

This Agreement is entered into by and between College Board ("College Board") and the AP coordinator, on behalf of the School or Local Education Authority ("Customer") and AP students, AP teachers, Pre-AP students, Pre-AP teachers and administrators ("End Users"). This Agreement is effective as of the date the Customer or End User clicks "I have read and accept the terms of service" and then clicks the "Continue" button below. This Agreement governs the Customer's and End User's access to and use of the AP Registration and Ordering system, the AP Classroom system and/or the Pre-AP Classroom system, and My AP (collectively the "Services") and will be effective as of the Effective Date. See "Definitions" for a list of terms and definitions used throughout this Agreement.

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1. AP coordinator ("Customer")

- 1.1. In addition to the terms of service referenced beginning at Section 6 below, the following terms apply to Customers who are AP Coordinators.
- 1.2. This Agreement is effective as of the date the Customer clicks "I have read and accept the terms of service" and then clicks the "Continue" button below or, if applicable, the date the Agreement is countersigned (the "Effective Date"). As the Customer, you represent and warrant that: (i) you have full legal authority to bind your employer, or the applicable entity, to these terms and conditions; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of the Customer you represent, to this Agreement. If you do not have legal authority to bind the Customer, please do not click "I have read and accept the terms of service" below (or, if applicable, do not sign this Agreement).
- 1.3. You acknowledge that these Services include the AP Registration and Ordering system, AP Classroom system, and My AP and collect confidential Personally Identifiable Information ("PII") for students enrolled in courses at your school or taking part in an exam administration at your school and are provided for your official use only. You acknowledge that you have the authority and permission to enter and/or access your student's PII. College Board exercises great care in providing secure storage of student information. You will be able to download this data to your computer from the system and you acknowledge that it is your responsibility to take precautions to ensure that data you download, print, or otherwise select for your use will remain confidential.
- 1.4. You acknowledge that College Board shall be considered a School Official with a legitimate educational interest in performing services that otherwise would be provided by the Customer. You acknowledge that it is not the responsibility of College Board to determine whether your school is required to obtain parental consent (in accordance with applicable laws) in order for College Board to use and retain the students PII while performing these Services. You also agree to inform College Board if the student PII collected in connection with the Services needs to be destroyed after the termination of these Services.
- 1.5. You acknowledge that you will have the ability to create and edit class and/or exam only sections, which will generate join codes for students to facilitate their association with either courses or exam registrations at your school and place these students within a roster viewable by school staff with appropriate access authorizations. You acknowledge that you will share join codes only with eligible students for the purpose of enrolling them in class sections and/or exam only sections. You acknowledge that you can identify and/or update students' exam registration status (e.g., whether an exam will be ordered for a student) as well as provide AP fee reduction status on behalf of students taking AP courses or exams at your school. You agree that all AP Exam orders submitted are for individuals who are eligible to take AP Exams.
- 1.6. You agree to adhere to all policies and procedures as described within the 2019-20 AP Coordinator's Manual (Parts 1 and 2). You acknowledge the following information about AP Exam ordering deadlines and fees; this information will also be included in your AP Participation Form. You acknowledge that your school will be responsible for all exam fees and any associated fees for exam orders that you or an additional authorized staff person submit through the AP Registration and Ordering system.
 - a. Orders placed by November 15, 2019, 11:59 p.m. ET: Exam fee less the \$9 school rebate.

- b. Orders placed after November 15, 2019 and by March 13, 2020, 11:59 p.m. ET: Exam fee less the \$9 school rebate **plus** an additional late order fee of **\$40 per exam**. (The late order fee is not applied for courses that begin after the November 15 Final ordering deadline or for students who transfer to a school after the November 15 Final ordering deadline.)
- c. Exam order cancelled after November 15, 2019, or returned unused: The original exam fee is removed, and a **\$40 per exam unused/canceled exam fee** is incurred.
- d. Late-Testing Fee: Occasionally, it's necessary for students to test late using an alternate form of the exam. Depending on the reasons for late testing, schools may be charged an additional **\$40 per alternate exam**, part or all of which the school may ask the students to pay. (Schools may charge a higher fee to recover proctoring and administration costs.)
- e. Fee Reductions: College Board provides a \$32 fee reduction per exam for students with financial need that meet College Board eligibility guidelines. For each AP Exam taken with a fee reduction, the school forgoes its \$9 rebate, resulting in a cost of \$53 per exam (\$83 per exam for schools* outside the United States, U.S. territories, and Canada; \$101 per exam for AP Capstone Exams—AP Seminar or AP Research). Many states and districts use federal, state, and local funding to further reduce exam fees. *International exam fees/rates do not apply to DoDEA schools located outside of the United States.

