



Because learning changes everything.®

**QUOTE PREPARED FOR:**

Florence Elementary School  
103 CENTER STREET  
FLORENCE, KY 41042-1993  
ACCOUNT NUMBER: 310817

**SUBSCRIPTION/DIGITAL CONTACT:**

Leisa Reed  
leisa.reed@boone.kyschools.us

**CONTACT:**

Leisa Reed  
leisa.reed@boone.kyschools.us

**SALES REP INFORMATION:**

Judy Lyles  
[judy.lyles@mheducation.com](mailto:judy.lyles@mheducation.com)

Section Summary	Value of All Materials		Product Subtotal
<a href="#">ALEKS 5-month</a>	\$1,485.00	\$0.00	\$1,485.00
<b>PRODUCT TOTAL*</b>	\$1,485.00	\$0.00	\$1,485.00
<b>ESTIMATED S&amp;H**</b>			TBD
<b>ESTIMATED TAX**</b>			TBD
<b>GRAND TOTAL*</b>			\$1,485.00

\* Price firm for 45 days from quote date. Price quote must be attached to school purchase order to receive the quoted price and free materials.

\*\*Shipping and handling charges are not included in the quote total. Actual shipping and handling charges will be applied at time of order. Taxes are not included in the quote total. If applicable, actual tax charges will be applied at time of order.

**Comments:**

ALEKS licenses are not transferable

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**SEND ORDER TO:**

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Email: [orders\\_mhe@mheducation.com](mailto:orders_mhe@mheducation.com) | Phone: 1-800-338-3987 | Fax: 1-800-953-8691

QUOTE DATE: 12/10/2019  
QUOTE NUMBER: JLYLE-12102019-003

ACCOUNT NAME: Florence Elementary School  
ACCOUNT #: 310817

EXPIRATION DATE: 01/24/2020  
PAGE #: 1



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Product Description	ISBN	Qty	Unit Price		Line Subtotal
<b>ALEKS 5-month</b>					
ALEKS K-6 FIVE MONTH SUBSCRIPTION	978-0-02-140703-3	60	\$24.75	\$0.00	\$1,485.00
ALEKS 5-month Subtotal:				\$0.00	\$1,485.00

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	\$0.00
<b>PRODUCT TOTAL*</b>	<b>\$1,485.00</b>
ESTIMATED SHIPPING & HANDLING**	TBD
ESTIMATED TAX**	TBD
<b>GRAND TOTAL</b>	<b>\$1,485.00</b>

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[Terms Of Service](#)

[Provisions required by Subscriber State law](#)

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**School Purchase Order Number:** \_\_\_\_\_

\_\_\_\_\_  
Name of School Official (Please Print)

\_\_\_\_\_  
Signature of School Official

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Email: [orders\\_mhe@mheducation.com](mailto:orders_mhe@mheducation.com) | Phone: 1-800-338-3987 | Fax: 1-800-953-8691

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### 1. THE SOLUTION.

MHE has developed a web-based solution (the "Solution") that enables users to access certain online products and services ("Services") and related courses, content and information (together with the Services, the "MHE Content") offered by MHE through our website (the "Website") by purchasing a subscription. MHE hereby grants Subscriber a non-exclusive, non-transferable license to access and use the Solution, and allow each administrator, faculty member, and student enrolled by Subscriber (each a designated "End User") to access and use the Solution, through the Website, solely for educational purposes. End Users may access the Solution and the MHE Content in accordance with an access method offered by MHE and selected by Subscriber. All End Users other than K-12 students will be required to agree to the [Terms of Use](#) in order to access the Solution and the MHE Content. Payments of applicable fees to MHE are due within thirty (30) days of the date of invoice unless otherwise agreed to in writing.

### 2. ADDITIONAL TERMS.

All use of the Solution and MHE Content is subject to this Agreement and any additional terms agreed to by the parties in connection with the Solution and MHE Content, including, without limitation, any prohibitions on distribution of the MHE Content to students or third

parties. Subscriber is responsible for its End Users' use of the Solution and the MHE Content.

