



IMPORTANT: DO NOT ALLOW LICENSED PRODUCT (AS DEFINED BELOW) TO BE USED WITHOUT READING THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY USING THE LICENSED PRODUCT AS PERMITTED BY THIS AGREEMENT, CUSTOMER (AS DEFINED BELOW) AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

LICENSED PRODUCT AGREEMENT – GRADPOINT PRODUCT

This Licensed Product Agreement (the “Agreement”) is between Pearson Online & Blended Learning K-12 USA (“OBL”) and the school, school district or other entity licensing the GradPoint product from OBL (“Customer”).

1. **DEFINITIONS.** The following terms, when capitalized in this Agreement, shall have the following meanings:
 - 1.1. **“Custom Courses”** shall have the meaning set forth in Section 3.3.
 - 1.2. **“Documentation”** shall mean all written user information, whether in electronic, printed or other format, delivered to Customer by OBL with respect to the Licensed Product, including, but not limited to, user manuals and training materials.
 - 1.3. **“Licensed Product”** shall mean OBL’s GradPoint product, which is comprised of virtual course content as well as a platform through which such course content is delivered. As such, Licensed Product when used herein refers to: (a) all course content made available to Customer and its users as part of the GradPoint product; (b) the platform through which this content is delivered to Customer; and (c) all related Documentation. This Agreement applies only to the GradPoint product, and not to other products or content delivered by OBL or its affiliates, even if ordered concurrently with the GradPoint product. Various course content packages are available to be licensed in connection with the GradPoint product. Customer shall receive access only to the courses ordered by Customer and for which Customer has paid the applicable Subscription Fees. To the extent that OBL releases and makes available to Customer any future enhancements or upgrades to the GradPoint platform or the specific GradPoint course content licensed by Customer hereunder, such enhancements or upgrades will also be deemed Licensed Product and are subject to, and will be governed by, the terms of this Agreement.
 - 1.4. **“License Term”** shall mean the term of Customer’s license to access and use the Licensed Product, including the initial term described in Section 8.1 and any renewal terms entered into pursuant to such Section. The License Term may vary for licenses purchased at different times.
 - 1.5. **“Subscription Fee”** shall mean the fee payable to OBL for the initial or any renewal License Term for the license of the Licensed Product and access to the support services provided by OBL as described herein.
2. **LICENSE.**
 - 2.1. **License Grant.** Subject to the terms and conditions set forth herein, OBL grants to Customer a restricted, non-exclusive, non-transferable license to use the Licensed Product for the applicable License Term for which fees have been paid. The Licensed Product shall be accessed only by students or authorized personnel of Customer. If Customer subsequently purchases additional licenses, such licenses shall also be subject to the terms and conditions of this Agreement (unless OBL provides new terms and conditions to Customer at the time such additional licenses are purchased, in which case such new terms and conditions shall apply). Customer acknowledges and agrees that OBL may, from time to time and at its sole discretion, (i) add new content to the Licensed Product, or (ii) limit, modify or discontinue any existing content made available within the Licensed Product.
 - 2.2. **Licensing Models.** The Licensed Product is available to be licensed pursuant to a variety of licensing models, including the following:
 - 2.2.1. If Customer purchases a quantity of “concurrent user” licenses, this means that there is no limit to the number of users who may be assigned by Customer to use the Licensed Product, but the number who may do so simultaneously cannot exceed the number of concurrent user licenses purchased.
 - 2.2.2. If Customer purchases a quantity of “per seat” licenses, then each “seat” entitles one named student to be assigned to use the Licensed Product. After that student completes all assigned courses or otherwise leaves the program, the seat may be reassigned by Customer to another student if the subscription period for such seat has not yet expired. For example, if Customer purchases fifty “per seat” licenses for one year, Customer will initially be able to assign fifty students to use the applicable courses licensed. (A given student may sign up for multiple courses, but this still counts as occupying only one seat.) If five of these students complete their coursework after three months and vacate the program, Customer may assign five new students to take over those seats for the balance of the year. Thus, in this example with fifty seats, Customer is limited at any given time to fifty students assigned to the program, but Customer may have as many students rotate through the program as is feasible within Customer’s defined license period.
 - 2.2.3. If Customer purchases a quantity of “per course enrollment” licenses, this means that the Customer has purchased a number of licenses, each of which will entitle a single student to enroll in a course designated as a one-semester course, or the Customer can use two licenses to enroll in a two-semester course. For example, if Customer purchases fifty “per course enrollment” licenses, then Customer can choose to have twenty-five students enroll in a two-semester course, or have fifty students enroll in a one-semester course, or even have twenty students enroll in two-semester courses, and ten students enroll in a one-semester course.
 - 2.3. Other licensing models may be available, in which case additional details regarding such options will be included on the price

quotation or other order documentation supplied by OBL to Customer during the sales process. Regardless of the licensing model used, Customer is limited to using only those courses specifically licensed by Customer, which may include the entire catalog of available courses or a defined subset thereof. OBL may monitor Customer's usage of the Licensed Product to ensure compliance with the terms of the licenses purchased by Customer.

