

# Terms Of Use Agreement for the INFOhio Open Space OER Commons Platform

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The Open Educational Resources (“OER”) Commons Platform is a dynamic digital library and network owned and operated by INFOhio, with offices at 1500 W. Lane Avenue, Columbus, OH 43221. This Terms of Use Agreement (this “Agreement”) describes the terms according to which you may legally use the OER Commons Platform website, those OER Commons goods or services of INFOhio that interact with it (including our APIs, mobile application, and Open Author tool), and the content contained there (“OERC Platform”).

By your use of this site, you agree to be bound by the terms and conditions of this Agreement, including any policies and procedures incorporated by reference, including:

1. [Our Privacy Policy](#)
2. [Our Intellectual Property Rights Policy](#)

You also represent and warrant that you have the legal authority to accept the Agreement; if you are accepting this Agreement on behalf of a business or other organization, you represent and warrant that you have the authority to bind that organization and that your acceptance of this Agreement will be treated as acceptance by that organization. If you do not agree to all of the terms in this Agreement, you are not authorized to use or access the OERC Platform.

**Changes And Modifications.** We may change or amend this Agreement from time to time. If we make material changes, we will endeavor to notify you that our terms have changed, either through the user interface, in an email message, or through other reasonable means. Your use of the OERC Platform after the date such change(s) become effective will constitute your consent to the changed terms. If you do not agree to the change(s), you must immediately stop using the OERC Platform; otherwise, the new terms will apply to you.

As long as you comply with this Agreement, we grant you a limited, revocable, non-exclusive, non-assignable, non-sublicensable right to access and use the OERC Platform as it is intended to be accessed and used, and in accordance with this Agreement and applicable law. We grant you no other rights, implied or otherwise.

**Adults Only.** The OERC Platform is intended for adults only. You must be 18 years of age or older – or have the consent of your parent or guardian, who must and hereby does consent to this Agreement – to use the OERC Platform or the oercommons.org website. In accordance with the Federal Children’s Online Privacy Protection Act of 1998 (“COPPA”), we will never knowingly solicit, nor will we accept, personally identifiable information from users of the OERC Platform known to be under 13 years of age. Please see our [privacy policy](#) for additional information, including information regarding how to notify us of any concerns you may have in this regard.

# Accessibility

INFOhio is committed to making its OERC Platform usable and accessible to the widest possible audience, regardless of technology or ability, and provides a number of features that support the accessibility of the OERC Platform:

- The “Learner Options” feature allows you to change the display of some elements of the site to meet your unique viewing preferences. The feature is found in the top right-hand corner of each page of the OERC Platform. You can find a step by step guide with images here: <https://www.oercommons.org/authoring/1504-oer-commons-learner-options/view>.
- Pages on the OERC Platform are intended to be compatible with screen readers and accessible to keyboard navigation. Additionally, authoring tools on the OERC Platform are built with well-formed HTML semantic tagging structures whenever possible, which include ARIA long descriptions, image captions, and embedded A11y accessibility mode microdata.
- The OERC Platform supports several AFA and A11y metadata fields. Use the Accessibility criteria in Advanced Search to find resources that include features such as ARIA long descriptions, transcripts, and captions, or that support specific learning modes such as auditory, visual, or textual.

**Limitations to Accessibility.** While INFOhio strives to ensure the accessibility of the OERC Platform, you may find some limitations.

Please report any problems to the INFOhio support team at OER Commons ([central@infohio.org](mailto:central@infohio.org)). For fastest processing, please include the phrase “Accessibility Request” in the subject line and in the body of your message.

