

MyFlashcards™ User Service Agreement

Last Updated: November 1st, 2014

Welcome to the User Service Agreement for MyFlashcards™. This agreement describes the terms and conditions for use of the MyFlashcards™ service described herein (the "Service") between Xpertion LLC ("Xpertion") and you (either an individual or a legal entity that you represent as an authorized employee or agent) ("You"). In order to become a MyFlashcards™ user, you must read and accept all of the terms and conditions of this service agreement ("Agreement"). BY CLICKING "I HAVE READ AND ACCEPT" BUTTON YOU ARE STATING THAT YOU ARE ELIGIBLE FOR AN ACCOUNT AND THAT YOU AGREE TO BE BOUND BY ALL OF THESE TERMS AND CONDITIONS OF THIS AGREEMENT. Xpertion reserves the right to modify this Agreement at any time, and without prior notice, by posting amended terms on this website. Your continued use of the Service indicates your acceptance of the amended Agreement.

1. DEFINITIONS

"Account" refers to the registered account for the Service.

"Customer Data" is the content created by User and saved on Xpertion Server(s) ("Servers") and used by MyFlashcards™ Processing Software.

"Documentation" refers to any accompanying documentation made available to You by Xpertion for use with the Processing Software, including any documentation available online or otherwise.

"Personally Identifiable Information" means individual names and personal e-mail addresses.

"Processing Software" means the proprietary Xpertion Software and any all upgrades to such, which allows Customer Data entry, edit and viewing by registered users.

"Servers" are the servers controlled by Xpertion (or its affiliates) where the Processing Software and Customer Data are stored.

"Software" means the MyFlashcards™ Processing Software.

"Views and Reports" is the resulting analysis Xpertion may provide. The number of views, graphs, and statistics contained in a Views and Reports varies with the edition of the Service.

2. FEES AND SERVICES

The Basic MyFlashcards™ services are provided for free only to pilot users. Xpertion reserves the right to charge for the MyFlashcards™ Service or any portion thereof, modify the pricing of, add to, or discontinue the MyFlashcards™ Service or any portion thereof. The changes to the Service, fees or payment policies are effective upon Your acceptance of such changes which will be communicated to you or posted at www.learningstarz.com (or such other URL Xpertion may provide from time to time). Unless otherwise stated, all fees are quoted in U.S. Dollars. Any outstanding balance becomes immediately due and payable upon termination of this Agreement for any reason and any collection expenses (including attorneys' fees) incurred by Xpertion will be included in the amount owed, and may be charged to the credit card or other billing mechanism associated with your account.

3. DESCRIPTION OF SERVICES

MyFlashcards™ is the online service offered to provide students, teachers, and organizations with learning instrument in the form of computer application software for collaborative teaching and studying.

4. ELIGIBILITY

MyFlashcards™ is the service for users of all ages. For children under 13, MyFlashcards requires parental consent. By using the Service, you represent and warrant that (a) all registration information you submit is truthful and accurate; (b) you will maintain the accuracy of such information; and (c) your use of the Service does not violate any applicable law or regulation.

5. ACCOUNT, PASSWORD, SECURITY, AND CUSTOMER DATA

To register for the Service, You must complete the registration process by providing Xpertion with current, complete and accurate information as prompted by the registration form, including Your e-mail address (username) and password. You shall protect your passwords and take full responsibility for Your own, and third party, use of Your accounts and Customer Data. You are solely responsible for any and all activities that occur under Your Account. You agree to notify Xpertion immediately upon learning of any unauthorized use of Your Account or any other breach of security. From time to time, Xpertion (or its affiliates') support staff may log in to the Service under Your customer password in order to maintain or improve service, including to provide You assistance with technical or billing issues. You hereby acknowledge and consent to such access.

6. CONTENT AND ACTIVITIES

When you create Content, post materials, links, and make materials available, you are responsible for the Content and any harm resulting from that Content. This works regardless of the format of the stored content. The service is designed for teaching and studying related activities. It is prohibited to post Content that is illegal and in violation of law. We reserve the rights of, removing the offending Content from the Service and terminating the accounts of such violators.

