

# Literably, Inc.

## Terms of Service

*Last Modified: May 8, 2019*

Welcome to Literably.com, the website and online and/or mobile service of Literably, Inc. (“**Literably**,” “**we**,” “**our**,” or “**us**”). This page explains the terms by which you may use our online and/or mobile services, web site, and software provided on or in connection with the service (collectively, the “**Service**”). By downloading, accessing or using the Service, or by clicking a button or checking a box marked “I Agree” (or something similar), you signify that you have read, understood, and agree to be bound by these Terms of Service (this “**Agreement**”) and to the collection and use of your information as set forth in our Privacy Policy (<https://literably.com/privacy>) which is incorporated herein by reference. Literably reserves the right to modify these terms and will provide notice of these changes as described below. This Agreement applies to all visitors, users, and others who access the Service (“**Users**”).

PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. THIS AGREEMENT CONTAINS A MANDATORY INDIVIDUAL ARBITRATION AND CLASS ACTION/JURY TRIAL WAIVER PROVISION THAT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, THEN YOU DO NOT HAVE OUR PERMISSION TO USE THE SERVICE.

### 1. **Literably Service**

#### 1.1 **Literably Service Description**

As part of its Service, Literably makes available software for assessing the educational abilities of students (“**Students**”) available to: (a) educational institutions (including, without limitation, school districts, school boards, and individual schools within a district) (“**Educational Institutions**”); (b) those who have parental responsibility over students, whether as a parent, guardian or otherwise (“**Parents**”); and (c) individual teachers, interventionists, specialists, data analysts, district- and school-level administrators (“**Educators**”). Through the Service, Parents and Educators may measure the educational abilities of Students through tests (“**Assessments**”) made available through the software, and may also make use of services related to the Assessments, such as online training and data management.

#### 1.2 **Eligibility**

This is a contract between you and Literably. You must read and agree to these terms before using the Literably Service. If you do not agree, you may not use the Service. You may use the Service only if you can form a binding contract with Literably, and only in compliance with this Agreement and all applicable local, state, national, and international laws, rules and regulations. The Service is not available to any Users previously removed from the Service by Literably.

#### 1.3 **Terms for Access by Students**

Any download, access or use of the Service by anyone under eighteen (18) years of age is strictly prohibited and in violation of this Agreement unless you are under the supervision of your Educational Institution, Educator or Parent. If you are under eighteen (18) years of age, your use of the Service may be subject to additional policies and restrictions imposed by your Educational Institution, Educator or Parent, with which you must comply.

#### 1.4 **Limited License**

Subject to the terms and conditions of this Agreement, you are hereby granted a non-exclusive, limited, non-transferable, freely revocable license to use the Service as permitted by the features of the Service. Literably reserves all rights not expressly granted herein in the Service and the Literably Content (as defined below). Literably may terminate this license at any time for any reason or no reason.

### 1.5 User Accounts

Your account on the Service (your “**User Account**”) gives you access to the services and functionality that we may establish and maintain from time to time and in our sole discretion. We may maintain different types of User Accounts for different types of Users.

If you open a User Account on behalf of an Educational Institution, company, organization, or other entity, then: (i) “you” includes you and that entity, and (ii) you represent and warrant that you are an authorized representative of the entity with the authority to bind the entity to this Agreement, and that you agree to this Agreement on the entity’s behalf.

By connecting to the Service with a third-party service, you give Literably permission to access and use your information from that service as permitted by that service, and to store your log-in credentials for that service.

You may never use another User’s User Account without permission. When creating your User Account, you must provide accurate and complete information, and you must keep this information up to date. You are solely responsible for the activity that occurs on your User Account, and you must keep your User Account password secure. We encourage you to use “strong” passwords (passwords that use a combination of upper and lower case letters, numbers and symbols) with your User Account. You must notify Literably immediately of any breach of security or unauthorized use of your User Account. Literably will not be liable for any losses caused by any unauthorized use of your User Account.

By providing Literably your email address you consent to our using the email address to send you Service-related notices, including any notices required by law, in lieu of communication by postal mail. We may also use your email address to send you other messages, such as changes to features of the Service and special offers. If you do not want to receive such email messages, you may opt out or change your preferences by emailing us at support@literably.com or by clicking on the “unsubscribe link” provided in such communications. Opting out may prevent you from receiving email messages regarding updates, improvements, or offers.

