

Kenton County School District | It's about ALL kids.

Issue Paper

DATE:

February 17, 2023

AGENDA ITEM (ACTION ITEM):

Consider/Approve The purchase of Scholastic Classroom Magazines for Ryland Heights Elementary through the 2023-24 school year.

APPLICABLE BOARD POLICY:

8.2321 copyrighted materials

HISTORY/BACKGROUND:

Scholastic Classroom Magazines is a current events student resource that is aligned with ELA standards in grades K-5.

FISCAL/BUDGETARY IMPACT:

\$2704.16 (ESSER ARP Funds)

RECOMMENDATION:

Approval to purchase Scholastic News Classroom Magazines, a current events student resource for Ryland Heights Elementary through the 2023-24 school year.

CONTACT PERSON:

Dan Schacherer

A handwritten signature in blue ink, appearing to be 'Dan Schacherer', written over a horizontal line.

Principal/Administrator

A handwritten signature in blue ink that reads 'Lerley Smith', written over a horizontal line.

District Administrator

A handwritten signature in blue ink, written over a horizontal line.

Superintendent

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.

Principal—complete, print, sign and send to your Director. Director—if approved, sign and put in the Superintendent's mailbox.

Quote Prepared by: Debbie Coffland
Q-124512

Thursday, February 9, 2023

SCHOLASTIC CLASSROOM MAGAZINES 2023-2024 QUOTATION

RYLAND HEIGHTS ELEM SCHOOL (41015070).
TAMMIE GROESCHEN
3845 STEWART DR
RYLAND HGHT, KY 41015-9307

P.O. #

Teacher Name	Item #	Product Title	Promo	Quantity	Price	Ext. Price
CYNTHIA HARRINGTON	008	LET'S FIND OUT	6419	25	\$5.99	\$149.75
CARRIE Niehues	008	LET'S FIND OUT	6419	25	\$5.99	\$149.75
ANITA HOLTZAPPLE	008	LET'S FIND OUT	6419	25	\$5.99	\$149.75
ERIN MORRIS	010	SCHOLASTIC NEWS 1	6419	25	\$5.99	\$149.75
ERIN MORRIS	300	SCIENCESPIN K-1	6419	25	\$0.99	\$24.75
AMY DODD	010	SCHOLASTIC NEWS 1	6419	25	\$5.99	\$149.75
AMY DODD	300	SCIENCESPIN K-1	6419	25	\$0.99	\$24.75
Liza Mathis	010	SCHOLASTIC NEWS 1	6419	25	\$5.99	\$149.75
Liza Mathis	300	SCIENCESPIN K-1	6419	25	\$0.99	\$24.75
ANGELA MEYER	012	SCHOLASTIC NEWS 2	6419	25	\$5.99	\$149.75
Stacey Fike	012	SCHOLASTIC NEWS 2	6419	25	\$5.99	\$149.75
JENNIFER HUGHES	012	SCHOLASTIC NEWS 2	6419	25	\$5.99	\$149.75
AMY WHELAN	002	STORYWORKS 3	6419	25	\$8.49	\$212.25
SARA STEELE	002	STORYWORKS 3	6419	25	\$8.49	\$212.25
AMANDA HIGGINS	038	STORYWORKS 4-6	6419	25	\$8.49	\$212.25
EMILY BARNARD	038	STORYWORKS 4-6	6419	25	\$8.49	\$212.25
AMY WHELAN	046	SUPER SCIENCE	6419	25	\$7.49	\$187.25
			Total Quantity	425	Subtotal	\$2,458.25
						(S+H): \$245.91
						Price Total: \$2,704.16

Sales tax added to invoices where required by law

Prices shown reflect an Educator's Discount, available on Print with Digital subscriptions when ordering for 10* or more students and on Digital-Only subscriptions for 20 or more students. Print with Digital orders include student copies, desk copy, Teacher's Guide, and online resources with every issue. You may adjust the number of subscriptions later if your class size changes. Science Spin is not available separately. It is only available as an add-on to Let's Find Out and/or Scholastic News subscriptions, in matching quantities.

*For 5 or more students when ordering My Big World, Let's Find Out, and/or Let's Find Out Spanish.

You are authorized to distribute online access only to the number of students for whom you have purchased subscriptions. You are not permitted to share passwords, access codes, or any login information with non-subscribers. A 10% shipping and handling charge will be added to your entire order for all Print with Digital subscriptions.