2. AP Teacher, Pre-AP Teacher, and Other Educator End Users.

- 2.1. In addition to the terms of service referenced beginning at Section 6 below, the following terms apply to End Users who are AP Teachers, Pre-AP Teachers, or Other Educators.
- 2.2. You acknowledge that the Services collect confidential Personally Identifiable Information ("PII"), as defined in Definitions (19), for students enrolled in courses at your school or taking part in an exam administration at your school and are provided for your official use only. You acknowledge that you have the authority and permission to enter and/or access your student's PII. College Board exercises great care in providing secure storage of student information. You will be able to download this data to your computer from the system and you acknowledge that it is your responsibility to take precautions to ensure that data you download, print, or otherwise select for your use will remain confidential.
- 2.3. You acknowledge that any information supplied through this system is accurate to the full extent of your knowledge, and that if any inaccuracies for which you are capable of correcting through the system are identified, they will be corrected through the system, as available.
- 2.4. You acknowledge and agree that the information you supply through the Services may be shared with researchers and subcontractors (in aggregate and/or anonymously), and data collected from the AP Classroom system could also be shared with researchers and partners.
- 2.5. You acknowledge that you may have the ability to create and edit class sections, which will generate join codes for the students in your class(es) to facilitate their association with either courses or exam registrations at your school (where applicable) and place these students within a roster viewable by school staff with appropriate access authorizations. You acknowledge that you will share join codes only with eligible students for the purpose of enrolling them in your class sections.

3. AP Student End Users.

- 3.1. In addition to the terms of service referenced beginning at Section 6 below, the following terms apply to End Users who are AP students.
- 3.2. By verifying or providing your course/exam information and/or taking an AP Exam you consent to College Board retaining and using your student information for the purposes specified here and in the 2019-20 Bulletin for AP Students and Parents (the "Bulletin"). The information explained in these Student End Users Terms of Service will also be in the Bulletin.
- 3.3. Any data provided about you may be used (in the aggregate and/or anonymously) for research purposes, to prepare research reports, and/or in AP Exam ordering and registration processes. Occasionally, College Board researchers and their subcontractors may contact students to invite their participation in surveys or other research. Data collected from the AP Classroom system could also be shared with researchers and partners.
- 3.4. Your AP Exam scores may be sent to any school at which you enrolled in a class section. This could be the school you regularly attend and/or a different school where you took an AP course. If you enroll in a class section at a school other than the one you regularly attend, that school will receive your AP Exam score(s) only for the class section(s) you're enrolled in at that school.

- 3.5. Information that you may provide yourself (or that may be provided about you by your school, district, or International Test Center) 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, AP Exam fee reduction status, Services for Students with Disabilities ID and information, AP course enrollment and teacher information, and AP Exam registration status. If taking an AP world language and culture course, information you may also provide about yourself is whether you speak the language at home and whether you have lived in a location for 6 months or more where the language is spoken.
- 3.6. The Bulletin includes details about the following circumstances in which your AP scores and/or personal identifying information may be shared:
- For the purposes of score reporting to your school, district, and state Dept of Education, if applicable.
 - If your school, district, or state partners with other educational organizations. Please consult your school for individual policies.
 - When a state requests the names of its public school students who receive fee reductions for audit or invoice verification. In such cases, the state agrees to maintain the confidentiality of such data.
 - If you earn an AP Award, your state superintendent of education's office and governor's office may be notified so they can recognize your achievement.
 - For research purposes and/or to prepare research reports (in the aggregate and/or anonymously). Occasionally, College Board researchers and their subcontractors may contact students to invite their participation in surveys or other research.
 - If you're a resident of the state of Kentucky, your AP Exam scores will automatically be sent to the Kentucky Higher Education Assistance Authority (KHEAA) for purposes of scholarship eligibility. If you don't want your scores sent to KHEAA, write to: AP Program, Educational Testing Service, 1425 Lower Ferry Road, 29Q, Ewing, NJ 08618. Include your full name, mailing address, date of birth, gender, 8-digit AP ID, and your 6-digit high school code number.
 - By providing your email address, you give College Board and its operational partners permission to contact you via email. Your email will be used to send you important information about your exams, scores, and any AP awards you may earn.
 - By providing your phone number, you agree to be contacted by College Board regarding: a test or program you registered for, opportunities to participate in research surveys, and/or free college planning services. By providing your mobile phone number, you may also opt-in to agree to receive text messages from College Board about our programs, to participate in research surveys, and/or to receive free college planning services. Standard text messaging rates may apply and you may opt out at any time.
- 3.7. College Board also reserves the right to contact the appropriate individuals or agencies—including your high school—if we believe you may be in imminent danger of harming yourself or others, based on any information you provide to College Board, including your responses to AP Exam questions. We might also provide the relevant essay or other content, along with your personal information, to those we may contact.
- 3.8. Enrollment: Students will enroll in class sections and/or exam only sections in My AP using join code(s) supplied by your teacher(s) or AP coordinator for each AP class you are currently taking or AP Exam you intend to take. You will use only the join codes supplied to you by your teacher(s) or AP coordinator, and you will not share join codes with any other parties.
- 3.9. Registration: If instructed to do so by your AP coordinator or teacher, you will indicate your AP Exam registration for each class section in which you are enrolled by the deadline provided by your AP coordinator.
- 3.10. AP Exam Fees: The fee owed depends on when your exam order is placed by your school's AP coordinator. The fees listed below are those charged to your school. Your school may require different fees.
- Orders placed by November 15, 2019, 11:59 p.m. ET: \$94 per exam (\$124 per exam for schools outside the United States, U.S. territories, and Canada; \$142 per exam for AP Capstone—AP Seminar or AP Research).
 - Orders placed after November 15, 2019, and by March 13, 2020, 11:59 p.m. ET: Exam fee **plus an additional late order fee of \$40 per exam**. (The late order fee is not applied for courses that begin after the November 15 Final ordering deadline or for students who transfer to a school after the November 15 Final ordering deadline.)