### 1.6 Service Rules

You agree not to, or to assist, aid or otherwise encourage any third party to, engage in any of the following prohibited activities: (i) copying, distributing, or disclosing any part of the Service in any medium, including without limitation by any automated or non-automated “scraping”; (ii) using any automated system, including without limitation “robots,” “spiders,” “offline readers,” etc., to access the Service in a manner that sends more request messages to the Literably servers than a human can reasonably produce in the same period of time by using a conventional on-line web browser (except that Literably grants the operators of public search engines revocable permission to use spiders to copy materials from Literably.com for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials); (iii) transmitting spam, chain letters, or other unsolicited email; (iv) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Service; (v) taking any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure; (vi) uploading invalid data, viruses, worms, or other software agents through the Service; (vii) collecting or harvesting any personally identifiable information, including account names, from the Service; (viii) using the Service for any commercial solicitation purposes; (ix) impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; (x) interfering with the proper working of the Service (including, without limitation, by interfering

with or circumventing the assessment features of the Service by assisting Students with the examination or copying the Literably Content (as defined below) to cheat on assessments); (xi) accessing any content on the Service through any technology or means other than those provided or authorized by the Service; or (xii) bypassing the measures we may use to prevent or restrict access to the Service, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Service or the content therein.

Your rights under this Agreement will automatically terminate without notice from Literably if you engage in, or otherwise assist, aid or otherwise encourage any third party to engage in, the foregoing.

### 1.7 **Changes to the Service**

We may, without prior notice, change the Service; stop providing the Service or features of the Service, to you or to Users generally; or create usage limits for the Service. We may permanently or temporarily terminate or suspend your access to the Service without notice and liability for any reason, including if in our sole determination you violate any provision of this Agreement, or for no reason. Upon termination for any reason or no reason, you continue to be bound by this Agreement.

### 1.8 **Disputes with Other Users**

You are solely responsible for your interactions with other Users. We reserve the right, but have no obligation, to monitor disputes between you and other Users. Literably shall have no liability for your interactions with other Users, or for any User's action or inaction (including, without limitation, the disabling of access or use of your User Account by an Educational Institution or other similarly situated account administrator).

### 1.9 **Service Location**

The Service is controlled and operated from facilities in the United States. Literably makes no representations that the Service is appropriate or available for use in other locations. Those who access or use the Service from other jurisdictions do so at their own volition and are entirely responsible for compliance with all applicable United States and local laws and regulations, including but not limited to export and import regulations. You may not use the Service if you are a resident of a country embargoed by the United States, or are a foreign person or entity blocked or denied by the United States government. Unless otherwise explicitly stated, all materials found on the Service are solely directed to individuals, companies, or other entities located in the United States.

## 2. **Our Proprietary Rights**

Except for your User Content, the Service and all materials therein or transferred thereby, including, without limitation, any training materials, software, images, text, graphics, illustrations, logos, patents, trademarks, service marks, copyrights, photographs, audio, videos, music, and User Content belonging to other Users (the "**Literably Content**"), and all Intellectual Property Rights related thereto, are the exclusive property of Literably and its licensors (including other Users who post User Content to the Service). Except as explicitly provided herein, nothing in this Agreement shall be deemed to create a license in or under any such Intellectual Property Rights, and you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any Literably Content. Use of the Literably Content for any purpose not expressly permitted by this Agreement is strictly prohibited.

Notwithstanding the Service rules in Section 1.6 and the foregoing in this Section 3, Educators and Parents may print out the following Literably Content for the following limited purposes: (i) Parents and Educators may print out the results from the Assessments (but not the Assessments themselves) for those Students in their Educational Institutions that they have assessed through the Service; and (ii) Parents and Educators may print out the Assessments only as necessary to administer such Assessments to those Students whose

speech patterns significantly diminish the efficacy of electronic Assessments (including, without limitation, Students with speech impediments). For the avoidance of doubt, and without limiting any of the foregoing in this Section 3, any copy or reproduction of Literably Content in any media or any distribution of the foregoing in this sentence other than as permitted in this paragraph (including, without limitation, any printouts of the Assessments for Students without disabilities) is an unauthorized use of the Literably Content and a material breach of this Agreement.

You may choose to or we may invite you to submit comments or ideas about the Service, including without limitation about how to improve the Service or our products (“**Ideas**”). By submitting any Idea, you agree that your disclosure is gratuitous, unsolicited and without restriction and will not place Literably under any fiduciary or other obligation, and that we are free to use the Idea without any additional compensation to you, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, Literably does not waive any rights to use similar or related ideas previously known to Literably, or developed by its employees, or obtained from sources other than you.

