

9. Indemnification. You agree to indemnify and hold NPOA, its owners, parents, subsidiaries, affiliates, any related companies, its suppliers, licensors and partners, and the officers, directors, employees, agents and representatives of each of them harmless, including costs and attorneys' fees, from any claim or demand made by any third party due to or arising out of (a) the access, download of any content from, or use of the Site by you or (b) your violation of this Agreement. We reserve the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify us, and you agree to cooperate with our defense of these claims. You agree not to settle any matter without our prior written consent. We will use reasonable efforts to notify you of any such claim, action or proceeding upon becoming aware of it.

10. Term and Termination. Subject to this Section, this Agreement will remain in full force and effect beginning when you use the Site for the first time. We may (a) suspend your rights to use the Site (including your Account) or (b) terminate this Agreement, at any time for any reason at our sole discretion, including for any use of the Site in violation of this Agreement. Upon termination of this Agreement, your Account and right to access and use the Site will terminate immediately. You understand that any termination of your Account involves deletion of any content you have provided associated therewith from our live databases. We will not have any liability whatsoever to you for any termination of this Agreement, including for termination of your Account or deletion of any content you have provided on the Site. Even after this Agreement is terminated, the following provisions of this Agreement will remain in effect: Sections 6 through 11.

11. General.

11.1 **Changes to Agreement.** This Agreement is subject to occasional revision, and if we make any substantial changes, we will notify you by sending you an email to the email address associated with your Account and/or by prominently posting notice of the changes on our Site. Any material changes to this Agreement will be effective upon the earlier of thirty (30) calendar days following our dispatch of an email notice to you (if applicable) or thirty (30) calendar days following our posting of notice of the changes on our Site. These changes will be effective immediately for new users of our Site. You are responsible for providing us with your most current email address. In the event that the last email address that you have provided us is not valid, or for any reason is not capable of delivering to you the notice described above, our dispatch of the email containing such notice will nonetheless constitute effective notice of the changes described in the notice. Continued use of our Site following notice of such changes shall indicate your acknowledgement of such changes and agreement to be bound by the terms and conditions of such changes. Certain provisions of this Agreement may be superseded by expressly designated legal notices or terms located on particular pages of the Site.

11.2 **U.S. Export Controls.** No software, content, or other materials may be downloaded from the Site or otherwise exported or re-exported in violation of U.S. export laws. By downloading or using any software, you represent and warrant that such download or use is not in violation of any such law.

11.3 **Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York without respect to principles of choice or conflict of laws (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York. You agree to submit to the exclusive personal jurisdiction of the state courts and federal courts located within the State of New York for the purpose of litigating any claims or disputes arising under this Agreement or your use of the Site. Notwithstanding the foregoing, we may seek injunctive or other equitable relief to protect our intellectual property rights in any court of competent jurisdiction.

11.4 **Entire Agreement.** This Agreement (which includes the Privacy Policy, Terms of Use and any other rules and policies posted on the Site) constitute the entire agreement between you and us regarding the use of the Site. Our failure to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision. The section titles in this Agreement are for convenience only and have no legal or contractual effect. The word “including” means “including without limitation.” If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Your relationship to us is that of an independent contractor, and neither party is an agent or partner of the other. This Agreement, and your rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by you without our prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be void. This Agreement shall be binding upon permitted assignees.

11.5 **Copyright/Trademark Information.** Copyright © 2015, New Perspectives On Assessment, LLC. All rights reserved. All trademarks, logos and service marks (“Marks”) displayed on the Site are our property or the property of other third parties. You are not permitted to use these Marks without our prior written consent or the consent of such third party which may own the Marks.