## Uses of the OERC Platform

You agree not to, and will not assist, encourage, or enable others to:

1. Use the OERC Platform to harass, threaten, impersonate, or intimidate anyone.
2. Upload, post, email, transmit, or otherwise make available any content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, hateful, or that is racially, ethnically, or otherwise objectionable, or any content that is in violation of copyright or trademark law – or any other law protecting intellectual property in any jurisdiction – or that violates an individual’s publicity or privacy rights.
3. Upload, post, email, transmit, or otherwise make available any unsolicited or unauthorized advertising, promotional materials, “junk mail,” “spam,” “chain letters,” “pyramid schemes,” “affiliate links,” or any other form of solicitation, or any worms or viruses or any code of a destructive nature.
4. Reverse engineer any portion of the [www.oercommons.org](http://www.oercommons.org) website or OERC Platform.

5. Use any robot, spider, site search/retrieval application, or other automated device, process, or means not provided by INFOhio to access, retrieve, scrape, or index any portion of the site or OERC Platform.
6. Record, process, or mine information about other users or about the OERC Platform.
7. Take any action that imposes, or may impose, in our sole discretion, an unreasonable or disproportionately large load on our technology infrastructure or otherwise make excessive traffic demands on the site or OERC Platform.
8. Interfere with the proper working of the OERC Platform, circumvent or otherwise interfere with any security-related features of the OERC Platform, or attempt to gain unauthorized access to the OERC Platform, Registered User accounts, or any computers/networks associated with the OERC Platform through hacking, password mining, or any other means.
9. Use the OERC Platform for any illegal or unauthorized purpose. You agree to comply with all applicable laws, including the laws of your local jurisdiction, regarding online conduct and acceptable content (including but not limited to intellectual property laws).

**Your Registered User Account.** If you choose, you may create a Registered User account. A Registered User account is not required to browse the OERC Platform or to download Educational Materials

**Your Password.** If you create a Registered User account, you are solely responsible for maintaining the confidentiality of your account information, including your password, and for any and all activity that occurs under your Registered User account. You agree to immediately notify us of any unauthorized use of your account or password, or any other breach of security.

**Information You Provide.** You must accurately provide us with all requested information when you sign-up as a Registered User of the OERC Platform.

## **Adding Content to the OERC Platform**

**Educational Materials.** If you wish to contribute educational materials to the OERC Platform, such as an instructional text, resource, lesson, module, or other educational work (collectively, “Educational Material”), you may do so via our Open Author tool. You can learn more about creating material via Open Author at <https://www.oercommons.org/authoring-overview#open-author-section>. With regard to any Educational Materials that you contribute to the OERC Platform via the Open Author tool, or by any other means, you represent and warrant that you have the full legal right to post the Educational Material and that use of the Educational Material by us and all other persons and entities as set forth in its license will not (i) infringe the trademark, copyright, privacy, or publicity rights of any person or entity; (ii) violate any law, statute, ordinance, regulation, or agreement; or (iii) disclose any confidential or private information of any third party. If you are authoring or contributing Educational Material to the OERC Platform using Open Author, you must select an approved license applicable to your Educational Material via the Open Author interface.

The OERC Platform is a platform for open educational resources. Accordingly, you represent and warrant that no license terms apply to any Educational Material you contribute to the OERC Platform that are incompatible with the most restrictive license found at <https://help.oercommons.org/support/solutions/articles/42000046845-usage-rights> (a list of pre-approved license types), at the time your Educational Material is submitted.

If you contribute any metadata – such as author name, title of work, year of completion of the work, and the like – in connection with contributing Educational Material to the OERC Platform or otherwise, you grant to INFOhio a perpetual, worldwide, royalty-free, irrevocable license to reproduce, distribute, publicly display, publicly perform, create derivative works of, transfer, sublicense, and make any other use in any form or medium of such metadata, without restriction of any kind.

**Display of Licenses.** INFOhio endeavors to provide information about the copyright status of the educational materials in the OERC Platform, and to identify any other terms and conditions that may apply to your use of such materials. However, INFOhio offers no guarantee or assurance that all pertinent information is provided or that the information provided is correct in each circumstance. In all cases, it is your sole responsibility to determine what permission(s) you may need in order to use materials available from the OERC Platform and, if necessary, to obtain such permission(s).

