

## **Terms of Service Agreement for Innovation Assessments**

*Updated: 15 June 2019, 1 January 2019*

### **ACCEPTANCE OF TERMS**

Welcome to Innovation Assessments. Innovation Assessments provides its services to you, subject to the following conditions. When using particular Innovation Assessments services, you and Innovation Assessments shall be subject to any posted guidelines or rules applicable to such services. Innovation Assessments may update these conditions from time to time without notice. Innovation Assessments provides its services through a web site named [InnovationAssessments.com](http://InnovationAssessments.com).

### **DESCRIPTION OF SERVICE**

Innovation Assessments is an online learning management system primarily intended for teachers and tutors. Students under 18 are generally ineligible for accounts without special permission of the site owners. Innovation Assessments provides users with access to online services that allow you to create a variety of activities over the Internet and share them with others; give online quizzes and track students' scores; and create your own front page for posting assignments, class schedules, and links to your favorite websites. Unless explicitly stated otherwise, any new features that augment or enhance the current services, including the release of new Innovation Assessments services, shall be subject to the Terms of Service (TOS). You understand and agree that all services are provided "AS-IS" and that Innovation Assessments assumes no responsibility for the timeliness, deletion, mis-delivery or failure to store any user communications or personalization settings.

In order to use the services, you must obtain access to the World Wide Web, either directly or through devices that access Web-based content, and pay any service fees associated with such access. In addition, you must provide all equipment necessary to make such connection to the World Wide Web, including a computer and modem or other access device.

### **YOUR REGISTRATION OBLIGATIONS**

In consideration of your use of Innovation Assessments's services, you agree to: (a) provide true, accurate, current and complete information about yourself as prompted by the registration form (such information being the "Registration Data") and (b) maintain and promptly update the Registration Data to keep it true, accurate, current, and complete. If you provide any information that is untrue, inaccurate, not current, or incomplete, or Innovation Assessments has reasonable grounds to suspect that such information is untrue, inaccurate, not current, or incomplete, Innovation Assessments has the right to suspend or terminate your account and refuse any and all current or future use of Innovation Assessments's services (or any portion thereof).

### **ACCOUNTS MAY NOT BE SHARED**

You understand that Innovation Assessments accounts may not be shared. A Innovation Assessments account may be used only by the single individual whose name appears in the Registration Data. If Innovation Assessments has reasonable grounds to suspect that an additional person has been accessing your account without having rendered proper payment to Innovation Assessments, Innovation Assessments has the right to suspend or terminate your account and refuse any and all current or future use of Innovation Assessments's services.

### **Innovation Assessments PRIVACY POLICY**

Please review our Privacy Policy (updated 25 May 2018 to comply with legislation in the EU called the General Data Protection Regulation), which governs your visit to [InnovationAssessments.com](http://InnovationAssessments.com), to understand our practices.

## MEMBER ACCOUNTS, PASSWORDS, AND SECURITY

When you use InnovationAssessments.com, you are responsible for maintaining the confidentiality of your account and password and for restricting access to your computer, and you agree to accept responsibility for all activities that occur under your account or password. When you visit InnovationAssessments.com or send e-mails to us, you are communicating with us electronically. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

## CONFORMITY TO THE CHILDREN'S ONLINE PRIVACY and PROTECTION ACT (hereafter called "COPPA")

Under federal law, web sites must provide parental notification and obtain parental consent before collecting personal information from children under the age of 13. The law permits schools to consent to the collection of personal information on behalf of all its students, thereby eliminating the need for individual parental consent given directly to the website operator. You understand that you may not create student accounts at Innovation Assessments unless your school district has already arranged such parental consent on behalf of any and all students under 13 who will use this site.

## COMPLIANCE WITH NEW YORK STATE EDUCATION LAW 2-D

Innovation Assessments is fully compliant with New York State Education Law 2-D, regarding the unauthorized release of personally identifiable information. The law may be read in full here: <https://www.nysenate.gov/legislation/laws/EDN/2-D>.

