



Houghton Mifflin Harcourt

Proposal

Prepared For

Boone Co School District

8330 US Highway 42
Florence KY 41042

Attention:

Casey Jaynes

casey.jaynes@boone.kyschools.us

For the Purchase of:

Read 180 Universal 3-Year Subscription

Prepared By

Jonathan Broyles

jonathan.broyles@hmhco.com

Please submit this proposal with your purchase order.

Purchase orders or duly executed service agreements for **Professional Services** purchased, must be submitted at least 30 days before the service event date.

Attention:
Casey Jaynes
casey.jaynes@boone.kyschools.us

Intervention Solutions Group
255 38th Avenue, Suite L
St. Charles, IL 60174
FAX: 877-287-8199

HMH Confidential and Proprietary

InterventionSolutionsOrders@hmhco.com

[illegible]

Proposal for Boone Co School District

ISBN	Title	Price	Quantity	Value of All Material	Free Materials Quantity
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live online sessions, and HMH Coaching Studio licenses, designed for up to 20 teachers. Additional sessions and HMH Coaching Studio licenses may be purchased and added to this annual membership as needed.

Total for Coaching	\$78,000.00
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<u>Total for Professional Development Services</u>	\$80,400.00
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<i>Total Savings:</i>	\$12,784.00
<i>Subtotal Purchase Amount:</i>	\$450,992.00
<i>Shipping & Handling:</i>	\$5,558.88

<i>Total Cost of Proposal (PO Amount):</i>	\$456,550.88
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****Please add proper sales tax to your order****

Attention:
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Total Cost of Proposal (PO Amount): \$456,550.88

Thank you for considering HMH as your partner. We are committed to providing an excellent experience and delivering ongoing, high-quality service to our customers. To meet these goals, we want to ensure you are aware of the below Terms of Purchase. These terms help us process your order quickly, efficiently, and accurately, ensuring successful delivery and implementation of our solutions.

- Please return this cost proposal with your signed purchase order that matches product, prices and shipping charges.
- Provide the exact address for *delivery* of print materials. The shipping address may be your district warehouse or individual school sites, but it is essential that this is accurate.
- Please supply the name of each important district point of contact for all aspects of the solution including their direct contact information (email/phone):
 - o Point of Contact for Print materials
 - o Point of Contact for Digital materials
 - o Point of Contact for Scheduling Professional Development

- Please confirm that we have the correct 'Ship to' and 'Sold to' information on the cost proposal.

Ship to:

Boone County School District

Sold to:

Boone County School District

- Please provide funding start and end dates.
- Please note that all products and services will be billed upon the processing of your purchase order.
- Our payment terms are 30 days from the invoice date.
- Print subscription material quantities may be adjusted across grades for like products, to accommodate enrollment fluctuations, quantities cannot be adjusted between different programs or copyrights.
- Our shipping terms are FOB shipping point. The shipping term for your proposal is Shipping Point.
- Should any of these Terms of Sale conflict with any preprinted terms on your purchase order, the HMH terms of service shall apply.

Thank you in advance for supplying us with the necessary information at time of purchase.

Our goal is to ensure your success throughout the duration of this agreement, which starts with a highly successful delivery of our solution.

For greater detail, the complete Terms of Purchase may be reviewed here: <http://www.hmhco.com/common/terms-conditions>

Date of Proposal: 7/8/2021**Proposal Expiration Date: 9/30/2021**

Houghton Mifflin Harcourt

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casey.jaynes@boone.kyschools.us

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Amendment to "Houghton Mifflin Harcourt Standard PreK-12 Terms of Purchase"

On this 4th day of August 2021, Houghton Mifflin Harcourt Publishing Company, 125 High Street, Boston, MA 02110 ("HMH") and Boone County School District, 8330 US Highway 42, Florence, KY 41042 ("Customer") agree that the HMH Standard PreK-12 Terms of Purchase as found at: <https://www.hmhco.com/terms-of-purchase> shall be modified as follows for the purchase of the **READ 180 Universal 3-Year Subscription** as detailed on the attached HMH Cost Proposal # 008082474 July 8, 2021.

TERMINATION: EFFECT OF TERMINATION

The following sentence will be added to the beginning of this Section: "This Agreement will remain in effect until terminated by either party for any reason upon (30) days' prior written notice to the other party."

Except as provided herein, all other HMH Standard PreK-12 Terms of Purchase shall remain in full force and effect.

