



Terms of Service

Acceptance of the Terms of Service

Welcome to Formative! (a.k.a. "we" or "us" or the "Company"). We are excited to have you as a user and member of the community. The following terms and conditions (collectively, these "Terms of Service") apply to your use of Formative, including any content, functionality and services offered on or via Formative (the "Website"). The Terms of Service also include our Privacy Policy, that you can review [here](#).

We want to keep our relationship with you as lean and informal as possible, but please read the Terms of Service carefully before you start using Formative, because by using the Website you accept and agree to be bound and abide by these Terms of Service.

Should you disagree with some of the provisions herein, you can either leave the Website (although we'll be sad to see you go!), or contact us at support@goformative.com. Formative is all about collaborating for improving education through feedback, and as such we would like to learn from your suggestions.

Changes to the Terms of Service and the Website

Formative is a work in progress, meaning that a lot will change in the near future. We reserve the right to update the Website and these Terms of Service from time to time, at our discretion.

Accessing the Website, Security and Privacy

We are working hard on improving Formative, but we can't guarantee that the Website will be up and running 24/7. We also reserve the right to suspend or restrict access to some features to users. In any case, we will not be liable if for any reason if all or any part of the Website is unavailable at any time or for any period, nor for any data loss.

To access certain features of the Website you have to register by entering your email and choosing a password as part of our security procedures. You must treat such information as confidential, not disclosing it to any

third party and only using Formative in person. There is a password reset procedure in case you forget your password, but please notify us of any breach of security. We highly recommend to choose a strong password and that you log out from your account at the end of every session.

It is a condition of your use of the Website that all the information you

provide on the Website is correct, current and complete. In the future, you may be asked to provide certain registration details or other information. As custom for internet websites, we reserve the right to disable any user account, at any time in our sole discretion for any or no reason, including, if in our opinion you have failed to comply with any provision of these Terms of Service.

Intellectual Property Rights and Use Guidelines

The Website and its original content, features and functionality (including look!), are owned by Formative and are protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws. Formative is about copying, branching and modifying assessments, not Website, design or code. So you agree to not copy, modify, create derivative works of, publicly display, publicly perform, republish, any of our copyrighted material, except to the extent permitted by the Website itself. If you have doubts about whether and how to use of material on the Website, please address your concerns to: support@goformative.com

This means that Formative's design, features and original copy (e.g. our About page or blog) are covered by copyright. The public content, i.e. the questions and assessments hosted here, are subject to the very broad license below and the rules in Paragraph 5. We wish we could say "everything else is public domain", but it's not that simple!

For purposes of these Terms of Service, the term "Content" includes, without limitation, assessments, questions, documents, information, data, text, photographs, videos, audio clips, written posts and comments, software, scripts, graphics, and interactive features generated, provided, or otherwise made accessible on or through the Website. For the purposes of these Terms of Service, "Content" also includes all User Content (as defined below).

All Content added, created, uploaded, submitted, distributed, or posted to the Website by users (collectively "User Content"), whether publicly posted or privately transmitted, is the sole responsibility of the person who originated such User Content. You represent that all User Content provided by you is accurate, complete, up-to-date, and in compliance with all applicable laws, rules and regulations. You acknowledge that all Content, including User Content, accessed by you using the Website is at your own risk and you will be solely responsible for any damage or loss to you or any other party resulting therefrom. We do not guarantee that any Content you access on or through the Website is or will continue to be accurate.

By submitting public User Content through the Website, you hereby do and shall grant us a worldwide, non-exclusive, perpetual, royalty-free, fully paid, sublicensable and transferable license to use, edit, modify, reproduce, distribute, prepare derivative works of, display, perform, and otherwise fully exploit the User Content in connection with the Website and our (and our successors' and assigns') businesses, including without limitation for promoting and redistributing part or all of the Website (and

derivative works thereof) in any media formats and through any media channels (including, without limitation, third party websites and feeds). You also hereby do and shall grant each user of the Website a non-exclusive, perpetual license to access your User Content through the Website, and to use, edit, modify, reproduce, distribute, prepare derivative works of, display and perform such User Content. For clarity, the foregoing license grants to us and our users does not affect your other ownership or license rights in your User Content, including the right to grant additional licenses to your User Content, unless otherwise agreed in writing. You represent and warrant that you have all rights to grant such licenses to us without infringement or violation of any third party rights, including without limitation, any privacy rights, publicity rights, copyrights, trademarks, contract rights, or any other intellectual property or proprietary rights.

We do not guarantee that any Content will be made available on the Website. We reserve the right to, but do not have any obligation to, (i) remove, edit or modify any Content in our sole discretion, at any time, without notice to you and for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Content or if we are concerned that you may have violated these Terms of Service), or for no reason at all and (ii) to remove or block any Content from the Website.

