

# PERTS Terms of Use for Programs

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## **About this Document**

PERTS is a nonprofit institute, fiscally sponsored by Tides Center, that helps educators in the United States apply evidence-based strategies in order to increase student engagement and success. To do so, PERTS provides various services to educators, parents, and students, including but not limited to websites, cloud-based applications, reports, speaking engagements, and other forms of assistance (together described as “Services”). This document describes the terms that govern the use of PERTS Services.

Before using any Services, you must read, understand, and agree to these terms of use and our privacy policy (collectively described as the “Agreement”). The privacy policy can be found at [perts.net/privacy](https://perts.net/privacy). You have no right to use the PERTS website or Services unless you unconditionally agree to all the terms of the Agreement.

By signing up for a PERTS account, or by otherwise using Services, you agree that you have read and agree to be bound by the terms of the Agreement without modification and to the exclusion of all other terms. You also agree to be bound by the Agreement regardless of your age, and regardless of whether someone else (like a parent, guardian, or teacher) has read and agreed to the terms on your behalf.

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## **Permission to Access Services**

You have permission to access PERTS Services as long as you comply with all terms of the Agreement. PERTS may change or discontinue any or all parts of the Services at any time, and PERTS may restrict features or services without notice or liability.

## **Eligibility to Use Services**

The Services are directed to, and intended for use by, users in the United States. The Services are not available to (a) any users who were previously suspended or blocked from accessing the Services or (b) anyone under the age of 13 whose participation has not been approved by a legal guardian or an educational organization acting in place of a legal guardian. By using the Services, you attest (a) that you have not been previously suspended or blocked from accessing the Services; (b) that your participation and your use of the Services complies with any and all applicable laws and regulations; and (c) that you are either (i) at least 13 years of age or (ii) that your legal guardian or an educational organization authorized to act in place of your legal guardian has consented to your use of the Services.

### **Students**

If you are a student: You agree that you will only use the Services if invited to do so by a teacher or other official from your school, college, or other educational organization that is authorized to give you access to the Services. You also agree not to send any personal information to us other than what we specifically request as a part of the Services.

### **Young Users (anyone under 13 years of age)**

If you are under 13 years of age (a “Young User”), you may only use the Services with consent and approval from your legal guardian or an authorized school official, like a teacher, who invites you to use the Services.

### **Educators**

If you are a teacher, instructor, or other person (“Educator”) accessing the Services on behalf of a school, school district, college, or other educational organization (“Organization”), the following terms apply to you: You attest that you are acting on behalf of and have permission from your Organization to enter into the Agreement and to use the Services as part of your educational duties for the benefit of students. Furthermore, if you invite a Young User to use the Services, you represent and warrant that you are authorized to consent on behalf of the Young User with respect to their use of Services; additionally, you agree to be bound by these terms on behalf of the Young User, including without limitation being liable for all use of the Services by the Young User. You agree to indemnify, defend, and hold harmless PERTS against all claims, losses, liabilities and expenses (including attorney’s fees) arising out of or related to (a) your violation of any provision, representation, or warranty; (b) the use of Services by a Young User; (c) your failure to obtain sufficient consent; or (d) all other actions related to the Young User.

Additionally, if PERTS and that Organization have a separate written agreement, then that agreement will define the order of precedence between the Agreement and that separate agreement. If any jurisdictions exist where the Agreement or part of it is prohibited, then your right to access and use the Services is revoked in those jurisdictions.

## **Modification of the Agreement**

We may modify the Agreement in the future. If we do modify the Agreement, we will send you a notice via email and/or post the modified Agreement to the website. You will be bound by the new version of the Agreement (a) once you use the Services after you know about the change or (b) 30 days after we publish the new Agreement (whichever is sooner). Any disputes will be resolved under the terms of the Agreement in place when the dispute takes place. It is your responsibility to stay familiar with the Agreement and any modifications that we may make.

## **Privacy Policy**

Our Privacy Policy (*see* [perts.net/privacy](https://perts.net/privacy)) is part of this Agreement. Please read it for information about our collection, use, and disclosure of personal information from users.

