

## Discovery Education Assessment TERMS OF USE

**I. Grant of Rights.** Discovery Education Assessment, LLC (“Discovery Education Assessment”) has granted to the purchasing school or entity (each, an “Assessment Customer”) and its authorized Users (as defined below), for the term of the services purchased by Assessment Customer, a limited, non-exclusive, terminable, non-transferable license to access the Discovery Education Assessment website (the “Website”) and any and all content included therein, including, without limitation, all the search pages, indexes, databases, online help, text, still images, Assessment Content and Video Content and all other content provided or hosted on the Website or otherwise offered in connection with the Predictive Assessment service (the “Content”), and to download, stream, and use the Content pursuant to the terms and conditions set forth in the Assessment Customer’s purchase order and these Terms of Use, such grant of rights subject to Discovery Education Assessment’s rights thereto. “Assessment Content” includes, but is not limited to, the questions and answers in diagnostic assessments, curricular resources, materials in the Progress Zone Item Bank, assessment reports, and other features of the Predictive Assessment service. “Audiovisual Content” means streaming and downloadable educational audio and visual materials provided on the Website.

“User” means the Assessment Customer, an educator, administrator or student in the schools covered under Assessment Customer’s purchase order.

Discovery Education Assessment may, in its sole discretion, make changes to the Website and/or the Content, including but not limited to adding and/or removing video titles or other Content, adding closed-captioning, and implementing new encoding rates.

All rights not expressly granted to Assessment Customer and its Users pursuant to the Assessment Customer’s purchase order and/or these Terms of Use are reserved to Discovery Education Assessment, and all uses of the Content by Assessment Customer and its Users not expressly permitted hereunder are prohibited.

## II. Permitted and Prohibited Uses.

**a. Use for Educational, Non-Commercial Purposes Only.** Assessment Customer and its Users may use the Website and the Content for bona fide educational and research purposes only, and may not use them in any commercial or for-profit manner.

Discovery Education Assessment reserves the right, in its sole and absolute discretion, to limit Assessment Customer’s and/or any Users’ use of the Website in the event that Discovery Education Assessment, in its sole and absolute discretion, deems Assessment Customer’s and/or such Users’ use thereof to be inconsistent with educational and research purposes, and/or inconsistent with these Terms of Use.

**b. Assessment Content.** User may administer tests to students, retain questions, answers, scores, class summaries and data reports, create mini-assessments with materials from the Progress Zone Item Bank and administer to students; and use curricular resources for classroom instruction.

### **c. Video Content.**

**1. Downloading of Content.** Users may download, for noncommercial instructional use, including for lesson plans, copies of (i) images and (ii) videos and video clips designated on the website as downloadable. Copies must be deleted or erased after use. Such downloading shall be for individual User convenience only, and Users may not (1) systematically download any of the Content, (2) create distribution “libraries”, or (3) transfer, sell, rent, display, or exhibit any of the Content to any third party.

**2. Editing Content.** Users may edit videos and video clips designated on the Website as editable, solely in connection with classroom or other school-related projects. Such videos and video clips, as edited by User, as well as any work containing User-edited videos or video clips, may not contain any libelous or unlawful materials or content or any commercial advertising materials, will not infringe upon any party’s proprietary rights, including but not limited to statutory or common-law

copyright, trademark and right of privacy, and may not violate any law, regulation or right of any kind whatsoever or give rise to any actionable claim or liability.

User must maintain all copyright, trademark and proprietary notices included with, attached to or embedded all editable videos and video clips without modification, obstruction or deletion.

The Content may include certain ancillary educational materials, such as student activity sheets, blackline masters and teachers' guides ("Ancillary Materials"). User may modify, alter and revise the Ancillary Materials to meet specific instructional needs, provided that the following statement is prominently displayed on all such revised Ancillary Materials, in addition to any other proprietary notices, and with the understanding that Discovery Education Assessment or its content provider shall continue to own the Ancillary Materials: "*Revised with the permission of Discovery Education Assessment. Discovery Education Assessment and its content providers are not responsible for the content or accuracy of the revision*".

**c. Dissemination of Content.** In the course of using any Content as permitted hereunder, Assessment Customer and its Users may not make the Content, or any part thereof, available to any party who is not an Assessment Customer or a User, except as permitted herein. Assessment Customer and its Users must ensure that the Content is at all times kept on a secure server, viewable only by Assessment Customers and/or its Users. If Assessment Customer wishes to use a third party to host the Content, Discovery Education Assessment must approve the use of such host in advance and in writing, and Discovery Education Assessment shall have the right to approve the terms of agreement between such host and Assessment Customer.