The Service contains data, information, and other content not owned by you, such as reputational or status indicators and/or fictional property representing virtual achievements (“**Literably Property**”). You understand and agree that regardless of terminology used, Literably Property represents a limited license right governed solely by the terms of this Agreement and available for distribution at Literably’s sole discretion. Literably Property is not redeemable for any sum of money or monetary value from Literably at any time. You acknowledge that you do not own the User Account you use to access the Service, nor do you possess any rights of access or rights to data stored by or on behalf of Literably on Literably servers, including without limitation any data representing or embodying any or all of your Literably Property. You agree that Literably has the absolute right to manage, regulate, control, modify and/or eliminate Literably Property as it sees fit in its sole discretion, in any general or specific case, and that Literably will have no liability to you based on its exercise of such right. All data on Literably’s servers are subject to deletion, alteration or transfer. NOTWITHSTANDING ANY VALUE ATTRIBUTED TO SUCH DATA BY YOU OR ANY THIRD PARTY, YOU UNDERSTAND AND AGREE THAT ANY DATA, USER ACCOUNT HISTORY AND USER ACCOUNT CONTENT RESIDING ON LITERABLY’S SERVERS, MAY BE DELETED, ALTERED, MOVED OR TRANSFERRED AT ANY TIME FOR ANY REASON IN LITERABLY’S SOLE DISCRETION, WITH OR WITHOUT NOTICE AND WITH NO LIABILITY OF ANY KIND. LITERABLY DOES NOT PROVIDE OR GUARANTEE, AND EXPRESSLY DISCLAIMS, ANY VALUE, CASH OR OTHERWISE, ATTRIBUTED TO ANY DATA RESIDING ON LITERABLY’S SERVERS.

### 3. **Free Services; Paid Services**

3.1 **Free Trial.** You may be granted access to the Service for a trial period (“**Free Trial**”). During the Free Trial, we will not charge you any fees related to the access or use of your membership (“**Trial Use**”). At the end of the Free Trial, your access and use the Service shall automatically terminate unless you convert to a paid membership. Literably reserves the right to determine the length of the Free Trial and to end the Free Trial and revoke your Trial Use at any time, at its sole discretion and without notice to you.

3.2 **Free Assessments.** Literably may offer you, in an amount and at a frequency determined by Literably in its sole discretion, a limited number of Assessments free of charge (“**Free Assessments**”). We will not charge you any fees for the Free Assessments. Upon the usage of all Free Assessments made available to you by Literably, you will no longer be able to access or use any additional Assessments unless and until you purchase Subscription Services.

3.3 **Paid Services.** Certain aspects of the Service may be provided for a fee or other charge. If you elect to use the paid aspects of the Service and make a payment through the Service, we will review the information you provided for validity by verifying your method of payment and/or billing address. We may contact you (via email or phone) if additional information is required to accept and process your order. Invalid order information may result in delays processing your order. For purchases through the Service,

your receipt of an order confirmation does not constitute our acceptance of your order. Without prior notification, Literably maintains the right to limit the order quantity and the right to refuse to sell licenses to any customer for any reason or no reason at all. Literably reserves the right not to sell to any customers. If your order is canceled, we will attempt to notify you using the email address you have given us with the order.

**3.4 Subscription Services; Usage Limits.** Literably may offer access to the Service on a paid subscription basis (“**Subscription Services**”). Literably offers Subscription Services on a number of Students per Assessment-type basis, or, at Literably’s sole discretion, on a per Educator basis. If ordering on a Students per Assessment-type basis, at the time of your order, you will identify the quantity of Students per Assessment-frequency for your Subscription Services (“**Quantity**”). You agree that, during the term of the Subscription Services, you will pay any fees for the Quantity of the Subscription Services you identified in your order. You further agree that you will not, and will not allow third parties to, use the Subscription Services in excess of the Quantity you identified in your order (which may include, without limitation, the use of the Service by more Students than identified in your order or the use by a Student of the Assessments at a frequency in excess of that Student’s designated frequency). Literably retains the right to run reconciliation reports at any time during the term of the Subscription Services, and in the event that Literably discovers that you have been using the Subscription Services in excess of the Quantity, Literably may invoice you for the overage and suspend or terminate your access to the Service until you pay such overage.

**3.5 Non-Auto Renewal.** For the avoidance of doubt, the purchase of Subscription Services does not entitle you, and is not a purchase of, automatically renewing services. Upon the expiration of the term of the Subscription Services you have paid for, your access and use of the Service will automatically terminate unless and until you choose to extend your Subscription Services through additional purchases of Subscription Services.

**3.6 Price Changes.** Please visit our Pricing page (<https://literably.com/pricing>) for information about the fees for the aspects of the Service that are made available for a fee or other charges. We reserve the right to adjust pricing for our Service or any components thereof in any manner and at any time as we may determine in our sole and absolute discretion. Except as otherwise expressly provided for in this Agreement, any price changes to your service will take effect in the billing cycle following the change in prices.

**3.7 Payment Methods.** We accept various payment methods for product purchases through our Service, including without limitation, check, Mastercard, Visa, and American Express. We will bill your payment method when you place an order for a product through the Service. Literably will not fulfill any product order without authorization validation of your purchase from your payment method.

**3.8 Refunds.** You may cancel your User Account at any time. In the event that Literably suspends or terminates your User Account or this Agreement or you cancel your User Account or terminate this Agreement, you understand and agree that Literably, in its sole discretion, will determine whether you are eligible for any or no refund or exchange for any Literably Property, any unused time on a subscription, any license or subscription fees for any portion of the Service or Professional Services, any content or data associated with your User Account, or for anything else.