**User Content.** Certain features of the OERC Platform may allow you to contribute content that is not itself either Educational Material or metadata, for example in the form of comments, ratings, reviews, feedback, evaluations, or other content for access, use, viewing, and downloading by us and by other users of the OERC Platform (“User Content”). When you post User Content, you represent and warrant that you have the full legal right to post the User Content and that use of the User Content by us and all other persons and entities will not (i) infringe the trademark, copyright, privacy, or publicity rights of any person or entity; (ii) violate any law, statute, ordinance, regulation, or agreement; or (iii) disclose any confidential or private information of any third party. Upon your submission of User Content, you grant us a fully-paid, royalty-free, worldwide, perpetual, irrevocable, transferable, license to access, use, distribute, reproduce, display, modify, create derivative works based upon, and sublicense the User Content for the purposes of providing and promoting the OERC Platform, all without any additional compensation to you whatsoever. Please note that Educational Materials and metadata are **not** considered User Content, but rather are discussed above, in the section titled Educational Materials.

**Removal of User Content or Educational Material.** We make User Content and Educational Material (including its metadata) available at our sole discretion and may disable access to any User Content or Educational Material at any time and for any reason. By using the OERC Platform, you acknowledge and agree that we do not guarantee access to and/or hosting of User Content or Educational Material that is published through the OERC Platform. For example, if Educational Material violates this Agreement, access to it may be disabled.

If you believe that a user of the OERC Platform has violated your intellectual property rights – for example by improperly posting your trademarks or copyrighted content to the OERC Platform – please contact us. You can review our full intellectual property policy, including information on how to report infringement, at: [https://www.infohio.org/images/ZOO\\_DOCS/oer/IntellectualPropertyRightsPolicyOpenSpace2018.pdf](https://www.infohio.org/images/ZOO_DOCS/oer/IntellectualPropertyRightsPolicyOpenSpace2018.pdf).

If we receive notice that User Content or Educational Material posted to or through the OERC Platform may infringe the rights of third parties, including their intellectual property rights, we reserve the right (in our sole discretion) to disclose information, including PII, about the poster of such material to those third parties, so that they can contact the poster directly regarding their concerns.

**INFOhio’s Content.** Except for Educational Materials (which are made available by INFOhio and its users pursuant to the public licenses associated therewith), all text, metadata, user interfaces and visual interfaces (including graphics, photographs, sounds, music, and artwork), trademarks, logos, computer code, and any and all compilations thereof (collectively, “INFOhio Content”), including but not limited to the design, structure, selection, coordination, expression, “look and feel,” and arrangement of INFOhio Content, is owned, controlled, or licensed by or to INFOhio, and is protected by trade dress, copyright, and trademark laws, and is subject to various other intellectual property rights. Except as expressly provided in this Agreement, you are prohibited from copying, reproducing, modifying, distributing, displaying, performing, or transmitting any of the INFOhio Content for any purpose, and nothing otherwise stated or implied in the OERC Platform confers on you any license or right to do so.

## Links

**To Third Party Sites.** The OERC Platform may link to third party sites that are not under the control of INFOhio. Links from the OERC Platform are provided as a convenience and for informational purposes only; they do not indicate endorsement, sponsorship of, or affiliation with the third party or content of the linked website, including any advertisements that may be posted. INFOhio has no control over and bears no responsibility for the accuracy, legality, or content of the externally linked sites. Privacy policies and practices for such linked sites may differ from our Privacy Policy and practices. You access and use such linked sites entirely and solely at your own risk. We urge you to read the privacy policies of such linked sites before disclosing your personal information on such sites.

**From Third Party Sites.** If you present a link to any portion of the OERC Platform from any third party site, you agree to present the link in a manner that does not convey the impression that INFOhio endorses, whether expressly or implicitly, any products, services, or opinions provided on your website. Any link to the OERC Platform must provide a clearly written notice that the user is leaving your website to access another.