**HOUGHTON MIFFLIN HARCOURT PUBLISHING
COMPANY**

By: 

Name: **Lisa A. Jacobson**

Title: **Sr. Director, Bids and Contracts**

BOONE COUNTY SCHOOL DISTRICT

By: _____

Name: _____

Title: _____

HMH Standard PreK-12

Terms of Purchase

The following HMH Standard PreK-12 Terms of Purchase apply to the purchase of all HMH **Physical Products**, **Digital Products**, **Connected Products**, [Services](#) and **Pilots**. Additional terms and conditions may pertain to the use of specified platforms or products. In the event that HMH is an authorized licensor of any Digital Products owned by third parties, the Terms of Use and Privacy Policies associated with such third-party products may apply.

The **Privacy Policy for HMH PreK-12 Products** governs all HMH Products in relation to privacy matters and is incorporated herein.

GENERAL TERMS APPLICABLE TO ALL PRODUCTS

1. **CONTRACT.** The ordering or acceptance of any **Products** purchased from Houghton Mifflin Harcourt or its applicable subsidiaries or affiliates (collectively, "[HMH](#)") by any **Customer** shall constitute an agreement to these standard terms and conditions (the "[General Terms](#)"). These General Terms, together with any other applicable terms, as specified below, any terms and conditions published by HMH in the applicable HMH catalog, the **Order Document(s)** (if applicable to Customer's purchase) and/or any other terms and conditions, attachments or exhibits associated with the purchased Products (collectively, the "[Terms](#)") constitute the entire agreement between the parties relating to the subject matter hereof, except for any agreements, amendments, or waivers agreed to in writing by both HMH and Customer. Any contrary or inconsistent terms appearing on purchase orders, acknowledgments, or other documents of Customer or oral stipulations shall not be binding on HMH.
2. **PURCHASE AUTHORIZATION; SOLVENCY.** By ordering Products, Customer represents and warrants that it has complied with any and all of its own requirements necessary to authorize the purchase. Customer is solely responsible for all purchase decisions, including ensuring the compatibility and suitability of all Products. Further, by ordering and accepting delivery, Customer represents to HMH that Customer is solvent and will make payment in full when due for such Products in accordance with the applicable invoice. In the event that the Customer orders and/or accepts delivery of any Products while insolvent, HMH shall have the right to stop shipment of any and all Products en route and Customer shall immediately return all such Products actually received to HMH. Events which shall be deemed to establish Customer's insolvency include, but are not limited to, the filing of a bankruptcy petition by or against Customer and/or Customer's admission of its inability to pay its debts when due.

3. **ACCEPTANCE, PRICES, CANCELLATIONS, AND TERMS.** Orders are subject to acceptance and availability. HMH's list prices and other terms shown are subject to change without notice. HMH may make changes in quantities, casepacks, specifications, delivery schedules, method of shipment, and packaging, and may cancel or terminate work on any order for its own convenience, in whole or in part, by written or electronic notice at any time. Any changes to orders requested by Customer may be approved or rejected in HMH's sole and absolute discretion. In the event of any errors relating to the pricing or specifications of any Products, HMH shall have the right to refuse or cancel any orders in its sole discretion.
4. **BILLING AND PAYMENT.** All amounts owing from Customer to HMH with respect to any Products purchased from HMH are subject to timely payment due within thirty (30) days of the date set forth on HMH's invoice. Accounts must be current before subsequent deliveries will be made or Services will be delivered. Customer credit limits may be established and modified by HMH in its sole discretion. Past due accounts are subject to a one percent (1%) monthly finance charge. Unless a set-off or deduction is specifically provided for by HMH in a valid credit memo, Customer may not charge back to HMH or make any set-offs or deductions, including, but not limited to, set-offs or deductions for violations of customer shipping or routing guidelines and/or other promotional programs. HMH shall process any credit to Customer's account in accordance with HMH's standard practices and procedures. All claims relating to any delivery and/or applicable invoice and/or Products must be made in writing within 30 days of the date of the invoice. Any request for proof of delivery must be made within 30 days of the date of the invoice.
5. **TAXES.** Where appropriate, Customer shall provide HMH with a duly executed tax certificate indicating that such purchase is for exemption or resale, and listing Customer's sales tax registration number for each state into which HMH's Products will be delivered. HMH shall have no liability for any tax required to be billed, collected, and/or remitted by Customer as a result of sales of Products made by Customer, and Customer shall defend, indemnify, and hold harmless HMH against all losses, penalties, interest, and expense (including reasonable attorneys' fees) arising out of any claims relating to such liability for taxes. Where applicable, all prices and payments for Products are exclusive of all taxes, and Customer agrees to pay all applicable national, state and local sales, use, value-added and other taxes, customs duties and similar tariffs and fees, other than taxes imposed on HMH's net income.
6. **SHIPPING; HANDLING; RISK OF LOSS.** Unless otherwise expressly indicated on the face of an order, the shipping term for all deliveries is F.O.B. HMH's shipping point (whether to an HMH or third-party facility). Risk of loss and title is passed to Customer upon transfer of the Physical Products to the carrier. Shipping costs quoted are estimates and may vary from the actual costs. Unless otherwise agreed, the cost of shipping is calculated by taking the Physical Product price and adding 10.5%. Minimum charge is \$10.00. HMH will ship Physical Products using its established methods of packing and transportation, except as otherwise instructed by Customer and agreed to by HMH. If Customer