3. **OWNERSHIP; RESTRICTIONS ON USE.**

3.1. **Title.** The Licensed Product is protected by trade secret and/or copyright law and is proprietary to OBL and/or its licensors. Title to all complete or partial copies, and all applicable rights to copyrights, patents and trade secrets in the Licensed Product and any derivative works thereof, are and shall remain the property of OBL or its licensors.

3.2. **Confidentiality.** Customer shall maintain the confidentiality of the Licensed Product, and, except as expressly provided herein, Customer shall not, and shall not allow any other person or entity to, reproduce, copy, create derivative works, repost, distribute, download or otherwise transfer to any other system or media any portion of any Licensed Product without the written consent of OBL. Customer shall not, and shall not allow others to, reverse engineer any software that is provided as part of the Licensed Product.

3.3. **Customer and Third-Party Courses.** It is permissible under this Agreement for the Customer, to the extent the Licensed Product contains such functionality, to import an online course developed by Customer on its own into the Licensed Product, or to create a course from OBL-provided content and other content created or supplied by Customer, subject to Section 3.4. Such courses are referred to herein as "Custom Courses." It is not permissible, however, for the Customer to license or purchase an online course from a third party and then import such course into the Licensed Product.

3.4. **Customer Content and Customer Data.**

3.4.1. To the extent that the Licensed Product allows Customer or its end users to create Custom Courses or otherwise input any content into the system, Customer represents and warrants that the inclusion of any content input or otherwise included in the system by Customer or its end users will not infringe any patent, copyright, trade secret or other proprietary right of any other party. Customer shall defend, indemnify, and hold harmless OBL and its licensors, and their respective directors, officers, employees and agents from and against any and all damages, losses, expenses, costs (including, without limitation, attorneys' fees), claims, suits, actions, judgments, or other liabilities arising out of or in any way related to any breach or alleged breach of the foregoing warranty or any claim that any such content infringes any proprietary right of any third party. Customer acknowledges and agrees that OBL has no obligation to screen, edit or review any content that Customer or its end users may include in the system as part of any Custom Courses or otherwise. However, Customer acknowledges and agrees that OBL may delete, or require Customer to delete, any such content upon OBL's determination, at its sole discretion, that such content (i) is or may be infringing upon the intellectual property rights of a third party, (ii) is interfering or may interfere in any way with the operation of the Licensed Product,

or (iii) is indecent, obscene, libelous, slanderous, illegal, or otherwise inappropriate.

3.4.2. OBL and its licensors retain all copyrights and other intellectual property rights in and to all content and materials included in the Licensed Product as originally delivered by OBL to Customer. To the extent any Custom Course includes any content provided by OBL or its licensors, or is based on or derived from such content provided by OBL or its licensors (i.e., such course was not developed entirely by Customer using its own content and/or other content not provided by OBL or its licensors), Customer may not use or distribute such Custom Course in any manner other than within the Licensed Product pursuant to the terms of this Agreement.

3.4.3. As part of its routine maintenance efforts, OBL may delete any content input, uploaded or posted in the Licensed Product by Customer after one (1) calendar year, and student data that has remained inactive for at least one (1) calendar year. In addition, upon expiration or termination of this Agreement, OBL may delete any of Customer's student data or any content input, uploaded or posted in the Licensed Product by Customer pursuant to OBL's standard retention practices for the Licensed Product. It is Customer's responsibility to extract any reports or student data that Customer desires to retain prior to expiration or termination of its license to the Licensed Product.

3.5. **Access.** OBL reserves the right to require Customer to suspend access to the Licensed Product to any end user (i) who inputs, uploads or posts inappropriate content; (ii) who attempts to "hack" the Licensed Product or otherwise use portions of the Licensed Product not intended to be accessed by such end user; (iii) who uses log-in credentials of another user without authorization; or (iv) whose actions otherwise violate the terms of this Agreement or any terms of use posted or made available to end users within the Licensed Product.