Additional Comments

Order Instructions

You can use this quote as a place holder for your budget or to generate your purchase order.

When orders are final, bill () Teachers () School () District Send invoice attention: _____

For your protection, please do not include credit card information in writing. If you wish to order using a credit card, please order by phone using the number below.

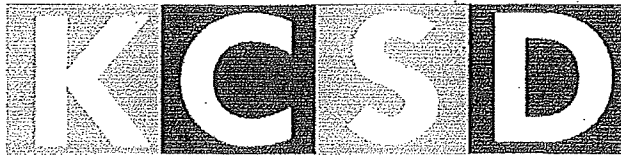
To order by telephone: 1-800-387-1437 ext.6251 To order by fax: 1-877-242-5865.

To order via email: eprocurement@scholastic.com

To order by mail, note any quantity changes and send this form to:

Scholastic Classroom Magazines
Attn: Debbie Coffland
2315 Dean Street, Suite 600
St. Charles, IL 60175

Prices Quoted are Valid for 30 Days



Kenton County School District | It's about ALL kids

THE KENTON COUNTY BOARD OF EDUCATION

1055 EATON DRIVE, FORT WRIGHT, KENTUCKY 41017

TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531

WEBSITE: www.kenton.kyschools.us

Dr. Henry Webb, Superintendent of Schools

**VENDOR ASSURANCES REGARDING PROTECTION OF
PERSONAL AND CONFIDENTIAL INFORMATION IN
CONNECTION WITH ALL DIGITAL EDUCATION
PRODUCTS LISTED AT:**

<https://educationsolutions.scholastic.com/privacypolicy.htm>

Data Security and Breach Protocols

Vendors that receive Personal Information from Kenton County Board of Education (herein referred to as "KCBOE") as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account number, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by any agency as defined under the Act;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" includes any person or entity that has a contract or agreement with the KCBOE and receives (accesses, collects or maintains) personal information from the KCBOE pursuant to the contract or agreement.

The vendor hereby agrees to cooperate with the KCBOE in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, KCBOE, the Commissioner of the Kentucky State Police, the Kentucky Auditor of Public Accounts, the Commonwealth (Kentucky) Office of Technology, and the Commissioner of the Kentucky Department of Education of confirmation of breach, unless the exception set forth in KRS 61.932(2)(b)(2) applies and the vendor abides by the requirements set forth in that exception. Notification shall be in writing on a form developed by the Commonwealth (Kentucky) Office of Technology.

The vendor hereby agrees to report to the KCBOE, immediately and within seventy-two (72) hours, any known confirmed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any security breach as defined under the Act in accordance with KRS 61.933.

Upon conclusion of an investigation of a security breach as defined under the Act as required by KRS 61.933, the vendor hereby agrees to an apportionment pro-rated between vendor and KCBOE according to fault of the legally-required costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a), the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth (Kentucky) Office of Technology and that are reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

Student Data Security

Pursuant to KRS 365.734, if the vendor is a cloud computing service provider (which is defined pursuant to KRS 365.734(1)(b) as any person or entity other than an educational institution that operates cloud computing services) or, through service to the KCBOE, becomes the equivalent of a cloud computing service provider, the vendor further hereby agrees that:

- The vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission for any such exceptional use.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Educational Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.
- Pursuant to KRS 365.734, the vendor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

Family Educational Rights and Privacy Act, National School Lunch Act and Child Nutrition Act

If during the course of this agreement, the KCBOE discloses to the vendor any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. sec. 1232g, *et seq.*), and its regulations, and data protected by the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. sec. 1751 *et seq.*, and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. sec. 1771 *et seq.*), the vendor agrees that it is bound by and will comply with the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA.

The vendor hereby agrees to report to the KCBOE, immediately and within seventy-two (72) hours, any known confirmed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor agrees that FERPA-protected information is confidential information. FERPA-protected information may include, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does

not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

The vendor understands and acknowledges that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

The vendor understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

In the event there is a conflict between this agreement and any other agreement between KCBOE and Vendor, the terms of this agreement shall apply.

Scholastic Inc.