requires other packing or preparation, Customer will pay the additional costs. In the event that Customer requests to pick up its own deliveries of Physical Products by its own carrier, Customer must pay 5% of the value of the order as a handling fee. In addition, the pickup must occur within 48 hours of confirming the date and time of pickup or HMH will ship and charge standard shipping and handling rates to a maximum of 10.5%. Customer assumes full liability for the materials upon freight leaving our distribution center dock.

7. **REJECTION.** Customer may, immediately on receipt of any incorrect titles or damaged or defective Products, or if Products are not as described, reject and return them to HMH, with authorization from HMH and at HMH's expense. Customer assumes, and shall bear and pay, all risks and expenses of returning any such Products without HMH's authorization. Shortages, damaged Products or incorrect titles must be reported within thirty (30) days of delivery. In the event of a shortage, HMH shall ship the items or credit Customer's account for the shortfall. For damaged Products, HMH shall pick up the Products and issue an appropriate credit or ship replacement Products. For Products showing visible damage on the shipping carton, the carrier must note damages on the freight bill before accepting delivery. Merchandise damaged in transit must be reported to the carrier immediately. All original shipping cartons, packing slips, packing materials and damaged Products must be saved until they have been inspected or Customer's claim has been resolved.
8. **RETURNS.** Except for Products sold on a non-refundable basis, Customer may return, at Customer's risk and expense, purchased Products no later than six (6) months (or one month for home schools and individual customers) after the invoice date, in accordance with HMH's standard practices and procedures with pre-approval from HMH Customer Experience. Customer assumes, and shall bear and pay, all risks and expenses of returning any such Products. If Customer returns any Product that is damaged by Customer, used or otherwise ineligible for credit for any reason specified in our policy, HMH has the right to dispose of it without any further obligation, including, without limitation, notice, credit obligation or obligation to return it to the Customer.
9. **MODIFICATION, DISCONTINUATION OR RECALL.** HMH may update, enhance and/or expand the content, features and functionality of a Product and/or change the name and branding of a Product from time to time. In the event a Product is discontinued by HMH or is the subject of a recall by HMH during the term of HMH's contract with the Customer, HMH shall be responsible only for, at HMH's election: (a) supplying Customer with a revised or corrected versions of the Product; (b) substituting the Product with a new product in the same subject area and the same type, quality, condition and price or (b) providing a pro-rated credit to Customer that may be applied toward the purchase of other HMH Products in the amount of the costs paid by Customer to HMH for the use of such Product during the remaining term of HMH's contract.
10. **COMPLIANCE WITH LAWS.** Customer shall comply with all applicable laws and regulations applicable to the purchase of Products. Furthermore, Customer warrants that it shall comply with all applicable data privacy laws, including federal and state laws including but not limited to the Family Educational Rights

and Privacy Act, including the Protection of Pupil Rights Amendment ("FERPA") and the Children's Online Privacy Protection Act ("COPPA"). Please see our **Privacy Policy for HMH PreK-12 Products**.