- c. Exam order canceled after November 15, 2019, or returned unused: The original exam fee is removed, and a **\$40 per exam unused/canceled exam fee** is incurred.
 - d. Late-Testing Fee: Occasionally, it's necessary for students to test late using an alternate form of the exam. Depending on the reasons for late testing, schools may be charged an additional **\$40** per alternate exam, part or all of which the school may ask the students to pay. (Schools may charge higher fees to recover proctoring and administration costs.)
- 3.11. Fee Reductions: College Board provides a \$32 fee reduction per exam for students with financial need that meets College Board eligibility guidelines. For each AP Exam taken with a fee reduction, the school forgoes its \$9 rebate, resulting in a cost of \$53 per exam (\$83 per exam for schools outside the United States, U.S. territories, and Canada; \$101 per exam for AP Capstone Exams—AP Seminar or AP Research). Many states and districts use federal, state, and local funding to further reduce exam fees. Check with your AP coordinator to learn more. *International exam fees/rates do not apply to DoDEA schools located outside of the United States.
- 3.12. Use of the Services, joining an AP course in this system, and supplying your registration information does not automatically order an AP Exam for you. An AP coordinator needs to separately place an order and to include you in that order. Neither the school nor College Board is under any obligation to order or ship an AP Exam for you, solely by your use of these Services and/or your indication that you plan to take an AP Exam.
- 3.13. AP Student End Users Testing with Accommodations
- a. Students may be eligible for accommodations on AP Exams due to, for example, a documented disability. Some types of accommodations include: Extended time, Large-type exams, Enlarged (large-block) answer sheets, Braille exams, permission to use a braille device, computer, or magnifying device, a reader to dictate questions, a writer/scribe to record responses, written copy of oral instructions.
 - b. All accommodations must be approved by College Board's Services for Students with Disabilities (SSD). If you test with accommodations that have not been approved by College Board, your scores won't be reported.
 - c. Most students work with the school's SSD coordinator to apply for accommodations before the AP Exam administration. The SSD coordinator requests and manages the accommodations online. Information about requesting accommodations is available at collegeboard.org/ssd (Opens in a new window). In some cases, documentation of the disability and need for accommodations is requested for review by College Board.
 - d. Requests for accommodations and, when required, complete documentation must be submitted by January 17, 2020. Requests should be submitted as early as possible, so they can be reviewed and processed before the exam ordering deadlines. If requests are submitted after this date, there's no guarantee accommodations will be approved, or appropriate exam materials will be shipped in time for the exam. In the event that anticipated accommodations are not approved by the College Board's Services for Students with Disabilities office, your AP coordinator can adjust your exam order by March 13, 2020, 11:59 p.m. ET without any additional fee incurred.
 - e. If you've already received College Board–approved accommodations for AP Exams, the PSAT/NMSQT[®], PSAT 10[®], or the SAT[®], you don't need to submit a new form unless:
 - 3.13.e.1. You change schools, in which case your new school's SSD coordinator should be asked to verify your accommodations through the online system.
 - 3.13.e.2. You need different accommodations. In this case, your school's SSD coordinator must submit an Accommodations Change Request Form, which can be downloaded from SSD Online.
 - 3.13.e.3. **Note:** Some accommodations are administered differently across College Board programs. For example, for AP, a student approved for extended time will **not** automatically be provided extra breaks. A student requiring extra breaks must apply for that specific accommodation for AP Exams. Keep in mind that AP Exams in most world languages and cultures and Music Theory include listening and speaking components.
 - f. You are your own best advocate to ensure you receive the testing accommodations that are needed. This means you are responsible for following through on the required procedures. Check with your school's SSD coordinator to confirm the specific accommodations that have been requested. The specific accommodations that have been requested may appropriately differ from what is being used in school.

