

PhET Premium for Classroom Use License Purchase Agreement

This PhET Premium for Classroom Use License Purchase Agreement (the “Purchase Agreement”) is between the purchaser (“Licensee”) and the Regents of the University of Colorado, a body corporate, for and on behalf of the University of Colorado Boulder, a public educational institution of the State of Colorado (“University”), and University’s PhET Interactive Simulations project (“PhET”), having an office at 4845 Pearl East Circle, Suite 300, Boulder, CO 80301.

University provides access to the PhET Premium for Classroom Use services to purchasers on an annual basis. Licensee desires to access the PhET Premium for Classroom Use services, and University desires to provide Licensee access to the PhET Premium for Classroom Use services, subject to the terms and conditions of this Purchase Agreement, the PhET Premium Services for Classroom Use Terms of Service (<https://phet.colorado.edu/files/premium/classroom-terms-of-service.pdf>), and the PhET Interactive Simulations Privacy Policy (<https://phet.colorado.edu/en/privacy-policy>).

The Purchase Agreement governs Licensee’s purchase of access to the PhET Premium for Classroom Use services on behalf of itself and its Authorized Users. Use of the PhET Premium for Classroom Use services by Licensee and its Authorized Users will be governed by the terms and conditions of the PhET Premium for Classroom Use Terms of Service.

By accepting this Purchase Agreement you, on behalf of Licensee, accept and agree to be bound by the terms of this Purchase Agreement and the PhET Premium Services for Classroom Use Terms of Service and acknowledge that you are authorized by Licensee to agree to the terms of this Purchase Agreement and the PhET Premium for Classroom Use Terms of Service on behalf of Licensee.

1. Definitions

- (a) “Authorized User” means those individuals (i) who are authorized by Licensee to access and use the Services under this Purchase Agreement and (ii) for whom access to the Services has been purchased under this Purchase Agreement.
- (b) “License Fee” means the dollar amount, specified at the point of sale, per Authorized User seat.

- (c) “License Period” means that period commencing on the Start Date and ending on the date that is 1 year from the Start Date (the “Termination Date”). Unless Licensee purchases a new license, Licensee and its Authorized Users will no longer have access to the Services as of the Termination Date.
- (d) “Non-Commercial Educational Purposes” means, and is limited to, teaching the students enrolled in or assigned to an Authorized User’s class(es) or classroom(s).
- (e) “Payment Date” means (i) for purchases made by Purchase Order, the date 30 days following the Start Date or (ii) for purchases made by credit card, the date of the sale.
- (f) “Services” means the PhET Premium for Classroom Use services, which includes the PhET Studio services.
- (g) “Start Date” means the date selected by Licensee when registering for access to the Services as the date the License Period will begin.
- (h) “Terms of Service” means the PhET Premium for Classroom Use Terms of Service available at <https://phet.colorado.edu/files/premium/classroom-terms-of-service.pdf>.

2. Access to the Services

Subject to and conditioned on Licensee’s payment of the License Fee, including applicable taxes, and compliance with the terms and conditions of this Purchase Agreement and the Terms of Service, University will provide Licensee and its Authorized Users with access to the Services during the License Period, solely for use by Authorized Users in accordance with the terms and conditions in this Purchase Agreement and the Terms of Service. Such use is limited to Non-Commercial Educational Purposes. Each Authorized User will be provided access to the Services through the Authorized User’s PhET website user account (“PhET Account”). The total number of Authorized Users will not exceed the number of seats purchased by Licensee. Each Authorized User must have their own unique PhET Account.

3. Fees and Payment

- (a) License Fee
 - (i) Licensee shall pay the License Fee and applicable taxes for each Authorized User seat for the License Period. Licensee’s access will terminate at the end of the License Period, unless Licensee

purchases access for a new License Period prior to the end of the current License Period.

- (ii) Additional Authorized Users. In the event that Licensee desires to purchase seats for additional Authorized Users during the current License Period subject to the terms of this Purchase Agreement, Licensee will be charged an additional pro-rated License Fee per seat based on the time remaining during the License Period.