11. **HMH'S INTELLECTUAL PROPERTY RIGHTS.** The intellectual property contained in the Products (and any derivative works based on the Products) is confidential and/or proprietary information of HMH or its licensors and is protected by copyright, trademark, and other intellectual property laws. HMH, or its licensors, are the sole and exclusive owners and shall retain all right, title and interest in and to the Products, including without limitation all materials, software, documentation, training and implementation materials, methodology, all parts of presentations and other materials provided in connection therewith, related software code, specifications, documentation, technical information, copyrighted and other proprietary content, HMH trademarks and brands, information and other materials of HMH, its licensors and other third parties; as well as corrections, modifications, additions, improvements and enhancements to the foregoing (collectively, "HMH IP"); subject to the personal, nonexclusive license to use the HMH IP granted to Customer for its own non-commercial, incidental use as contemplated herein.
12. **EQUAL OPPORTUNITY CLAUSE.** HMH does not and Customer shall not engage in any discriminatory practices based on race, color, religion, sex, national origin, protected veteran status, or disability. To the degree they are applicable, the following provisions are incorporated herein by reference and are binding upon HMH and Customer as if set forth fully at length herein: 41 CFR 60-1.4, 60-250.4 and 60-300.5; and 41 CFR 60-741.4 and 60-741.5.
13. **FORCE MAJEURE.** HMH shall not be deemed in default of its obligations to Customer to the extent that performance of its obligations or attempts to cure any breach are delayed, cancelled, rescheduled or prevented by reason of any act of God, war, civil commotion, strikes, labor disputes, fire, natural disaster, accident, riots, acts of government, shortage of materials and supplies, or any other cause beyond its reasonable control.
14. **INDEMNIFICATION.** To the extent allowed by law and subject to the right of Customer to raise the defense(s) of sovereign governmental or qualified immunity against third party claims, Customer will indemnify, defend and hold harmless HMH, its parent companies, subsidiaries, affiliates, directors, officers and employees from any third party claims, causes of action, damages, costs, liabilities or expenses that arise from a breach of these Terms or from improper, illegal or unauthorized use, distribution or operation of the Products.
15. **DISCLAIMER OF WARRANTIES AND INDEMNITIES; LIMITATION OF LIABILITY.** ALL PRODUCTS ARE PROVIDED ON AN "AS IS" BASIS, AND HMH EXPRESSLY EXCLUDES THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT. WHILE HMH DOES ITS BEST TO DESCRIBE EVERY PRODUCT OFFERED AS ACCURATELY AS POSSIBLE, HMH DOES NOT WARRANT THAT PRODUCTS, SPECIFICATIONS, PRICING, AND/OR OTHER CONTENT HMH PROVIDES ARE COMPLETE, ACCURATE, RELIABLE, CURRENT, OR ERROR-FREE. TO THE EXTENT PERMITTED BY LAW, CUSTOMER AGREES

TO DEFEND, INDEMNIFY AND HOLD HARMLESS HMH AND ITS PARENT, AFFILIATES, SUCCESSORS AND ASSIGNS AND THEIR RESPECTIVE OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL LOSSES, COSTS AND EXPENSES (INCLUDING REASONABLE OUTSIDE ATTORNEYS' FEES AND EXPENSES) INCURRED IN DEFENDING ANY CLAIM, JUDGMENT OR PROCEEDING RELATING TO OR ARISING OUT OF: (I) CUSTOMER'S BREACH OR ALLEGED BREACH OF ITS REPRESENTATIONS, WARRANTIES, OBLIGATIONS AND AGREEMENTS CONTAINED IN THESE TERMS; AND/OR (II) THE DISTRIBUTION, RESALE AND PROMOTION OF PRODUCTS BY CUSTOMER. HMH WILL HAVE THE RIGHT TO CONTROL THE DEFENSE AND SETTLEMENT OF ANY CLAIMS SUBJECT TO INDEMNIFICATION HEREIN. HMH SHALL HAVE NEITHER LIABILITY NOR RESPONSIBILITY TO ANY PERSON OR ENTITY WITH RESPECT TO ANY LOSS OR DAMAGE ARISING FROM THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, HMH'S FAILURE OR ALLEGED FAILURE TO FILL ORDERS BY CUSTOMER IN WHOLE OR IN PART. HMH DOES NOT GUARANTEE THAT ANY DIGITAL PRODUCTS WILL BE DELIVERED ERROR-FREE OR UNINTERRUPTED. HMH DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND DIGITAL PRODUCTS MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. HMH SHALL NOT BE LIABLE FOR ANY DAMAGES TO COMPUTERS, COMMUNICATION SYSTEMS, DATA OR SERVICES THAT MAY ARISE AS A RESULT OF THE USE OF DIGITAL PRODUCTS. IN NO EVENT SHALL HMH BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER IN TORT, CONTRACT, STRICT LIABILITY, WARRANTY OR OTHERWISE, AND REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL HMH'S TOTAL AGGREGATE LIABILITY IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THESE TERMS EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER DURING THE MOST RECENT TWELVE (12) MONTH PERIOD PRIOR TO THE CLAIM.