**3.9 Payment Information; Late Payments; Taxes.** All information that you provide in connection with a purchase or transaction or other monetary transaction interaction with the Service must be accurate, complete, and current. You agree to pay all charges incurred by users of your credit card, debit card, or other payment method used in connection with a purchase or transaction or other monetary transaction interaction with the Service at the prices in effect when such charges are incurred. All payments shall be made in U.S. Dollars. In the event that any payment is more than thirty (30) days late, Literably shall have the right to suspend your access to the Service until all payments are made current. You shall pay for all costs incurred by Literably in connection with the collection of late payments. You will pay any

applicable taxes, if any, relating to any such purchases, transactions or other monetary transaction interactions.

#### 4. **Personal Information; Student Data**

4.1 **Data Definitions.** When Literably is used by an Educational Institution for an educational purpose, Literably may collect or have access to Student Data. “**Student Data**” is personal information that is directly related to an identifiable Student that is maintained by an Educational Institution or related entity or organization, or by us. Student Data may include “educational records” as defined by the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232(g).

4.2 **Confidentiality.** Literably agrees to treat Student Data as confidential and not to share it with third parties other than as described in this Agreement, and in our Privacy Policy (<https://literably.com/privacy>).

4.3 **Student Data Ownership and Control.** Literably shall access and process Student Data for the purposes of providing an outsourced institutional function pursuant to FERPA. In performing these Services, Literably shall be considered a School Official with a legitimate educational interest in the Student Data, under the direction and control of the Educational Institution as it pertains to the use of Student Data. As between Literably and the Educational Institution, the Educational Institution owns all right, title, and interest to all Student Data processed by Literably pursuant to the Agreement, and Literably does not own, control, or license such Student Data, except so as to provide the Services and as described in the Agreement.

#### 4.4 **Student Data Access.**

You authorize Literably to access or collect Student Data for the purpose of providing the Service. To the extent necessary to provide the Service, we may access and collect Student Data from the Educational Institution manually, such as when an Educator, school administrator, or other individual authorized to access the Educational Institution’s account enters the Student Data through the Educational Institution’s login and dashboard; or automatically, if the Educational Institution chooses to integrate its Student Information System (“SIS”) with the Service.

You additionally authorize Literably to collect Student Data, including Personal Information, directly from Students authorized to use the Service, as described in our Privacy Policy. Literably collects such information only at the direction of, and on behalf, of the Educational Institution, Educator or Parent.

#### 4.5 **Personal Information and Student Data Consents and Authority.**

If you are an Educational Institution, Educator, Parent or other individual, you represent and warrant that you have the authority to provide Personal Information, including Student Data, to Literably for the purpose of providing the Service, and that you have provided appropriate disclosures to the appropriate individuals regarding your sharing of such Personal Information with Literably.

#### 4.6 **Compliance with Laws**

Literably and the Educational Institutions, Educators, and Parents each agree to uphold their responsibilities under laws governing Personal Information and Student Data, including, without limitation, the Family Educational Rights and Privacy Act (“FERPA”), the Protection of Pupil Rights Amendment (“PPRA”), and the Children’s Online Privacy and Protection Act (“COPPA”) and any and all applicable state laws. We rely on Educational Institutions, Educators, and Parents to obtain and provide appropriate consent and disclosures, if necessary, for Literably to collect any Student Data, including the collection of Student Data directly from Students under thirteen (13) years of age, as permitted under COPPA. We recommend that you provide a copy of the Privacy Policy (<https://literably.com/privacy>) to parents and guardians.

You are required to comply with this Agreement and all regulations and laws governing the privacy of children and children’s Personal Information in your territory. You represent and warrant that you are in

compliance with all applicable data protection laws governing the protection of Personal Information and the sharing of student education records.

**4.7 Use of Student Data.** By submitting or providing us access to Student Data, you agree that Literably may use the Student Data solely for the purposes of (i) providing the Service, (ii) maintaining, supporting, evaluating, diagnosing, improving and developing our Service, (iii) enforcing our rights under these Terms, and (iv) as permitted with the Educational Institution's, Educator's or Parent's consent. For clarity and without limitation, we may use Student Data for adaptive learning purposes or customized student learning and to provide recommendation engines to recommend content or services relating to school purposes or other educational or employment purposes, provided such recommendation is not determined in whole or in part by payment or other consideration from a third party.