### **3. ADDITIONAL SERVICES.**

MHE may enhance and/or expand the features of the Solution from time to time at no additional cost to Subscriber, or may provide additional content, performance or features that may, but are not required to, be added by Subscriber at additional cost to Subscriber. Any professional services to be provided by MHE to Subscriber in connection with the Solution shall be set forth in a separate Professional Services Agreement between MHE and Subscriber.

### **4. APPLICABLE PRIVACY LAW.**

Subscriber is familiar with and agrees to be responsible for compliance with the Children's Online Privacy Protection Act of 1998 ("COPPA"), the Family Educational Rights and Privacy Act and the US Department of Education's implementing regulations at 34 CFR Part 99 (collectively, "FERPA"); and all other applicable country and state laws, rules or regulations concerning the collection, use, and disclosure of Personally Identifiable Information about End Users accessing the Services that are the subject of this Agreement (collectively, "Applicable Privacy Law"). "Personally Identifiable Information", or "PII", shall mean any information relating to an identified or identifiable natural person (a "data subject") including personal data as defined under applicable local law. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. MHE acknowledges that in the course of Subscriber's use of the Services, End Users' Personally Identifiable Information may be disclosed to MHE. MHE agrees that it will comply with the requirements of Applicable Privacy Law concerning the confidentiality and release of Personally Identifiable Information. MHE acknowledges that it will be considered a "School Official" (as that term is used in FERPA) and agrees that it will comply with the requirements in FERPA concerning the confidentiality and release of Personally Identifiable Information. Per such requirements, MHE agrees that under Applicable Privacy Law, officers, employees, and agents of MHE who access Personally Identifiable Information may use such data only for the purposes for which such data has been made available to MHE. MHE and its contractors, suppliers and licensors shall only use Personally Identifiable Information for the purpose of facilitating the performance, delivery or use of the Services. MHE shall enable Subscriber to maintain compliance with Applicable Privacy Law in connection with Subscriber's use of the Solution. For further information about MHE's data privacy and security practices, please read our Privacy Notice.

### **5. SUBSCRIBER DATA.**

All information concerning Subscriber ("Subscriber Data") and Personally Identifiable Information concerning End Users shall belong to Subscriber and shall be considered Confidential Information of Subscriber subject to the terms and conditions of this Agreement. Subscriber assumes sole responsibility for: (a) providing any notices and obtaining any consent needed to the extent required under COPPA or other Applicable

Privacy Law in connection with the collection, use and/or disclosure of Personally Identifiable Information from End Users; (b) providing a reasonable means for End Users or End Users' parents, as applicable, to review Personally Identifiable Information provided by End Users to the extent required by COPPA or other Applicable Privacy Law; and (c) establishing and maintaining reasonable procedures to protect the confidentiality, security, and integrity of the Personally Identifiable Information.

#### **6. MHE USE OF SUBSCRIBER DATA.**

As a service provider to Subscriber, MHE will establish and maintain reasonable procedures in accordance with its policies and practices and Applicable Privacy Law to protect the confidentiality, security, and integrity of Personally Identifiable Information and Subscriber Data received by MHE in connection with provision of the Solution to Subscriber. Subscriber acknowledges and agrees that MHE has the right to use the Personally Identifiable Information and Subscriber Data collected in connection with provision of the Solution for (a) purposes of performing its obligations under this Agreement, and (b) for research purposes in connection with quality control and the development of revised or new products or services ("Research Purposes"), provided that such Personally Identifiable Information and Subscriber Data will be used by MHE for Research Purposes only in the aggregate and so that the privacy of the individual's Personally Identifiable Information will be maintained.

#### **7. LOCATION OF SERVICES.**

We own, control and operate the Solution from our offices in the United States. We do not represent that materials on the Solution or the Website are appropriate or available for use in other locations. Subscribers who access the Solution from outside the U.S. are responsible for compliance with local laws, if and to the extent local laws are applicable.