16. **TERMINATION; EFFECT OF TERMINATION.** HMH may terminate this Agreement upon the failure of Customer to comply with any of the Terms, at any time by giving Customer 30 days' prior written notice, specifying the breach upon which the notice is based. If Customer has not cured the breach to HMH's satisfaction within the notice period, this Agreement will terminate. HMH shall have, in addition to any other remedies available to it, the right to injunctive and other equitable relief to restrain action by Customer inconsistent with this Agreement, and Customer hereby acknowledges that other remedies are inadequate in such cases. Upon termination for any reason, HMH will disable access to any applicable Digital Products, including at the end of the **Subscription Term**. In addition, Sections 11, 14 through 18 and 20 shall survive any termination of this Agreement.

17. MODIFICATION AND SEVERABILITY. If any provision of these Terms is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining portions of the Terms shall remain in force and in effect and be construed so as to best effectuate the intention of the parties. The waiver of one default shall not waive subsequent defaults of the same or different kind. HMH reserves the right to make changes to these Terms at any time.
18. JURISDICTION; VENUE; CHOICE OF LAW. THE STATE COURTS OF THE COMMONWEALTH OF MASSACHUSETTS SITTING IN SUFFOLK COUNTY AND, IF THE JURISDICTIONAL PREREQUISITES EXIST AT THE TIME, THE UNITED STATES DISTRICT COURT FOR MASSACHUSETTS SHALL HAVE THE SOLE AND EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY DISPUTE OR CONTROVERSY ARISING UNDER OR CONCERNING THIS CONTRACT. THIS CONTRACT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, WITHOUT REFERENCE TO ITS PRINCIPLES OF CONFLICTS OF LAWS, EXCEPT THAT FOR GOVERNMENTAL CUSTOMERS IN THE UNITED STATES THESE TERMS SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE GOVERNMENT AGENCY CUSTOMER IS LOCATED.
19. EXPORT. Import duties, taxes and customs clearance fees relating to Products shipped outside the United States will be borne by Customer. Export laws and regulations of the United States apply to all Products. Customer agrees that export control laws govern its use of the Digital Products and related Services (including technical data) and any Digital Products deliverables provided to Customer by HMH, and Customer agrees to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). For Products exported outside the United States, Customer agrees that it will not import or allow a third party to import such Products into the United States.
20. CONFIDENTIALITY. Customer acknowledges that in the course of providing Products under this Agreement, representatives of HMH may disclose certain confidential information to Customer. All concepts, work, materials, and related information disclosed to Customer by any person acting on behalf of HMH are proprietary and confidential information of HMH. Customer acknowledges this and agrees not to disclose any such concepts, work, material or related information to any other parties, or to make any use of the Products other than the use that is intended by HMH through its provision of the Products.

TERMS APPLICABLE TO DIGITAL PRODUCTS

In addition to the above General Terms applicable to all Products, the following terms are applicable to the purchase of Digital Products. In the event of a discrepancy between the General Terms and the Terms Applicable to Digital Products, the Terms Applicable to Digital Products shall apply.

