



GRADECAM, LLC

GradeCam is a professional problem solver for teachers everywhere. We make teachers' problems our problems and design technologies that solve for them. Like all providers of online services, we set out these terms of service to explain our legal relationship with you.

TERMS OF SERVICE

Last updated: March 2, 2017

PLEASE READ THIS DOCUMENT CAREFULLY. GradeCam, LLC ("GradeCam," "we," or "us") provides this website and the products and services obtained through the website (the "Services"). By using the Services in any way, you accept these Terms of Service, which form a binding agreement between you and GradeCam (the "Terms of Service"). If you do not wish to be bound by this agreement, do not use the Services.

You affirm that you are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter these Terms of Service, and to abide by and comply with these Terms of Service. If you are an administrator of an Education Client (defined below), you are agreeing to these Terms of Service on behalf of the Education Client and you represent that you have the authority bind the Education Client to these terms.

We care about your privacy. [Please see our Privacy Policy here](#)

For Teachers and Schools, [see here](#)

1. Terms and Conditions

Changes in Terms of Service: GradeCam may, in its sole discretion, modify or revise these Terms of Service at any time, and you agree to be bound by such modifications or revisions. These Terms of Service may not be modified except by a revised Terms of Services posted by GradeCam on the GradeCam website or a written amendment signed by an authorized representative of GradeCam. A revised Terms of Service will be effective as of the date it is posted on the GradeCam website.

Services: These Terms of Service apply to all users of the Services, including users who upload information, text, images, or any type of content ("**User Content**") via the Services.

GradeCam Accounts: In order to access the Services, you will be asked to create a GradeCam account. You may never use another's account without permission. You must keep your account password secure. You must notify GradeCam immediately of any breach of security or unauthorized use of your account. Although GradeCam will not be liable for your losses caused by any unauthorized use of your account, you may be liable for the losses of GradeCam or others due to such unauthorized use.

Payment for Services: Unless set out in a separate written agreement between you and GradeCam, or unless you are using the Services during a free trial period, you agree to pay GradeCam a monthly fee for the Services as specified when you create an account. The monthly fee will be due and charged to your credit card monthly on the same day of the month on which you initially entered your payment details (i.e., if the initial payment is entered on March 5, all subsequent payments will be on the 5th of the month).

Account Termination: GradeCam will, in its sole discretion, determine if your account will be terminated because you have violated these Terms of Service.

Use of the Services – Permissions and Restrictions:

- You agree not to distribute in any medium any part of the Services without GradeCam's prior written authorization.
- You agree not to alter or modify any part of the Services.
- You agree not to access the Services through any technology or means other than through the GradeCam application or website.
- You agree not to use the Services for any commercial uses.
- You will not reproduce, redistribute, sell, create derivative works from, decompile, reverse engineer, or disassemble the Services, nor will you take any measures to interfere with or damage the Services.
- All rights not expressly granted by GradeCam are reserved.

Teachers, Schools and School Districts: If you are a teacher, school or school district (“**Education Client**”), you represent and warrant to us that you have obtained parents’ consent for the collection of student’s personal information in compliance with the Children’s Online Privacy and Protection Act (“**COPPA**”) and any similar State or local law that protects the personal information of students or children under 13. This means that before you use the Services, you must obtain advance written consent from all parents or guardians whose children under 13 (or all students, as applicable law may require) will be accessing the Services. If you are a teacher and you do not directly obtain such consent, you represent to us that you are using the Services with the express permission of a school or school district that has the appropriate consents.

2. Licenses

GradeCam Marks: The Services, and the trademarks, service marks and logos (“**Marks**”) on the Services, are owned by or licensed to GradeCam, subject to these Terms of Service and to copyright and other intellectual property rights under the law. Except as permitted by features of the Services, you agree not to copy, reproduce, publicly display, publicly distribute, create derivative works of, transmit or otherwise transfer, the content of the Services without the express written consent of GradeCam.

User Content: You are solely responsible for your User Content uploaded to the Services. By submitting User Content, you grant to GradeCam and its affiliates an unlimited, worldwide, perpetual, non-exclusive, royalty-free license and right to copy, transmit, distribute and display the User Content for the purposes of displaying the User Content as part of the Services and storing the User Content as necessary when backing up the Services in the normal course of business. GradeCam may modify the User Content as necessary to meet the technical

requirements of connection networks, devices, services, or media. GradeCam does not regularly or systematically monitor User Content.

