

Riverside Assessments d/b/a Riverside Insights Management Platforms

Terms of Use

Last Updated: April 1, 2019

Riverside Assessments, LLC d/b/a Riverside Insights (“Riverside,” “We” or “Our”) provides content for Our assessments (collectively the “Products”) and related assessment management features via Our web-based platforms including but not limited to Riverside DataManager, Online Scoring and Reporting for the Woodcock Assessment and Intervention Suite, and BDI-2 DataManager (collectively the “Platforms”).

These Terms of Use (the “Terms” or “Terms of Use”) constitute a legal agreement concerning Riverside’s Platforms and are between you, either as an individual or acting as an authorized representative on behalf of an organization (“You” or “Your”), and Riverside. Please note that different or additional terms may apply regarding your purchase of Products.

PLEASE READ THESE TERMS OF USE CAREFULLY. BY ACCESSING, USING, OR DISPLAYING THE PLATFORMS, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THESE TERMS. DO NOT ACCESS USE OR DISPLAY THE PLATFORMS IF YOU DO NOT AGREE TO THESE TERMS.

For purposes of these Terms, “FERPA” means the Family Educational Rights and Privacy Act, 20 USC §1232g, and the Protection of Pupil Rights Amendment (“PPRA”), including associated regulations. The term “HIPAA” means the Health Insurance Portability and Accountability Act, 42 U.S.C. §§ 1320d et seq., and the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), including associated regulations under HIPAA and the HITECH Act.

1. Access to Purchased Products

Subject to Your compliance with these Terms, Riverside grants You a personal, limited, nontransferable, nonpublicable, nonexclusive license to access the applicable Platform(s) during the term of access to use purchased Products in accordance with these Terms and any accompanying Product and Platform documentation. Riverside reserves the right, upon prior written notice to You, to sunset versions of the Products or Platform, or the Products or Platform in their entirety. In the event a Product or Platform is sunsetted, Riverside will provide you notice as to whether a new version of such Product or Platform is available and You will be required to license the latest version of such Product Platform, if such version is available, in order to maintain access to the related Product or Platform.

2. Access to the Platform

2.1 Required Computing Resources

Use of the Platform requires, at a minimum, computing resources needed to access and browse the Internet. Such computing resources may include, as specified in applicable Riverside documentation: (i) a personal computer and/or mobile device; (ii) software, including browser software and operating system software; and (iii) other specified client-side computing

resources (collectively “Client-Side Computing Resources”). You shall be responsible for ensuring that You (a) have access to requisite Client-Side Computing Resources, and (b) are sufficiently familiar with and trained regarding such Client-Side Computing Resources.

Riverside does not guarantee that the Platforms will operate with Your specific Client-Side Computing Resources. Carefully review each Platforms’ posted minimum system requirements to ensure compatibility.

2.2. Enrollment Responsibilities

You must select the students and other adults who will have access to the Platforms and prepare the necessary files for import or manually enroll the students and other adults using features provided in the Platforms.

2.3 Use of Passwords

Once enrolled, You will have the opportunity to create a password for Your assigned user name (Your “Login Credentials”). Riverside will treat anyone who uses Your Login Credentials as “You.” Riverside shall not be responsible for Your sharing or other misuse of Login Credentials and Riverside shall hold You responsible for the activities of a person using Your Login Credentials. Riverside therefore recommends that You maintain Your Login Credentials in confidence, and that You notify Riverside immediately if You suspect that someone is using Your Login Credentials in an inappropriate manner.

3. Riverside’s Intellectual Property

Riverside’s Products, Platforms, derived scaled scores from number of questions answered correctly (“Score Conversions”), Reports (as defined below) and all related designs, layouts, appearances and graphics therein, as well as the trademarks, service marks, and logos contained within the Platforms and Products embody intellectual property rights owned by Riverside (or its licensors) including, where applicable, rights under patent law, copyright law, trade secret law, and trademark law (“Riverside Intellectual Property”). All rights not expressly granted herein are reserved to Riverside and/or its licensors, as applicable.

4. Test Security; Use of Assessment Score Reports

Confidentiality is important to the integrity and validity of the testing process. Riverside restricts distribution of certain Products to qualified institutions and examiners. Under the Standards for Educational and Psychological Testing (2014) published by AERA, APA and NCME, (“SEPT”) educators and psychologists have a duty to protect the integrity of secured tests by maintaining the confidentiality of test questions and answers. Widespread dissemination of test protocols, which include substantial portions of the actual test items, would inevitably damage this process. It is for this reason that Products are distributed only to recipients that agree to take appropriate steps to protect the confidentiality of the Products. Providing digital access via the Platforms to these Products to unauthorized third parties, permitting notetaking by non-professionals during test administrations or permitting the audio or video recording of test administrations would be a compromise of test security and a violation of the Terms, which may result in termination of Your rights to access and use purchased Products on the Platforms.