**4.8 Restrictions of Disclosure of Student Data.** Literably is prohibited from using Student Data to (a) direct targeted online advertising to Students; (b) develop a profile of a Student, Parent, or other individual, other than for the purpose of providing educational services or as authorized by an Educational Institution, Educator or Parent; or (c) for any commercial purpose unless authorized by an Educational Institution, Educator or Parent or permitted by applicable law. Notwithstanding the foregoing, you agree that Literably may provide customized content, advertising and commercial messaging to Users from time to time, provided that such advertisements shall not be based upon Student Data relating to individually identifiable Students, unless we have received consent from the Educational Institution, Educator or Parent to have Student Data used for such purposes and to the extent such data use is permitted by applicable law.

**4.9 Use of Anonymized Student Data.** You agree that we may collect and, both during and after the term of our agreement, use data derived from Student Data for our own purposes, provided that such data will be de-identified and/or aggregated to reasonably avoid identification of a specific individual.

**4.10 Literably's Third-Party Service Providers.** You acknowledge and agree that Literably may provide access to Student Data to our employees, affiliates, and to certain third-party service providers which have a legitimate need to access such information in order to provide their services to us. We and our employees, affiliates, service providers, or agents involved in the handling, transmittal, and processing of Student Data will be required to maintain the confidentiality of such data.

**4.11 User-Requested Third-Party Access.** Literably may provide users the ability to use and access third-party services through the Literably Service, and to share data, including Student Data, with third-parties through the Service. You consent to allow us to provide access to Student Data to third parties through the Service as directed by the User. You acknowledge that we are not responsible for the data practices of third parties with whom you elect to share Student Data or permit Students to access through the Service, and that, as between us, you are solely responsible for the third party content and the consequences of providing or transmitting Student Data to such third parties, or authorizing those third parties to access Student Data through the Service.

**4.12 Student Data Retention and Deletion Requests.** Educational Institutions, Educators or Parents may request that we delete or retrieve Student Data in our possession at any time by providing such a request in writing, and we shall comply with such request within thirty (30) days. A User seeking to modify, correct, or delete Personal Information in a Student's User Account that is connected to an active class profile will be instructed to contact the Educational Institution, Educator or Parent (as applicable) to discuss data deletion or modification. We do not delete or de-identify any Student Data associated with an active Educational Institution contract except at the direction of the Educational Institution. The Educational Institution is responsible for maintaining current class rosters and removing Student Data which the Educational Institution no longer needs for an educational purpose through the Service itself, if applicable, or by submitting a deletion request. We retain Student Data for a period of two years after termination of the contract to continue to provide the Educational Institution access to its records and aggregate reports, after which the Student Data will be deleted and/or de-identified, unless we receive a



deletion request prior to that date. We are not required to delete data that has been de-identified such that it can no longer be used to identify an individual.

4.13 **Terms of Service changes with respect to Student Data.** We will use our best efforts to provide at least thirty (30) days' notice of a Terms of Service change that may involve collecting, using, storing, or sharing Student Data in a materially different way than was disclosed in our previous Terms of Service, so that you have sufficient time to evaluate the change in practice. If you do not choose to accept the changes, you may opt-out by deleting your account before the changes take effect. You may request previous versions of this Terms of Service by contacting us at support@literably.com.

## 5. **Privacy**

We care about the privacy of our Users. You understand that by using the Services you consent to the collection, use and disclosure of your personally identifiable information and aggregate and/or anonymized data as set forth in our Privacy Policy (<https://literably.com/privacy>), and to have your personally identifiable information collected, used, transferred to and processed in the United States.

## 6. **Professional Services**

If Customer has purchased Professional Services, then the following terms and conditions will apply:

6.1 **Performance of the Professional Services.** Literably will perform the Professional Services set forth on the Sales Order. Literably has the sole right to control the method, details, and manner of performing the Professional Services, including, but not limited to, the right to hire and manage Literably's own personnel.

6.2 **Access to Premises.** To the extent the Professional Services require Literably to enter Customer's premises, Customer hereby grants Literably a right to access Customer's premises as may be required to provide the Professional Services. Literably will: (i) access and use Customer's premises solely for the purposes of providing the Professional Services and not to provide goods or services to or for the benefit of any third party or for any unlawful purposes, (ii) return Customer's premises to Customer in the same condition it was in prior to Customer's use of such premises, ordinary wear and tear excepted.

6.3 **Personal Injury or Property Damage Indemnification.** Without limiting any of Customer's indemnification obligations in the Sales Order, these Terms, and the Literably Terms of Service, Customer will defend, indemnify, and hold harmless Literably against any personal injury or property damage claim brought against Literably; *provided however*, that Customer will not be obligated to indemnify Literably under this Section 3.3 to the extent such claim would not have arisen but for the gross negligence or intentional misconduct of Literably.

6.4 **Limitation of Liability.** WITHOUT LIMITING THE LIMITATIONS OF LIABILITY SET FORTH IN THE SALES ORDER, THESE TERMS, OR THE LITERABLY TERMS OF SERVICE, IN NO EVENT WILL LITERABLY'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO LITERABLY'S PERFORMANCE OF THE PROFESSIONAL SERVICES EXCEED THE AGGREGATE FEES AND REIMBURSABLE EXPENSES ATTRIBUTABLE TO THE APPLICABLE PROFESSIONAL SERVICES UNDER THE APPLICABLE SALES ORDER.

