

Literably Terms of Use

These terms are a legal agreement between Literably, Inc. ("Literably") and You for the use of www.literably.com (the "Site"), the Literably mobile application (the "App") and the services available through our Site and App (collectively, the "Services"). By using the Literably Site, App and Services, You accept these terms. If You do not accept them, do not use the Literably Site, App and Services. You are bound by these terms even if You do not read all the terms. These terms replace all previous terms.

1.0 Definitions

1.1 Qualifying Educational Institution ("QEI") means a PK-12 school or district, a school board or other educational institution.

1.2 "Authorized Users" are (i) personnel who are current employees of a QEI; (ii) students who are currently enrolled in a QEI, and (iii) parents/legal guardians of minor students.

1.3 "Login Credentials" means usernames, passwords and other forms of identification used to authenticate an Authorized User with the Site, App and Services.

1.4 "Personal Information" means information about an identifiable individual, but excludes business contact information.

2.0 Services

2.1 Account. Access to certain functionality requires a valid account from Literably and is subject to payment of the applicable license fee(s). Some features may be available on a trial basis to qualified users, as set forth below. You are responsible for maintaining the confidentiality of your account information, password and login, including logins distributed to Authorized Users. You are responsible for all uses of your account. You agree to immediately notify Literably of any unauthorized use of your account.

A limited use trial account (i.e. free account) permits use of the Site, App and Services by individual teachers for themselves and their students within QEIs. If you are not an active teacher or instructor, but would like to try Literably, please contact hello@literably.com to discuss trial options. If you are an active teacher or instructor, but do not belong to a QEI, please contact hello@literably.com to discuss trial options.

2.2 Fees. Literably will invoice for all chargeable Services and timely payment must be made for access to the Services. Upon notice to you, Literably reserves the right to change its price list for certain Services and to institute new charges at any time, which may be sent by email or posted on the Site. If You continue to use those Services after such notification, that use constitutes your consenting to the new or increased charges. This Agreement does not include the provision by Literably of any upgrades, updates, consulting services, customization or training. Such additional services may be available through separate agreements with Literably.

2.3 Educational Users. The Site, App and Services are designed for use by educators and parents/legal guardians in QEIs. As an educator or representative of a QEI, you

represent and warrant that: you have permission from your QEI to enter into this Agreement and to use the Services as part of your curriculum; you are over the age of majority; you are entering this Agreement on behalf of your QEI; and you have the authority to bind such entity to the terms of this Agreement.

2.4 Student Users. The Site, App and Services are also designed for use by student users at QEIs. Minor students agree that they have obtained consent from their teacher for their use of the Site, App and Services. By using the Site, App and Services, if you are a minor, you represent that you have obtained consent from your teacher who has read and agreed to this Agreement on your behalf. If you do not obtain such consent, then you are not authorized to use the Site, App or Services.

2.5 Login Credentials. If you are accessing the Services, You will only use the Login Credentials that were assigned to You in order to authenticate and access the Site, App or Services. You will not seek to obtain another user's Login Credentials, and you will not use another user's Login Credentials to authenticate with the Site, App or Services.

2.6 Intellectual Property. Literably and its third-party licensors own any and all intellectual property rights and all right, title and interest in and to the Site (including free, public or beta portions of the Site) and the App.

2.7 Free, Trial, Public or Beta Usage. Any free, trial, public or beta portions of the Site, App or Services are still subject to these terms, and in respect of those free, trial, public or beta portions of the Site, App or Services you bear the entire risk of use; such portions of the Site, App or Services may be changed, suspended or blocked by Literably at any time without notice to You.

3.0 Personal Information

3.1 Privacy Policy. Use of the Services is governed by the Literably Privacy Policy, which is incorporated herein by reference. By using the Site, App and Services, You agree to the terms of the Privacy Policy. Literably abides by applicable provincial and federal Personal Information protection laws with respect to the handling of Personal Information. Literably does not collect, use or disclose any Personal Information in connection with the Services, other than as described in this agreement or the Literably Privacy Policy.

3.2 Collection of User Information. Literably collects limited Personal Information from educators and representatives of QEIs only as needed for the operation and management of the Services.

3.3 Collection of Student Information. Literably collects limited Personal Information from minor students, only as needed for the operation and management of the Services, and only where that student's QEI or teacher has contracted with Literably to do so. If you are a minor student, do not send any Personal Information about yourself or other students to Literably, other than what is required to use the Services.