You must use the Platforms and all assessment score reports for each Product (the “Reports”) in accordance with these Terms and in accordance with all applicable federal, state, and local laws and regulations. You understand and agree that the Platforms’ features and Reports are meant to be used as tools to supplement You in the overall assessment process and are not intended or designed to replace Your professional judgment. You assume all responsibility for the use or misuse of the Platform and all Reports. You must use the Platform and Reports in accordance with Riverside’s Test Security Policy, and in accordance with SEPT (collectively, the “Policies and Standards”).

5. Grant of Rights in Submitted Data and Feedback; Storage

By providing information to Riverside directly through Your use of the Platform’s interface, including but not limited to, information about examinees (“Submitted Data”), You grant Riverside a royalty-free, nonexclusive, transferrable, sublicensable, worldwide license to use the Submitted Data for all purposes contemplated under these Terms as well as the Platforms’ documentation and functionality. You acknowledge and agree that Riverside may use or disclose Submitted Data to provide maintenance and support for the Products or the Platforms. Riverside does not claim ownership in Submitted Data and retains only those rights in Submitted Data reasonably necessary or otherwise required in order to provide the Products and Platforms, and as otherwise contemplated under these Terms and associated Riverside documentation. Submitted Data that Riverside receives from You is subject to the terms set forth in Section 13 below regarding use of de-identified Submitted Data as well as the applicable Privacy Policy set forth in Section 14.

In addition to the license You grant us for the Submitted Data, You grant Riverside a nonexclusive, worldwide, perpetual, royalty-free, irrevocable right to use, disclose, reproduce, modify, license, transfer, and otherwise distribute and exploit any comments, ideas, and suggestions for improvements or developments related to or associated with the Products that You provide (“Feedback”) in any manner without compensation to You. Please do not submit Feedback if You do not wish to grant us the rights set forth in this Section.

By providing Submitted Data and/or Feedback, You represent and warrant that You own such Submitted Data and Feedback (including intellectual property rights therein), or that You have obtained sufficient authority and right to the Submitted Data and Feedback in order to grant the rights to Riverside contemplated under these Terms and associated Riverside documentation.

YOU ARE ADVISED TO EXPORT AND SAFEGUARD SUBMITTED DATA AND BACK UP IMPORTANT INFORMATION FREQUENTLY. If You choose to provide Submitted Data to Riverside via the Platforms’ functionality, Riverside will back up the Submitted Data in the Platform database and will take reasonable steps to securely store said backups. Notwithstanding anything to the contrary, You hereby release Riverside from any claim or liability relating to any failure in Riverside’s database system and backup practices.

6. Platform Availability and Errors

Riverside shall use commercially reasonable efforts to make the Platforms available to You without significant interruption. There may be times when the Platforms are unavailable due to

technical errors or for maintenance and support activities. We do not represent, warrant, or guarantee that the Platforms will always be available or are completely free of human or technological errors.

If the Product experiences a significant interruption that is not due to scheduled downtime, Riverside shall use timely and commercially reasonable efforts to restore required functionality (the "Availability Commitment"). The Availability Commitment does not apply to downtime that results due to: (i) emergencies, (ii) downtime that Riverside otherwise schedules, for example, to install software updates and patches, (iii) downtime due to Your violation of these Terms; or (iv) downtime due to Your failure to update or upgrade your Product or Platform when suggested by Riverside.

The Platforms may contain typographical mistakes, inaccuracies, or omissions and some information may not be complete or current. We expressly reserve the right to correct any errors, inaccuracies, or omissions and to change or update information at any time without prior notice. We do not make any representation or warranty concerning errors, omissions, delays, or defects in the Platforms or any information supplied to You via the Platforms, or that files available through the Platforms are free of viruses, worms, Trojan horses, or other code that include or manifest contaminating or destructive characteristics.

You may contact Riverside's technical support team with questions on Platforms between the hours of 7am and 6pm Central Time (U.S.). In addition to taking reasonable steps to respond to reproducible errors or bugs in the Platforms commensurate with the severity of the error or bug, technical support may also provide You with information regarding Platform availability.

Riverside shall maintain disaster recovery, system and data backup, and business continuity for the Platforms, all in compliance with Riverside's internal policies and procedures.

