

TERMS OF USE

Welcome to New Perspectives On Assessment! These Terms of Use govern 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”).

These Terms of Use set forth the legally binding terms for your use of the Site. By accessing, downloading any content from, or using the Site, you hereby agree to be bound by these Terms of Use and represent and warrant that you have the right, authority, and capacity to enter into these Terms of Use 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 these Terms of Use. If you do not agree with all provisions of these Terms of Use, you may not access, download any content from, or use the Site.

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

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”). You are responsible for your own continuous compliance with these Terms of Use and other guidelines and policies released by us from time to time.

2. Important Note Regarding Children.

2.1 Generally. Our Site offers certain software and applications to schools and teachers for the benefit of the schools and their students. In providing such software and applications, we may collect personal information from users. To collect, use, or disclose personal information from or about children under 13 years of age (“Children”), we and you are required to comply with the Children’s Online Privacy Protection Act of 1998 (“COPPA”). Please read this Section carefully as it explains, among other things, (a) a Child’s parent’s or guardian’s ability to limit the collection, use and disclosure of personal information collected from or about their Children whose work will be uploaded onto the Site; and (b) the role of the Child’s school (“School”) and teachers in this process.

2.2 Schools and Teachers. You agree to use the Site solely for the benefit of your School and the teachers in your School, and not for commercial purposes. The Family Educational Rights and Privacy Act (“FERPA”) protects the privacy of student educational records and limits when a school may disclose a student’s educational records. You are solely responsible for compliance with FERPA and COPPA. Without limiting the generality of the foregoing, to the extent you are uploading videos of students and/or their work samples as documentation of learning or otherwise disclosing any student records to us (“Student Records”), you represent and warrant that you have obtained the appropriate consent from the parent of the student or from the student himself/herself if such student is 18 years old and older, if and as required under FERPA to make

such disclosure and grant the following license. To the extent you are disclosing any Student Records to us, you grant to us a non-exclusive license to use Student Records of an end user solely for the limited purposes of (a) providing the Services, software, or content to the end user on the Site, and (b) to use anonymized Student Records to improve the Services, software and content on the Site and our other products and Services.

3. Accounts. To use the Site, you must have an account, which you may sign up for on the Site (“Account”). You represent and warrant that: (a) all required registration information you submit is truthful and accurate; (b) you will maintain the accuracy of such information; and (c) your use of the Site does not violate any applicable law or regulation or any provision of these Terms of Use. When you sign up for an Account, you will be asked to choose a login name and a password for your Account. You are entirely responsible for maintaining the confidentiality of your password. You agree not to use the Account, login name, or password of another user at any time, and you agree to notify us immediately if you suspect any unauthorized use of your Account or access to your password. If you are a teacher using your School’s Account and you move to a different School, your Account will be terminated by us, unless your new School also maintains an Account with us. You are solely responsible for any and all use of your Account.

4. Fees. Some Services and software on the Site may be provided to you on a fee basis. You agree to pay all applicable fees for Services provided to you pursuant to these Terms of Use as set forth in the pricing schedule made available to you or as otherwise agreed to between you and us. We may increase any price or fee and/or payment terms for the Services at any time by giving advance notice of the change and its effective date to you. All fees are quoted and must be paid in U.S. Dollars. If you elect to purchase fee-based Services or software and transmit to us a purchase request, you warrant that your use of the particular credit card or other accepted payment method is authorized and that all information that you submit to us, or any third party designated by us, is true and accurate (including your credit card number and expiration date), and you agree to pay all fees, including any applicable sales taxes, you incur.

5. Site.

5.1 Site License. Subject to these Terms of Use, we grant you a non-transferable, non-exclusive, royalty-free, fully paid, worldwide license to access, download, and display the documents and other information and content and use the applications that we make available to you on the Site (collectively, “Site Content”) on the web browser software of your choice, solely for the purpose of reviewing and learning from the Site Content for your personal use as it pertains to the accrual of documentation for School Records.

5.2 Certain Restrictions. The rights granted to you in these Terms of Use are subject to the following restrictions: (a) you shall not license, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Site; (b) you shall not modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of the Site; (c) you shall not access the Site to build a similar or competitive product or service; (d) except as expressly stated herein, no part of the Site may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means (provided the foregoing shall not restrict your ability to download and print School Records to share such Student Records with students, their parents and/or other teachers, so long as such sharing is in compliance with FERPA

and all applicable law); and (e) any future release, update, or other addition to the functionality of the Site shall be subject to these Terms of Use. All copyright and other proprietary notices on any Site Content must be retained on any copies.

5.3 **Modification.** We reserve the right, at any time, to modify, suspend, or discontinue the Site or any part thereof with or without notice. You agree that we will not be liable to you or to any third party for any modification, suspension, or discontinuance of the Site or any part thereof.