4. Pre-AP Student End Users.

- 4.1. In addition to the terms of service referenced beginning at Section 6, the following terms apply to End Users who are Pre-AP students.
- 4.2. By verifying or providing your course information you consent to College Board retaining and using your student information for the purposes specified.
- 4.3. Any data provided about you may be used (in the aggregate and/or anonymously) for research purposes, to prepare research reports, and/or registration processes. Occasionally, College Board researchers and their subcontractors may contact students to invite their participation in surveys or other research. Data collected from the Pre-AP Classroom system could also be shared with researchers and partners.
- 4.4. Information that you may provide yourself (or that may be provided about you by your school or district) 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.
- 4.5. College Board also reserves the right to contact the appropriate individuals or agencies—including your high school—if we believe you may be in imminent danger of harming yourself or others, based on any information you provide to College Board, including your responses to Pre-AP assessment questions. We might also provide the relevant essay or other content, along with your personal information, to those we may contact.

5. Additional Notice to EU End Users and International Students

- 5.1. College Board is providing this supplemental privacy notice to give individuals located in the European Union ("EU") and other international countries this additional information required by the EU General Data Protection Regulation ("GDPR"). These provisions, together with the statements in the College Board Privacy Notices, explain our practices with regard to processing EU residents' personal data. For the most up to date information please visit <https://about.collegeboard.org/privacy-policy/notice-to-eu-residents> (Opens in a new window) or contact customer service at eucustomerservice@collegeboard.org or (844) 849-3551.
- 5.2. College Board requires certain Personally Identifiable Information ("PII"), as defined in Definitions (19), from you in order to provide you with the Services. We collect and process your information based on the lawful basis described below:
 - a. To offer you these Services and to administer an AP exam to you.
 - b. We may provide your PII to our subcontractors (processors) pursuant to a written agreement, based on our instructions and in compliance with our privacy policies and any other appropriate confidentiality and security measures. For example, we use service providers to help process and score our tests; to process a payment, to create an account on our website, for website management; and with your consent, to send you marketing emails communications or to send your scores to your designated recipients.
- 5.3. We may also process your PII for the purposes of our legitimate interests, provided that such processing shall not outweigh your rights and freedoms. In particular, we may process your PII as needed to: (i) Protect you, us, or others from threats (such as security threats or test fraud); (ii) Improve College Board tests and support College Board research initiatives; (iii) comply with the laws that are applicable to us around the world; (iv) enable or administer our business, such as for quality control, consolidated reporting, and customer service; (v) manage corporate transactions, such as mergers or acquisitions; and (vi) understand and improve our business, improve test integrity, and for research purposes.
- 5.4. Automated Decision Making and Profiling
 - a. College Board may use automated processes in connection with scoring tests and for similar purposes, as needed to provide the test services that you have requested. All such decisions are subject to human review. We will not make automated decisions about you that may significantly affect you, unless (i) the decision is necessary as part of a contract that we have with you, (ii) we have your explicit consent, or (iii) we are required by law to use the technology. You can learn more about test scoring by reading the information posted on our website about each of our tests and in our Research section of our website. <https://research.collegeboard.org/pdf/guidelines-uses-college-board-test-scores-and-data.pdf> (Opens in a new window)
- 5.5. Your Rights

- a. You always have the right to object to our marketing communications. To opt out of emails, simply click the link labeled unsubscribe at the bottom of any email we send you. EU residents also have the right to access, correct, and request erasure or restriction of their PII as required by law. This means you have a right to know whether or not College Board maintains your PII. If we do have your PII we will provide you with a copy (subject to the rights of others). If your information is incorrect or incomplete, you have the right to ask us to update it. You may also ask us to delete or restrict your PII
- b. To exercise these rights, please contact us via email at eucustomerservice@collegeboard.org or call (844) 849-3551. Please understand that we may need to verify your identity before we can process your request. Additionally, our ability to delete PII will be limited in those cases where we are required to retain records, such as in connection with score reports and test security processes.
- c. If you believe that we have processed your PII in violation of applicable law, you may file a complaint with College Board Office of General Counsel or with a supervisory authority.

5.6. Data Retention

- a. We will retain your PII for as long as the information is needed for the purposes set forth above and for any additional period that may be required or permitted by law. You may request that we delete your PII by contacting us via email at eucustomerservice@collegeboard.org. Unless we are required by law or have a legitimate interest to retain your information, we will delete it within 30 days of your request.