7. Use Restrictions

You agree not to copy, duplicate, publish, distribute, display, modify, create derivative works of, or alter physical or electronic characteristics of the Products or the Platforms. You agree not to dismantle or reverse engineer or clone any part of the Products or the Platforms. You shall not grant sublicenses to, assign, transfer, sell or rent the Product or the Platforms without prior written consent of Riverside.

Because the Products, Platforms, Score Conversions, and Reports are protected by Riverside's Intellectual Property Rights, and considered confidential information of Riverside, the Products, Platforms, Score Conversions, and Reports shall not be disclosed by You in response to requests made by third parties unless otherwise required pursuant to applicable law, and then only after prior notice is provided to Riverside as well as an opportunity to prevent such disclosure. You agree that You will not otherwise, directly or indirectly, disclose any confidential information of Riverside without the prior written consent of Riverside.

Subject to the restrictions included in Sections 6 and 7, You may print, copy, display, and otherwise distribute Reports, provided that such actions are in compliance with Your obligations under the Policies and Standards and are otherwise in compliance with all applicable laws, regulations, and professional standards and obligations. You represent and warrant that You have obtained the necessary permissions from examinees and/or other applicable third parties

relating to Your use of the Reports. You hereby release Riverside from any claim or liability relating to Your use of the Reports.

Notwithstanding anything to the contrary, You shall not, under any circumstance, import into any Test Reports; copy, display, or reproduce any test question without Riverside's prior written consent; or otherwise provide, as Submitted Data, test questions from Riverside Products.

Your use of the Platforms to generate Reports is based on quantities of student administrations (record forms, answer documents, other consumable test or response booklets, digital administrations or digital licenses) that You purchase from Riverside. You are only entitled to assess one student per record form, answer document, other consumable test or response booklet, digital administration, or digital license; however, any number of different Reports may be generated from a single test administration.

You agree that when using the Platforms, You will not introduce into the Platform any virus, rogue program, time bomb, drop dead device, ransomware, back door, Trojan horse, worm or other malicious or destructive code, software routines, denial of service attack, or equipment components designed to permit unauthorized access to the Platforms, or to otherwise harm other users, Riverside Intellectual Property, or any third parties, or perform any such actions.

You will not use the Platforms to commit fraud or conduct other unlawful activities. You will not access or attempt to access any other person's account, personal information, or content without permission.

You will not use any bot, spider, or other automatic or manual device or process for the purpose of harvesting or compiling information on the Platforms or enrolled individuals for any reason.

You will not Decrypt, transfer, frame, display, or translate (except translations for personal use) any part of the Platforms.

You will not connect to or access any Riverside computer system or network without authorization.

You will not use the information in the Platforms to create or sell a similar service, or use the Platforms for the purpose of soliciting, selling or offering services, merchandise, or products.

8. Third Party Websites

The Platforms may include or provide links to other websites or open education resources on the Internet that We do not control. These other websites may provide opinions, recommendations, or other information from various individuals, organizations, or companies. We are not responsible for the nature, quality, or accuracy of the content or opinions expressed on such websites and We do not investigate, monitor, or check them for quality, accuracy, or completeness. Inclusion of any linked website on the Platforms does not imply or express an approval or endorsement of the linked website by us or of any of the content, opinions, treatments, information, products, or services provided on these websites, even if We receive a referral fee in connection with Your use of such third-party websites.

9. Limited Warranty

Riverside warrants that the Platform will not infringe on any valid United States copyrights existing at time that the Platform is made available, provided that this warranty does not extend to any infringement arising out of: (i) the use of the Platform in combination with systems, equipment, materials or platforms not supplied by Riverside or any use of the Platform outside of the United States; (ii) Your use of the Platform in violation of these Terms or the Platform documentation provided by Riverside; (iii) Your modification of the Platform; (iv) Your failure to install or implement a released upgrade to the Platform that would have avoided the infringement; or (v) any Submitted Data. If You promptly notify Riverside of any such infringement claim brought by a third party of which You have knowledge or notice, and accord Riverside the right, at its sole option and expense, to handle the defense of the infringement claim, Riverside will defend You against such infringement claim and pay any final judgment or settlement thereof. Notwithstanding the foregoing, Riverside will not indemnify for any infringement claim that arises out of the scenarios set forth in sub-sections (i)-(v) of this Section. If such an infringement claim arises, or if Riverside becomes aware of the possibility of such a claim, then Riverside may, at its sole discretion (a) acquire the right for You to continue to use the affected Platform in accordance with these Terms, (b) furnish You with a noninfringing replacement as soon as commercially possible, or (c) terminate these Terms in whole or in part by refunding any pre-paid, unused fees You paid for use of this Platform. The obligations set forth in this Section are Your exclusive remedy and Riverside's sole obligations with respect to any breach of this warranty.

EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS SECTION 9 (LIMITED WARRANTY), RIVERSIDE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PLATFORM. THE PLATFORM IS PROVIDED "AS IS". RIVERSIDE DOES NOT WARRANT OR MAKE ANY PROMISES REGARDING THE CORRECTNESS, USEFULNESS, ACCURACY, AVAILABILITY, OR RELIABILITY OF (I) YOUR USE THE PLATFORM; OR (II) ANY ADVICE YOU GLEAN FROM THE PLATFORM WHETHER PROVIDED BY US OR A THIRD PARTY. WE DO NOT PROMISE THAT THE PLATFORM WILL BE UNINTERRUPTED OR WILL BE ERROR-FREE, OR THAT ANY DEFECTS WILL BE CORRECTED. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 9, THERE IS NO WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED. RIVERSIDE WILL HAVE NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MISDELIVERY, OR FAILURE TO STORE ANY COMMUNICATION OR CONTENT.

10. Term and Termination

These Terms are effective on the earlier of (i) the date these Terms are electronically accepted by You, or (ii) the date You first begin to use the Product or Platform ("Term"). Unless terminated earlier pursuant to this Section 10 (Term and Termination), the Term shall continue for as long as You have access to the Product.

Either party shall have the right to terminate these Terms if the other party breaches any of its obligations under these Terms and fails to cure the same within thirty (30) days after receipt of written notice of default, except that there shall be no cure period for Your breach of Riverside's rights under Section 3 (Riverside Intellectual Property); Section 4 (Test Security; Use of Assessment Score Reports), Section 5 (Grant of Rights in Submitted Data and Feedback; Storage), or Section 7 (Use Restrictions). Your obligations under this Section 10 (Term and Termination), as well as the provisions of Section 3 (Riverside Intellectual Property), Section 5

(Grant of Rights in Submitted Data and Feedback; Storage), Section 9 (Limitation of Liability) and Section 18 (General) shall survive any termination of these Terms.

Riverside reserves the right to terminate these Terms for convenience by providing You with reasonable notice and thereafter allowing You a reasonable opportunity (not to exceed thirty (30) days) to export a copy of Your Submitted Data. If these Terms are terminated for any reason, Riverside may make a reasonable effort to allow You access to the Platform for not more than thirty (30) days for the sole purpose of exporting Submitted Data (the "Submitted Data Retrieval Period"). Upon conclusion of the Submitted Data Retrieval Period, Riverside shall destroy copies of Submitted Data stored on its servers and any rights You have in the Platform or Product shall terminate.

11. Indemnification

EXCEPT TO THE EXTENT PROHIBITED BY LAW, YOU AGREE TO INDEMNIFY, DEFEND AND HOLD RIVERSIDE HARMLESS AGAINST ALL CLAIMS, LIABILITIES, DEMANDS, DAMAGES, OR EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES) ARISING OUT OF OR IN CONNECTION WITH: (I) YOUR USE OF THE PRODUCT(S) REPORTS AND PLATFORM(S) COVERED BY THESE TERMS AND/OR (II) YOUR FAILURE TO COMPLY WITH THESE TERMS.

12. Limitation of Liability.

RIVERSIDE'S TOTAL AGGREGATE LIABILITY FOR LOSS OR DAMAGE RELATING TO THESE TERMS AND/OR THE PRODUCT, REPORTS, OR PLATFORM OR YOUR USE OR INABILITY TO USE THE PRODUCT, REPORTS OR PLATFORM REGARDLESS OF THE FORM OF ACTION, SHALL IN NO EVENT EXCEED ONE THOUSAND U.S. DOLLARS (\$1000.00 USD).

IN NO EVENT SHALL RIVERSIDE BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING FROM YOUR USE OF THE PRODUCTS, REPORTS OR PLATFORMS, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, OR LOSS OF PROFITS, EVEN IF RIVERSIDE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM, LOSS, OR DAMAGE.

13. Riverside's Use of Submitted Data and Feedback; De-Identified Information.

Riverside may, from time to time, modify and otherwise anonymize Submitted Data so that it constitutes de-identified Information, and then extract de-identified Information. Riverside will only use de-identified Information for any lawful purposes including, but not limited to, quality assurance, research, and/or test development. Riverside may de-identify information that does not directly identify a particular person, but that may be linkable to a particular computer, device, operation system, platform, or software instance (via a unique device ID or otherwise) ("Usage Information") in accordance with HIPAA and FERPA and use this de-identified Information to develop, evaluate, and provide improved educational products and services, as permitted under HIPAA and FERPA. You acknowledge and agree that Riverside shall be free to use de-identified Information in compliance with HIPAA and FERPA requirements.