(b) Payment

- (i) For purchases made through the PhET Premium for Classroom Use website using a Credit Card, ACH Bank Transfer or e-Check, Licensee will be charged, and payment is due, prior to being granted access to the Services.
 - (ii) For purchases made using a Purchase Order (“PO”), University shall invoice Licensee for the fees due, and Licensee shall make payment in full within 30 days of the Start Date. Licensee’s access to the Services will be provided after University’s receipt of payment in full. To the extent any term of the PO conflicts or is inconsistent with any term of this Purchase Agreement, the terms of this Purchase Agreement supersede and control. University reserves the right to negotiate any legal terms listed in a PO. University will not accept any obligations nor will make any warranties beyond those obligations and warranties set forth in this Purchase Agreement and the Terms of Service.
 - (iii) If the payment is not received by the due date, access to the Services will be suspended until payment is received.
- (c) Taxes. The License Fee set forth above does not include sales or value-added tax, and applicable tax may be calculated and added at the time the purchase is completed. Depending on where Licensee is located, such tax may not be visible until Licensee receives a receipt or confirmation of purchase for the purchase. In certain jurisdictions, local laws require that prices include all applicable taxes, in which case this will be indicated at the time of purchase.

4. Licensee Responsibilities

- (a) Passwords. Each Authorized User must have created a PhET Account in order to access the Services, including the creation of a username and password (the “Login Information”). Each Authorized User’s Login Information is personal to that Authorized User and may only be used

by or on behalf of that Authorized User. Licensee and the Authorized Users may not share the Login Information with any third party and shall take reasonable steps to prevent unauthorized use of the Login Information. Unauthorized access to or use of the Services by someone using an Authorized User's Login information may be attributed to such Authorized User.

- (b) Responsibility for Authorized Users. Licensee is responsible and liable for all uses of the Services resulting from access provided by Licensee, directly or indirectly, whether such access or use is permitted by or in violation of this Purchase Agreement or the Terms of Service. Without limiting the generality of the foregoing, Licensee is responsible for all acts and omissions of the Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Purchase Agreement or the Terms of Service if taken by Licensee will be deemed a breach of this Purchase Agreement or the Terms of Service, as applicable, by Licensee. Licensee shall use reasonable efforts to make all Authorized Users aware of this Purchase Agreement's provisions and the provisions of the Terms of Service as applicable to such Authorized User's use of the Services, and shall cause Authorized Users to comply with such provisions.

5. Licensee Data and Privacy

- (c) Information Collected to Provide the Services. University will collect the following contact information of Licensee's account administrator(s) in order to set up Licensee's account: billing contact name, email, phone, and address. We use this contact information for necessary business purposes (e.g., providing invoices and account-related services). University may also share the administrator's contact information with University's third-party payment and tax processors only to the extent necessary to provide the Services (e.g., for billing purposes). Information shared and entered directly with these processors is subject to the third-party's data policy. For questions related to the administrator's data, email to phet-studio@colorado.edu.
- (d) Information Collected to Identify Authorized Users. Additionally, University will collect from Licensee's administrator information necessary to identify any Authorized User(s) and any additional Licensee administrator(s), in order to invite these individuals to create accounts. University's use of any personally identifiable information of all Authorized User(s) and Licensee Administrator(s) collected and maintained by University shall be in accordance with the PhET Privacy Policy that is available at <https://phet.colorado.edu/en/privacy-policy>.

6. Intellectual Property Rights

- (a) University's Rights. As between Licensee and University, University owns all right, title, and interest, including all intellectual property rights, in and to the Services and any content incorporated within the Services, including, but not limited to, the PhET simulations.
- (b) Feedback. If Licensee or any of its Authorized Users, employees, agents, or representatives sends or transmits any communications or materials to University by mail, email, telephone, or otherwise, suggesting or recommending changes to the Services, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("Feedback"), University is free to use such Feedback, including any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, irrespective of any other obligation or limitation between the parties governing such Feedback, without any attribution or compensation to any party, for any purpose whatsoever, although University is not required to use any Feedback.