6. Services and Data Use and Security

- 6.1. Facilities and Data Transfer. All facilities used to store and process Customer Data will adhere to reasonable security standards no less protective than the security standards at facilities where College Board stores and processes its own information of a similar type. College Board has implemented at least industry standard systems and procedures to ensure the security and confidentiality of Customer Data, protect against anticipated threats or hazards to the security or integrity of Customer Data, and protect against unauthorized access to or use of Customer Data. As part of providing the Services, College Board may transfer, store and process Customer Data in the United States or any other country in which College Board or its agents maintain facilities. By using the Services, Customer consents to this transfer, processing and storage of Customer Data.
- 6.2. To the Services. College Board may make commercially reasonable changes to the Services from time to time. If College Board makes a material change to the Services, College Board will inform Customer, provided that Customer has subscribed with College Board to be informed about such material change.
- 6.3. College Board does not serve Ads in the Services or use Customer Data for Advertising purposes.
- 6.4. Data Retention. The Customer will obtain all necessary consents to allow College Board to retain the student data for legitimate educational purposes related to the AP Program and the Services.
- 6.5. Privacy Notice. The Privacy Notice for the Services governs how College Board collects and uses information from Customer or End Users.

7. Customer and End User Obligations.

- 7.1. Permitted Uses. The Services are permitted for use only by educational institutions and their staff and students ("End Users").
- 7.2. Compliance. Customer will use the Services in accordance with these terms of service. College Board may develop new applications, features or functionality for the Services available from time to time. These terms of service apply to any new applications, features or functionality for the Services that College Board may develop.
- 7.3. Customer Administration of the Services. Customer will have the ability to create and edit class sections and/or exam only sections, which will generate invitation or "join" codes for the Student End Users to facilitate their association with either courses or exam registrations at your institutions. The End Users will appear on a roster viewable by school staff with appropriate access authorizations. Customer acknowledges that you will share join codes only with eligible students for the purpose of enrolling them in your class sections and/or exam only sections. Customer is responsible for: (a) designating those individuals who are authorized to administer the "join" codes and (b) ensuring that all activities that occur in connection with the Services comply with the Agreement. Customer agrees that the responsibilities of College Board do not extend to the on-site management or administration of the Services for Customer.
- 7.4. End User Consent. Customer may have the ability to access, monitor, use, or disclose data available to End Users within the End User accounts. Customer will obtain and maintain all required consents from

End Users to allow: (a) Customer's access, monitoring, use and disclosure of this data and College Board providing Customer with the ability to do so and (b) College Board to provide the Services.

- 7.5. COPPA and Parental Consent. If Customer allows End Users under the age of 13 to use the Services, Customer consents as required under the Children's Online Privacy Protection Act to the collection and use of personal information in the Services, described in the Services from such End Users. Customer will obtain parental consent for the sharing and use of PII from End Users who are under the age of 13 before the Student End User has access to use these Services.
 - 7.6. Unauthorized Use. Customer will use commercially reasonable efforts to prevent unauthorized use of the Services and to terminate any unauthorized use. Customer will promptly notify College Board of any unauthorized use of, or access to, the Services of which it becomes aware.
 - 7.7. Restrictions on Use. Unless College Board specifically agrees in writing, Customer and End User will not, and will use commercially reasonable efforts to make sure a third party does not: (a) sell, resell, lease, or the functional equivalent, the Services to a third party (unless expressly authorized in this Agreement); (b) attempt to reverse engineer the Services or any component; or (c) attempt to create a substitute or similar service through use of, or access to, the Services.
 - 7.8. Third Party Requests. Customer is responsible for responding to Third Party Requests. College Board will, to the extent allowed by law and by the terms of the Third Party Request: (a) promptly notify Customer of its receipt of a Third Party Request; (b) comply with Customer's reasonable requests regarding its efforts to oppose a Third Party Request; and (c) provide Customer with the information or tools required for Customer to respond to the Third Party Request. Customer will first seek to obtain the information required to respond to the Third-Party Request on its own and will contact College Board only if it cannot reasonably obtain such information.
8. Technical Support Services.
 - 8.1. By Customer. Customer will, at its own expense, respond to questions and complaints from End Users or third parties relating to Customer's or End Users' use of the Services. Customer will use commercially reasonable efforts to resolve support issues before escalating them to College Board.
 - 8.2. By College Board. If Customer cannot resolve a support issue consistent with the above, then Customer may escalate the issue to College Board in accordance with the terms of service.
9. Suspension of End User accounts.
 - 9.1. If College Board becomes aware of an End User's violation of the Agreement, then College Board may specifically request that Customer suspend the applicable End User Account. If Customer fails to comply with the College Board's request to suspend an End User Account, then College Board may do so. The duration of any suspension by College Board will be until the applicable End User has cured the breach which caused the suspension. In the event that an End User violates this Agreement in a manner that may cause harm to the End User or other users, College Board reserves the right to deactivate the End User account before first notifying the Customer.
10. Confidential Information.
 - 10.1. Obligations. Each party will: (a) protect the other party's Confidential Information with the same standard of care it uses to protect its own Confidential Information; and (b) not disclose the Confidential Information, except to Affiliates, employees and agents who need to know it and who have agreed in writing to keep it confidential. Each party (and any Affiliates, employees and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfill its obligations under this Agreement, while using reasonable care to protect it. Each party is responsible for any actions of its Affiliates, employees and agents in violation of this Section.
 - 10.2. Exceptions. Confidential Information does not include information that: (a) the recipient of the Confidential Information already knew; (b) becomes public through no fault of the recipient; (c) was independently developed by the recipient; or (d) was rightfully given to the recipient by another party.
 - 10.3. Required Disclosure. Each party may disclose the other party's Confidential Information when required by law but only after it, if legally permissible: (a) uses commercially reasonable efforts to notify the other party; and (b) gives the other party the chance to challenge the disclosure.
 - 10.4. FERPA. The parties acknowledge that (a) Customer Data may include personally identifiable information from education records that are subject to FERPA ("FERPA Records"); and (b) to the extent