**e. Prohibited Uses.** Except as expressly set forth herein, neither Assessment Customer nor the Users may (i) copy, reproduce, alter, modify, transmit, perform, create derivative works of, publish, sub-license, distribute, or circulate the Website, the Content, or any portion thereof; (ii) disassemble, decompile, or reverse engineer the Website or any portion thereof, or use a robot, spider, or any similar device to copy or catalog the Content or any portion thereof; (iii) take any actions, whether intentional or unintentional, that may circumvent, disable, damage or impair the Website's or the Content's control or security systems, nor allow or assist a third party to do so; or (iv) use the Content in a manner that disparages the Website, the Content or Discovery Education Assessment or its content providers, or in any manner that Discovery Education Assessment may, in its sole discretion, deem inappropriate.

Assessment Customer and the Users acknowledge and agree that the Website and the Content possess a special, unique and extraordinary character that makes difficult the assessment of the monetary damages that would be sustained as a result of unauthorized use, and that unauthorized use may cause immediate and irreparable damage to Discovery Education Assessment for which Discovery Education Assessment would not have an adequate remedy at law. Therefore, Assessment Customer agrees that, in the event of such unauthorized use, in addition to such other legal and equitable rights and remedies as may be available to Discovery Education Assessment, Discovery Education Assessment shall be entitled to injunctive and other equitable relief without the necessity of proving damages or furnishing a bond or other security.

**III. Ownership.** As between Assessment Customer, the Users, and Discovery Education Assessment, the Website and the Content are the property of Discovery Education Assessment, and are protected by United States and international copyright and trademark law. By using the Website and the Content, even as permitted hereunder, neither Assessment Customer nor any of its Users gain any ownership interest in the Website or the Content.

**IV. Security and Use of Passwords.** Each User shall have a valid username, password, and passcode for the purpose of accessing the Website and the Content (the "Log-In Information"). Assessment Customer and its Users must keep all Log-In Information strictly confidential, and all Log-In Information may be used only by the assigned User. Assessment Customer and its Users are responsible for maintaining the security and confidentiality of all Log-In Information, and for preventing access to the Website and/or the Content by unauthorized persons using a User's Log-In Information. Unauthorized access to or use of the Website and/or the Content by someone using a User's Log-In information may be attributed to such User.

**V. Citations.** User must include citation information, including Discovery Education Assessment or the applicable content provider (if identified) as the source, for all portions of the Content used in any end product.

**VI. Communications from Discovery Education Assessment.** Discovery Education Assessment may periodically contact Users for customer service purposes. By accessing the Website and the Content, Users consent to receive such communications. Assessment Customer shall promptly provide Discovery Education Assessment with any and all information regarding its Users and/or use of the Website and the Content by its Users that Discovery Education Assessment reasonably requests. Assessment Customer agrees that Discovery Education Assessment may reference its business relationship with Assessment Customer in its marketing or sales materials.

**VII. Changes to Terms of Use.** Discovery Education Assessment reserves the right to change these Terms of Use from time to time. Such changes will become effective when Discovery Education Assessment posts the revised Terms of Use on the Website. Users should check the Terms of Use from time to time, as they are bound by the Terms of Use posted on the Website at the time of access. Any revised Terms of Use shall supersede all previous versions.

**VIII. Termination of the Assessment Customer Access; Effect of Termination or Expiration.** In the event that Assessment Customer breaches any of its terms of purchase, or Assessment Customer and/or any of its Users breach these Terms of Use, and such breach is not cured within 10 days after receipt of notice thereof from Discovery Education Assessment, Discovery Education Assessment may terminate the Assessment Customer's order in whole or in part immediately upon written notice to Assessment Customer. Notwithstanding the foregoing, there shall be no cure period for any Event of Default that is not cureable.

Upon expiration or prior termination of the Assessment Customer's purchase, all rights granted herein shall revert to Discovery Education Assessment; all access to and use of the Website and the Content by Users must cease; all materials downloaded from the Website must be erased, deleted, or destroyed; and all storage devices provided by Discovery Education Assessment (if any), must be immediately returned to Discovery Education Assessment at its business address.