5.4 **Ownership.** You acknowledge that all the intellectual property rights, including copyrights, patents, trademarks, and trade secrets, in the Site are owned by us or our licensors. The provision of the Site and related Services does not transfer to you or any third party any rights, title or interest in or to such intellectual property rights. We and our suppliers reserve all rights not granted in these Terms of Use.

6. User Content.

6.1 **Responsibility for Content.** “User Content” of the Site user means any and all documents and other information and content that such user uses with or uploads to the Site through such user’s Account. You are solely responsible for your User Content. You assume all risks associated with use of your User Content, including any reliance on its accuracy, completeness or usefulness by others, or any disclosure of your User Content that makes you or any third party personally identifiable. You hereby affirm, represent, and warrant that (a) you own, or have the necessary licenses, rights, consents, and permissions to use, and authorize Site users to use your User Content as described herein and (b) your User Content does not violate the Acceptable Use Policy (as described below). You may not state or imply that your User Content is in any way provided, sponsored or endorsed by us. Because you alone are responsible for your User Content (and not us), you may expose yourself to liability if, for example, your User Content violates the Acceptable Use Policy. We are not obligated to backup any User Content and you are solely responsible for creating backup copies of your User Content. We will protect User Content in accordance with the Privacy Policy.

6.2 **Sharing User Content.** You may permit certain users with an Account and who are also employed at your School to view and download your User Content by following the instructions in your Account (“**Authorized Users**”). You agree and acknowledge that we cannot and do not control any Authorized User’s use of your Content. 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 these Terms of Use and other guidelines and policies released by us from time to time.

6.3 **License.** By using or uploading your User Content to the Site, you automatically grant, and you represent and warrant that you have the right to grant, an irrevocable, nonexclusive, royalty-free and fully paid, worldwide (a) license to us, during the term of your Account, to reproduce, distribute, display, prepare derivative works of, incorporate into other works, and otherwise use your User Content, internally to provide you the Site; and (b) perpetual license to us and Authorized Users to reproduce, distribute, and display your User Content. You agree to

irrevocably waive (and cause to be waived) any claims and assertions of moral rights or attribution with respect to your User Content.

6.4 **Feedback.** We will treat any feedback or suggestions you provide to us as non-confidential and non-proprietary. Thus, in the absence of a written agreement with us to the contrary, you agree that you will not submit to us any information or ideas that you consider to be confidential or proprietary.

7. **Acceptable Use Policy.** The following sets forth our “Acceptable Use Policy”:

7.1 You agree not to use the Site to collect, upload, transmit, display, or distribute any User Content (a) that violates any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (b) that is unlawful, harassing, abusive, tortious, threatening, harmful, abusive, invasive of another’s privacy, vulgar, defamatory, false, intentionally misleading, trade libelous, pornographic, obscene, patently offensive (e.g., material that promotes racism, bigotry, hatred, or physical harm of any kind against any group or individual) or otherwise objectionable material of any kind or nature or which is harmful to minors in any way; or (c) in violation of any law, regulation, or obligations or restrictions imposed by any third party.

7.2 In addition, you agree not to use the Site to: (a) upload, transmit, or distribute any computer viruses, worms, or any software intended to damage or alter a computer system or data; (b) send unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of duplicative or unsolicited messages, whether commercial or otherwise; (c) harvest, collect, gather or assemble information or data regarding other users, including email addresses, without their consent; (d) interfere with or disrupt servers or networks connected to the Site or violate the regulations, policies or procedures of such networks; (e) attempt to gain unauthorized access to the Site, other computer systems or networks connected to or used together with the Site, through password mining or other means; or (f) harass or interfere with another user’s use and enjoyment of the Site.

7.3 If you use or upload personal information of your students to the Site, you agree to comply with your obligations under FERPA, COPPA and all other applicable laws.

8. **Enforcement by Us.** We have the right (but not the obligation) to review all User Content and delete (or modify) any User Content that in our sole judgment violates these Terms of Use, is used in a way that in our sole judgment would violate these Terms of Use, or may otherwise violate the rights, harm, or threaten the safety of any user or any other person, or create liability for us or any user. We reserve the right (but have no obligation under these Terms of Use) to investigate and/or take appropriate action, including legal action, in our sole discretion against you if you violate this provision or any other provision of these Terms of Use, including removing your User Content from the Site (or modifying it), terminating your Account in accordance with Section 14, 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 consider necessary or appropriate, including your Account, IP addressing and traffic information, usage history, and your User Content.