4. **RESPONSIBILITIES.** OBL's responsibility is only to deliver the contracted-for Licensed Product, and Customer shall be responsible for the day-to-day management of its learning program and shall perform any responsibility not explicitly delegated to OBL under the terms of this Agreement, including, but not limited to: enrollment, placement, special education services, government reporting, standardized testing, and tracking graduation requirements and issuing diplomas (if applicable), all in accordance with Customer's policies. Customer acknowledges that OBL is not serving as the credit-granting institution under this Agreement.

5. **PAYMENT TERMS.** Customer's Fees for the initial License Term, along with any fees for training, implementation or other services ordered by Customer, shall be due and payable in accordance with OBL's invoice terms. Customer agrees to pay to OBL all such fees, and all applicable sales, use or other taxes, however designated, except for taxes based on OBL's income. Customer shall pay a monthly charge of 1.5% (18% annually) on all amounts not paid when due, or, if a lower maximum rate is established by law, then such lower maximum rate. Customer shall provide OBL with proof of any claimed tax exemption, and shall be responsible for the payment of all applicable penalties, taxes and costs that may arise if the tax exemption proves inapplicable.

6. **COMPATIBILITY.** Customer shall be responsible for the provision of a computing environment compatible with OBL's standard specifications for the Licensed Product, including

maintaining all necessary connections to the Internet as may be required to access the Licensed Product. Specifications relating to the foregoing are available upon request. Such specifications are subject to change over time based on changes in technology or Licensed Product delivery methods.

7. **HOSTING SERVICES; SYSTEM AVAILABILITY.** The Licensed Product will be hosted for Customer by OBL (or by OBL's designee; OBL may use in-house services or a third party service provider to provide any hosting services in connection with the Licensed Product). OBL will attempt to schedule any planned maintenance or upgrades at times when usage of the Licensed Product in the continental United States is typically low, and will attempt to communicate any outages associated with planned maintenance or upgrades to its customers in advance through its support website, via email, or through notifications within the Licensed Product. In addition, Customer acknowledges that OBL may take the Licensed Product down from time to time as necessary to perform unscheduled maintenance in response to emergencies or other unforeseen circumstances. Customer further acknowledges that the Licensed Product is Internet accessible and that as such, in connection with Customer's use of the Licensed Product, some information may be transmitted over local exchange and Internet carrier lines, as well as through routers, switches and other devices owned, maintained and serviced by third parties, all of which are beyond the control of OBL and which can be impaired or disrupted through no fault of OBL. OBL cannot control the flow of data over the Internet and assumes no liability for or relating to the delay, failure, interruption or corruption of any data or other information transmitted in connection with use of the Licensed Product.

8. **TERM AND TERMINATION.**

8.1. **Term.** The term of the Agreement (including any potential renewal periods) will be as specified in the Agreement, and may be renewed in writing signed by OBL and Customer. If this Agreement is terminated due to non-payment, and then OBL subsequently reinstates Customer's access to the Licensed Product upon later receiving payment, any such reinstated access shall remain subject to the terms of this Agreement (unless OBL provides new terms and conditions to Customer at the time of such reinstated access, in which case such new terms and conditions shall apply). The Parties agree to honor their respective responsibilities under this Agreement if the terms of Licensed Products whose terms commenced within the Term extended beyond the Term. In the event the parties determine to negotiate a continuation of their relationship beyond the expiration date, and such renewal negotiations continue beyond the expiration date such that OBL continues to provide services consistent with its obligations set forth in this Agreement, without a renewal agreement being executed by and between the parties, the terms and conditions of this Agreement shall continue to govern the relationship of the parties until such time as the parties: (i) execute a new agreement; or (ii) the parties' relationship terminates without a new agreement being executed.

8.2. **Termination.** Either party shall have the right to terminate this Agreement in whole or in part upon thirty (30) days written notice to the other party, in the event the other party materially breaches this Agreement and fails to correct such breach within such thirty (30) day period; provided, however, that OBL shall have the right to suspend performance under this Agreement at any time that

Customer is not current in its payment obligations, and OBL may terminate this Agreement immediately upon written notice in the event Customer breaches, or threatens to breach, any of its obligations under Section 3. If another party is responsible for payment on Customer's behalf, Customer acknowledges that the failure of such other party to pay fees for Customer's access to the Licensed Product when due is grounds for termination under this Section. Upon termination or expiration of this Agreement, Customer's ability to use the Licensed Product, including any Custom Courses which contain, or are based on or derived from, content from OBL or its licensors, shall cease immediately. Sections 3.1, 3.2, 4, 10, 11 and 15 shall survive the termination of this Agreement.