### **1. Innovation Assessments is a "third party contractor".**

Innovation Assessment is a DBA, a sole proprietorship owned and operated by David Jones, 595 Luzerne Road, Queensbury, New York, 12804. The proprietor may also be reached by email at [djones@InnovationAssessments.com](mailto:djones@InnovationAssessments.com). Innovation Assessments is a small business that consists of a website named **InnovationAssessments.com** and an online store at TeachersPayTeachers.com. The website provides an online assessment service for K-12 school teachers that consists of a blend of free and paid software-as-a-service (SaaS) applications. Under New York State Education Law 2-d(1)(k), Innovation Assessments is a "[t]hird party contractor' that receives student data or teacher or principal data from an educational agency pursuant to a contract or other written agreement for purposes of providing services to such educational agency [...]."

### **2. Data that is stored or transferred to and from InnovationAssessments.com is protected.**

Data that is stored or transferred to and from InnovationAssessments.com is protected. Personally identifiable information is held confidential. It is safeguarded by encryption, firewalls, and password protection. InnovationAssessments.com is accessed through a secure sockets layer (SSL) connection such that all data transferred over the internet to and from the website is encrypted. Passwords are maintained in a database and they are "hashed" (encrypted) such that it is impossible for anyone to view them. Student and teacher data are stored in databases on a virtual private server at Hostwinds.com, which hosts InnovationAssessments.com. Hostwinds.com provides business class firewall and security in a virtual private server environment.

### **3. Innovation Assessments only collects four pieces of personally identifiable information.**

Innovation Assessments collects the following personally identifiable information about teachers and students: name, surname, email address, and school name. Account holders' street address and telephone number are also maintained for billing purposes. Teachers control the sub-accounts of their students. Teachers do not have access to student passwords, but they can change them. The data that Innovation Assessments collects is exclusively used for the following purposes: (1) to authenticate users' identity when accessing the service; (2) to verify the identity of users for the purpose of billing or technical support.

#### **4. Innovation Assessments limits internal access to education records.**

Innovation Assessments limits internal access to education records to those individuals that are determined to have legitimate educational interests. Such access is normally limited to the teacher holding the account. The records that are maintained at InnovationAssessments.com consist exclusively of scores on assessments created by the teacher holding the master account. These scores do not constitute an official report card or a transcript and are not a legal part of a student's record until the teacher transfers them to the school district's student data management system. The proprietor also reserves the right to view the personally identifiable information collected at the site as a way to maintain security and verify the identity of subscribers and sub-account holders.

#### **5. Personally identifiable information transmitted to Innovation Assessments can come from teacher account holders or from sub-account holders.**

Personally identifiable information transmitted to Innovation Assessments can come from the following sources: (1) from a teacher who creates a teacher account; (2) from a teacher who provides this information about a student in order to create a student sub-account; (3) from a student who provides this information him- or herself using the self-registration process; (4) from Google Sign-In. In such cases where personally identifiable information is transmitted from Google Sign-in, Innovation Assessments will also have access to the image file "avatar" of the Google User and this may or may not include personally identifiable information such as the image of the user's face. This avatar is completely under the control of the Google account holder and it is never saved to Innovation Assessments, although it will appear on login as a cue to the account holder that Google Sign-In has succeeded..

#### **6. Innovation Assessments will never sell or release any teacher or any student's personally identifiable information.**

Innovation Assessments will never sell or release any teacher's or any student's personally identifiable information for any commercial purposes and for that matter nor will Innovation Assessments share this information with any other party, save for court-ordered and law enforcement requests.

#### **7. Parents have the right to have complaints addressed**

Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed to the contact address noted above. If a parent, student or teacher needs to challenge the accuracy of the student data or teacher data that is collected, such challenge will require identity and eligibility authentication. Requests should be made in writing to the mailing address for Innovation Assessments.

## **8. When a teacher terminates an account, all of the student and teacher data is deleted.**

The SaaS agreement between the teacher account holder remains in effect until the teacher terminates his or her account with Innovation Assessments. Teacher accounts which remain inactive for one calendar year may be deleted by the proprietor without notice. When account termination happens, all of the student and teacher data is permanently, completely, and irretrievably deleted from all online data storage provided by our service. This information is not retained anywhere else.