## **Violation of this Agreement - Termination**

Your right to access and use the OERC Platform terminates automatically upon your breach of any of the terms of this Agreement. You agree that we may, in our sole discretion and without prior notice to you, terminate your access to the OERC Platform and/or block your future access to the OERC Platform for any reason, including if we determine that you have violated this Agreement or other agreements or guidelines which may be associated with your use of the OERC Platform. Please note that it is our policy to terminate the accounts of Registered Users who repeatedly violate the copyrights, trademark rights, or other rights of third parties.

If we take any legal action against you as a result of your violation of this Agreement, we will be entitled to recover from you, and you agree to pay, all reasonable attorneys' fees and costs of such action, in addition to any other relief granted. You agree that we will not be liable to you or to any third party for termination of your access to the OERC Platform. The disclaimer of warranties, the limitation of liability, and the jurisdiction and applicable law provisions will survive any termination.

## **Disclaimer of Warranties**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE OERC PLATFORM IS AT YOUR SOLE RISK. THE OERC PLATFORM, AND ANY GOOD OR SERVICE DOWNLOADED OR USED THROUGH OR IN CONNECTION WITH THE OERC PLATFORM, IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE AND OUR PARENTS, SUBSIDIARIES, BOARD OF TRUSTEES, BOARD OF TRUSTEES OF OUR PARENTS AND SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, LICENSORS, AND ANY PARTY UNDER OUR COMMON OWNERSHIP OR COMMON CORPORATE CONTROL (COLLECTIVELY, "OUR AFFILIATES"), EXPRESSLY DISCLAIM ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, OR ANY WARRANTY OR CONDITION ARISING BY USAGE OF TRADE, COURSE OF DEALING, OR COURSE OF PERFORMANCE. WE AND OUR AFFILIATES MAKE NO WARRANTY THAT (a) THE OERC PLATFORM WILL MEET YOUR REQUIREMENTS; (b) THE OERC PLATFORM WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (c) CONTENT AND MATERIAL WILL BE HOSTED AND/OR TRANSMITTED WITHOUT INTERRUPTION OR CESSATION; (d) ANY PRODUCTS, SITES, INFORMATION, OR OTHER MATERIAL, WHETHER IN TANGIBLE OR INTANGIBLE FORM, DOWNLOADED OR OBTAINED BY YOU THROUGH THE OERC PLATFORM, WILL MEET YOUR EXPECTATIONS OR ANY STANDARD OF QUALITY; AND (e) ANY DEFECTS IN THE OPERATION OR FUNCTIONALITY OF THE OERC PLATFORM OR RELATED SOFTWARE WILL BE CORRECTED.

ANY MATERIAL, INFORMATION, OR DATA DOWNLOADED, VIEWED, SHARED, OR OTHERWISE ACCESSED ON OR THROUGH THE OERC PLATFORM IS ACCESSED AT

YOUR OWN DISCRETION AND RISK; YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULT FROM THE DOWNLOADING, VIEWING, SHARING, OR OTHERWISE ACCESSING OF SUCH MATERIAL. NO ADVICE, REPRESENTATION, OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU EITHER FROM US OR THROUGH THE OERC PLATFORM SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

## **Limitation of Liability**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT WE AND OUR AFFILIATES WILL NOT BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES THAT MAY BE INCURRED BY YOU, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY. THIS INCLUDES, BUT IS NOT LIMITED TO, ANY LOSS OF PROFITS, GOODWILL, OR BUSINESS REPUTATION; ANY LOSS OF DATA; ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; OR ANY OTHER INTANGIBLE LOSSES. THIS ALSO INCLUDES ANY LOSS OR DAMAGES THAT MAY BE INCURRED BY YOU AS A RESULT OF (a) ANY CHANGES THAT WE MAY MAKE TO THE OERC PLATFORM; (b) ANY PERMANENT OR TEMPORARY CESSATION OF THE OERC PLATFORM; (c) THE DELETION OR CORRUPTION OF, OR FAILURE TO STORE, ANY CONTENT OR DATA (INCLUDING WITHOUT LIMITATION USER CONTENT, EDUCATIONAL MATERIAL, AND METADATA) MAINTAINED THROUGH THE OERC PLATFORM; OR (d) YOUR FAILURE TO KEEP YOUR PASSWORD OR REGISTERED USER ACCOUNT DETAILS SECURE. THE LIMITATIONS AND EXCLUSIONS OF LIABILITY ABOVE SHALL APPLY IRRESPECTIVE OF THE THEORY OF LIABILITY, INCLUDING CONTRACT (INCLUDING FUNDAMENTAL BREACH), WARRANTY, PRODUCT LIABILITY, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE), OR OTHER THEORY, EVEN IF WE (OR OUR AFFILIATES) HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