7. Limited Warranty; Warranty Disclaimer

- (a) No Guarantee of Uptime. University warrants that the Services will conform in all material respects to University's published specifications available at <https://phet.colorado.edu/> when accessed and used in accordance with such published specifications. University does not make any representations or guarantees regarding uptime or availability of the Services, though University does take significant steps to maximize availability.
- (b) Disclaimer of Warranties. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 7(a), THE SERVICES ARE PROVIDED "AS IS" AND UNIVERSITY HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. UNIVERSITY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 6(a), UNIVERSITY MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET LICENSEE'S, ANY AUTHORIZED USER'S, OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE

COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. UNIVERSITY HAS NO OBLIGATION TO INDEMNIFY OR DEFEND LICENSEE OR ANY AUTHORIZED USER AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY.

8. **Liability; Limitation of Liability; Governmental Immunity**

- (a) **Liability.** Licensee assumes all liability for damages which may arise from its use of the Services. University will not be liable to Licensee or any Authorized User for any loss, claim, or demand made by Licensee, or made against the Licensee by any other party, due to or arising from the use of the Services by Licensee or its Authorized Users.
- (b) **Limitation of Liability.** IN NO EVENT WILL UNIVERSITY BE LIABLE UNDER OR IN CONNECTION WITH THIS PURCHASE AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (i) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (ii) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (iii) LOSS OF GOODWILL OR REPUTATION; (iv) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (v) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER UNIVERSITY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL UNIVERSITY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS PURCHASE AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO UNIVERSITY UNDER THIS PURCHASE AGREEMENT IN THE 1-YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.
- (c) **Governmental Immunity.** Nothing in this Purchase Agreement or Terms of Service is intended or may be construed as a waiver, either express or implied, of any of the immunities, rights, benefits, defenses or protections provided to University under governmental or sovereign immunity laws from time to time applicable to University, including,

without limitation, the Colorado Governmental Immunity Act (C.R.S. §§ 24-10-101, et seq.) and the Eleventh Amendment to the United States Constitution. Regardless of venue, jurisdiction, or choice of law for any dispute arising from this Purchase Agreement, this Article 7(c) and the governmental and sovereign immunities afforded University as a state institution are to be governed and construed in accordance with the laws of the State of Colorado.

9. Term and Termination

- (a) Term. The Term of this Purchase Agreement commences on the date that Licensee agrees to the terms of this Purchase Agreement and expires on the Termination Date of the License Period, as applicable, unless earlier terminated pursuant to the provisions of this Purchase Agreement.
- (b) Termination of this Purchase Agreement
 - (i) Termination by University. University may terminate this Purchase Agreement, effective on written notice to Licensee, if Licensee or any Authorized User materially breaches any term of this Purchase Agreement or the Terms of Service, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured for 30 days after University provides Licensee with written notice of such breach.
 - (ii) Termination by Licensee. Licensee may terminate this Purchase Agreement in the event of a License Transfer upon written notice to University in accordance with Section 10. “License Transfer” means the assignment or transfer of Licensee’s PhET Account to a new paid license to the Services owned by a third party (e.g. transfer of an individual’s PhET Account to a license administered by the individual’s employer) and there is Term remaining and no other Authorized Users under this Purchase Agreement.
- (c) Removal of Authorized User Access and the Authorized User’s Content. University may terminate an Authorized User’s access to the Services and may deactivate any content created by the Authorized User using the Services, effective on written notice to Licensee, if the Authorized User materially breaches any term of this Purchase Agreement or the Terms of Service, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured for 30 days after University provides Licensee with written notice of such breach.