1. **SUBSCRIPTION TERM.** Any subscription to Digital Products is for the price and time period or term listed in the applicable Order Document(s). If Customer wishes to extend any Subscription Term, a purchase order, change order, or amendment is to be negotiated for additional fees. If no commencement date for the Subscription Term to the Digital Products is specified in the applicable Order Document(s), the Subscription Term shall be deemed to commence on the date on which the Customer is granted access to the Digital Product as delivered by HMM, NOT upon Customer activation of the Digital Product, and shall continue until the end of the Subscription Term. Upon expiration or termination of the Subscription Term, Customer will no longer have permitted access to the Digital Product. In the event that HMM must discontinue access to a Digital Product prior to expiration of the Subscription Term, HMM shall provide a pro-rated credit to Customer applicable toward the purchase of other HMM Products. Such pro-rated credit shall reflect the portion of the Subscription Term that remains unused as of the date of discontinuation of the Digital Product.
2. **HOSTING.** Any Digital Products purchased for a limited Subscription Term shall be hosted by or through HMM. HMM may choose to transition the hosting of a Digital Product to a different site or platform upon prior written notice to Customer. Any HMM Digital Products Customer wishes to self-host would be considered a separate transaction, and separate agreements and fees are to be negotiated. Self-hosted versions of many of HMM's Digital Products are not available for license. In the case of Digital Products that are self-hosted in whole or in part, upon expiration or termination of the applicable Subscription Term, Customer must immediately cease using the Digital Product, delete or destroy any copies of the Digital Product and, if requested, confirm to HMM that the Customer has complied with these requirements.
3. **ALLOCATION OF LICENSES.** HMM will provide Customer with the number of credentials with respect to Digital Products equal to the number of students, teachers or administrators licensed by Customer under the applicable Order Document(s).
4. **LICENSE LIMITATIONS.** Customer may not: (1) re-sell, rent or lease a Digital Product or any part of it; (2) copy any part of a Digital Product, except where specifically indicated otherwise or for back-up purposes; (3) reverse engineer, decompile or disassemble a Digital Product or the software through which it is delivered, or convert it into any other format or medium; (4) use more copies of a Digital Product, or deploy a Digital Product on more devices or at more sites, than are authorized by these Terms Applicable to Digital Products and the applicable Order Document(s), or (5) sub-license the Digital Products except as permitted by HMM.
5. **SECURITY.** Customer acknowledges that Digital Products may include security technology to ensure that they may only be used in accordance with the applicable license rights. Customer shall take all reasonable security measures to prevent unauthorized access to the Digital Products. Customer agrees to: (1) accept all responsibility for all activities that occur under user name(s) or password(s) used by Customer; and (2) immediately notify HMM of any unauthorized use of any password or account assigned to Customer, or any

other breach of security or confidentiality thereof. In such event, HMH shall have the right, without limitation of any other rights under this Agreement, to terminate any such account or this Agreement in its entirety. In the event that Customer transmits **Customer Materials** to HMH outside of HMH's secure software (e.g. in association with the provision of any Services), Customer agrees to use a secure conduit (e.g., HTTPS) for the transmission of such Customer Materials. HMH shall have no obligation to monitor Customer Materials, but HMH reserves the right to do so and to remove or disclose any Customer Materials as necessary to satisfy any applicable law, regulation, legal process or governmental request, and HMH will use reasonable efforts to notify Customer reasonably in advance.

6. **THIRD PARTY PRIVACY POLICIES.** In connection with Customer's use of Digital Products owned and hosted by HMH, **Privacy Policy for HMH PreK-12 Products** shall apply. Please note that in some instances Digital Products are owned and hosted by third parties. In such cases, there may be other specific privacy policies that apply. In such cases, you should refer to the applicable third-party privacy policy for that Digital Product(s).

TERMS APPLICABLE TO CONNECTED PRODUCTS

In addition to the General Terms and Terms Applicable to Digital Products that may apply to individual components of the Connected Products, the following terms apply to HMH Connected Products. In the event of any conflict, the Terms Applicable to Connected Products shall apply.

1. **CONNECTED PRODUCTS.** The Connected Products consists of the HMH program products, professional development services and classroom materials offered by HMH through its platform(s), or otherwise delivered to the Customer, solely in the formats identified in the Order Document(s). Customer understands and agrees that certain content of the Connected Products may be updated or substituted on an ongoing basis in the discretion of HMH. In addition, the Customer may add other Products and Services to the Order Documents, at the applicable HMH price, and all such additional Products and Services shall be governed by these terms and other applicable HMH terms and conditions.
2. **LICENSE.** Subject to the General Terms and Terms Applicable to Digital Products, HMH hereby grants Customer a limited, non-exclusive, non-sublicensable and non-transferable right to access the Connected Products as identified on the applicable Order Document(s), solely for educational purposes and solely in connection with the Customer's school/district. HMH will provide Customer with the number of credentials with respect to the Connected Products equal to the number of students, teachers or administrators licensed by Customer under the applicable Order Document(s). Teacher licenses can be used by multiple instructors in good faith, in the same school/district so long as such teacher licenses maintain a customary classroom teacher-to-student ratio (i.e. the number of teacher licenses purchased is substantially in proportion to the number of student licenses purchased by the Customer). Any rights not expressly granted by HMH in this Agreement are expressly reserved to HMH.

The Subscription Term is for the period of years specified in the applicable Order Document(s) and paid for by Customer. This Subscription Term shall be effective upon the date set forth in the Order Document(s), provided that, if no such commencement date is specified, the Subscription Term shall be deemed to commence on the earliest date on which the applicable product is first accessed or used by Customer and shall continue until the end of the Subscription Term. For a multi-year Subscription Term, Customer shall be permitted to re-allocate the licensed credentials to different grade levels of the same HMH program, so long as the total number of licensed users is not exceeded for the same Subscription Term during the same academic year.