#### **8. OWNERSHIP.**

No intellectual property rights of any kind are assigned or transferred to Subscriber under this Agreement. Subscriber is permitted to access and use the Solution, MHE Content and any other materials provided hereunder only as expressly set forth in these Terms of Service. Subscriber is not permitted and shall have no right to use the Solution or MHE Content for any purpose other than as set forth herein. Subscriber shall not challenge, or assist any person or entity in challenging, MHE's right, title, and interest in the Solution and MHE Content.

- A. Before using any content or materials in the Solution or MHE Content designated as "open", OER, or available for public use, you should review the governing licensing restrictions associated with such content or materials. No rights of any kind are granted by MHE to use such content or materials outside of the Solution.
- B. If the Solution permits you to upload third-party content for use with your use of the Services granted herein, you represent and warrant that prior to performing any such upload you will secure all necessary rights to grant and will grant MHE the right to make such third-party content available to End Users in the same manner and to the same extent as the MHE Content provided in the Solution, and that such third-party content will not infringe any intellectual, proprietary or other rights of third parties.

Additional terms and options may be presented through the user upload interface available on the Solution which shall be in addition to, and not in lieu of, these Terms of Service.

#### **9. RESTRICTIONS ON USE.**

Subscriber shall not, and shall cause its employees, officers, directors, members, managers, partners, agents, third party service providers, or other designated persons (its "Representatives") not to, take any of the following actions: (a) creating or enabling the creation of derivative works, modifications, or adaptations of the Solution or MHE Content; (b) decompiling, reverse engineering or disassembling the Solution or MHE Content, (c) distributing or disclosing the Solution or MHE Content to third parties; (d) removing or modifying any proprietary marking or restrictive legends placed on the Solution or MHE Content; or (e) using any robot, spider, other automatic device or program or manual process to monitor, copy or reproduce the Solution or MHE Content.

#### **10. TERM AND TERMINATION.**

This Agreement shall remain in full force and effect unless and until terminated earlier as provided in these Terms of Service. In the event that Subscriber commits a material breach of this Agreement (other than breach of its payment obligations, for which MHE may terminate this Agreement immediately), MHE may terminate this Agreement on five (5) business days' prior written notice to Subscriber; provided that Subscriber fails to cure such breach within such five (5) business day period. Subscriber may terminate this Agreement by (a) providing MHE with no less than thirty (30) days' prior written notice or (b) ceasing all access to the Solution for six (6) months or longer. No sooner than one (1) year after Subscriber accepts these Terms of Service, MHE may terminate this Agreement on at least sixty (60) days prior written notice.

#### **11. EFFECT OF TERMINATION OR EXPIRATION.**

Subscriber's permission to use the Solution and MHE Content shall end immediately upon any termination or expiration of this Agreement, and Subscriber shall immediately cease any use of the Solution or MHE Content upon such termination. The following provisions shall survive any termination or expiration of this Agreement: Section 8 ("Ownership"), Section 9 ("Restrictions on Use"), this Section 11 ("Effect of Termination or Expiration"), Section 12 ("Confidentiality"), Section 13 ("Representations and Warranties; Disclaimer"), Section 14 ("Liability"), 15 ("Indemnification") and Section 16 ("Miscellaneous").

#### **12. CONFIDENTIALITY.**

The parties acknowledge and agree that, as a result of negotiating, entering into and performing this Agreement, each party (the "Receiving Party") has and will have access to certain confidential information ("Confidential Information") of the other party (the "Disclosing Party"). Personally Identifiable Information of End Users is considered Confidential Information of Subscriber. At all times the Receiving Party shall: (i) use the same standard of care to protect the Confidential Information as it uses to protect its own confidential information of a similar nature, but not less than a commercially reasonable standard of care, (ii) not use the Disclosing Party's Confidential Information other than as necessary to perform its obligations under this Agreement, (iii) not disclose, distribute, or disseminate the Confidential Information to any third party (except to Representatives, as

expressly permitted below), and (iv) only disclose the Disclosing Party's Confidential Information to its Representatives on a "need to know" basis; provided that each Representative is bound by confidentiality obligations at least as restrictive as those contained in this Agreement.

