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# Pre-AP Terms & Conditions

Below are the terms for your use of Pre-AP<sup>®</sup>.

By accessing College Board's Pre-AP<sup>®</sup> program, you ("Client" or "You") accept the terms of this Agreement. Should You fail to comply with these requirements, College Board will terminate access without liability. If You subscribe to Pre-AP pursuant to a separate written contract with College Board ("CRS Agreement"), the terms of the separate written CRS Agreement between College Board and You for Pre-AP supersede the terms contained herein to the extent they conflict with any terms in this Agreement.

**License Grant.** The following licenses are referred to herein collectively as the "Licenses".

**Site License.** College Board hereby grants to Client a limited, non-exclusive, non-transferable, non-assignable, revocable license during the Term of this Agreement to access and use the Pre-AP website ("Pre-AP Website") and to use all content available on the Pre-AP Website in print or otherwise provided to Client. Access to the Pre-AP Website is for the sole purpose of improving teaching and learning of students in the grades designated by Client.

**Materials License.** College Board hereby grants to Client a limited, non-exclusive, non-transferable, non-assignable, revocable license to use all content available in these services or otherwise provided to You (the "Materials") for the sole purpose of use within the classroom of a teacher participating in the Pre-AP program at an educational institution. Materials can only be used as intended to support the Pre-AP learning experience and by authorized Client. You are otherwise prohibited from copying, disseminating, publishing, displaying or distributing in any form, or reproducing the Materials in whole or in part, without the prior written consent of College Board. If you download Materials from this platform, you must keep all copyright and other notices on the materials. You do not gain any ownership interest in the Materials or in the derivative works thereof due to your use of the Materials or such derivative works in connection with these services.

**Schools' Compliance with License Terms.** Client shall be responsible for the school's compliance with the terms of all Licenses.

**Access to Pre-AP Website.** If Client and its students choose to access College Board platform available to Pre-AP program users, Client and students will receive access to the platform upon acceptance to the Terms and Conditions related to the platform. Client understands and agrees that there is a risk of interruption to websites. Additionally, the website may be suspended from time to time for administrative purposes, as necessary, including but not limited to, system maintenance. College Board may change the technical functionality of the website at any time upon notice (where reasonable) to Client to the extent necessary to address technical and other business needs of College Board.

**Restrictions on Use.** Client shall not: (a) sell, rent, lease, loan, sublicense, disseminate, assign, reverse engineer, attempt to derive the source code of, transfer or otherwise provide access to third parties, make the website available for use by third parties or use the website for the benefit of any third party; (b) copy, reproduce, modify, adapt, translate or create any derivative works from the website; (c) remove, alter, obscure or tamper with any trademark, copyright or other proprietary markings or notices affixed to or contained within the website; or (d) encourage or permit any user or other third party to engage in any of the foregoing. Client shall be responsible for ensuring that all students and teachers comply with the terms of this Agreement. If Client violates any of the provisions hereof, College Board shall have the right to terminate your right to use Pre-AP, without waiver of any other remedy, whether legal or equitable.

**Client Obligations.** Client shall facilitate student's creation of a Pre-AP account. Information that students may provide (or that may be provided by Client) includes school code, name, gender, birth date, grade level, race/ethnicity, mailing address, phone number, email address, student ID, the language you know best,

parent/guardian education levels, Services for Students with Disabilities ID and information, and Pre- AP course enrollment and teacher information. ("Registration Information").

Client shall comply with the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, and its implementing regulations, 34 C.F.R. pt. 99 ("FERPA") in connection with Pre-AP. Client shall obtain any and all consents necessary for students to participate in Pre-AP, and Client shall include in its annual notification of rights under FERPA criteria that support the designation of College Board and its employees as school officials with legitimate educational interests. Client authorizes College Board to use personally identifiable, non-directory information to conduct studies with the purpose of improving instruction for Pre-AP in accordance with 34 C.F.R. 99.31(a)(6)(i).