YOU SPECIFICALLY ACKNOWLEDGE THAT WE AND OUR AFFILIATES SHALL NOT BE LIABLE FOR USER CONTENT, EDUCATIONAL MATERIAL, AND/OR METADATA, OR FOR THE INFRINGING, DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY, AND THAT THE RISK OF HARM OR DAMAGE FROM THE FOREGOING RESTS ENTIRELY WITH YOU.

## **Exclusions and Limitations**

SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS, OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR CERTAIN DAMAGES. ACCORDINGLY, ONLY THE LIMITATIONS THAT ARE LAWFUL IN YOUR JURISDICTION WILL APPLY TO YOU AND, IN SUCH INSTANCES, OUR LIABILITY AND THAT OF OUR AFFILIATES WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

## Indemnification

You agree to defend, indemnify, and hold INFOhio and Our Affiliates harmless from and against any and all liabilities and costs (including reasonable attorneys' fees) we may incur in connection with any claim arising out of your breach of this Agreement or your use of the OERC Platform. We reserve the right, but have no obligation, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you.

## General Terms

**Entire Agreement.** These Terms of Use contain the entire agreement between you and INFOhio regarding the use of the OERC Platform, and supersede any prior agreement between you and INFOhio on such subject matter. The parties acknowledge that no reliance is placed on any representation made but not expressly contained in these Terms of Use. You may also be subject to additional terms and conditions that may apply when you use or purchase other goods or services from us, our affiliates, or our parents or subsidiary entities.

**Governing Law.** Ohio law will govern this Agreement – as well as any claim, cause of action, or dispute that might arise between us concerning the OERC Platform, content appearing thereon, or any other matter – without regard to conflict of law provisions. For any claim brought by either party relating to or not governed by the arbitration provision of these Terms of Use, the parties agree to submit and consent to the personal and exclusive jurisdiction in, and the exclusive venue of, the state and federal courts located within Franklin County, Ohio.**Statute Of Limitations.** You agree that, regardless of any statute or law to the contrary, any claim under this Agreement must be brought within one (1) year after the cause of action arises, or such claim or cause of action is forever barred.

**Severability of Terms; Non-waiver of Terms; Assignment.** If any portion(s) of the Agreement is held to be invalid or unenforceable, such provision(s) shall be stricken and the remainder of the Agreement enforced as written. If we do not exercise or enforce any legal right or remedy, including those contained in the Agreement or arising under applicable law, this will not be taken to be a formal waiver or relinquishment of our rights. We may assign or delegate all rights and obligations under the Agreement, fully or partially.

**Notices.** We may provide you with notices, including those regarding changes to the Agreement, by email, by regular mail, or by postings to the OERC Platform. If you have general questions or concerns regarding these Terms of Use, please contact us in writing at [central@infohio.org](mailto:central@infohio.org) for fastest processing, please include the phrase “Terms of Use” in the subject line and in the body of your message.



## Reusing these Terms of Use

The terms of this Agreement are dedicated to the public domain under the CC0 1.0 Universal (CC0 1.0) Public Domain Dedication, shown at

<http://creativecommons.org/publicdomain/zero/1.0>. You are free to use and adapt elements of this Agreement for your own purposes. However, you should always seek the advice of your own attorney before repurposing the terms of this Agreement for use on your own site.