(d) Effect of Expiration or Termination of this Purchase Agreement

- (i) Upon expiration or early termination of this Purchase Agreement, except in the event of a License Transfer, Licensee and Authorized Users shall cease all use of the Services, and Licensee's and Authorized Users' access to the Services will be disabled.
- (ii) No expiration, early termination, or removal of an Authorized User's access, except in the event of a License Transfer, will affect Licensee's obligation to pay all fees that may have become due before such expiration or termination or entitle Licensee to any refund except as set forth in subsection (iv).
- (iii) In the event access to the Services by an Authorized User is removed under Section 8(c), Licensee may assign that Authorized User seat to another user.
- (iv) Allowed Refunds.
 - (A) If Licensee makes a duplicate purchase, University shall refund the amounts paid for the duplicate purchase within 30 days of University's receipt of notice of the duplicate purchase.
 - (B) In the event of a License Transfer, University shall refund the amount paid, pro-rated to the remaining Term, within 30 days of University's receipt of notice of the License Transfer.
- (v) Survival. Upon expiration or termination of this Purchase Agreement, the provisions of Sections 5 (Intellectual Property Rights); 6 (Limited Warranty; Warranty Disclaimer); 7 (Liability; Limitation of Liability; Governmental Immunity); and 8 (Term and Termination) survive termination.

10. Price changes and new Service Plans

- (a) Price Changes. University may change the price for the Services at any time Provided that price changes that occur during the Term will not be effective unless and until Licensee enters into a new Purchase Agreement for a new License Period. If Licensee does not agree with the price change, Licensee may elect not to enter into a new Purchase Agreement.

- (b) No Refunds. University will not provide any refund if the price for the Services is reduced during the Term or if University offers any promotional pricing or changes the content or features of the Services during the Term.
- (c) Modification to the Services. University may decide to change or replace the Services at any time. If the Services are changed or replaced during the Term, Licensee will automatically be provided access to the Services at the pricing tier that corresponds with the pricing of its original pricing tier, except that if there are no Services provided at the same pricing tier, Licensee will automatically be provided access to the Services at the next lower pricing tier, unless Licensee terminates this Purchase Agreement as set forth in Section 8(b) or purchases an upgrade to a higher pricing tier.

11. Notice

- (d) To University. Any notice or other communication to be provided to University under this Purchase Agreement shall be sent via email to: phet-studio@colorado.edu. Notice to University under this Purchase Agreement is sufficiently given and effective upon receipt by the sender of written confirmation from University of receipt of the notice or communication.
- (e) To Licensee. Any notice or other communication to be provided to Licensee or an Authorized User under this Purchase Agreement shall be sent via email to, for Licensee, the email address provided by Licensee at the time of the purchase and, for an Authorized User, to the email address provided at the set-up of the Authorized User's PhET Account. Notice to Licensee or an Authorized User is sufficiently given and effective one business day after the University sent the email.

12. General

- (a) Accurate Information. By agreeing to the terms of this Purchase Agreement, Licensee affirms that its registration information, payment details, and any other information that it submits to University are true, accurate, and complete, and Licensee agrees to maintain the accuracy of this data during the Term and any active License Period. If any information provided by Licensee is incorrect or inaccurate, Licensee should correct such information in its account settings.

- (b) Entire Agreement. This Purchase Agreement, together with the Terms of Service, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Purchase Agreement and the Terms of Service and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Purchase Agreement and the Terms of Service, the terms of this Purchase Agreement will govern.
- (c) Assignment. This Purchase Agreement is binding upon and inures to the benefit of the respective successors and assigns of the parties. Licensee may not assign its rights in this Purchase Agreement without prior written approval by University.
- (d) Waiver. No waiver by University of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by University. Except as otherwise set forth in this Purchase Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Purchase Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- (e) Force Majeure. In no event shall either party be liable to the other party, or be deemed to have breached this Purchase Agreement, for any failure or delay in performing its obligations under this Purchase Agreement, if and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, other potential disaster(s) or catastrophe(s), such as epidemics, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.
- (f) Headings. The headings are included for convenience only and may not be used to construe this Purchase Agreement.
- (g) Severability. The provisions of this Purchase Agreement are severable, and in the event that any provision of this Purchase Agreement is determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability will not in any way affect

the validity or enforceability of the remaining provisions of this Purchase Agreement.