8.3. **Termination Due to Customer's Non-Payment.** OBL may, at its sole discretion, immediately terminate or suspend its performance of the Agreement, including suspension of access to the Licensed Product, any time Customer is more than thirty (30) days in arrears on its payment obligations to OBL. In the event of termination or suspension by OBL under this section, Customer's access to the Licensed Product (including all Students and Authorized Users whose right of access to the Licensed Product is derived from OBL's contractual relationship with Customer) shall be discontinued without further notice. In the event of a suspension of access to the Licensed Product, access may, at the sole discretion of OBL, be restored when Customer's payment obligations are brought current and OBL has received adequate assurances that Customer's payment obligations to OBL shall remain current for the remainder of the term of the Agreement.

9. **LIMITED WARRANTY.** During the term of this Agreement, OBL shall attempt to correct any material failure of the Licensed Product to conform substantially to the applicable description and specifications contained in the standard user Documentation delivered with the Licensed Product (collectively, "Errors"), after receiving written notification of such Error from Customer. If OBL is unable to correct the Error after a reasonable opportunity, OBL shall, at Customer's request, reimburse Customer for a prorated portion of the Fees paid to OBL hereunder for Customer's current License Term, computed from the date of Customer's notice as described above through the scheduled expiration date of the current License Term, and Customer's license to use the Licensed Product shall terminate. The foregoing remedy shall not apply to Errors resulting from Customer's acts or omissions. The foregoing states the complete and entire remedies that Customer has under this warranty. In no event will OBL have any liability under this limited warranty to provide a refund or credit with respect to amounts paid by Customer for license periods prior to the then-current License Term.

10. **DISCLAIMER OF OTHER WARRANTIES. THE WARRANTIES SET FORTH IN SECTION 9 ABOVE CONSTITUTE THE ENTIRE STATEMENT OF OBL AS TO WARRANTIES FOR THE LICENSED PRODUCT, SUPPORT, SERVICES AND OTHER ITEMS PROVIDED HEREUNDER. OBL DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE RESULTS OF USING THE LICENSED PRODUCT IN TERMS OF ITS CORRECTNESS, PEDAGOGICAL EFFECTIVENESS OR OTHERWISE. CUSTOMER CANNOT ASSUME THE PERFORMANCE OF THE**

PLATFORM OR OTHER SUCH TECHNOLOGY WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ANY PROBLEMS RELATED THERETO WILL BE CORRECTED, DESPITE OBL'S REASONABLE EFFORTS. ACCORDINGLY, EXCEPT FOR ANY EXPRESS WARRANTIES GIVEN IN THE AGREEMENT: (a) THE PLATFORM AND THE CONTENT PROVIDED UNDER THE AGREEMENT ARE PROVIDED "AS IS" TO THE MAXIMUM EXTENT PERMITTED BY LAW; AND (b) OBL AND ITS LICENSORS DISCLAIM ANY AND ALL WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SECURITY, TITLE, NONINFRINGEMENT, COURSE OF DEALING, OR COURSE OF TRADE. EXCEPT AS SPECIFICALLY PROVIDED IN THE AGREEMENT, NEITHER OBL NOR ITS LICENSORS WARRANT THAT THE FUNCTIONS OR INFORMATION CONTAINED IN THE PLATFORM AND THE CONTENT PROVIDED UNDER THE AGREEMENT WILL MEET ANY REQUIREMENTS OR NEEDS THAT CUSTOMER OR THE AUTHORIZED USERS MAY HAVE, OR THAT THE PLATFORM AND THE CONTENT ARE COMPATIBLE WITH ANY PARTICULAR OPERATING SYSTEM. FURTHER, EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, OBL MAKES NO GUARANTEE OF ACCESS TO OR ACCURACY OF THE CONTENT ACCESSED THROUGH THE PLATFORM. IN NO EVENT WILL OBL BE LIABLE FOR ANY UNAUTHORIZED ACCESS TO, OR ALTERATION, THEFT OR DESTRUCTION OF INFORMATION DISTRIBUTED OR MADE AVAILABLE FOR DISTRIBUTION VIA THE PLATFORM.