## 7. **Publicity**

During the term of the Agreement, Customer consents to Literably's use of, and Customer hereby grants Literably a license to use, Customer's name, trade names, trademarks, service marks, trade dress, logos and other rights in indicia (collectively, the "**Customer Marks**") in Literably's marketing and promotion of the Software, the Professional Services, and Literably's other products and services. Such uses of the Customer Marks by Literably will be without Customer's prior written consent; *provided that*, Customer may submit a written request to Literably to cease use of the Customer Marks and within a reasonable



amount of time following its receipt of Customer's written request, Literably will discontinue and—to the extent reasonably practicable—remove from any advertising or marketing materials, any of the Customer Marks.

#### 8. **Security; Data Breach**

Literably cares about the integrity and security of your personal information. However, we cannot guarantee that unauthorized third parties will never be able to defeat our security measures or use your personal information for improper purposes. You acknowledge that you provide your personal information at your own risk. In the event we have a reasonable, good faith belief that an unauthorized party has gained access to or been disclosed Personal Information, including Student Data (a “**Security Event**”), that we have collected or received through the Service, we will promptly notify the Educational Institution or Educator and will cooperate with the Educational Institution's investigation of the incident. If, due to the Security Event, a notification to an individual, organization or government agency is required under applicable privacy laws, the Educational Institution shall be responsible for the timing, content, cost and method of any such legally-required notice and compliance with such laws with respect to all individual users associated with the School's license. Literably shall be responsible for the timing, content, cost and method of notice and compliance with such laws as they relate to User accounts that are not associated with an Educational Institution or Educator license.

#### 9. **Third-Party Links and Information**

The Service may contain links to third-party materials that are not owned or controlled by Literably. Literably does not endorse or assume any responsibility for any such third-party sites, information, materials, products, or services. If you access a third-party website or service from the Service or share your User Content on or through any third-party website or service, you do so at your own risk, and you understand that this Agreement and Literably's Privacy Policy do not apply to your use of such sites. You expressly relieve Literably from any and all liability arising from your use of any third-party website, service, or content, including without limitation User Content submitted by other Users. Additionally, your dealings with or participation in promotions of advertisers found on the Service, including payment and delivery of goods, and any other terms (such as warranties) are solely between you and such advertisers. You agree that Literably shall not be responsible for any loss or damage of any sort relating to your dealings with such advertisers.

#### 10. **Indemnity**

You agree to defend, indemnify and hold harmless Literably and its subsidiaries, agents, licensors, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Service, including any data or content transmitted or received by you; (ii) your violation of any term of this Agreement, including without limitation your breach of any of the representations and warranties above; (iii) your violation of any third-party right, including without limitation any right of privacy or Intellectual Property Rights; (iv) your violation of any applicable law, rule or regulation; (v) User Content or any content that is submitted via your User Account including without limitation misleading, false, or inaccurate information; (vi) your willful misconduct; or (vii) any other party's access and use of the Service with your unique username, password or other appropriate security code.

#### 11. **No Warranty**

THE SERVICE IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. USE OF THE SERVICE IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-

INFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM LITERABLY OR THROUGH THE SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. WITHOUT LIMITING THE FOREGOING, LITERABLY, ITS SUBSIDIARIES, ITS AFFILIATES, AND ITS LICENSORS DO NOT WARRANT THAT THE CONTENT IS ACCURATE, RELIABLE OR CORRECT; THAT THE SERVICE WILL MEET YOUR REQUIREMENTS; THAT THE SERVICE WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DOWNLOADED AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR MOBILE DEVICE OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD OR YOUR USE OF THE SERVICE.

FURTHER, LITERABLY DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICE OR ANY HYPERLINKED WEBSITE OR SERVICE, AND LITERABLY WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

FEDERAL LAW, SOME STATES, PROVINCES AND OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION AND LIMITATIONS OF CERTAIN IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. THE DISCLAIMERS AND EXCLUSIONS UNDER THIS AGREEMENT WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## 12. **Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL LITERABLY, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, ARISING OUT OF OR RELATING TO THE USE OF, OR INABILITY TO USE, THE SERVICE. UNDER NO CIRCUMSTANCES WILL LITERABLY BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LITERABLY ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO OR USE OF OUR SERVICE; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE; (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH OUR SERVICE BY ANY THIRD PARTY; (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE; AND/OR (VII) USER CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY. IN NO EVENT SHALL LITERABLY, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS, OR LICENSORS BE LIABLE TO YOU FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNT YOU PAID TO LITERABLY IN THE TWELVE (12) MONTHS PRECEDING THE EVENT WHICH FIRST GAVE RISE TO LIABILITY OR \$100.00, WHICHEVER IS GREATER.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF LITERABLY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES

YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. THE DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS OF LIABILITY UNDER THIS AGREEMENT WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

### 13. **Governing Law, Arbitration, and Class Action/Jury Trial Waiver**

13.1 **Governing Law.** This Agreement shall be governed by the internal substantive laws of the State of California, without respect to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. You agree to submit to the personal jurisdiction of the federal and state courts located in San Francisco, California for any actions for which we retain the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of our copyrights, trademarks, trade secrets, patents, or other intellectual property or proprietary rights, as set forth in the Arbitration provision below, including any provisional relief required to prevent irreparable harm. You agree that San Francisco, California is the proper forum for any appeals of an arbitration award or for trial court proceedings in the event that the arbitration provision below is found to be unenforceable.

13.2 **Arbitration.** READ THIS SECTION CAREFULLY BECAUSE IT REQUIRES THE PARTIES TO ARBITRATE THEIR DISPUTES AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM LITERABLY. For any dispute with Literably, you agree to first contact us at support@literably.com and attempt to resolve the dispute with us informally. In the unlikely event that Literably has not been able to resolve a dispute it has with you after sixty (60) days, we each agree to resolve any claim, dispute, or controversy (excluding any claims for injunctive or other equitable relief as provided below) arising out of or in connection with or relating to this Agreement, or the breach or alleged breach thereof (collectively, “**Claims**”), by binding arbitration by JAMS, under the Optional Expedited Arbitration Procedures then in effect for JAMS, except as provided herein. JAMS may be contacted at www.jamsadr.com. The arbitration will be conducted in San Francisco, California, unless you and Literably agree otherwise. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Nothing in this Section shall be deemed as preventing Literably from seeking injunctive or other equitable relief from the courts as necessary to prevent the actual or threatened infringement, misappropriation, or violation of our data security, Intellectual Property Rights or other proprietary rights.

13.3 **Class Action/Jury Trial Waiver.** WITH RESPECT TO ALL PERSONS AND ENTITIES, REGARDLESS OF WHETHER THEY HAVE OBTAINED OR USED THE SERVICE FOR PERSONAL, COMMERCIAL OR OTHER PURPOSES, ALL CLAIMS MUST BE BROUGHT IN THE PARTIES’ INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION OR OTHER REPRESENTATIVE PROCEEDING. THIS WAIVER APPLIES TO CLASS ARBITRATION, AND, UNLESS WE AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON’S CLAIMS. YOU AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND LITERABLY ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION, OR OTHER REPRESENTATIVE PROCEEDING OF ANY KIND.

### 14. **Additional Terms for Mobile Applications**

14.1 **Mobile Applications.** We may make available software to access the Service via a mobile device (“**Mobile Applications**”). To use any Mobile Applications you must have a mobile device that is compatible with the Mobile Applications. Literably does not warrant that the Mobile Applications will be compatible with your mobile device. You may use mobile data in connection with the Mobile Applications and may incur additional charges from your wireless provider for these services. You agree that you are solely responsible for any such charges. Literably hereby grants you a non-exclusive, non-transferable, revocable license to use a compiled code copy of the Mobile Applications for one Literably User Account on one mobile device owned or leased solely by you, for your personal use. You may not: (i) modify, disassemble, decompile or reverse engineer the Mobile Applications, except to the extent that such restriction is expressly prohibited by law; (ii) rent, lease, loan, resell, sublicense, distribute or otherwise

transfer the Mobile Applications to any third party or use the Mobile Applications to provide time sharing or similar services for any third party; (iii) make any copies of the Mobile Applications; (iv) remove, circumvent, disable, damage or otherwise interfere with security-related features of the Mobile Applications, features that prevent or restrict use or copying of any content accessible through the Mobile Applications, or features that enforce limitations on use of the Mobile Applications; or (v) delete the copyright and other proprietary rights notices on the Mobile Applications. You acknowledge that Literably may from time to time issue upgraded versions of the Mobile Applications, and may automatically electronically upgrade the version of the Mobile Applications that you are using on your mobile device. You consent to such automatic upgrading on your mobile device, and agree that the terms and conditions of this Agreement will apply to all such upgrades. Any third-party code that may be incorporated in the Mobile Applications is covered by the applicable open source or third-party license EULA, if any, authorizing use of such code. The foregoing license grant is not a sale of the Mobile Applications or any copy thereof, and Literably or its third-party partners or suppliers retain all right, title, and interest in the Mobile Applications (and any copy thereof). Any attempt by you to transfer any of the rights, duties or obligations hereunder, except as expressly provided for in this Agreement, is void. Literably reserves all rights not expressly granted under this Agreement. If the Mobile Applications is being acquired on behalf of the United States Government, then the following provision applies. The Mobile Applications will be deemed to be “commercial computer software” and “commercial computer software documentation,” respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, reproduction, release, performance, display or disclosure of the Service and any accompanying documentation by the U.S. Government will be governed solely by these Terms of Service and is prohibited except to the extent expressly permitted by these Terms of Service. The Mobile Applications originates in the United States, and is subject to United States export laws and regulations. The Mobile Applications may not be exported or re-exported to certain countries or those persons or entities prohibited from receiving exports from the United States. In addition, the Mobile Applications may be subject to the import and export laws of other countries. You agree to comply with all United States and foreign laws related to use of the Mobile Applications and the Service.