### **13. REPRESENTATIONS AND WARRANTIES; DISCLAIMER.**

Each party represents and warrants that this Agreement constitutes its valid and binding obligation and is enforceable against it in accordance with its terms. MHE DOES NOT WARRANT THE COMPLETENESS, ADEQUACY, ACCURACY, OR USEFULNESS OF THE SOLUTION, THE MHE CONTENT OR ANY OTHER MATERIALS PROVIDED HEREUNDER (COLLECTIVELY, THE "MATERIALS"). THE MATERIALS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITH ALL DEFECTS. MHE EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, ERROR-FREE OR UNINTERRUPTED OPERATION AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, MHE MAKES NO WARRANTY THAT (i) THE MATERIALS WILL MEET THE REQUIREMENTS OF SUBSCRIBER, (ii) THE MATERIALS WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE MATERIALS WILL BE ACCURATE OR RELIABLE, OR (iv) ANY ERRORS IN THE MATERIALS WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR COMMUNICATIONS GIVEN BY MHE, ITS EMPLOYEES, OR AGENTS WILL INCREASE THE SCOPE OF THE ABOVE WARRANTY OR CREATE ANY NEW OR ADDITIONAL WARRANTIES. To the extent that MHE may not as a matter of applicable law disclaim an implied warranty, the scope and duration of such warranty will be the minimum permitted under such law.

### **14. LIABILITY.**

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR TO ANY OTHER PERSON CLAIMING RIGHTS DERIVED FROM SUCH PARTY'S RIGHTS) FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND INCLUDING BUT NOT LIMITED TO, LOST TIME, LOST MONEY, LOST DATA, LOST PROFITS OR GOOD WILL, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEN OR UNFORESEEN WITH RESPECT TO ANY USE OF THE MATERIALS OR OTHERWISE ARISING FROM OR RELATING TO THESE TERMS OF SERVICE AND IN NO EVENT SHALL THE LIABILITY OF MHE OR ITS LICENSORS FOR WHATEVER CAUSE EXCEED THE FEES PAID BY YOU IN CONNECTION WITH YOUR USE OF THE MATERIALS EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. To the extent the foregoing exclusion of liability is not permitted under applicable law, MHE's liability in such case will be limited to the greatest extent permitted by law.

### **15. INDEMNIFICATION.**



MHE shall indemnify, defend and hold harmless Subscriber from and against any and all liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees, related to or arising out of any claim by a third party that the technology platform underlying the Solution infringes or misappropriates the intellectual property rights of such third party. To the extent permitted by law, Subscriber shall indemnify, defend and hold harmless MHE and its parent, affiliates, successors and assigns and their respective officers, employees and agents from and against any and all liabilities, claims, demands, losses, damages, costs and expenses, including reasonable attorneys' fees, related to or arising out of use of the Solution by Subscriber, except to the extent that such claim is subject to indemnification by MHE hereunder.

#### **16. MISCELLANEOUS.**

The Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and commitments with respect thereto; provided, however, that if Subscriber has entered into a separate written agreement with MHE regarding the subject matter hereof, that agreement will supersede this Agreement to the extent of any conflict. There are no other oral or written understandings, terms or conditions with respect to the subject matter of the Agreement, and neither party has relied upon any representation, express or implied, not contained in the Agreement. The rights and remedies of the parties are cumulative and not alternative. No waiver of any rights is to be charged against any party unless such waiver is in writing signed by an authorized representative of the party so charged. Neither the failure nor any delay by any party in exercising any right, power, or privilege under the Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. No modification of or amendment to the Agreement will be effective unless in writing signed by authorized representatives of both parties. If any provision of the Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of the Agreement will remain in full force and effect, and, if legally permitted, such offending provision will be replaced with an enforceable provision that as nearly as possible effects the parties' intent. Subscriber may not assign or otherwise transfer any of its rights or obligations under the Agreement without the prior written consent of MHE, which consent MHE may grant or withhold in its sole and absolute discretion. Subject to the foregoing, the Agreement will be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns. Any purported or attempted assignment or other transfer or delegation in violation of this Section shall be null and void.