7. USER'S RESPONSIBILITIES

We don't review and cannot be responsible for Users Data including all users' material and content stored on our servers. User is responsible for taking all steps necessary to protect themselves from harmful or destructive content. The Service may contain content that is offensive, indecent, or otherwise objectionable, as well as content containing technical inaccuracies, typographical mistakes, and other errors. The Service may also contain material that violates the privacy or publicity rights, or infringes the intellectual property and other proprietary rights, of third parties, or the downloading, copying or use of which is subject to additional terms and conditions, stated or unstated. Xpertion disclaims any responsibility for any harm resulting from the use by visitors of the Service, or from content there posted.

8. LICENSE

Xpertion hereby grants You a limited, revocable, non-exclusive, non-sublicensable and non-transferable license to use the Service. Your license of, use of and access to the Software and the Service (which may include, without limitation, the Software, Documentation, Views and Reports) is conditioned upon Your compliance with the terms and conditions of the Agreement, including the following:

You will not nor will You allow any third party to (i) copy, modify, adapt, translate or otherwise create derivative works of the Software or the Documentation; (ii) reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code of the Software; (iii) rent, lease, sell, assign or otherwise

transfer rights in or to the Processing Software, the Documentation or the Service; (iv) remove any proprietary notices or labels on the Software or placed by the Service; or (v) use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Service or the Software. You will use the Software, Service and Reports solely for Your own use, and will not make the Software or Service available for timesharing, application service provider or service bureau use. You will comply with all applicable laws and regulations in Your use of and access to the Documentation, Software, Service, Views and Reports.

This license will terminate immediately if You fail to comply with the terms of this Agreement. Upon such termination, You must stop using Service and Processing and cease any further use of the Service without the express written consent of Xperton.

9. CONFIDENTIALITY

"Confidential Information" includes any proprietary data and any other information disclosed by one party to the other in writing and marked "confidential" or disclosed orally and, within five business days, reduced to writing and marked "confidential". Notwithstanding the foregoing, Confidential Information will not include any information that is or becomes known to the general public, which is already in the receiving party's possession prior to disclosure by a party or which is independently developed by the receiving party without the use of Confidential Information. Except as provided in Section 7 below, neither party will use or disclose the other party's Confidential Information without the other's prior written consent except for the purpose of performing its obligations under this Agreement or if required by law, regulation or court order. In which case, the party being compelled to disclose Confidential Information will give the other party as much notice as is reasonably practicable prior to disclosing such information. Upon termination of this Agreement, the parties will promptly either return or destroy all Confidential Information and, upon request, provide written certification of such. You are responsible for safeguarding the confidentiality of Your password(s) and user name(s) issued to You by Xperton, and for any use or misuse of Your account resulting from any third party using a password or user name issued to You. You agree to immediately notify Xperton of any unauthorized use of Your account or any other breach of security known to You.

10. INFORMATION RIGHTS AND PUBLICITY

Xperton and its affiliates may retain, use, and share with third parties, subject to the terms of its Privacy Policy (located at http://www.xperton.com/Xperton_Privacy.pdf , or such other URL as Xperton may provide from time to time), deidentified information collected in Your use of the Service. Xperton may offer unlisted service, whereby deidentified information will not be shared with any third party, for an additional fee. Xperton will not share Personally Identifiable Information about You with any third parties unless Xperton (i) has Your consent; (ii) concludes that it is required by law or has a good faith belief that access, preservation or disclosure of such information is reasonably necessary to protect the rights, property or safety of Xperton, its users or the public; or (iii) provides such information in certain limited circumstances to third parties to carry out tasks on Xperton's behalf (e.g., billing or data storage) with strict restrictions that prevent the data from being used or shared except as directed by Xperton . When this is done, it is subject to agreements that oblige those parties to process such information only on Xperton's instructions and in compliance with this Agreement and appropriate confidentiality and security measures.

11. PRIVACY

You will not (and will not allow any third party to) use the Service to track or collect Personally Identifiable Information of Software users, nor will You (or will You allow any third party to) associate any data gathered from Software use with any personally identifiable information from any source as part of Your use (or such third parties' use) of the Service.

12. INDEMNIFICATION

You agree to indemnify, hold harmless and defend Xperton and any of its officers, directors, employees, contractors, agents or affiliates (collectively "Indemnitees"), at Your expense, from and against any and all third-party claims, actions, proceedings, and suits brought or threatened against any Indemnatee, and all related liabilities, damages, settlements, investigations, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees and other litigation expenses) (collectively a "Claim") arising out of or relating to (i) Your breach of any term or condition of this Agreement, (ii) Your use of the Service, (iii) Your violations of applicable laws, rules or regulations in connection with the Service, (iv) Your Brand Features, or (v) Your dealings with Third Parties pursuant to Section 13. In such a case, Xperton will provide You with written notice of such Claim. You shall cooperate as fully as reasonably required in the defense of any Claim. Without waiving its right to indemnification, Xperton reserves the right to assume the exclusive defense and control of any Claim.