Client shall be responsible for removing access to the Pre-AP website for any personnel who no longer should have access to the Pre-AP website, or promptly notifying College Board to request removal of any such access.

**Client Representations.** Client has designated as "directory information" for purposes of FERPA, a student's name, the most recent educational agency or institution attended, and the other items specifically identified as directory information in 34 C.F.R. 99.3. To the extent the Registration Information includes only such directory information, College Board may redisclose the Registration Information in accordance with its Privacy Policy without the consent of the parent or student eighteen (18) years of age or older. To the extent that the Registration Information or other personally identifiable information from education records of students disclosed by Client to College Board includes information other than directory information, for purposes of FERPA, College Board and its employees and independent contractors are "school officials" whom Client has determined to have "legitimate educational interests", and Client may disclose such non-directory information to College Board consistent with FERPA and other applicable law and policy.

College Board may share my contact information with my state Department of Education (DOE) and/or Board of Education (BOE) for the purposes of receiving email communications that are related to statewide or districtwide Pre-AP initiatives. By participating in the Pre-AP program, You give College Board permission to provide Pre-AP reports directly to individual teachers at my school. You understand if your school's Pre-AP reports are sent to selected nonprofit foundations for research and statistical purposes, your school's data will be aggregated in such a way that my school and students will not be identifiable, unless your school or authoritative body provides a written release for such identifying information.

**General Disclaimer.** COLLEGE BOARD HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

**Limitation of Liability.** TO THE EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE TOTAL LIABILITY, IN THE AGGREGATE, OF COLLEGE BOARD AND ITS' AFFILIATES FOR ANY AND ALL CLAIMS, LOSSES, COSTS OR DAMAGES WHATSOEVER ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE WORK PERFORMED BY COLLEGE BOARD PURSUANT TO THIS AGREEMENT FROM ANY CAUSE OR CAUSES, INCLUDED BUT NOT LIMITED TO THE NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, STRICT LIABILITY OR BREACH OF CONTRACT OR WARRANTY EXPRESS OR IMPLIED OF COLLEGE BOARD OR ITS' AFFILIATES, SHALL NOT EXCEED THE ACTUAL AMOUNT PAID TO COLLEGE BOARD UNDER THIS AGREEMENT FOR THE SPECIFIC DELIVERABLE SUBJECT TO THE DAMAGES CLAIM.

IN NO EVENT WILL COLLEGE BOARD AND ITS AFFILIATES HAVE ANY LIABILITY TO PURCHASER IN CONNECTION WITH THIS AGREEMENT FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM OR THEORY OF LIABILITY. TO THE EXTENT ALLOWED BY LAW, PURCHASER WILL INDEMNIFY, DEFEND AND HOLD HARMLESS, COLLEGE BOARD AGAINST THIRD PARTY CLAIMS THAT ARISE AS A RESULT OF THE BREACH OF THIS AGREEMENT BY CLIENT.

**Ownership of Intellectual Property.** Client agrees and acknowledges that all intellectual property provided under or pertaining to this Agreement, including, but not limited to, any College Board publications, College Board website(s), CD-ROMS, videos, examinations and all items contained therein, including all copies thereof, all data and any parts thereof, all copyrights, trademarks, trade secrets, patents, and other similar proprietary rights are the sole and exclusive property of College Board.

Client acknowledges that College Board: (a) obtains permission, when necessary, to use certain content from persons, other than you, whose text, information, data, images (still and moving), sound recordings, and/or software ("Third-Party Content") is included in the Materials; and (b) may, at the sole discretion of

College Board, eliminate such content from the Materials at any time. Third Party Content is owned by the respective authors of such content, and you shall not obtain any rights in or use such content except as provided in these services.