You are permitted to use the Website for your personal, non-commercial use, or legitimate business purposes, provided that your activities are lawful and in accordance with these Terms of Service. Prohibited uses include violation of laws and regulations, hacking the Website in any manner, or violating the Content Standards set below. No right, title or interest in or to the Website or any content on the site is transferred to you, and all rights not expressly granted are reserved. Any use of the Website not expressly permitted by these Terms of Service is a breach of these Terms of Service and can lead to account termination.

We encourage your feedback, in the form of reviews, comments, and suggestions or recommendations for modifications, improvements or changes to the Services or the Site that you may choose in your sole discretion to provide us from time to time ("Feedback"). When you provide Feedback, you grant us, under all right, title and interest in and to the

Feedback, a non-exclusive, royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use that Feedback or to incorporate it into the Website or other products or services.

The Website may contain Content specifically provided by us, our partners or our users and such Content is protected by copyrights, trademarks, service marks, patents, trade secrets or other proprietary rights and laws. You shall abide by and maintain all copyright notices, information, and restrictions contained in any Content accessed through the Website.

Are you still reading? Awesome! Please bear with us a little longer as what follows might look as legal boilerplate but it's actually important. A treat is waiting for you at the end of the page.

Accounts, Premium Memberships, Payments. and School Partnerships

• Privacy, and School Partnerships

Because we want to ensure that you and your students' data is as safe as possible, Teacher accounts must register using an email address and must not be shared. Collaboration and Co-Teaching tools, amongst others, are available in team plans but are not permitted on free individual user plans. All sharing of data will require approval from the Teacher or from a school administrator in the case of school Partnerships. If a Partner school requests Formative to sync up with your Student Information System (SIS), Learning Management System (LMS), or other system in order to automatically create accounts, you may receive an email to obtain access to the account authorized by an administrator and created by Formative. **DO NOT SHARE YOUR ACCOUNT CREDENTIALS!** This could open up you and your school to potential legal issues if student data is incorrectly shared with someone that should not have access.

School Partnerships are entered into between Formative and either a School or District that has legal authorization to Teacher and Student Data. Small teams may self-serve directly on our site, but a Partnership will always require written permissions and guarantees from an authorized agent of the Local Education Agency (LEA). If Formative learns that the signing person did not have authority in the LEA to sign the Partnership agreement, it reserves the right to terminate the Partnership and all Accounts. Formative also reserves the right to terminate any account which we think is being abused, violates our Terms of Service, creates undue risk for students, or creates issues for other educators in our system.

Teachers may self-upgrade to a Premium Membership directly at www.goformative.com/upgrade at any time. A credit card is required to authorize payment at the beginning of the subscription. This subscription may or may not begin with a trial period in which the card is not charged immediately. If a trial period exists, the Teacher can cancel their subscription at any time by visiting www.goformative.com/profile/plans to avoid being charged. If the plan is not cancelled by the first billing period, the card supplied will be charged according to the plan selected. Billing cycles are either monthly or annually, depending on what the account holder selects. You can continue to cancel your plan any time at www.goformative.com/profile/plans. Any cancellation will take effect at the end of the current billing cycle. E.g. if your current period ends on the 15th of the month and you cancel on the 3rd, you will continue to have premium access for the remaining 12 days and your account will fully cancel on the 15th. No refund will be issued.

All payments for both individual Teacher subscriptions and School Partnerships are considered final and are not eligible for refund. The only exception to this rule is that if an individual account is rolled into a School Partnership account that is overlapping and being paid for by an LEA, we may issue a pro-rated refund for the unused portion of the subscription period to avoid double payment of the time period by the LEA. If you have any billing issues or questions, you must notify us in writing by email or support chat within 5 calendar days of the issue being addressed. Any billing issues older than 5 calendar days will not be considered. Formative does not store any credit card information. We utilize the secure and vetted 3rd party system, Stripe (stripe.com), for our credit card payment processing and subscription services.

User Contributions and Content Standards. Special Disclaimer for legal content

Formative contains user generated content, and also may contain message boards, personal web pages, forums or other interactive features that allow you to upload, post, submit, publish, display or transmit to other Users Content on or through the Website. All User Content must be lawful, not spammy, and clear of virus or other malware. More specifically, but without limiting the foregoing, it must comply with the following Content Standards:

1. Not contain any material which is defamatory, obscene, indecent, abusive, offensive, harassing, violent, hateful, inflammatory or otherwise objectionable.
2. Not promote sexually explicit or pornographic material, violence, or discrimination based on race, sex, religion, nationality, disability, sexual orientation or age.
3. Not infringe any patent, trademark, trade secret, copyright or other intellectual property rights of any other person.
4. Not violate the legal rights (including the rights of publicity and privacy) of others or contain any material that could give rise to any civil or criminal liability under applicable laws or regulations or that otherwise may be in conflict with these Terms of Service.
5. Not be likely to deceive any person.
6. Not promote any illegal activity, or advocate, promote or assist any unlawful act.
7. Not cause annoyance, inconvenience or needless anxiety or be likely to upset, embarrass, alarm or annoy any other person.
8. Not be used to impersonate any person, or to misrepresent your identity or affiliation with any person or organization.
9. Not involve commercial activities or sales , such as contests, sweepstakes and other sales promotions, barter or advertising.
10. Not give the impression that they emanate from us or any other person or entity, if this is not the case.
11. Not used, if public, as test empty documents with no actual content, or typing exercises: please respect our community and help us minimize the clutter!

