



NIMAC LIMITATION OF USE AGREEMENT

THIS USER AGREEMENT is between the National Instructional Materials Access Center (NIMAC) and the authorized user who physically signed, or assented electronically, to this Agreement under the terms and conditions set forth herein.

1. INTRODUCTION

1.1. Terms. The authorized user is called "USER" or "YOU". "YOU" also includes any representatives you designate as authorized users for your agency. The National Instructional Materials Access Center is called "the Center," "WE" or "US," depending upon the context of the reference. This is referred to as "the Agreement," while the services WE provide are called "the Services" and the electronic NIMAS file sets available on or from the Web Site described below are collectively called "the Files." The term "Web Site" means the electronically accessible World Wide Web location for NIMAC and its content, and all Services associated with or part of the Web Site. References to the U.S. Copyright law include all the applicable laws and treaties and the regulations and rules issued thereunder, unless the context clearly indicates a specific section of the U.S. Copyright Act, found in Title 17 of the United States Code.

The Files are for the purpose of providing accessible instructional materials to blind or other persons with print disabilities in elementary and secondary schools as described in sections 612(a)(23)(C), 613(a)(6), and 674(e) of the Individuals with Disabilities Education Act (IDEA). The content of these files is made available pursuant to an exemption in the United States Copyright Act, 17 U.S.C. Sec. 121. Our Web Site is operated in full legal compliance with 17 U.S.C. Sec. 121.

1.2 Who is Eligible to Use Our Services?

1.2.1 The NIMAC makes available the content in these File sets only to "authorized users" of the NIMAC. Authorized users are representatives of agencies who are designated by State Education Agencies or Local Education Agencies under sections 612(a)(23)(C) and 613(a)(6) of IDEA to access NIMAS files. In addition, authorized users must meet the exemption provided by the Copyright Act, 17 U.S.C. Sec. 121. An "authorized entity" is defined by the Copyright Act as "a nonprofit organization or a governmental agency that has a primary mission to provide specialized services relating to training, education, or adaptive reading or information access needs of blind or other persons with disabilities." By signing the agreement you certify that the entity you work for qualifies both as an "authorized user" pursuant to IDEA and an "authorized entity" under section 121 of the Copyright Act. If WE deem it necessary to meet our legal

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obligations, WE may request additional certification information from YOU, at any time, in order to permit access to the Web Site.

1.2.2 NIMAC authorized users may also designate one or more Accessible Media Producers (AMP) to download NIMAS file sets on their behalf, provided the AMP also signs and accepts the limitation of use agreement and agrees to convert or have converted these NIMAS file sets for the exclusive purpose of producing accessible instructional materials for blind or other persons with print disabilities in elementary and secondary schools, as defined in section 674(e)(3) of IDEA.

1.3 Individuals for Whom YOU May Make Accessible Versions of the Files from this Web Site

The NIMAS file sets are provided for the sole, express purpose of producing accessible instructional materials for blind or other persons with print disabilities in elementary and secondary schools as defined in section 674(e)(3) of IDEA. Furthermore, YOU are only permitted to reproduce these files in “specialized formats” as defined below.

Below are key definitions as provided in IDEA. As they apply to the NIMAC and NIMAS files, YOU concur with these definitions:

(A) BLIND OR OTHER PERSONS WITH PRINT DISABILITIES--The term 'blind or other persons with print disabilities' means children served under this Act¹ and who may qualify in accordance with the Act entitled 'An Act to provide books for the adult blind', approved March 3, 1931 (2 U.S.C. 135a; 46 Stat. 1487) to receive books and other publications produced in specialized formats.²

The Library of Congress regulations (36 CFR 701.6(b)(1)) related to 'An Act to provide books for the adult blind' provide that an “eligible person” means an individual who, regardless of any other disability—

(i) Is blind;

¹ To be eligible to receive NIMAS-sourced accessible materials, students must have an Individualized Education Program (IEP) and a qualifying disability.

²The Marrakesh Treaty Implementation Act (MTIA) amended section 121 of the Copyright Act. The term “blind or other persons with print disabilities” has been replaced by “eligible person.” While IDEA 2004 has not yet been updated to align its language with these changes, the U.S. Department of Education, Office of Special Education Programs (OSEP) has advised that “[u]ntil such time as Congress makes technical amendments to the IDEA statute and the Department is able to make conforming technical amendments to the IDEA Part B regulations, States should rely on, and utilize, the terms and definitions as updated and implemented by the Marrakesh Treaty and found in the Copyright Act at 17 U.S.C § 121.” (<https://osep.grads360.org/services/PDCService.svc/GetPDCDocumentFile?fileId=35283>)

(ii) Has a visual impairment or perceptual or reading disability that cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or

(iii) Is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading.