3. EMBEDDED SERVICES. Subject to the General Terms, HMH will provide the then standard embedded professional development services to Customer as HMH makes available with the Connected Products Subscription. In addition, Customer may engage HMH to provide additional training, coaching or other professional development in association with the Connected Products.

TERMS APPLICABLE TO SERVICES

In addition to the General Terms, the following terms apply to the purchase of Services. In the event of a discrepancy between the General Terms and the Terms Applicable to Services, the Terms Applicable to Services shall apply.

1. PURCHASE ORDER. At least thirty (30) days prior to the first date of Services, Customer shall provide HMH with a purchase order. If Customer's purchase practice is not to provide a purchase order, Customer agrees that it shall sign a Services Agreement or contract and make prompt payment under the terms set forth herein for all Services delivered to Customer by HMH.
2. LOGISTICS. No less than thirty (30) days before a Services Date, Customer shall provide to HMH the following information: shipping address for materials, the address and other pertinent details (e.g., room number) of Services delivery sites, and the number of participants for each day of Services to be delivered. HMH reserves the right to charge Customer expedited shipping charges if additional shipping or handling charges are incurred by HMH, or to reschedule the Services without penalty, as a result of Customer's failure to provide the necessary information within this timeframe.
3. SCHEDULING, RESCHEDULING AND CANCELLATION. The scheduling of Services to be delivered on specified dates ("Services Dates") shall be outlined in the purchase order or agreement. Services to be delivered on dates to be determined ("TBD Dates") must be delivered within twelve (12) months of HMH's receipt of the purchase order or other agreement. Fees paid for any TBD Dates not consumed within twelve (12) months will be forfeited by the Customer. When scheduling TBD Dates, the Customer shall contact HMH at least six (6) weeks prior to the first day on which the Customer would like the Services to begin. HMH cannot guarantee availability of dates for specific consultants.
 - a. DATE CHANGES/RESCHEDULING.

1. Services Dates, once scheduled, may be changed only upon the mutual agreement of HMH and the Customer. In addition to rescheduling fees, as set forth below, any change to the dates or the type of Services herein may change the fees that will be charged.
 - i. Any date change requests must be received by HMH from the Customer no less than thirty (30) days prior to the scheduled Services Date. All rescheduled Services Dates must be delivered within twelve (12) months of HMH's receipt of the purchase order or other agreement. All rescheduled Services Dates not consumed within twelve (12) months will be forfeited by the Customer and no refund of any prepaid fees shall be given.
 - ii. For any Services Date changes made at any time by Customer for any reason, Customer shall reimburse HMH 100% of any out-of-pocket travel or other ancillary costs spent by HMH in connection with preparation for providing the Services (e.g., travel already booked).

b. CANCELLATIONS/DEFAULT.

1. Customer may cancel Services without incurring any cancellation fee prior to the scheduling of a Services Date by providing HMH no less than thirty (30) days' written notice prior to the Services Date.
 2. Cancellations received from Customer less than thirty (30) days prior to the Services Date shall result in payment by Customer of a cancellation fee of 50% of the fees for the cancelled Services. Cancellations received from Customer less than seven (7) days in advance of the Services Date shall result in payment by Customer of a cancellation fee of 75% of the fees for the cancelled Services.
 3. Cancellations received from Customer less than 24 hours prior to the Services Date, or if Customer is absent from the scheduled Service ("no-show"), shall result in payment by Customer of a cancellation fee of 100% of the fees for the cancelled Services.
 4. If a cancellation involves more than one Service Date, any cancellation fees shall be prorated accordingly. In all cases, Customer shall pay for any Services actually delivered.
 5. For any cancellation of Services Dates at any time for any reason, Customer shall reimburse HMH 100% of any out-of-pocket travel or other ancillary costs spent by HMH in connection with preparation for providing the Services in accordance with this Agreement (e.g., travel already booked).
4. PROHIBITION ON REPRODUCTION. No part of the Services or any related materials may be videotaped, audio taped, photographed or in any way copied, excerpted, reproduced or distributed without the prior written consent of HMH. Participants may be asked to leave if they engage in this activity and will be required to delete any unauthorized recordings.