College Board retains all rights not expressly granted under these terms. In no way shall these services be construed to grant Client any rights other than those expressly granted herein. You further acknowledge and agree that, with the exception of the Third-Party Content, College Board owns all right, title and interest in and to the Materials, including without limitation all copyrights, trademarks, trade secrets, patents, and other similar proprietary rights, and all renewals and extensions thereof. AS SUCH, CLIENTS ARE STRICTLY PROHIBITED FROM POSTING THE MATERIALS AND/OR THIRD PARTY CONTENT ON ANY PUBLIC INTERNET SITE OR SITE THAT THE GENERAL PUBLIC MAY ACCESS. USE OF THE MATERIALS AND THIRD-PARTY CONTENT MAY BE GROUNDS FOR IMMEDIATE SUSPENSION OR TERMINATION OF THESE SERVICES AT COLLEGE BOARD'S DISCRETION.

Client shall not upload any Third-Party Content to avoid any possible infringement claim. If College Board receives a notice of infringement from a third party rightsholder for content that was uploaded by Client, College Board will promptly notify Client of the claim and cooperate with College Board in defending the claim. College Board will have full control and authority over the defense, except that: (a) any settlement requiring Client to admit liability or to pay any money will require Client's prior written consent, such consent not to be unreasonably withheld or delayed; and (b) Client may join in the defense with its own counsel at its own expense.

**Confidentiality.** All information exchanged hereunder to which either party shall have access in connection with this Agreement, including the terms of this Agreement, is confidential ("Confidential Information"), and except as otherwise expressly provided in this Agreement, neither party will authorize or permit the other party's Confidential Information to be conveyed or in any manner communicated to or made available to any third party or to be physically duplicated or reproduced or used by or for the benefit of any third party, in whole or in part; provided, however, that Confidential Information shall exclude any data or information that: (a) is publicly disclosed or expressly approved for public disclosure by the act of an authorized agent of either party; (b) becomes publicly known without breach of any confidentiality obligation; or (c) is required to be disclosed pursuant to any applicable law or regulation, government authority or duly authorized subpoena or court order, provided that the disclosing party in such event shall provide the other party with notice of such requirement as soon as practicable.

**Data Protection.** College Board shall take actions to ensure the security and confidentiality of Confidential Information. College Board assures Client that College Board employs security controls designed to secure and protect personally identifiable information in a manner consistent with industry standards. College Board shall maintain the Registration Information (defined above) that may be obtained pursuant to this Agreement in a secure computer environment and not copy, reproduce or transmit such data except as necessary to fulfill the purpose of the original request.

College Board has security measures in place designed to help protect against loss, misuse and alteration of the data under College Board's control. College Board shall develop, implement, maintain and use reasonably appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all stored, managed, retained, accessed or used student records received from or on behalf of Client, Parents or Adult Students as determined by College Board. College Board shall host content on the Pre-AP Website in a secure server environment that uses a firewall and other advanced technology designed to prevent interference or access from outside intruders. Where applicable, the Pre-AP Website will require unique account identifiers, usernames and passwords that must be entered each time a Client or user signs on.

College Board warrants that all student records will be encrypted in transmission and storage where technically feasible and when designed as being appropriate by College Board. If not, other security controls may be implemented to reduce risk, mitigate risk, or otherwise protect the data as determined solely by College Board. When the Pre-AP Website is accessed using a supported web browser, Secure Socket Layer ("SSL") or equivalent technology protects information while in transit, using both server authentication and data encryption to help ensure that data are safe, secure and available to only authorized users.

College Board may use de-identified data: to improve Pre-AP, to demonstrate the effectiveness of Pre-AP, and for research or other purposes related to developing and improving Pre-AP. College Board will share de-identified data with a third-party organization Adobe for the purpose of site analytics data. College Board's use of such de-identified data will survive termination of this Agreement.