(2) Eligibility must be certified by one of the following: doctor of medicine, doctor of osteopathy, ophthalmologist, optometrist, psychologist, registered nurse, therapist, and professional staff of hospitals, institutions, and public or welfare agencies (such as an educator, a social worker, case worker, counselor, rehabilitation teacher, certified reading specialist, school psychologist, superintendent, or librarian).

(B) NATIONAL INSTRUCTIONAL MATERIALS ACCESSIBILITY

STANDARD--The term 'National Instructional Materials Accessibility Standard' means the standard established by the Secretary to be used in the preparation of electronic files suitable and used solely for efficient conversion into specialized formats (See Federal Register, Volume 71, Number 138, pages 41083-41089, July 19, 2006).

(C) PRINT INSTRUCTIONAL MATERIALS--The term 'print instructional materials' means printed textbooks and related printed core materials³ that are written and published primarily for use in elementary school and secondary school instruction and are required by a State educational agency or local educational agency for use by students in the classroom.

(D) SPECIALIZED FORMATS--The term 'specialized formats' has the meaning given the term in section 121(d) of title 17, United States Code.⁴ With regard to NIMAS, 'specialized formats' include Braille, audio, digital text or large print which is exclusively for use by the blind or other persons with print disabilities as defined above.

2. NIMAC OBLIGATIONS.

2.1. Once YOU have been accepted by US as qualified to use our Service, and YOU have agreed to be bound by this Agreement, WE will provide YOU with a User ID and

³ The Final Notice of Interpretation published on May 26, 2020, clarified that the definition of “print instructional materials” in IDEA 2004 includes digital instructional materials, when these can be successfully supplied to the NIMAC in valid NIMAS format. For more information, see <https://www.govinfo.gov/content/pkg/FR-2020-05-26/pdf/2020-09273.pdf>.

⁴ The MTIA replaced the term “specialized format” in section 121 of the Copyright Act with “accessible format.” The term “accessible format” means “an alternative manner or form that gives an eligible person access to the work when the copy or phonorecord in the accessible format is used exclusively by the eligible person to permit him or her to have access as feasibly and comfortably as a person without such disability” [17 U.S. Code § 121 (d)(1)]. See Footnote 2 above for additional information.

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Password to access the Files of the Web Site and to download such Files solely for their authorized use during the term of this Agreement.

2.2. WE grant YOU a terminable, non-exclusive, royalty-free right to access the Web Site and to download, display, modify, reproduce, and distribute the content contained in the Files on the Web Site consistent with the provisions of 17 U.S.C. Sec. 121 and in accordance with the terms, conditions, and restrictions of this Agreement. WE do not own nor do WE have the right to license the actual copyright-protected content contained in the Files accessed through the Web Site. While YOU may download, display, convert into 'specialized formats,' and distribute the content solely for authorized uses, any other use including reproduction, modification, distribution, retransmission, republication, public display, performance, re-hosting, tampering with, framing, or deep linking of this Web Site, its Files or their content, or its tools is strictly prohibited.

2.3. WE will provide YOU with that level of technical support WE deem necessary and reasonable during the term of this Agreement.

2.4 WE reserve the right, in our sole discretion, to refuse Service or to reject any download request deemed unacceptable due to patterns of usage that suggest abuse, or for other legal or business reasons. WE also reserve the right to refuse service or to reject YOUR download request if YOU cannot establish that YOU represent a State or local educational agency at the time of intended use.

3. USER OBLIGATIONS AND RIGHTS

3.1. YOUR Obligations.

3.1.1. Once YOU establish YOUR qualification to use this Web Site under section 674(e) of IDEA, 17 U.S.C. Sec. 121 and under our policies, YOU will be provided with access to the functionality and Files of the Web Site if YOU have completed the requirement below:

3.1.1.1. YOU have agreed to the terms of this Agreement by selecting "I Agree" on the Web Site and clicking thereon, or if YOU receive notice that WE have received a signed copy of this Agreement from YOU.

3.1.2. If you receive a Password to access Files directly, YOU must retain YOUR Password in strict confidence and not disclose it to any third party, nor otherwise assist any third party in gaining access to the Web Site.

3.1.3. If you receive a Password to access Files directly, YOU must log off when YOU leave the computer so that others cannot use it to access our Web Site. Other Authorized

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Users must log in under their own User ID and Password if they are to use YOUR computer for access.

3.1.4. By signing this Agreement or otherwise expressly assenting to its terms or by downloading copyrighted Files from the Web Site, YOU certify to US and the owners of the copyrights for the content provided through these Files on the Web Site that YOU are legally qualified to download the Files under the Copyright laws and agree to abide by the restrictions imposed under the Copyright laws and this Agreement.