TERMS APPLICABLE TO PILOTS

In addition to all of the above Terms, where Pilots are permitted by applicable law and otherwise available, the following terms are applicable to the Pilots. In the event of a discrepancy, the Terms Applicable to Pilots shall apply.

1. **CONSIDERATION.** In partial consideration of its participation in the Pilot, Customer agrees to cooperate with HMH's efforts to gather data (including but not limited to performance, usage, and other data at the building, grade, teacher and student levels), testimonials and other information relating to the Pilot. HMH may meet with the Customer to review success data and other information obtained in connection with the Pilot or from the use of Products in the Pilot ("Pilot Materials"). Customer agrees that de-identified or anonymized data and other information may be quoted, reproduced and otherwise used in any manner whatsoever, including without limitation, in Product development, Product improvement, demonstration of Product efficacy, white papers or research studies.
2. **PILOT MATERIALS.** Pilot Materials shall be provided in limited quantities as specified in the Pilot Proposal and only for the duration of and otherwise within the scope of the Pilot. Participation in the Pilot shall not thereby entitle Customer to participation in future pilots or additional access to Pilot Materials or to other instructional materials.
3. **OWNERSHIP.** To the fullest extent permitted by law, where the Customer does not share in the funding of the Pilot, HMH retains ownership of all Pilot Materials. HMH also retains all right, title and interest in and to any Pilot Materials consisting of software licensed to the Customer for the limited period of the Pilot. In the event that the HMH program relating to the Pilot is selected and purchased by Customer at the end of the Pilot, Customer will have the option to purchase or license the Pilot Materials on terms to be negotiated between HMH and Customer. Where the Customer does not share in the funding of the Pilot, and the piloted HMH program is NOT selected by the Customer at the end of the Pilot, Customer shall discontinue use of all Pilot Materials provided under license and return such Pilot Materials to HMH (and HMH is entitled to terminate access to or collect all Pilot Materials owned by HMH at its discretion). Customer is not permitted to resell any Pilot Materials.
4. **DAMAGE AND/OR LOSS.** Customer is responsible for any damage or loss to HMH owned Pilot Materials during the Pilot.
5. **TERMINATION.** Where Customer has not participated in the funding of the Pilot, HMH may terminate the Pilot at any time upon thirty days prior written notice to Customer.

DEFINITIONS

The following terms used throughout this agreement, whether used in the singular or plural, shall have the meanings set forth herein.

- a. "Connected Product(s)" means Physical Products, Digital Products and Services specifically labelled as part of HMH's "Connected Teaching System."
- b. "Customer" means the legal entity identified on the purchasing or registration materials. For purposes of this Agreement, Customer includes affiliates specifically listed in a purchase order or in other purchasing or registration materials. Such affiliates agree to be bound by the terms of this Agreement. Customer is responsible for compliance with the terms of this Agreement by all affiliates, subsidiaries and subdivisions purchasing Products hereunder.
- c. "Customer Materials" means the materials, data and information belonging to a Customer and provided to HMH, either directly or by granting HMH access to Customer's files/systems, for the purpose of using an HMH Product.
- d. "Digital Product(s)" means non-tangible, digital versions of Products, whether licensed on a fixed, perpetual or subscription term.
- e. "Order Document(s)" means the HMH cost proposal or HMH quotation and order form.
- f. "Physical Product(s)" means any Product versions that are not Digital Products, including printed books, other printed materials, and the physical media (CDs, DVDs, videos, other audio/ video/multimedia products) that carry copies of any Digital Product(s) delivered to Customer, and any other physical copies of Products.
- g. "Pilot" means the paid or unpaid, full or partial access to Products for a specific, limited period of time for evaluation and trial of the Product prior to Customer's decision on whether or not to purchase the Product in full. Pilots are generally of short-duration and for limited Product in order for a Customer to evaluate how a full-scale implementation of Products will work in practice. Ownership of the Product remains with HMH unless and until full purchase of the Pilot Materials, as hereinafter defined, is completed.
- h. "Product(s)" collectively refers to all HMH Physical Products, Digital Products, Connected Products, Pilots and Services.
- i. "Services" means professional development services delivered personally to the Customer either , in person or on site as specified in the purchase order or other ordering documents or statement of work(s), which may include training, professional development, coaching, consulting, conferences, courses, "Getting Started" and implementation training, and software implementation, for Customer as agreed to by the parties, under this Agreement.
- j. "Subscription Term" means the license term for the subscription to a Digital Product