that Customer Data includes FERPA Records, College Board will be considered a "School Official" (as that term is used in FERPA and its implementing regulations) and will comply with FERPA.

11. Intellectual Property Rights.

- 11.1. Intellectual Property Rights. Except as expressly set forth herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. As between the parties, Customer owns all Intellectual Property Rights in Customer Data and Customer User Generated Content, (to the extent that the User Generated Content does not infringe on any College Board Intellectual Property Rights), and College Board owns all Intellectual Property Rights in the Services.
- 11.2. Materials License. College Board hereby grants to Customer 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 AP Program at an educational institution. Materials can only be used as intended to support the AP learning experience and by authorized Customer and End Users. 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.
- 11.3. Customer 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.
- 11.4. The College Board retains all rights not expressly granted under these terms. In no way shall these Services be construed to grant you 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, CUSTOMER AND END USERS 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 THE COLLEGE BOARD'S DISCRETION.

12. Representations, Warranties and Disclaimers.

- 12.1. Representations and Warranties. Each party represents that it has full power and authority to enter into the Agreement. Each party warrants that it will comply with all laws and regulations applicable to its provision or use, of the Services.
- 12.2. Disclaimers. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT. COLLEGE BOARD MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH THE SERVICES.

13. Term.

- 13.1. Agreement Term. This Agreement will remain in effect for the Term of one (1) year.
- 13.2. Auto Renewal. At the end of each Term, the Services will automatically renew for an additional Term of one (1) year. If either party does not want the Services to renew, then it must notify the other party in writing at least 15 days prior to the end of the then current Term. This notice of non-renewal will be effective upon the conclusion of the then current Term.

13.3. Services Use. Customer has no obligation to use the Services and may cease using the Services at any time for any reason (or no reason). However, Customer wishing to order AP Exams must use these Services to place and adjust exam order as no alternative ordering system is available.

14. Termination.

14.1. Termination for Breach. Either party may suspend performance or terminate this Agreement if: (i) the other party is in material breach of the Agreement and fails to cure that breach within thirty days after receipt of written notice; (ii) the other party ceases its business operations; or (iii) the other party is in material breach of this Agreement more than two times notwithstanding any cure of such breaches.

14.2. Other Termination. Customer may terminate this Agreement for any reason (or no reason) with thirty days prior written notice to College Board.

14.3. Effects of Termination.

a. On ordered exams. If this Agreement terminates, (i) on or before the Final ordering deadline (November 15, 2019, 11:59 p.m. ET), Customer will not be able to order AP Exams; (ii) after the Final ordering deadline (November 15, 2019, 11:59 p.m. ET) and on or before the Spring course order and fall order changes deadline (March 13, 2020, 11:59 p.m. ET), Customer is responsible for canceled exam fees (**\$40 per exam**) for any existing AP Exam orders; (iii) after the Spring course order and fall order changes deadline (March 13, 2020, 11:59 p.m. ET), Customer is responsible for unused exam fees (**\$40 per exam**) for any existing AP Exam orders.

b. On Customer Data and Confidential Information. If this Agreement terminates, (i) the rights granted by one party to the other will cease immediately (except as set forth in this Section); (ii) if feasible, College Board will provide Customer access to, and the ability to export, the Customer Data for a commercially reasonable period of time; (iii) after a commercially reasonable period of time, College Board may delete Customer Data on the College Board's active servers by overwriting it over time; and (iv) upon request each party will promptly use commercially reasonable efforts to return or destroy all other Confidential Information of the other party.