3.1.5. Each time YOU log in and access the Files on the Web Site, or receive NIMAS files provided to you by an Organization that has agreed to the terms of the Center's Use Agreement, YOU are certifying that YOU intend to acquire the digital content solely for authorized use as described herein. YOU agree to use the Files solely to enable access by eligible individuals who meet the criteria set out in Sections 1.3-1.3.4 above and no other purposes. YOU agree to obtain the written agreement of eligible individuals who are permitted access to the content of these Files to the same restrictions regarding use of the content contained in this Agreement. YOU agree not to make any commercial use of this Web Site, its content, including charging others for access or selling collections of content gathered from the Web Site. YOU are not permitted to copy or reproduce any portion of the content for distribution to anyone other than blind or other persons with print disabilities, even at no cost.

3.1.6. YOU are responsible for the security of YOUR computer and software environment and YOUR Password. If YOUR Password is lost or misplaced by YOU, YOU must advise US immediately of this fact so that a new Password can be assigned to YOU. Failure to promptly advise US of loss or theft of YOUR Password may be grounds for immediate termination of YOUR account.

3.1.7. YOU understand and acknowledge that WE use Digital Rights Management (DRM) technology or other copyright protection mechanisms to track violations of Copyright law and our contractual agreements with YOU, which technology or mechanisms may include identifying codes embedded in content that are specific to YOU and/or use other tracking devices that will enable US and the content owners to collect information regarding electronic redistribution of Files and such collection may include the internet protocol (IP) address or other identifiable information of where the File is being forwarded. YOU will not knowingly delete or tamper with such DRM technology, codes or other mechanisms.

3.1.8. YOU will not allow others to access the Web Site using YOUR User ID or Password, nor will YOU allow others to download the content from the Web Site, nor will YOU transfer to third parties any physical or electronic copies of any content YOU have downloaded to an Organization that has not agreed to the terms of this Agreement.

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3.1.9. YOU acknowledge that our Web Site may contain trade secrets, copyrighted works, and other proprietary materials. For the protection of the content providers and US, YOU agree not to make any unauthorized use of the Web Site or any of its art, design or any other Content, or to decompile, reverse engineer, or in any other manner disassemble or modify the Web Site or any of the supporting technology of the Web Site.

3.1.10. YOU will not, in communicating with US, use any false email or physical address or residence, false name or identification, or impersonate any other person or entity, or otherwise mislead US as to the origin of communications, or any qualifying information. Any such action is grounds for immediate termination of YOUR user account and may be grounds for damage claims by Copyright owner in addition to any other remedies available.

4. TERMINATION PROVISIONS

4.1. Term and Termination.

4.1.1. The initial term of this Agreement shall begin when WE have received a copy signed by YOU or YOU have otherwise expressly assented to its terms by clicking the "I Agree" box at the end of the Agreement on the Web Site. Agreements will remain in effect unless terminated by either party as provided herein.

4.1.2. YOU may terminate this Agreement, at any time, by notifying US at Customer Support at 502-899-2230. After receipt of your notice to terminate YOUR User Name and Password will be cancelled on the effective date of termination, and may not be used by anyone after that date. Your eligibility to have Files downloaded for YOUR use by an Organization that has agreed to the terms of the Agreement will be terminated on the effective date of termination.

4.1.3. WE have the right to terminate this Agreement and YOUR right to access the Web Site and the Files at any time with or without cause and with or without prior notice. In most cases, WE will notify YOU ahead of time of any planned termination. However, where and when WE deem it in the best interest of the Service, there may not be time to notify YOU in advance. Since the NIMAC is authorized and funded by the Federal government, services may be interrupted or discontinued based on action by the Federal government.

4.1.4. If WE terminate YOUR account for cause, YOU must immediately destroy all copies of Files YOU have downloaded yourself or that have been downloaded for YOU for YOUR use from the Web Site, in order to comply with the Copyright laws.

4.1.5. In the event of the expiration or termination of this Agreement, all the applicable obligations agreed to by YOU when signing or assenting to this Agreement shall survive and shall remain in full force and effect. However, in such case, OUR applicable

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obligations to YOU, but not OUR rights, will end. YOU may not, after termination, continue to access or use the Web Site for any reason. Furthermore, YOU expressly agree that nothing contained in this Agreement will in any way relieve YOU of YOUR obligations under the Copyright laws to respect the rights of the copyright owners of the Content contained in the Files downloaded and used under this Agreement, whether during the term of this Agreement or thereafter. YOU may not provide the downloaded Files to anyone after termination, and any use of any downloaded Content continues to be restricted under the Copyright laws. YOU must also comply with paragraph 4.1.5. if YOU are terminated for cause.