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*(Last updated: October 2019)*

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## **7. COMMUNITY GUIDELINES.**

In using the Sites or Services, you agree you will not: (a) submit material that is unlawful, obscene, lewd, defamatory, libelous, threatening, pornographic, harassing, hateful, racially or ethnically offensive, excessively violent, or encourages conduct that would be considered a criminal offense, give rise to civil liability, violate any law, or is otherwise inappropriate or objectionable; (b) post advertisements or solicitations of business; (c) impersonate another person; (d) submit material that is copyrighted, protected by trade secret or otherwise subject to third party intellectual property or proprietary rights, including privacy and publicity rights, unless you are the owner of such rights or have permission from their rightful owner to post the material and to grant McGraw-Hill all of the license rights granted herein; (e) submit material that is unsuitable for minors in any country; or (f) submit material that is malicious or destructive in nature, or contain a virus or other computer programming routine or engine that is intended to damage or otherwise interfere with any system, data, or information. McGraw-Hill does not and cannot review all User Content or Service Uploads and is not in any manner responsible for such content. McGraw-Hill reserves the right, but has no obligation, to refuse to post, block or remove communications or materials for any reason in its sole discretion. McGraw-Hill may terminate your access to our Sites and/or the Services to prevent further posting or distribution of any communications or materials, and McGraw-Hill may, but is not obligated to, report any of your communications or materials to your educational institution.

## **8. NO WARRANTIES.**

WE AND OUR LICENSORS AND SERVICE PROVIDERS MAKE NO WARRANTIES OR REPRESENTATIONS ABOUT THE CONTENTS OF OUR SITES, MCGRAW-HILL CONTENT OR THE SERVICES. WE SHALL NOT BE SUBJECT TO LIABILITY FOR ANY DELAYS OR INTERRUPTIONS OF OUR SITES OR THE SERVICES FROM WHATEVER CAUSE. YOU AGREE THAT YOU USE THE SITES, THE MCGRAW-HILL CONTENT, AND THE SERVICES AT YOUR OWN RISK. OUR SITES, MCGRAW-HILL CONTENT AND THE



SERVICES MAY CONTAIN TECHNICAL INACCURACIES OR TYPOGRAPHICAL ERRORS OR OMISSIONS. MCGRAW-HILL IS NOT RESPONSIBLE FOR ANY SUCH TYPOGRAPHICAL OR TECHNICAL ERRORS. MCGRAW-HILL RESERVES THE RIGHT TO MAKE CHANGES, CORRECTIONS, AND/OR IMPROVEMENTS TO OUR SITES, MCGRAW-HILL CONTENT AND THE SERVICES AT ANY TIME WITHOUT NOTICE.

#### **9. EXTERNAL WEBSITES.**

Our Sites may contain links to third-party applications or websites ("External Websites"). These links are provided only as a convenience to you and not as an endorsement by us of the content on such External Websites. When you access an External Website, McGraw-Hill has no control over its content, applications, or services. We do not make any representations regarding the accuracy, quality, or accessibility of any External Website or its content or materials. McGraw-Hill disclaims all liability for any errors, omissions, violation of third-party rights or illegal conduct arising from such External Websites.

#### **10. INDEMNIFICATION.**

You agree to defend, indemnify, and hold harmless McGraw-Hill and our officers, directors, employees, successors, licensors, service providers, and assignees from and against any claims, actions, demands, liabilities, losses, damages, costs and expenses including, without limitation, reasonable legal and accounting fees, arising from or relating to your breach of this Agreement or your access to, use, or misuse of the McGraw-Hill Content, our Sites, or the Services. We shall provide notice to you of any such claim, suit, or proceeding and shall assist you, at your expense, in defending any such claim, suit, or proceeding. We reserve the right to assume the exclusive defense and control of any matter that is subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting our defense of such matter.