13. THIRD PARTIES

If You provide access to Your Account or any portion thereof to any third party or use the Service whether or not You are authorized to do so by Xperton or its affiliates, the terms of this Section shall apply to You.

If You use the Service on behalf of any Third Party, You represent and warrant that (a) You are authorized to act on behalf of, and bind to this Agreement, that Third Party, (b) as between the Third Party and You, the Third Party owns any rights to Customer Data in the applicable account, and (c) You shall not disclose Third Party's Customer Data to any other party without the Third Party's consent.

You shall ensure that each Third Party is bound by and abides by the terms of this Agreement. Xperton and its affiliates make no representations or warranties for the direct or indirect benefit of any Third Party. You shall have no rights under any agreements between Xperton and any Third Party or contractor of Xperton With respect to Third Parties; You shall take all measures necessary to disclaim any and all representations or warranties that may pertain to Xperton and its affiliates, the Service, the Software or the Reports, or use thereof.

14. DISCLAIMER OF WARRANTIES

The information and services included in or available through the Service, including the Reports, may include inaccuracies or typographical errors. Changes are periodically added to the information herein. Xperton and/or its respective suppliers may make improvements and/or changes in the Service or Software at any time, with or without notice. Xperton does not represent or warrant that the Service will be uninterrupted or error-free, that defects will be corrected, or that the Service, the Software or any other software on the Server are free of viruses or other harmful components. Xperton does not warrant or represent that the use of the Service or the Reports will be correct, accurate, timely or otherwise reliable. You specifically agree that Xperton and its affiliates shall not be responsible for unauthorized access to or alteration of the Customer Data.

THE SERVICE, THE SOFTWARE AND REPORTS ARE PROVIDED "AS IS" AND THERE ARE NO WARRANTIES, CLAIMS OR REPRESENTATIONS MADE BY XPERTON AND/OR ITS AFFILIATES, EITHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SERVICE, THE SOFTWARE, THE DOCUMENTATION AND REPORTS, INCLUDING WARRANTIES OF QUALITY, PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, NOR ARE THERE ANY WARRANTIES CREATED BY COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE. XPERTON DOES NOT WARRANT THAT THE SERVICE, THE SOFTWARE OR REPORTS WILL MEET YOUR NEEDS OR BE FREE FROM ERRORS, OR THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED. THE FOREGOING EXCLUSIONS AND DISCLAIMERS ARE AN ESSENTIAL PART OF THIS AGREEMENT AND FORMED THE BASIS

FOR DETERMINING THE PRICE CHARGED FOR THE SERVICE. SOME STATES DO NOT ALLOW EXCLUSION OF AN IMPLIED WARRANTY, SO THIS DISCLAIMER MAY NOT APPLY TO YOU.

15. LIMITATION OF LIABILITY

XPERTON AND ITS AFFILIATES WILL NOT BE LIABLE TO USER OR ANY THIRD-PARTY CLAIMANT FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOST DATA COLLECTED THROUGH THE SERVICE), OR INCIDENTAL DAMAGES, WHETHER BASED ON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, INDEMNITY OR CONTRIBUTION, OR OTHERWISE, EVEN IF XPERTON AND/OR ITS AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE EXCLUSION CONTAINED IN THIS PARAGRAPH SHALL APPLY REGARDLESS OF THE FAILURE OF THE EXCLUSIVE REMEDY PROVIDED IN THE FOLLOWING PARAGRAPH. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE LIMITATIONS OR EXCLUSIONS IN THIS AND THE FOREGOING PARAGRAPH MAY NOT APPLY TO YOU.

Xperton (and its affiliates') total cumulative liability to You or any other party for any loss or damages resulting from any claims, demands, or actions arising out of or relating to this Agreement shall not exceed U.S. \$100.