4.0 Restrictions

4.1 Restrictions. You shall not, and shall not authorize any third party to:

- a) Make copies of the Site or App;

- b) Modify, decompile, disassemble, translate into another computer language, create derivative works, access the source code, hack, decrypt, rename files, or otherwise reverse engineer the Site or App;
- c) Permit use of the Site, App or Services by anyone other than Authorized Users;
- d) Distribute Login Credentials to third parties;
- e) Incorporate any portion of the Site, App or Services into any product that will be sold, licensed or transferred to a third party;
- f) Distribute, sell, lease, transfer, assign, trade, rent, lend or publish the Site or App, or license, sublicense or cross-license it or any part thereof and/or copies thereof to others;
- g) Use the Services to upload, post or otherwise transmit any materials that are harmful, fraudulent, threatening, abusive, harassing, tortious, defamatory, vulgar, profane, pornographic, obscene, libelous, offensive, or otherwise objectionable; or that promote discrimination, bigotry, racism, hatred, harassment or harm against an individual or group; or that promote illegal or harmful activities or substances; or that have the effect of harassing or stalking any person, or otherwise offend the acceptable use standards set by Literably;
- h) Upload, post or otherwise transmit any content through the Services that (i) would negatively affect the functioning of the system, including without limitation any harmful, disruptive or destructive files or computer programs or (ii) would impose an unreasonable or disproportionately large load on this system's infrastructure;
- i) Use the Services or any part thereof in violation of any law or regulation, or for any purpose other than as expressly permitted in this Agreement;
- j) Distribute screen shots of the Site or App without Literably's approval.

4.2 Acceptable Use. The Services may be used only for authorized purposes by Authorized Users who have agreed to this Agreement. You must also abide by our acceptable use standards, and any acceptable use policy published by us. You may not:

- a) Use the output of the Services for any purpose other than as required in connection with your personal, non-commercial use;
- b) Engage in linking or framing of any portion of our Site or App without our approval;
- c) Aggregate, scrape, harvest or duplicate any portion of our Site, including any personal or contact information, or use such personal or contact information for any secondary marketing purposes or unsolicited mass e-mail, or any purpose inconsistent with the purposes of the Services;
- d) Corrupt, falsify or distort any content on the Site.

4.3 Circumvention Prohibited. You specifically agree not to, in any way access (or attempt to access) a third party database by any unauthorized or automated means,

other than through the servers and interface that is provided by Literably through the Site or App.

5.0 Limitation of Liability and Disclaimer of Warranty

5.1 Disclaimer. The Site, App and Services are provided "AS IS" without warranties, conditions or representations of any kind, and Literably expressly disclaims, to the fullest extent permitted by applicable law, any warranty or condition, express or implied, statutory or otherwise, whether arising from trade or course of dealing, including, without limitation, any warranty or condition that the Site, App and Services (i) shall correspond with a particular description, (ii) are of merchantable quality, (iii) are fit for Your particular purpose, (iv) are durable for a reasonable period of time, (v) do not and will not infringe any patent, trade-mark, trade-secret or other intellectual property or other proprietary rights of any third party, (vi) are bug or error free, or (vii) are accessible through all devices. You acknowledge that entry, conversion and storage of data is subject to human and machine error and Literably is not responsible for such errors. Literably is not responsible for third-party hardware or software, or for cell, wifi or other service providers. Literably does not warrant that the Site or App will be compatible with all platforms that may now or in the future be used.

6.2 Allocation of Risk. Literably shall not be liable for any monetary damages whatsoever with respect to Your use of the Site, App or Services hereunder (or use by Your Authorized Users), nor shall Literably be liable for any indirect, incidental, consequential, special, punitive or exemplary damages arising out of this Agreement, even if Literably is advised of the possibility of such damages. The entire risk as to the results and performance of the Site, App and Services is assumed by You and You agree to implement and adopt reasonable measures to examine and confirm results prior to use, to save data, and limit exposure to errors and failures in data.

6.3 Limitation of Liability. The total liability of Literably, whether under the express or implied terms of this Agreement, in tort (including negligence or other duty of care) or at common law, for any loss or damage including but not limited to any data loss or corruption, suffered by You or any Authorized Users or third parties, whether direct, indirect or special, or any other similar damage that may arise or does arise from use of the Site and Services or any breach of this Agreement by Literably, shall in no event exceed the amount paid by You to Literably for the Services. These limitations of liability shall survive failure of any exclusive remedies provided in the agreement.