14. Protection of Student Personal Information.

Please see Our Privacy Policy governing the particular Product you purchased for information about (i) Our practices related to collection, use and deletion of personal information, including how students or their parents/legal guardians can access, review, and update personal information, and (ii) the security measures We have in place designed to safeguard student records,

15. Applicability of HIPAA.

If You are a “Covered Entity” under HIPAA, You and Riverside agree that the Business Associate Addendum will govern HIPAA-related matters (click on the following link to view and accept the Business Associate Addendum). If You are a school or not a Covered Entity, this Section 15 (Applicability of HIPAA) does not apply.

16. Federal Government Terms and Conditions.

If You are the United States Government or any agency or instrumentality thereof, the Platform (including, but not limited to, any related databases, documentation, technical data, and programmer’s tools) delivered to the U.S. Government is “commercial computer software” or “commercial technical data” pursuant to the applicable Federal Acquisitions Regulation and agency-specific supplemental regulations. As such, the use, duplication, disclosure, modification, and adaptation are subject to the restrictions as provided in FAR 52.227-19 (DEC 2007), and all rights of the U.S. Government shall not exceed the minimum rights set forth in FAR 52.227-19 (DEC 2007). If You are the United States Government or any agency or instrumentality thereof and subject to Department of Defense Federal Acquisition Regulations, then the Platform (including, but not limited to, any related databases, documentation, technical data, and programmer’s tools) is provided subject to DFARS 252.227-7015 (Technical Data—Commercial Items) and DFARS 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). Should the Platform be deemed to not constitute “commercial computer software” or “commercial technical data,” then it shall be given to the U.S. Government with restricted rights.

17. Consent Regarding Students’ Personal Information.

Please note that FERPA requires parental consent before a service provider (such as Riverside) is given access to personal information contained in a student’s educational records. Under FERPA, this parental consent requirement is met where the service provider acts as a type of “school official” by performing services for the school that would otherwise be performed by the school’s own employees. Riverside fulfills FERPA requirements for qualifying as a school official by, among other steps, giving the school direct control with respect to the use and maintenance of the education records at issue (including associated personal information), and refraining from re-disclosing or using this personal information except for purposes of providing the Product. Riverside will comply with access requests as required by FERPA.

18. General

THESE TERMS SHALL BE GOVERNED BY, CONSTRUED, AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS. The foregoing choice of law notwithstanding, copyright, trademark, and patent claims are subject only to U.S. Federal law and U.S. Federal court interpretation thereof. You agree that any action at law or in equity arising out of or relating to

these Terms of Use shall be filed only in the state or federal courts located in the Northern District of Illinois. These Terms shall not be assignable by You, either in whole or in part. Riverside reserves the right to assign the rights and obligations under these Terms for any reason and in Riverside's sole discretion. The Privacy Policy must be read in conjunction with these Terms, and the provisions of Our Privacy Policy are incorporated herein. These Terms and Our Privacy Policy constitute the entire agreement of You and Riverside concerning this matter, and supersede all discussions, proposals, bids, understandings, agreements, invitations, orders, and other communications, oral or written, on this subject. These Terms may not be waived, amended, or modified in any way without the prior written permission of Riverside. We may revise and update these Terms from time to time and will post the updated Terms to the Product. UNLESS OTHERWISE STATED IN THE AMENDED VERSION OF THESE TERMS, ANY CHANGES TO THESE TERMS WILL APPLY IMMEDIATELY UPON POSTING. Although We are not obligated to provide You with notice of any changes, any changes to these Terms will not apply retroactively to events that occurred prior to such changes. Your continued use of the Platform and the Products will constitute Your agreement to any new provisions within the revised Terms. You may print out a copy of these Terms and the Privacy Policy for Your records. If any one or more provisions of these Terms are found to be illegal or unenforceable, the remaining provisions will be enforced to the maximum extent possible. To the extent any purchase order from You conflicts with or amends these Terms in any way, these Terms, as unmodified, shall prevail. To the extent the Privacy Policy conflicts with or amends these Terms in any way, the Privacy Policy, as unmodified, shall prevail.

Any license granted under these Terms to You must be expressly provided herein, and there shall be no licenses or rights implied pursuant to these Terms, based on any course of conduct, or other construction or interpretation thereof. All rights and licenses not expressly granted to You by Riverside are reserved.