16. SERVICE LEVELS

Xperton does not guarantee the Service will be operable at all times or during any down time (1) caused by outages to any public Internet backbones, networks or servers, (2) caused by any failures of Your equipment, systems or local access services, (3) for previously scheduled maintenance or (4) relating to events beyond Xperton (or its affiliates') control such as strikes, riots, insurrection, fires, floods, explosions, war, governmental action, labor conditions, earthquakes, natural disasters, or interruptions in Internet services to an area where Xperton (or its affiliates) or Your servers are located or co-located. Complete accuracy in all aspects of Your Customer Data at all times also is not guaranteed.

17. PROPRIETARY RIGHTS NOTICE

The Service, which includes but is not limited to the MyFlashcards™ Processing Software and all intellectual property rights in the Service are, and shall remain, the property of Xperton (and its affiliates). All rights in and to the Software not expressly granted to You in this Agreement are hereby expressly reserved and retained by Xperton and its licensors without restriction, including, without limitation, Xperton (and its affiliates') right to sole ownership of the MyFlashcards™ Processing Software and Documentation. Without limiting the generality of the foregoing, You agree not to (and to not allow any third party to): (a) sublicense, distribute, or use the Service outside of the scope of the License granted herein; (b) copy, modify, adapt, translate, prepare derivative works from, reverse engineer, disassemble, or decompile the Software or otherwise attempt to discover any source code or trade secrets related to the Service; (c) use the trademarks, trade names, service marks, logos, domain names and other distinctive brand features or any copyright or other proprietary rights associated with the Service for any purpose without the express written consent of Xperton; (d) register, attempt to register, or assist anyone else to register any trademark, trade name, service marks, logos, domain names and other distinctive brand features, copyright or other proprietary rights associated with Xperton (or its affiliates) other than in the name of Xperton (or its affiliates, as the case may be); or (e) remove, obscure, or alter any notice of copyright, trademark, or other proprietary right appearing in or on any item included with the Service.

18. TERM and TERMINATION

Either party to the Agreement may terminate it at any time and for any reason.

Upon any termination or expiration of this Agreement, Xperton will cease providing the Service. In the event of any termination (a) You will not be entitled to any refunds of any usage fees or any other fees, and (b) any (i) outstanding balance for Service rendered through the date of termination, and (ii) other unpaid payment obligations during the remainder of the Initial Term will be immediately due and payable in full and (c) all of Your historical report data will no longer be available to You unless a purchase or professional services agreement for the exchange and transfer of such data is entered into as a component of termination.

19. MODIFICATIONS TO TERMS OF SERVICE AND OTHER POLICIES

Xperton reserves the right to change or modify any of the terms and conditions contained in this Agreement or any policy governing the Service (including, but not limited to, the Privacy Policy), at any time, by posting the new agreement to the site located at www.learningstarz.com (or such other URL as Xperton may provide). You are responsible for regularly reviewing this Agreement and applicable policies. No amendment to or modification will be binding unless (i) in writing and signed by a duly authorized representative of Xperton, (ii) You accept updated terms online, or (iii) You continue to use the Service after Xperton has posted updates to the Agreement or to any policy governing the Service.

20. MISCELLANEOUS; APPLICABLE LAW AND VENUE

Xperton shall be excused from performance hereunder to the extent that performance is prevented, delayed or obstructed by causes beyond its reasonable control. This Agreement (including any amendment agreed upon by the parties in writing) represents the complete agreement between us concerning its subject matter, and supersedes all prior agreements and representations between the parties. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed to the extent necessary to make it enforceable to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect. This Agreement shall be governed by and construed under the laws of the state of Illinois without reference to its conflict of law principles. In the event of any conflicts between foreign law, rules, and regulations, and Illinois law, rules, and regulations, Illinois law, rules and regulations shall prevail and govern. Each party agrees to submit to the exclusive and personal jurisdiction of state and federal courts located in Cook County, Illinois. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act shall not apply to this Agreement. The Software is controlled by U.S. Export Regulations, and it may be not be exported to or used by embargoed countries or individuals. Any notices to Xperton must be sent to: Xperton LLC, 22439 Chestnut Ridge Rd, Kildeer, IL 60047 USA via first class or air mail or overnight courier, and are deemed given upon receipt. A waiver of any default is not a waiver of any subsequent default. You may not assign or otherwise transfer any of Your rights hereunder without Xperton's prior written consent, and any such attempt is void. The relationship between Xperton and You is not one of a legal partnership relationship, but is one of independent contractors. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.