9. Third Party Sites; Other Users; Release.

9.1 **Third Party Sites.** The Site may contain links to third-party Sites (“Third-Party Sites”). Such Third-Party Sites are not under our control. We are not responsible for the content or links in any Third-Party Sites. We provide these links to Third-Party Sites only as a convenience and do not review, approve, monitor, endorse, warrant, or make any representations with respect to Third-Party Sites. You use all content of and links to Third-Party Sites at your own risk. When you leave the Site, our terms and policies no longer govern. You should review the applicable terms and policies, including privacy and data gathering practices, of any Third-Party Sites, and should make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any third party.

9.2 **Other Users.** Each Site user is solely responsible for any and all User Content that is posted by such user on the Site. Because we do not control User Content, you acknowledge and agree that we are not responsible for any User Content and we make no guarantees regarding the accuracy, currency, suitability, or quality of any User Content, and we assume no responsibility for any User Content. Your interactions with other Site users are solely between you and such user. You agree that we will not be responsible for any loss or damage incurred as the result of any such interactions. If there is a dispute between you and any Site user, we are under no obligation to become involved.

9.3 **Release.** You hereby release us, our affiliates, owners, subsidiaries, directors, officers, employees, agents and successors from claims, demands any and all losses, damages, rights, claims, and actions of any kind including personal injuries, death, and property damage, that is either directly or indirectly related to or arises from any interactions with or conduct of other Site users or Third-Party Sites. IF YOU ARE A CALIFORNIA RESIDENT, YOU HEREBY WAIVE CALIFORNIA CIVIL CODE SECTION 1542, WHICH STATES: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

10. Copyright Policy. We respect the intellectual property of others and ask that users of our Services do the same. In connection with our Services, we have adopted and implemented a policy respecting copyright law that provides for the removal of any infringing materials and for the termination, in appropriate circumstances, of users of our online Services who are repeat infringers of intellectual property rights, including copyrights. If you believe that one of our users is, through the use of our Services, unlawfully infringing the copyright(s) in a work, and wish to have the allegedly infringing material removed, the following information in the form of a written notification (pursuant to 17 U.S.C. § 512(c)) must be provided to our designated Copyright Agent:

- your physical or electronic signature;
- identification of the copyrighted work(s) that you claim to have been infringed;
- identification of the material on our Services that you claim is infringing and that you request us to remove;

- sufficient information to permit us to locate such material;
- your address, telephone number, and email address;
- a statement that you have a good faith belief that use of the objectionable material is not authorized by the copyright owner, its agent, or under the law; and
- a statement that the information in the notification is accurate, and under penalty of perjury, that you are either the owner of the copyright that has allegedly been infringed or that you are authorized to act on behalf of the copyright owner.

Please note that, pursuant to 17 U.S.C. § 512(f), any misrepresentation of material fact (falsities) in a written notification automatically subjects the complaining party to liability for any damages, costs and attorney’s fees incurred by us in connection with the written notification and allegation of copyright infringement.

The designated Copyright Agent for NPOA is:

3396 Meadowbrook Blvd.
 Cleveland Heights, OH 44118
 USA
 Email: mbecerra@newperspectivesonassessment.com

11. Disclaimers.

11.1 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.

11.2 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 THESE TERMS OF USE 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.

11.3 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.

12. 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 THESE TERMS OF USE (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.

13. 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) your access, download of any content from, or use of the Site, (b) your User Content, or (c) your violation of these Terms of Use. 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.

14. Term and Termination. Subject to this Section, these Terms of Use 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 these Terms of Use, at any time for any reason at our sole discretion, including for any use of the Site in violation of these Terms of Use or if we believe you are younger than thirteen (13) years of age. Upon termination of these Terms of Use, your Account and right to access and use the Site will terminate immediately. You understand that any termination of your Account involves deletion of your User Content associated therewith from our live databases. We will not have any liability whatsoever to you for any termination of these Terms of Use, including for termination of your Account or deletion of your User Content. Even after these Terms of Use are terminated, the following provisions of these Terms of Use will remain in effect: Sections 1, 2, 5.2, 5.3, 5.4, and 6 through 15.

15. General.

15.1 Changes to Terms of Use. These Terms of Use are 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 these Terms of Use 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 these Terms of Use may be superseded by expressly designated legal notices or terms located on particular pages of the Site.

15.2 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.

15.3 Governing Law and Jurisdiction. These Terms of Use 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 these Terms of Use 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.

15.4 Entire Agreement. These Terms of Use (which include the Privacy Policy, Service Agreement 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 these Terms of Use shall not operate as a waiver of such right or provision. The section titles in these Terms of Use are for convenience only and have no legal or contractual effect. The word “including” means “including without limitation.” If any provision of these Terms of Use is, for any reason, held to be invalid or unenforceable, the other provisions of these Terms of Use 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. These Terms of Use, 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. These Terms of Use shall be binding upon permitted assignees.

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