14.4. Survival. The following Sections will survive expiration or termination of this Agreement: 10 (Confidential Information), 11 (Intellectual Property Rights), 14 (Termination), 15 (Indemnification), 16 (Limitation of Liability), 17 (Disputes), 18 (Miscellaneous), and 19 (Definitions).

15. Indemnification.

15.1. Customer agrees to indemnify, defend and hold College Board and its affiliates, officers, directors, employees, agents, contractors and suppliers, harmless from and against any and all claims, actions, losses, expenses, damages and costs (including reasonable attorneys' fees), resulting from any breach or violation of the terms of service. College Board reserves the right to assume, at our sole expense, the exclusive defense and control of any such claim or action and all negotiations for settlement or compromise, and you agree to cooperate fully with us in the defense of any such claim, action, settlement or compromise negotiations, as requested.

15.2. Possible Infringement.

a. Repair, Replace, or Modify. If College Board reasonably believes the Services infringe a third party's Intellectual Property Rights, then College Board will: (i) obtain the right for Customer, at the College Board's expense, to continue using the Services; (ii) provide a non-infringing functionally equivalent replacement; or (iii) modify the Services so that they no longer infringe.

b. Suspension or Termination. If College Board does not believe the foregoing options are commercially reasonable, then College Board may suspend or terminate Customer's use of the impacted Services.

15.3. General. Customer 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 the Customer, College Board will promptly notify the Customer 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 Customer to admit liability or to pay any money will require Customer's prior written consent, such consent not to be unreasonably withheld or delayed; and (b) Customer may join in the defense with its own counsel at its own expense.

16. Limitation of Liability.

16.1. Limitation on Indirect Liability. NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR

PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

- 16.2. Exceptions to Limitations. These limitations of liability apply to the fullest extent permitted by applicable law but do not apply to violations of a party's Intellectual Property Rights by the other party or indemnification obligations.

17. Disputes.

- 17.1. Other than score validity investigations where certain students can request arbitration in accordance with ETS's Standard Arbitration Agreement or infringement of the College Board's intellectual property rights, all student disputes against College Board and/or any or all of its contractors, that relate in any way to registering for or taking part in a College Board program such as AP or Pre-AP, including but not limited to requesting or receiving test accommodations, score reporting, and the use of test taker data, shall exclusively be resolved by a single arbitrator through binding, individual arbitration administered by the American Arbitration Association ("AAA"), under the AAA Consumer Arbitration Rules in effect at the time a request for arbitration is filed with the AAA. Copies of the AAA Rules can be located at www.adr.org. Unless the parties mutually agree otherwise, the seat and the place of the arbitration shall be New York, New York. The parties agree that the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 et seq. governs this provision, and it is the intent of the parties that the FAA shall pre-empt all State laws to the fullest extent permitted by law. No arbitration may be maintained as a class action, and the arbitrator shall not have the authority to combine or aggregate the disputes of more than one individual, conduct any class proceeding, make any class award, or make an award to any person or entity not a party to the arbitration, without the express written consent of College Board. By agreeing to arbitration in accordance with this section, you are waiving your right to have your dispute heard by a judge or jury. Each party will be responsible for its own fees and expenses incurred in connection with the arbitration, regardless of its outcome. For purposes of this provision, each College Board contractor is a third-party beneficiary of this section, is entitled to the rights and benefits hereunder, and may enforce the provisions hereof as if it were a party hereto.

18. Miscellaneous.

- 18.1. Notices. Unless specified otherwise herein: (a) all notices must be in writing and addressed to the attention of the other party's legal department and primary point of contact; and (b) notice will be deemed given: (i) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt; or (ii) when verified by automated receipt or electronic logs if sent by facsimile or email.
- 18.2. Assignment. Neither party may assign or transfer any part of this Agreement without the written consent of the other party, except to an Affiliate, but only if: (a) the assignee agrees in writing to be bound by the terms of this Agreement; and (b) the assigning party remains liable for obligations incurred under the Agreement prior to the assignment. Any other attempt to transfer or assign is void.
- 18.3. Force Majeure. Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.
- 18.4. No Waiver. Failure to enforce any provision of this Agreement will not constitute a waiver.
- 18.5. Severability. If any provision of this Agreement is found unenforceable, the balance of the Agreement will remain in full force and effect.
- 18.6. No Agency. The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.
- 18.7. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.
- 18.8. Equitable Relief. Nothing in this Agreement will limit either party's ability to seek equitable relief.
- 18.9. Governing Law.
- For City, County, and State Government Entities. If Customer is a city, county, or state government entity, then the parties agree to remain silent regarding governing law and venue.
 - For all other Entities. If Customer is any entity not set forth in sections 1, 2, 3, 4, and 5, then the following applies: This Agreement is governed by New York law, excluding that state's choice of law rules. FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN NEW YORK.