11. **LIMITATION OF LIABILITY.** OBL AND ITS LICENSORS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOST FUNDING, LOST SAVINGS OR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM THIS AGREEMENT, THE LICENSED PRODUCT, SUPPORT, SERVICES OR OTHER ITEMS PROVIDED HEREUNDER, OR ARISING FROM THE USE OF OR INABILITY TO USE THE LICENSED PRODUCT, EVEN IF OBL OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE LIABILITY OF OBL AND ITS LICENSORS FOR ANY CLAIM UNDER THIS AGREEMENT EXCEED THE FEES PAID FOR THE LICENSED PRODUCT OR OTHER ITEM OR SERVICE ON WHICH THE CLAIM IS BASED DURING CUSTOMER'S THEN-CURRENT LICENSE TERM.

12. **THIRD PARTY REQUIREMENTS.** To the extent that Customer uses any Licensed Product offering, Customer is responsible for ensuring that the courses meet the requirements of any third-party organization that Customer or its students desire to satisfy. For example, the National Collegiate Athletic Association ("NCAA") has specific guidelines regarding the acceptance of distance learning or credit recovery courses for student athletes. Customer accepts responsibility for these criteria to the extent that Customer uses any Licensed Product offering for students who desire to meet NCAA

eligibility criteria. OBL is a curriculum provider, not an accredited or credit-granting educational institution. Further, the Licensed Product may include certain courses that are designed to support Customer's implementation of an Advanced Placement ("AP") program; however, the courses have not been approved by the College Board as AP courses. If Customer desires to use any Licensed Product courses as part of an approved College Board AP curriculum, then it is Customer's responsibility to complete all applicable College Board audit procedures with respect to Customer's AP program.

13. **PRODUCT MONITORING AND RESEARCH.** In accordance with OBL's privacy statement for the Licensed Product, OBL tracks a variety of data regarding usage of the Licensed Product. Among other things, OBL may use cookies to measure traffic patterns, personalize content and control security. OBL may record IP addresses or other information (such as the browser type used to access the Licensed Product's website; the country, state and telephone area code where the user's Internet service provider's servers are located; and the pages that users viewed during their visit). Collection of IP addresses is generally for system administration and security purposes, to gather broad demographic information and to monitor the level of activity on the website. OBL may also use a variety of analytical tools to obtain aggregated data (not including any personally identifiable information regarding Customer's students or other users) regarding usage of the Licensed Product and any content accessed through the Licensed Product, in order to assist OBL in providing, maintaining, improving and promoting OBL's products and services.

14. **Protection of Student Records, and Compliance.**

14.1. The Parties acknowledge and agree that under state law and under FERPA, including any regulations promulgated thereunder, each Party has certain obligations with regard to maintaining the security, integrity and confidentiality of "education records", as that term is defined by FERPA, and not re-releasing to third parties who are not authorized under FERPA, and that have no legitimate educational interest for access to Student Records. The Parties agree that they shall perform their obligations under the Agreement in compliance with FERPA and any regulations promulgated thereunder. The Parties designate the staff, employees and volunteers who are providing educational or administrative services to the Student as agents of the Customer having a legitimate educational interest and thus entitled to access to educational records under FERPA. The Parties shall also maintain Student Records in accordance with any other applicable state, local and federal laws and in accordance with these Terms.

14.2. The Parties agree to comply with federal and state privacy laws, including, but not limited to FERPA and the regulations promulgated thereunder, and other similar federal or state laws, administrative rules and regulations restricting commercial use of, or otherwise regulating, Student information. Customer further agrees to limit access by its employees and agents to educational records containing personally identifiable information to solely those of its employees and agents who have a legitimate educational interest for such information. By designating an individual as authorized to have Licensed Product access to educational records and other student related information, Customer represents such access is in compliance with all such federal and state privacy laws.

15. **GENERAL.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the state of Maryland. This Agreement is subject to the “Standard Terms” located at <https://www.pearson.com/obl-terms-conditions>. In the event this Agreement conflicts with the Standard Terms, this Agreement prevails. This Agreement (including the Standard Terms), along with invoices issued hereunder, constitutes the complete agreement between Customer and OBL, and supersedes all prior discussions, understandings, arrangements and negotiations between the parties with respect to its subject matter. Any additional or variant terms and conditions submitted by Customer, in a purchase order or otherwise, with respect to the Licensed Product or any support or other services shall be of no effect. No action, regardless of form, may be brought by Customer more than one year after the cause of action has arisen. In the case of notices to OBL, such notices shall be sent to Pearson Online & Blended Learning, Attn.: Legal Department, 10960 Grantchester Way, Two Merriweather, Columbia, MD, 21044. In the case of notices to Customer, such notices shall be sent to OBL’s address of record for Customer. Either party may change its notice address by notifying the other in like manner.