As stated above, all the user generated legal documents are in the public domain, unless otherwise specified by the author. The rest of the content (e.g. private documents, comments, description, guides, etc) is creative work, therefore covered by copyright. We claim no intellectual property rights over the User Content. Your content remain yours. However, by setting your documents to be viewed publicly, or commenting in public, you agree to allow others to view, comment, edit and branch your content, and you grant us the right to use, copy, distribute and disclose to third parties the content for any purpose.

User Content is not intended to replace official state testing or education guidelines at this time. Use of the Website should never be understood to

be replacing use of official state testing or education entities, and Formative's relationship to all documents and transactions completed using the Website is that of a trusted, disinterested third party.

Note also that this license to User Content continues even if you stop using the Services, primarily because of the social nature of Content shared through the Services - when you post something publicly, others may choose to use your materials, making your Content part of other's materials that cannot later be erased without retroactively censoring the speech of others.

Termination and Deletion:

On termination of your Account or upon your deletion of particular pieces of User Content from the Services, Formative shall make reasonable efforts to make any such non-public User Content inaccessible and cease use of it and to remove all personal information from our servers; however, you acknowledge and agree that: (a) caching of, copies of, or references to the User Content may not be immediately removed; (b) such removed Subscriber Content may persist in backups (not available to others) for a reasonable period of time; and (c) such removed User Content may be available (and stored on our servers) through the accounts of other Subscribers, such as because of cloning documents or shared assessment questions.

Law and Copyright Infringement

We do not undertake to review all material before it is posted on the Website, and cannot ensure prompt removal of objectionable material after it has been posted. Accordingly, we assume no liability for any action or inaction regarding transmissions, communications or content provided by any user or third party. In the unlikely event we receive a disclosure request from an authorized party, we reserve the right to disclose user identities when required to do so by the law, including in response to a law enforcement request supported by a valid court order. You waive and hold harmless the Company from any claims resulting from any action taken by the Company during or as a result of its investigations and from any actions taken as a consequence of investigations by either the Company or law enforcement authorities.

If you believe that any User Content violate your copyright, please follow the procedure set forth by article 512(c) of the DMCA and provide us a written takedown notice including the following information:

1. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
2. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
3. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material.
4. Information reasonably sufficient for us to contact you, such as

4. Information reasonably sufficient for us to contact you, such as email, address, telephone number.
5. A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
6. A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

The notice should be addressed to dmca@goformative.com, or via snail mail to DMCA Designated Agent, c/o Formative, 1158 26th Street, #161, Santa Monica, CA 90403.

Disclaimer of Warranties, Limitations of Liability and Indemnification

Your use of Formative is at your sole risk. The service is provided "as is" and "as available". We disclaim all warranties of any kind, express or implied, including, without limitation, the warranties of merchantability, fitness for a particular purpose and non-infringement. We are not liable for damages, direct or consequential, resulting from your use of the Website, and you agree to defend, indemnify and hold us harmless from any claims, losses, liability costs and expenses (including but not limited to attorney's fees) arising from your violation of any third-party's rights. You acknowledge that you have only a limited, non-exclusive, nontransferable license to use the Website. Because the Website is not error or bug free, you agree that you will use it carefully and avoid using it ways which might result in any loss of your or any third party's property or information.

Governing Law and Jurisdiction

These Terms of Service and any dispute or claim arising out of, or related to them, shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule.

Any legal suit, action or proceeding arising out of, or related to, these Terms of Service or the Website shall be instituted exclusively in the federal courts of the United States or the courts of the State of California.

Waiver and Severability

Our failure to exercise or enforce any right or provision of the Terms of Service shall not constitute a waiver of such right or provision. The Terms of Service constitutes the entire agreement between you and Formative and govern your use of the service, superseding any prior agreements (including, but not limited to, any prior versions of the Terms of Service). If any provision of these Terms of Service is held by a court of competent jurisdiction to be invalid, illegal or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that

the remaining provisions of the Terms of Service will continue in full force and effect.

General Addenda

[Connecticut Addendum](#)

Feedback

We welcome any comment, question and communication at support@goformative.com

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