Vendor Name

The Scholastic Building, 557 Broadway (Entrance at 130 Mercer Street), New York, NY 10012

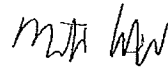
Vendor Address

800-387-1437 x6204

Vendor Telephone

lthomka@scholastic.com

Vendor Email Address



Signature by Vendor's Authorized Representative

Matt Wilcox

Print Name

11/15/22

Date

Kenton County Board of Education

KCBOE Address

KCBOE Telephone

KCBOE Email Address

Signature by KCBOE's Authorized Representative

Print Name

Date

Last Updated: August 21st, 2015

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If you have entered into an Institutional Customer Agreement with Scholastic (currently available upon request as described in the "Information or Complaints" section below, and referred to herein as a "Customer Agreement"), then please note that (1) these Terms are incorporated into such Customer Agreement, and (2) as used in these Terms, the word "you" means both Customer and any other Users permitted to use the Site and Scholastic Products under the applicable Order, as defined in the Customer Agreement.

- For example, if an Institutional Customer Agreement has been entered into by a school or school district, then the word "you" in these Terms may include such school or district and its teachers and students.

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Applicable law may not allow for limitations on certain implied warranties, or exclusions or limitations of certain damages; solely to the extent that such law applies to you, some or all of the above disclaimers, exclusions or limitations may not apply to you, and you may have certain additional rights.

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Phone: 212-343-6726
Email: tm&c@scholastic.com

The notification must be in writing and include: (a) a signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (b) identification of each alleged infringing copyrighted work or works; (c) identification of the allegedly infringing material and information reasonably sufficient to enable us to locate such material; (d) information reasonably sufficient to enable us to contact the party complaining of an alleged infringement (*e.g.*, an address, telephone number, and e-mail address); a statement that the complaining party has a good-faith belief that use of the allegedly infringing material in the manner complained of is not authorized by the copyright owner, its agent or the law; and (e) a statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

18. Export Controls. You agree not to directly or indirectly export or re-export the Scholastic Products or any code found therein, except as authorized by the laws and regulations of the United States and any other applicable jurisdiction. You will not permit the Scholastic Products to be accessed or used at any location or by any person that would violate such laws or regulations. To the extent permitted by law, you will defend, indemnify and hold Scholastic harmless from and against

any violation of such laws or regulations by you or any of your agents, officers, directors or employees.

19. Miscellaneous. These Terms do not, and shall not be construed to, create any partnership, joint venture, employer-employee, agency or franchisor-franchisee relationship between you and Scholastic. If any provision of these Terms is found to be unlawful, void or for any reason unenforceable, that provision will be deemed severable from these Terms and will not affect the validity and enforceability of any remaining provision. You may not assign, transfer or sublicense any or all of your rights or obligations under these Terms without our express prior written consent. We may assign, transfer, sublicense or subcontract any or all of our rights or obligations under these Terms without restriction. No waiver by either party of any breach or default hereunder will be deemed to be a waiver of any preceding or subsequent breach or default. Any heading, caption or section title contained herein is for convenience only, and in no way defines or explains any section or provision. All terms defined in the singular shall have the same meanings when used in the plural, where appropriate and unless otherwise specified. Any use of the term "including" or variations thereof in these Terms shall be construed as if followed by the phrase "without limitation." These Terms, including any terms and conditions incorporated herein, together with the Customer Agreement if you are a Customer, is the entire agreement between you and Scholastic relating to the subject matter hereof, and supersedes any and all prior or contemporaneous written or oral agreements or understandings between you and Scholastic relating to such subject matter. Notices to you (including notices of changes to these Terms) may be made via posting to the Site or by e-mail (including in each case via links), or by regular mail. Notices to Scholastic shall be sent in writing by registered mail, return receipt requested, to: Scholastic Inc., 557 Broadway, New York, NY 10012, Attn: SVP, Corporate Finance; with a copy sent to: Scholastic Inc., 557 Broadway, New York, NY 10012, Attn: EVP & General Counsel. Without limitation, a printed version of these Terms and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. Scholastic will not be responsible for any failure to fulfill any obligation due to any cause beyond its reasonable control.