### **MEMBER CONDUCT**

You understand that all information, data, text, software, music, sound, photographs, graphics, video, messages, or other materials ("Content"), whether publicly posted or privately transmitted, are the sole responsibility of the person from which such Content originated. This means that you, and not Innovation Assessments, are entirely responsible for all Content that you post, e-mail, or otherwise transmit via Innovation Assessments's services. Innovation Assessments does not control the Content posted via Innovation Assessments's services and, as such, does not guarantee the accuracy, integrity, or quality of such Content. Under no circumstances will Innovation Assessments be liable in any way for any Content, including, but not limited to, for any errors or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content posted, e-mailed, or otherwise transmitted via Innovation Assessments's services.

You agree to not use Innovation Assessments's services to:

- upload, post, e-mail or otherwise transmit any Content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically, or otherwise objectionable;
- harm minors in any way;
- impersonate any person or entity, including, but not limited to, an Innovation Assessments official, forum leader, guide or host, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through Innovation Assessments's services;
- upload, post, e-mail or otherwise transmit any Content that you do not have a right to transmit under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
- upload, post, e-mail, or otherwise transmit any Content that infringes any patent, trademark, trade secret, copyright, or other proprietary rights ("Rights") of any party;
- upload, post, e-mail, or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation that are designated for such purpose;
- upload, post, e-mail, or otherwise transmit any material that contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment;
- interfere with or disrupt Innovation Assessments's services or servers or networks connected to Innovation Assessments's services, or disobey any requirements, procedures, policies, or regulations of networks connected to Innovation Assessments's services;
- intentionally or unintentionally violate any applicable local, state, national, or international law, or any regulations having the force of law;

- "stalk" or otherwise harass another; or
- collect or store personal data about other users.

You acknowledge that Innovation Assessments may not pre-screen Content, but that Innovation Assessments and its designees shall have the right (but not the obligation) in their sole discretion to refuse or move any Content that is available via Innovation Assessments's services. Without limiting the foregoing, Innovation Assessments and its designees shall have the right to remove any Content that violates the TOS or is otherwise objectionable. You agree that you must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content.

You acknowledge and agree that Innovation Assessments may preserve Content and may also disclose Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce the TOS; (c) respond to claims that any Content violates the rights of third- parties; or (d) protect the rights, property, or personal safety of Innovation Assessments, its users, and the public.

You understand that the technical processing and transmission of Innovation Assessments's services, including your Content, may involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

#### PUBLIC CONTENT POSTED TO Innovation Assessments

With respect to all Content you elect to post, upload, input, provide, or submit to Innovation Assessments's services, Innovation Assessments makes no claim on the right and license to use such Content.

#### INDEMNITY

You agree to indemnify and hold Innovation Assessments, and its subsidiaries, affiliates, officers, agents, co-branders or other partners, and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of Content you submit, post to, or transmit through Innovation Assessments's services, your use of Innovation Assessments's services, your connection to Innovation Assessments's services, your violation of the TOS, or your violation of any rights of another.

#### NO RESALE OF SERVICE

You agree not to reproduce, duplicate, or copy any portion of Innovation Assessments's services, use of Innovation Assessments's services, or access to Innovation Assessments's services.

#### GENERAL PRACTICES REGARDING USE AND STORAGE

You acknowledge that Innovation Assessments may establish general practices and limits concerning use of Innovation Assessments's services, including without limitation posted Content that will be retained by Innovation Assessments's services, the maximum disk space that will be allotted on Innovation Assessments's servers on your behalf, and the maximum number of times (and the maximum duration for which) you may access Innovation Assessments's services in a given period of time. You agree that Innovation Assessments has no responsibility or liability for the deletion or failure to store any data and other communications or other Content maintained or transmitted by Innovation Assessments's services. You acknowledge that Innovation Assessments reserves the right to delete accounts that are inactive for an extended period of time. You further acknowledge that Innovation Assessments reserves the right to change these general practices and limits at any time, in its sole

discretion, with or without notice. You acknowledge that Innovation Assessments software will automatically delete data in the scores database tables and in the audit database tables after an amount of time specified in the site software in order to maintain reasonable space demands on the server. You further acknowledge your responsibility to download and backup to your own computer any data or content that you want to preserve.

#### MODIFICATIONS TO SERVICE

Innovation Assessments reserves the right at any time to modify or discontinue, temporarily or permanently, Innovation Assessments's services (or any part thereof), with or without notice. You agree that Innovation Assessments shall not be liable to you or to any third party for any modification, suspension, or discontinuance of Innovation Assessments's services.