## **Content**

The Services and their contents, including any software, technology, and any other materials shown or provided through the Services (“Content”), as well as the technology used to provide them, must only be used for non-commercial purposes and only in accordance with the terms of the Agreement. All Content is protected by copyright and other intellectual property laws. You must abide by all copyright notices, trademark rules, and restrictions contained in any Content accessed through the Services. You may not use, copy, reproduce, modify, sell, or otherwise exploit for any purposes whatsoever any Content not owned by you: (i) without the express prior written consent of the respective owners, and (ii) in any way that violates any third party rights.

Under no circumstances is PERTS liable in any way for any Content. That includes but is not limited to any Content with errors or omissions or any loss or damage of any kind incurred in connection with use of or exposure to any Content posted, emailed, accessed, transmitted, or otherwise made available via the Services.

You may provide information in the course of using Services that will be visible to certain other users. You grant PERTS and its successors a non-exclusive, worldwide, royalty free, and transferable right and license (without obligation) to reproduce, distribute, publicly perform and display, and modify any information or Content you share in the course of using Services. However, note that your information will be only stored or shared in accordance with our strict Privacy Policy, *see* [perts.net/privacy](https://perts.net/privacy).

## **Your Warranty**

You attest and agree that you will not use the Services in any manner that (i) infringes intellectual property rights, privacy rights, or other third party rights; (ii) violates any law or other regulation which would place PERTS in violation of any applicable laws or regulations (including but not limited to FERPA and COPPA); (iii) is harmful or abusive in any way; or (iv) risks the security of your account, including but not limited to letting someone else use your account or password. We reserve the right to remove any of your content or your account for any reason whatsoever or no reason at all.

## **Limitation of Liability**

You agree that PERTS has no fiduciary relationship or responsibility to you and no control over, and no duty to take any action regarding: who accesses Services or what effects the Content may have on you, including what actions you do or do not take as a result of accessing the Content or Services. To the greatest legally permissible extent, the Services and all related Content are provided on an "as is" basis without express or implied warranties of any kind whatsoever. In no event, will PERTS, Tides Center, or their respective staff, partners, agents or affiliates be liable to you or any other party for any damages of any kind arising out of or in connection with your use of the Services.

## **Indemnity**

You will indemnify and hold harmless PERTS, Tides Center, and any affiliated individuals and organizations from any claim or demand made by any third party arising out of your use or misuse of the Services. That includes, but is not limited to, failure to obtain or provide any necessary consent or infringement of the right of any individual or organization, whether those rights be privacy rights, property rights, or any other kind of right.

## **Third Party Websites**

The Services and Content occasionally link to third party websites that are not owned or controlled by PERTS. When you access third party websites or interact or communicate with third parties through the Services, you do so entirely at your own risk and assume all responsibility for such interactions. You hereby agree that PERTS has no control or responsibility for those websites or the information located therein, and that you release PERTS from any liability arising from your interaction with such third party websites or third parties.

## **User Interactions**

PERTS is not responsible for the actions of or interactions between users. You are solely responsible for your interactions with other users or other third parties you may encounter while

using Services. If you have a dispute with other users, you hereby release PERTS, Tides Center, and their respective staff, partners, agents and affiliates from any and all claims, demands, and damages of every kind arising out of or in any way connected with such disputes. Additionally, you waive California Civil Code §1542, which states: "**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor.**" You also waive any and all similar, applicable state statutes.

## **Termination**

The Agreement is in full effect while you use the Services. You may terminate your use of the Services at any time by contacting us at [support@perts.net](mailto:support@perts.net). PERTS may suspend or block your access to the Services at any time for any reason and without warning or notice, which could result in the loss of information associated with your account. All portions of the Agreement that can survive termination, shall survive termination, including but not limited to ownership provisions, disclaimers, and limitations of liability.

## **Miscellaneous**

### **Governing Law**

The Agreement will be governed by and construed in accordance with the laws of the State of California, without giving effect to any principles of conflicts of law.

### **Severability**

If any part of the Agreement is held to be unlawful or unenforceable, that provision will be limited or eliminated from the terms to the minimum extent necessary and without influencing the validity and enforceability of remaining provisions.

### **Headings**

The headings in the Agreement are provided for convenience and do not limit or affect any of the provisions in the Agreement.