6.0 Indemnity

6.1 Indemnity. You indemnify, hold harmless and defend Literably against any and all third party claims (including all associated legal fees and disbursements actually incurred) against Literably arising out of a breach by You of the obligations under this Agreement, or the use or misuse of the Site, App or Services by You (or Your Authorized Users).

7.0 Term and Termination

7.1 Termination Rights.

- a) **By Us:** In the event You breach this Agreement or any other agreement with us, and such breach is not remedied or cured within 10 days of written notice, Literably may suspend or terminate this Agreement and your access to the Site, App and Services. If your employer or QEI under which you access the Site and Services is in breach of any agreement with us, or the subscription term has expired, we may suspend or terminate this Agreement and your access to the Services.
- b) **By You:** You may shut down your account and cease use of the Services at any time. You are responsible for backing-up, saving, downloading or deleting any of your content and Personal Information, as you wish, prior to the termination of your account. After termination, we reserve the right to delete any content or Personal Information remaining on our servers.
- c) **By Your QEI:** Your QEI may shut down or suspend your account access as part of their management of the relationship with You or in the event of termination or expiry of your employment or enrollment.

8.0 Governing Laws and Disputes

8.1 Governing Law. This Agreement is governed by the laws of the State of California.

8.2 Arbitration Agreement. You agree that any and all disputes between you and Literably shall be fully and finally resolved by binding arbitration. You are waiving any and all rights to a jury trial but all court remedies will be available in arbitration. All disputes shall be resolved by a neutral arbitrator who shall issue a written opinion. The arbitration shall provide for adequate discovery.

8.3 Exception from Arbitration Agreement. Either party may obtain injunctive relief (preliminary or permanent) and orders to compel arbitration or enforce arbitral awards in any court of competent jurisdiction.

9.0 General Terms

9.1 Assignment. You will not assign, transfer, encumber or otherwise dispose of any or all of the rights granted to You under this Agreement without the prior written consent of Literably. Literably may assign this Agreement to a third-party.

9.2 Ensurement. Subject to the limitations in this Agreement, this Agreement operates for the benefit of and is binding on the parties and their respective successors and permitted assigns.

9.3 No Waiver. No condoning, excusing or overlooking by any party of any default, breach or non-observance by any other party at any time regarding any terms of this Agreement operates as a waiver of that party's rights under this Agreement. No exercise of a specific right or remedy by any party precludes it from or prejudices it in exercising another right or pursuing another remedy or maintaining an action to which it may otherwise be entitled either at law or in equity.

9.4 Survival. All terms which require performance by the parties after the expiry or termination of this Agreement, will remain in force despite this Agreement's expiry or termination for any reason.

9.5 Severability. Part or all of any section that is indefinite, invalid, illegal or otherwise voidable or unenforceable may be severed and the balance of this Agreement will continue in full force and effect.

9.6 Entire Agreement. This Agreement and any App terms sets forth the entire understanding between the parties related to the Site, App and Services, and replaces all prior versions.

9.7 Software and Hardware. You must provide your own computer hardware and software necessary to connect to the Services, including internet access and if applicable, a suitable mobile device, according to the optimal use standards and specifications we stipulate from time to time. The Services may experience temporary downtime as we perform routine maintenance or updates.

9.8 Linked Sites. Links available on the Site may link to third-party Sites not maintained or controlled by us. We provide these links for your convenience, and Literably is not responsible for the contents of any linked site.

9.9 Changes. On release of any update or upgrade to the Site, App or Services, Literably reserves the right to modify this Agreement and to impose new or additional terms or conditions on Your use of the Site, App or Services. The then-current terms (including any modifications and additional terms and conditions if applicable) will be presented to You and will be effective immediately upon Your acceptance of the terms and continued use of the Site or Services.

9.10 Language. It is the express will of the parties that this Agreement and all related documents will be drawn up in English.

9.11 Electronic Acceptance. This agreement may be agreed to by electronic acceptance.

9.12 Contact. If You have questions about these terms or wish to contact Literably for any reason, please contact us at: Literably, 117 Bayview Drive, South San Francisco, CA 94080; Email hello@literably.com.

Last Updated: November 11, 2015