5. GENERAL PROVISIONS

5.1. Proprietary Rights. The entire right, title, and interest in the intellectual property rights of the content contained in Files made available through the Web Site, including all copyright, patent, trademark, trade secret or other legal rights, shall remain the exclusive property of the owners of such intellectual property rights. No license or other rights of any kind are granted or conveyed by the act of our transmitting or making available proprietary or copyrighted information through the Web Site to YOU under this Agreement or by allowing YOU to access the Web Site hereunder, except for the limited right to Use the Web Site for the purposes expressly provided to YOU in this Agreement and then only while YOU are in full compliance with this agreement, section 674(e) of IDEA, and section 121 of the Copyright Act. Any use by YOU of the Files, the Content contained therein or the Web Site in contravention of this Agreement or section 121 is a violation of U.S. Copyright law and may be punished by the copyright owners under the civil and criminal provisions of the Copyright law.

5.2. Quality Controls. WE have established quality controls and procedures which WE try to enforce, but human and technical means of review are not perfect. In spite of this, WE are committed to ensuring that electronic files of all content on the Web Site are valid NIMAS files. However, due to the inherent technological limitations, WE cannot and do not guarantee that there are no errors in the Files or the content contained therein. WE, therefore, do not guarantee the quality or accuracy of any information or content provided on the Web Site.

6. LIMITATION OF LIABILITY

THE CENTER, AND THE PUBLISHERS AND COPYRIGHT OWNERS OF THE CONTENT SHALL NOT IN ANY CASE BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING OF, THE PERFORMANCE OF, OR YOUR USE OF THE WEB SITE SERVICES AND THE FILES PROVIDED HEREUNDER.

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7. ASSIGNMENT. YOU may not assign or grant any rights under this Agreement to anyone. Any attempted assignment or grant shall be null and void, and shall automatically terminate this Agreement without further notice to YOU.

8. WAIVER. Failure to exercise any rights hereunder shall not constitute a waiver or forfeiture of such rights of any party or third party beneficiary hereunder.

9. GOVERNING LAW. This Agreement between YOU and US shall in all respects be interpreted, construed in accordance with, and governed by section 674(e) of IDEA, section 121 of the Copyright Act, and any other applicable laws.

10. NOTICES. Any notice required or permitted by this Agreement shall be in writing and shall be sent by email, facsimile or regular mail. Such notice shall be deemed to have been given the earlier of the date of actual receipt or three (3) business days after being sent, except where a termination for cause occurs in which case notice shall be deemed complete in one business day, if sent by email or facsimile.

11. ENTIRE AGREEMENT. This Agreement contains the entire understanding of the parties relating to the subject matter hereof and any representation, promise, or condition not contained herein shall not be binding on either party.

12. EFFECT OF SIGNATURE OR ASSENT. YOU have indicated YOUR agreement to the terms of this Agreement, by YOUR signature on this Agreement, or by expressly assenting to these terms electronically on the Web Site, which is recorded permanently in YOUR account file retained by US.

13.0 AUTHORIZED USER ACCOUNTS

AUTHORITY. The undersigned hereto represents and warrants that they have the authority to obligate their agency to the terms of this agreement:

I agree that my agency and I will abide by the NIMAC Limitation of Use Agreement.

Signature _____ **Date** _____

Printed Name _____

Job Title _____

Educational Agency _____

Address 1 _____

Address 2 _____

Address 3 _____

City _____ **State** _____ **ZIP** _____

Telephone _____

Email _____

Important Note: Please initial all pages of the LUA on the designated lines in the lower right-hand corner. You must submit the entire LUA to the NIMAC in order for your account to be activated.

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13.1. If the designated Authorized User account holder is not the above signed, the Authorized User will sign below as the Authorized User on behalf of this agency:

Signature _____ **Date** _____

Printed Name _____

Job Title _____

Educational Agency _____

Address 1 _____

Address 2 _____

Address 3 _____

City _____ **State** _____ **ZIP** _____

Telephone _____

Email _____

Please email a scan of the complete, signed agreement to nimac@aph.org.

If you prefer, you are welcome instead to mail the original document to the NIMAC at the address found in the footer below.

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14.0 ACCESSIBLE MEDIA PRODUCER ACCOUNTS

The undersigned hereto represents and warrants that they have the authority to obligate their agency to the terms of this agreement in accordance with 1.2.2 above:

I agree that my agency and I will abide by the NIMAC Limitation of Use Agreement.

Signature _____ Date _____

Printed Name _____

Job Title _____

Educational Agency _____

Address 1 _____

Address 2 _____

Address 3 _____

City _____ State _____ ZIP _____

Telephone _____

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