**IX. No Warranties, Limitation of Liability.** THE WEBSITE AND THE CONTENT ARE PROVIDED AS IS, AND ALL WARRANTIES OF ANY KIND, PAST OR PRESENT, WHETHER STATUTORY, COMMON-LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SECURITY AND, EXCEPT AS MAY BE OTHERWISE STATED IN THIS AGREEMENT, NON-INFRINGEMENT, ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW. DISCOVERY EDUCATION ASSESSMENT DOES NOT GUARANTEE OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR ACCURACY OF THE WEBSITE OR THE CONTENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY DISCOVERY EDUCATION ASSESSMENT OR ITS EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF DISCOVERY EDUCATION ASSESSMENT'S OBLIGATIONS HEREUNDER, AND ASSESSMENT CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. IN NO EVENT SHALL DISCOVERY EDUCATION ASSESSMENT BE LIABLE FOR ANY LOST DATA, LOST PROFITS, BUSINESS INTERRUPTION, REPLACEMENT SERVICE OR OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR INDIRECT DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY.

**X. Release.** Assessment Customer and its Users release and waive all claims against Discovery Education Assessment, its parent, subsidiaries, affiliated companies, agents or content providers, and the directors, trustees, officers, shareholders, employees, agents and representatives of each of the foregoing, from any and all claims, damages, liabilities, costs and expenses arising out of User's use of the Website and the Content. California residents waive any rights they may have under §1542 of the California Civil Code, which reads: "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." Assessment Customer and its Users agree to release unknown claims and waive all available rights under California Civil Code §1542 or under any other statute or common law principle of similar effect.

**XI. Representations/Indemnity.** Assessment Customer represents and warrants that (i) it has full power and authority to authorize and submit the Assessment purchase order, and to agree to all the terms and

conditions contained therein and in these Terms of Use, and has received all parental and other permissions required to permit Discovery Education Assessment to obtain and retain information (including personal information) from Users; (ii) only Assessment Customer or its Users shall access the Website and the Content; (iii) Assessment Customer and its Users will at all times use the Website and the Content only as expressly permitted by the Assessment Customer terms of purchase and these Terms of Use; (iv) in the event that Assessment Customer requests that Discovery Education Assessment customize the Website interface with Assessment Customer's trade name, trademarks or logos, and/or digitize and/or encode and/or host any of Assessment Customer's content on the Content and/or the Website, Assessment Customer has the right to so use and exploit any and all such trade names, trademarks, logos and content, including without limitation any and all underlying elements (the "Assessment Customer IP"), and (v) the Assessment Customer IP, any content, materials, and/or information contributed by Users, and any revisions to the Content by Users does not and will not contain any libelous, unlawful or infringing materials or content, will not infringe upon any party's proprietary rights, including without limitation statutory or common-law copyright, trademark and right of privacy, and will not violate any law, regulation or right of any kind whatsoever or give rise to any actionable claim or liability.

Assessment Customer and its Users shall defend, indemnify and hold Discovery Education Assessment, its parent, subsidiaries, affiliated companies, agents or content providers, and the directors, officers, shareholders, employees, agents and representatives of each of the foregoing, harmless against and from any and all claims, damages, liabilities, costs and expenses arising out of any violation by Assessment Customer and/or its Users of these Terms of Use, any downloading of the Content, any modification or edit made to any portion of the Content, and the use of any portion of the Content with products or services not supplied by Discovery Education Assessment.

All representations, warranties, and indemnities shall survive the expiration or prior termination of the Assessment Customer Agreement.

**XII. Reporting Infringement.** By accessing and/or using the Website and the Content, Users agree to report to Discovery Education Assessment all claims or suspected claims of copyright or other infringement of Discovery Education Assessment's intellectual property or other proprietary rights. Claims of infringement should be directed to Legal Department, Discovery Education, One Discovery Place, Silver Spring, Maryland 20910.

**XIII. Miscellaneous.** Failure to perform by reason of any law, natural disaster, labor controversy, encumbered intellectual property right, war or any similar event beyond a party's reasonable control shall not be a breach hereof. This Agreement shall be construed and enforced under the laws of the State of Maryland, USA without reference to the choice of law principles thereof. User hereby consents to and submits to the jurisdiction of the federal and state courts located in the State of Maryland. User waives any defenses based upon lack of personal jurisdiction or venue, or inconvenient forum. If any provision herein is unenforceable, then such provision shall be of no effect on any other provision hereof. No waiver of any breach hereof shall be deemed a waiver of any other breach hereof. Section headings are provided for convenience only, and shall not be used to construe the meaning of any section hereof.