- 18.10. Amendments. Any amendment must be in writing and expressly state that it is amending this Agreement.
- 18.11. Entire Agreement. This Agreement, and all documents referenced herein, is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. If Customer is presented with a similar agreement on the same subject matter upon its log in to use the Services, this Agreement supersedes and replaces that agreement. The terms located at a URL and referenced in this Agreement are hereby incorporated by this reference.
- 18.12. Interpretation of Conflicting Terms. If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the 2019-2020 AP Participation Form (if applicable), this Agreement, and the [College Board's terms of use \(Opens in a new window\)](#).
- 18.13. Counterparts. The parties may enter into this Agreement by executing the applicable 2019-2020 AP Participation Form (if any) or this Agreement in counterparts, including facsimile, PDF or other electronic copies, which taken together will constitute one instrument.

Definitions.

- "Ads" means online advertisements, excluding advertisements provided by any advertising products that are not part of the Services (for example, College Board AdSense) that Customer chooses to use in connection with the Services, displayed by College Board to End Users.
- "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with a party.
- "Agreement" means, as applicable either this Agreement, or the combination of the 2019-20 AP Participation Form and this Agreement.
- "Confidential Information" means information disclosed by a party to the other party under this Agreement that is marked as confidential or would normally be considered confidential under the circumstances. Customer Data is considered Customer's Confidential Information.
- "Customer" means the school or LEA.
- "Customer Data" means data, including email, provided, generated, transmitted or displayed via the Services by Customer or End Users.
- "Customer User Generated Content" means content created by the Customer, Teacher or Student End User that is uploaded to the Services platform.
- "Effective Date" means the date this Agreement is countersigned.
- "End Users" means the individuals Customer permits to use the Services.
- "End User Account" means College Board-hosted account established by Customer through the Services for an End User.
- "Fees" means the amounts invoiced to Customer by College Board for the Services (if applicable) as described in this Agreement.
- "FERPA" means the Family Educational Rights and Privacy Act (20 U.S.C. 1232g) and the Family Educational Rights and Privacy Act Regulations (34 CFR Part 99), as amended or otherwise modified from
- "Intellectual Property Rights" means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.
- "LEA" means Local Education Authority.
- "Personally Identifiable Information" or "PII" means any data that could potentially identify a specific individual or that can be used to distinguish one person from another.
- "School Official" means, under FERPA and state law, a third-party provider under the control and direction of the Local Education Authority, as it pertains to the use of student data.

- "Services" means the AP Registration and Ordering, AP Classroom, and My AP systems provided by College Board and used by Customer and End User under this Agreement.
- "Staff" means an individual (including any faculty) who is or has been employed by Customer. Any Student or Alumni who are also Staff are deemed Staff under this Agreement (and excluded from the Student or Alumni definition) if they have been employed by Customer within the last twelve months.
- "Student" means an individual who has been registered for classes offered by Customer within the last twelve months.
- "Student Data" means student PII as well as student generated content and is the property of the Customer or the party who provided such data (such as the student or parent).
- "Subcontractor" (or "Processor") means trusted business partners that College Board may engage pursuant to a written agreement and under the direction of College Board, to help process and score our tests; to process a payment, to create an account on our website, for website management; for customer service; and with your consent, to send you marketing emails communications or to send your scores to your designated recipients. See below for a list of College Board subcontractors who may perform the services and exam administration related to these Services. Notice of changes in designated subcontractors will be updated in these Terms of Service.
- "Suspend" means the immediate disabling of access to the Services, or components of the Services, as applicable, to prevent further use of the Services.
- "Term" means the term of the Agreement, which will begin on the Effective Date and continue until the earlier of: (i) the end of the last Services Term or (ii) the Agreement is terminated as set forth herein.
- "Third Party Request" means a request from a third party for records relating to an End User's use of the Services. Third Party Requests can be a lawful search warrant, court order, subpoena, other valid legal order, or written consent from the End User permitting the disclosure.

College Board Subcontractors

Academic Merit LLC
(dba FineTune)
281 Summer St. 2nd Floor
Boston, MA 02210

Alorica Inc.
5 Park Plaza, Suite 100
Irvine, CA 92614

Educational Testing Service
660 Rosedale Road
Princeton, NJ 08541

Paperscorer
32985 Hamilton Court East, Suite 121
Farmington Hills, MI 48334