**14.2 Mobile Applications from Apple App Store.** The following applies to any Mobile Applications you acquire from the Apple App Store (“**Apple-Sourced Software**”): You acknowledge and agree that this Agreement is solely between you and Literably, not Apple, Inc. (“**Apple**”) and that Apple has no responsibility for the Apple-Sourced Software or content thereof. Your use of the Apple-Sourced Software must comply with the App Store Terms of Service. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Apple-Sourced Software. In the event of any failure of the Apple-Sourced Software to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Apple-Sourced Software to you; to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Apple-Sourced Software, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be solely governed by this Agreement and any law applicable to Literably as provider of the software. You acknowledge that Apple is not responsible for addressing any claims of you or any third party relating to the Apple-Sourced Software or your possession and/or use of the Apple-Sourced Software, including, but not limited to: (i) product liability claims; (ii) any claim that the Apple-Sourced Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation; and all such claims are governed solely by this Agreement and any law applicable to Literably as provider of the software. You acknowledge that, in the event of any third-party claim that the Apple-Sourced Software or your possession and use of that Apple-Sourced Software infringes that third party’s intellectual property rights, Literably, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by this Agreement. You and Literably acknowledge and agree that Apple, and Apple’s subsidiaries, are third-party beneficiaries of this Agreement as relates to your license of the Apple-Sourced Software, and that, upon your acceptance of the terms and

conditions of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement as relates to your license of the Apple-Sourced Software against you as a third-party beneficiary thereof.

**14.3 Mobile Applications from Google Play Store.** The following applies to any Mobile Applications you acquire from the Google Play Store (“**Google-Sourced Software**”): (i) you acknowledge that the Agreement is between you and Literably only, and not with Google, Inc. (“**Google**”); (ii) your use of Google-Sourced Software must comply with Google’s then-current Google Play Store Terms of Service; (iii) Google is only a provider of the Google Play Store where you obtained the Google-Sourced Software; (iv) Literably, and not Google, is solely responsible for its Google-Sourced Software; (v) Google has no obligation or liability to you with respect to Google-Sourced Software or the Agreement; and (vi) you acknowledge and agree that Google is a third-party beneficiary to the Agreement as it relates to Literably’s Google-Sourced Software.

## 15. **General**

**15.1 Assignment.** This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Literably without restriction. Any attempted transfer or assignment in violation hereof shall be null and void.

**15.2 Notification Procedures and Changes to the Agreement.** Literably may provide notifications, whether such notifications are required by law or are for marketing or other business related purposes, to you via email notice, written or hard copy notice, or through posting of such notice on our website, as determined by Literably in our sole discretion. Literably reserves the right to determine the form and means of providing notifications to our Users, provided that you may opt out of certain means of notification as described in this Agreement. Literably is not responsible for any automatic filtering you or your network provider may apply to email notifications we send to the email address you provide us. Literably may, in its sole discretion, modify or update this Agreement from time to time, and so you should review this page periodically. When we change the Agreement in a material manner, we will update the ‘last modified’ date at the top of this page and notify you that material changes have been made to the Agreement. Your continued use of the Service after any such change constitutes your acceptance of the new Terms of Service. If you do not agree to any of these terms or any future Terms of Service, do not use or access (or continue to access) the Service.

**15.3 No Waiver.** No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and Literably’s failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision.

**15.4 Electronic Communications.** By downloading, accessing or using the Service, you consent to receiving electronic communications and notices from Literably. You agree that any notice, agreement, disclosure or other communications that we sent to you electronically will satisfy any applicable legal communication requirements, including, without limitation, that such communications be in writing.

**15.5 Contact.** Literably is located at 364 Utah St, San Francisco, CA 94103. Please contact us at [support@literably.com](mailto:support@literably.com) with any questions regarding this Agreement.

**15.6 Entire Agreement/Severability.** This Agreement, together with any amendments and any additional agreements you may enter into with Literably in connection with the Service, shall constitute the entire agreement between you and Literably concerning the Service. If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect, except that in the event of unenforceability of the universal Class Action/Jury Trial Waiver, the entire arbitration agreement shall be unenforceable.