#### TERMINATION

You agree that Innovation Assessments, in its sole discretion, may terminate your password, username, account (or any part thereof) or use of Innovation Assessments's services, and remove and discard any Content within Innovation Assessments's services, for any reason, including, without limitation, for lack of use or if Innovation Assessments believes that you have violated or acted inconsistently with the letter or spirit of the TOS. Innovation Assessments may also in its sole discretion and at any time discontinue providing Innovation Assessments's services, or any part thereof, with or without notice. You agree that any termination of your access to Innovation Assessments's services under any provision of this TOS may be effected without prior notice, and acknowledge and agree that Innovation Assessments may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or Innovation Assessments's services. Further, you agree that Innovation Assessments shall not be liable to you or any third party for any termination of your access to Innovation Assessments's services.

#### Innovation Assessments'S PROPRIETARY RIGHTS

You acknowledge and agree that Innovation Assessments's services and any necessary software used in connection with Innovation Assessments's services ("Software") contain proprietary and confidential information that is protected by applicable intellectual property and other laws. You further acknowledge and agree that information presented to you through Innovation Assessments's services is protected by copyrights, trademarks, service marks, patents, or other proprietary rights and laws.

#### DISCLAIMER OF WARRANTIES

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY THIS SITE IS PROVIDED BY InnovationAssessments.com ON AN "AS IS" AND "AS AVAILABLE" BASIS.

InnovationAssessments.com MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THIS SITE OR THE INFORMATION, CONTENT, MATERIALS, OR PRODUCTS INCLUDED ON THIS SITE. YOU EXPRESSLY AGREE THAT YOUR USE OF THIS SITE IS AT YOUR SOLE RISK.

Innovation Assessments MAKES NO WARRANTY THAT (i) Innovation Assessments'S SERVICES WILL MEET YOUR REQUIREMENTS, (ii) Innovation Assessments'S SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF Innovation Assessments'S SERVICES WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER

MATERIAL OBTAINED BY YOU THROUGH Innovation Assessments'S SERVICES WILL MEET YOUR EXPECTATIONS, AND (v) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED.

TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, InnovationAssessments.com DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. InnovationAssessments.com DOES NOT WARRANT THAT THIS SITE, ITS SERVERS, OR E-MAIL SENT FROM InnovationAssessments.com ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOU EXPRESSLY UNDERSTAND AND AGREE THAT Innovation Assessments SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES (EVEN IF Innovation Assessments HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (i) THE USE OR THE INABILITY TO USE Innovation Assessments'S SERVICES; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION, OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO, THROUGH OR FROM Innovation Assessments'S SERVICES; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON Innovation Assessments'S SERVICES; OR (v) ANY OTHER MATTER RELATING TO Innovation Assessments'S SERVICES.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

#### NOTICE

Notices to you may be made via either e-mail or regular mail. Innovation Assessments's services may also provide notices of changes to the TOS or other matters by displaying notices or links to notices to you generally on Innovation Assessments's services.

Innovation Assessments can be reached as follows:

Innovation Assessments  
595 Luzerne Road  
Queensbury, NY 12804

#### GENERAL INFORMATION

The TOS constitutes the entire agreement between you and Innovation Assessments and govern your use of Innovation Assessments's services, superseding any prior agreements between you and Innovation Assessments. You also may be subject to additional terms and conditions that may apply when you use affiliate services, third-party content, or third-party software. The TOS and the relationship between you and Innovation Assessments shall be governed by the laws of the State of California without regard to its conflict of law provisions. You and Innovation Assessments agree to submit to the personal and exclusive jurisdiction of the courts located within the County of Warren, New York. The failure of Innovation Assessments to exercise or enforce any right or provision of the

TOS shall not constitute a waiver of such right or provision. If any provision of the TOS is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the TOS remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of Innovation Assessments's services or the TOS must be filed within one (1) year after such claim or cause of action arose or be forever barred.

The section titles in the TOS are for convenience only and have no legal or contractual effect.

#### VIOLATIONS

Report any violations of the Terms of Service to technical support.