**Security Measures.** To ensure the security and confidentiality of confidential records College Board shall designate an employee responsible for the training and compliance of all College Board employees, agents, and assigns on compliance with security and confidentiality provisions detailed in this Agreement. College Board warrants that the confidentiality requirements and security measures identified in this Agreement will be extended by contract to any and all subcontractors used by College Board, if any, to execute the terms of this Agreement. College Board will use appropriate and reliable storage media, regularly backup student records and retain such backup copies for the duration of this Agreement and as defined by College Board. Client acknowledges that College Board utilizes cloud hosting service providers throughout its infrastructure. College Board warrants that all student records will be stored in the United States where technically feasible and reasonable as determined solely by College Board. Client acknowledges that in some cases College Board may not be able to restrict the location of data due to limitations within the cloud hosting service provider capabilities. Notice. In the event of an unauthorized disclosure of student records which have been distributed or received in connection with this Agreement, Client and College Board agree to notify the other party, fully investigate the incident and fully cooperate with any investigation of the incident, implement remedial measures and respond in a timely manner. Such notification shall be promptly performed as information becomes available but not greater than thirty (30) calendar days immediately upon becoming aware of: (1) a confirmed compromise of student records, or of (2) circumstances that could have reasonably resulted in an unauthorized access to or disclosure of these student records. Both Client and College Board acknowledge that in the event of an unauthorized disclosure computer forensics teams may require many days, weeks or even months to fully ascertain the details surrounding the disclosure which may delay prompt notification within the 30 calendar day requirement.

Where information is available, Client shall notify the parent or adult student of: (1) the nature of the unauthorized use or disclosure (e.g., security breach, nonconsensual re-disclosure, etc.); (2) the specific student records that were used or disclosed without authorization where possible; (3) what College Board and Client have done or will do to mitigate any effects of the unauthorized use or disclosure; and (4) what corrective action College Board and Client have taken or will take to prevent future occurrences. Except as otherwise required by law, College Board will not provide notice of the incident directly to the parent or adult student whose student records were involved, regulatory agencies, or other entities, without prior written permission from Client.

**Use of Cookies.** A cookie is a small text file placed on your computer's hard drive when you visit a website. The cookie gives you a unique, random ID, and this ID enables our website(s) to readily recognize each user on a subsequent visit to the site(s). For example, a cookie may indicate the preferences you selected on a prior visit. This facilitates more efficient browsing on subsequent visits, by using your preferences to customize the content and/or layout of our site(s). College Board may use cookies in this fashion. Visitors are free to set their Web browsers to prevent the acceptance of cookies. However, subscribers of the Pre-AP Website must enable cookies to access certain areas. Be aware that College Board website cookies do not contain personally identifiable information. Some Service Providers use cookies on College Board site(s). College Board has no access to or control over these cookies. This privacy statement covers the use of cookies by College Board website(s) only and does not cover the use of cookies by any third-party providers.

**Force Majeure.** Either party may be excused from performance of an obligation under this Agreement in the event that performance of that obligation by such party is prevented by an act of God, act of war, terrorism, riot, disease-related epidemic/pandemic, fire, explosion, flood or other circumstance that is beyond the control of, and could not reasonably be avoided by, such party.

**Payment.** This Agreement supersedes any conflicting terms and conditions contained in Client's purchase order. Client agrees to pay any applicable sales, use, value added or other taxes or import duties (other than College Board's corporate income taxes) based on, or due as a result of, any fees paid to College Board under this Schedule, unless Client is exempt from such taxes as the result of Client's corporate or government status. Client shall furnish College Board with a valid tax exemption certificate.

#### **Return Policy.**

**Materials.** Within thirty (30) days of receipt, Client may return at Client's sole expense, unused Materials in new condition. College Board will issue a refund within thirty (30) days upon receipt of the Materials.

**Pre-AP Website.** Client may receive a refund of fees paid for the Pre-AP Website license only if Client terminates this Agreement prior to receiving access to the Pre-AP Website. College Board will issue a refund within thirty (30) days upon receipt of termination notice, so long as Client has no outstanding payments due to College Board.

Signature (must be hand-signed): \_\_\_\_\_

Date: \_\_\_\_\_