Communication Services. The Services may contain forums, communities, personal portals, and/or other message or communication facilities designed to enable you to communicate with the a group (collectively, "**Communication Services**"), and you agree to use the Communication Services only to post, send and receive User Content that is proper and related to the particular Communication Service.

When using the Services, the Communication Services, or uploading User Content, you will not:

- Defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others.
- Publish, post, upload, distribute or disseminate any inappropriate, profane, defamatory, infringing, obscene, indecent or unlawful topic, name, material or information.
- Upload files that contain software or other material protected by intellectual property laws (or by rights of privacy of publicity) unless you own or control the rights thereto or have received all necessary consents.
- Upload files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of another's computer.
- Advertise or offer to sell or buy any goods or services for any business purpose.
- Conduct or forward surveys, contests, pyramid schemes or chain letters.
- Download any file posted by another user of the Service that you know, or reasonably should know, cannot be legally distributed in such manner.
- Falsify or delete any author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material contained in a file that is uploaded.
- Restrict or inhibit any other user from using and enjoying the Services.
- Violate any code of conduct or other guidelines which may be applicable for any particular Service.
- Harvest or otherwise collect information about others, including e-mail addresses, without their consent.
- Violate any applicable laws or regulations.

You represent and warrant that you have all rights to the User Content, and that you will indemnify GradeCam against any third party actions arising from or relating to your User Content.

Your Use of the Services:

- The Services are provided to you AS IS. You may access the Services for your information and personal use solely as intended through the provided functionality of the Service and as permitted under these Terms of Service. You shall not copy, reproduce, distribute, transmit, broadcast, display, sell, license, or otherwise exploit any content in the Services for any purposes without the prior written consent of GradeCam or its respective licensors. GradeCam and its licensors reserve all rights not expressly granted in and to the Services.
- You agree not to circumvent, disable or otherwise interfere with security-related features of the Services.

- You understand that when using the Services, you will be exposed to content from a variety of sources, and that GradeCam is not responsible for the accuracy, usefulness, safety, or intellectual property rights of or relating to such content.

3. **Digital Millennium Copyright Act**

Submission of Notice: If you are a copyright owner or an agent thereof and believe that any content infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act ("**DMCA**") by providing our Copyright Agent with the following information in writing (see 17 U.S.C 512(c)(3) for further detail):

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- 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;
- 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 the service provider to locate the material;
- Information reasonably sufficient to permit the service provider to contact you, such as an address, telephone number, and, if available, an electronic mail;
- 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; and
- 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.

Submission of Counter-Notice: If you believe that your content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use the material in your content, you may send a counter-notice containing the following information to the Copyright Agent:

- Your physical or electronic signature;
- Identification of the content that has been removed or to which access has been disabled and the location at which the content appeared before it was removed or disabled;
- A statement that you have a good faith belief that the content was removed or disabled as a result of mistake or a misidentification of the content; and
- Your name, address, telephone number, and e-mail address, a statement that you consent to the jurisdiction of the federal court in San Francisco, California, and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the Copyright Agent, GradeCam may send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed content or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the content provider, member or user, the removed content may be replaced, or access to it restored, in 10 to 14 business days or more after receipt of the counter-notice, at GradeCam's sole discretion.

GradeCam Copyright Agent: GradeCam's designated Copyright Agent to receive notifications of claimed infringement is:

GradeCam, LLC
Attn: Privacy Officer
Richard Porter
PO Box 151, Livermore, CA 94551
Email: rich.porter at gradecam.com
Telephone: 925.218.2009

4. Disclaimers and Limitations

GradeCam Disclaimers: GradeCam reserves the right to modify the Services. We may change, suspend, or discontinue any part of the Services at any time without notice. GradeCam does not guarantee that any content available on the Services complies with these Terms of Service or is suitable for all users. GradeCam provides the Services on an "as is" and "as available" basis. You therefore use the Services at your own risk.

GRADECAM EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY OTHER WARRANTY THAT MIGHT ARISE UNDER ANY LAW.