#### **11. LIABILITY.**

IN NO EVENT WILL MCGRAW-HILL OR ITS LICENSORS OR SERVICE PROVIDERS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, LOST TIME, LOST MONEY, LOST DATA, LOST PROFITS OR GOOD WILL, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEN OR UNFORESEEN WITH RESPECT TO ANY USE OF THE MCGRAW-HILL CONTENT, SITES, THE SERVICES, OR OTHERWISE ARISING FROM OR RELATING TO THESE TERMS OF USE AND IN NO EVENT SHALL THE LIABILITY OF MCGRAW-HILL OR ITS LICENSORS FOR WHATEVER CAUSE EXCEED THE FEES PAID BY YOU IN CONNECTION WITH YOUR USE OF THE MCGRAW-HILL CONTENT, THE SITES, OR THE SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT THE FOREGOING EXCLUSION OF LIABILITY IS NOT

PERMITTED UNDER APPLICABLE LAW, MCGRAW-HILL'S LIABILITY IN SUCH CASE WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

## **12. INFRINGEMENT NOTIFICATION.**

We respect the intellectual property rights of others, and require that the people who use our Sites do the same. If you believe that your work has been copied in a way that constitutes copyright infringement, please send notifications of the claimed infringement to: Legal Department, McGraw-Hill, 2 Penn Plaza, New York 10121. Notices of the claimed infringement should include the following information: (a) your address, telephone number, and email address; (b) a description of the copyrighted work that you claim has been infringed; (c) a description of where the alleged infringing material is located, with a link if possible; (d) a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; (e) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (f) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

## **13. COMPLIANCE WITH APPLICABLE LAWS.**

We control and operate our Sites from our offices in the United States of America. We do not represent that materials on our Sites are appropriate or available for use in other locations. Persons who choose to access our Sites from other locations do so on their own initiative, and are responsible for compliance with local laws, if and to the extent local laws are applicable. All parties to these terms and conditions waive their respective rights to a trial by jury.

## **14. TERMINATION OF THE AGREEMENT.**

We reserve the right in our sole discretion, to restrict, suspend, or terminate your use or access to any of the Services, McGraw-Hill Content, and/or our Sites and/or discontinue any portion, feature, or content of the Services, McGraw-Hill Content, our Sites, or this Agreement at any time and for any reason without prior notice or liability. If you violate these Terms of Use McGraw-Hill may, but is not obligated to, report any such violation of these Terms of Use to your educational institution. When reasonably feasible, we will make reasonable efforts to provide notice of significant changes to the Services to end users with active licenses to use the Services.

## **15. MISCELLANEOUS.**

If any provision of this Agreement is found to be invalid by any court having competent jurisdiction or terminated in accordance with the "Termination of the Agreement" provision above, the invalidity or termination of such provision shall not affect the validity of the following provisions of this Agreement, which shall remain in full force and effect: "Intellectual Property," "Communications to McGraw-Hill," "No Warranties," "Indemnification," "Liability," "Compliance With Applicable Laws," "Termination of the Agreement," and "Miscellaneous." Our failure to act on or

enforce any provision of this Agreement shall not be construed as a waiver of that provision or any other provision in this Agreement. No waiver shall be effective against us unless made in writing, and no such waiver shall be construed as a waiver in any other or subsequent instance. Except as expressly agreed by us and you in writing, this Agreement constitutes the entire Agreement between you and us with respect to the subject matter, and supersedes all previous or contemporaneous agreements, whether written or oral, between the parties with respect to the subject matter. The section headings are provided merely for convenience and shall not be given any legal import. This Agreement will inure to the benefit of our successors, assigns, licensees, and sublicensees.