Without limiting the foregoing, GradeCam makes no representations or warranties:

- That the GradeCam Services will be permitted in your jurisdiction;
- That the GradeCam Services will be uninterrupted or error-free;
- Concerning User Content;
- That the Services will meet your educational or personal needs;
- That GradeCam will continue to support any particular feature of the Services; or
- Concerning sites and resources outside of the Services, even if linked to from the Services.

To the extent any disclaimer or limitation of liability does not apply, all applicable express, implied, and statutory warranties will be limited in duration to a period of thirty (30) days after the date on which you first used the Services, and no warranties shall apply after such period

Limitation of Liability: IN NO EVENT SHALL GRADECAM, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS, BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER RESULTING FROM ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR SERVICES, (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM OUR SERVICES, (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED TO OR THROUGH OUR SERVICES BY ANY THIRD PARTY, AND/OR (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF YOUR USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT THE COMPANY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF

LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

The Services are controlled and offered by GradeCam from its facilities in the United States of America. GradeCam makes no representations that the Services are appropriate or available for use in other locations. Those who access or use the Services from other jurisdictions do so at their own volition and are responsible for compliance with local law.

Indemnification: You agree to indemnify and hold harmless GradeCam, its affiliates, officers, agents, employees, contractors, and partners harmless from and against any and all claims, liabilities, damages (actual and consequential), losses, and expenses (including attorneys' fees) arising from or in any way related to any third party claims relating to (a) your use of the Services (including any actions taken by a third party using your account), and (b) your violation of these Terms of Service. In the event of such a claim, suit, or action ("**Claim**"), we will provide notice of the Claim to the contact information we have for your account (provided that failure to deliver such notice shall not eliminate or reduce your indemnification obligations hereunder).

5. General Provisions

Termination. You may stop using the Services at any time. We may terminate your use of the Services or your account, for any reason at any time, including if you violate these Terms of Service. Provisions of these Terms of Service that by their nature should survive the termination of these Terms of Service will survive the termination.

Assignment; Third Party Beneficiaries: These Terms of Service, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by GradeCam without restriction. Except for person entitled to indemnification hereunder, no third party shall have any rights hereunder.

Governing Law: You agree that: (i) the Services shall be deemed solely based in California; and (ii) the Services shall be deemed a passive website that does not give rise to personal jurisdiction over GradeCam, either specific or general, in jurisdictions other than California. These Terms of Service shall be governed by the internal substantive laws of the State of California, without respect to its conflict of laws principles. The Uniform Commercial Code, the Uniform Computer Information Transaction Act, and the United Nations Convention of Controls for International Sale of Goods shall not apply.

Arbitration: Any dispute arising from or relating to the subject matter of these Terms of Service shall be finally settled in Alameda, California, in accordance with the Streamlined Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services, Inc. ("**JAMS**") then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes, who shall be selected from the appropriate list of JAMS arbitrators in accordance with the Arbitration Rules and Procedures of JAMS. Judgment upon the award rendered by such arbitrator may be entered in any court of competent jurisdiction. Notwithstanding the foregoing obligation to arbitrate disputes, each party shall have the right to pursue injunctive or other equitable relief at any time, from any court of competent jurisdiction. For all purposes of this Agreement, the parties consent to exclusive jurisdiction and venue in the United States Federal Courts located in the Northern District of California. The prevailing party in any action or proceeding to enforce the terms of this Agreement shall be entitled to an award of its reasonable attorneys' fees and costs.

Entire Agreement: These Terms of Service, together with the GradeCam Privacy Policy and any other legal notices published by GradeCam on its website, shall constitute the entire agreement between you and GradeCam concerning the Services. A printed version of this agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. It is the express wish to the parties that this agreement and all related documents be drawn up in English.

Severability; Waiver: If any provision of these Terms of Service is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms of Service, which shall remain in full force and effect. No waiver of any term of these Terms of Service shall be deemed a further or continuing waiver of such term or any other term, and GradeCam's failure to assert any right or provision under these Terms of Service shall not constitute a waiver of such right or provision.

Notices: You consent to receive all communications including notices, agreements, disclosures, or other information from GradeCam electronically. For support-related inquiries, you may contact us at support@gradecam.com and you may send notices of a legal nature to GradeCam at rich.porter@gradecam.com or the following address:

GradeCam, LLC
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PO Box 151, Livermore, CA 94551
Email: support@gradecam.com
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