20. Apple-Specific Terms. In addition to your agreement with the foregoing terms and conditions, and notwithstanding anything to the contrary herein, the following provisions apply with respect to your use hereunder of any version of any Scholastic mobile app compatible with Apple Inc.'s iOS operating system (an "App"). Apple Inc. is not a party to these Terms and does not own and is not responsible for any App. Apple Inc. is not providing any warranty for any App except, if applicable, to refund the purchase price for it. Apple Inc. is not responsible for maintenance or other support services for any App and shall not be responsible for any other claims, losses, liabilities, damages, costs or expenses with respect to any App, including any third-party product liability

claims, claims that an App fails to conform to any applicable legal or regulatory requirement, claims arising under consumer protection or similar legislation, and claims with respect to intellectual property infringement. Any inquiries or complaints relating to the use of an App, including those pertaining to intellectual property rights, must be directed to Scholastic in accordance with the "Information or Complaints" section above. The license you have been granted herein is limited to a non-transferable license to use the App(s) on an Apple-branded product that runs Apple Inc.'s iOS operating system and is owned or controlled by you, or as otherwise permitted by the Usage Rules set forth in Apple's App Store Terms of Service. In addition, you must comply with the terms of any third-party agreement applicable to you when using any App, such as your wireless data service agreement. Apple Inc. and its subsidiaries are third-party beneficiaries of these Terms and, upon your acceptance of the terms and conditions of these Terms, will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third-party beneficiary thereof; notwithstanding the foregoing, Scholastic's right to enter into, rescind or terminate any variation, waiver or settlement under these Terms is not subject to the consent of any third party.

Last Updated: November 5th, 2015

INSTITUTIONAL CUSTOMER AGREEMENT

This Institutional Customer Agreement (the "Agreement") is made as of the Effective Date (as defined below) by and between Customer (as defined below) and Scholastic Inc., located at 557 Broadway, New York, NY 10012, and/or any applicable affiliated entities set forth in an Order with respect to particular Licensed Products, each as defined below ("Scholastic"). This Agreement includes the Product Terms (as updated by Scholastic from time to time), which are currently available above (Product Terms) and are hereby incorporated into this Agreement by reference.

By accessing or using the Licensed Products (as defined below), or by otherwise indicating your acceptance of this Agreement (for example, by clicking "I Agree" or through another mechanism confirming your acceptance), Customer is agreeing to be bound by this Agreement, and you represent and warrant that you have the legal authority to bind Customer to this Agreement. Please note that your Internet browser will typically permit you to print or save a copy of this Agreement.

- **1. Definitions.**

- § 1.1 "Customer" means the institution or other legal entity identified on the applicable Order, or, if no legal entity is identified on such Order, then "Customer" means the legal entity on behalf of which the person identified on such Order is acting.
- § 1.2 "Customer Data" means user data (including Personally Identifiable Information), which may include student education record data, provided by or on behalf of Customer to Scholastic or received by Scholastic from Users in connection with the Licensed Products.
- § 1.3 "Customer Materials" means any data, information, content and materials provided by or on behalf of Customer to Scholastic, or submitted or otherwise posted or uploaded to the Licensed Products, which are used in connection with the Licensed Products, including, for example, technical information, functional specifications and Customer Data.
- § 1.4 "Effective Date" means the effective date of this Agreement, as set forth in the applicable Order.
- § 1.5 "Licensed Products" means those Scholastic products and services as set forth in the applicable Order.
- § 1.6 "Order" means the written (including electronic) ordering or registration materials applicable to this Agreement, subject to written acceptance of such materials by Scholastic in its discretion, and which are incorporated by reference into this Agreement upon such acceptance by Scholastic.

- § 1.7 "Personally Identifiable Information" means any information regarding or that identifies (or that could be used to identify) any individual, including, for example, any individual student or parent name, address, personal identifiers such as school- or district-issued student identification numbers, and any other information or combination of information that would make the identity of an individual easily traceable, or any other information that is defined as personally identifiable or as "personal information" by applicable law.
 - § 1.8 "Subscription Period" means, with respect to each Licensed Product, the applicable subscription time period set forth on the applicable Order.
 - § 1.9 "Territory" means the territory set forth on the applicable Order.
 - § 1.10 "User" means any individual who accesses or uses the Licensed Products.
- **2. Fees; Payment Terms.** Customer will pay to Scholastic, for each Subscription Period, the fees and other amounts for the Licensed Products as set forth on the applicable Order (the "Fees") in accordance with the payment terms set forth therein.
- **3. Licenses.**
 - § 3.1 *Scholastic License Grant.* Subject to the terms and conditions of this Agreement, Scholastic hereby grants to Customer a limited, non-exclusive, non-sublicensable and non-transferable right for Customer to access and use the Licensed Products in the Territory, and to permit Users to access and use the Licensed Products in the Territory, solely for the personal, non-commercial use of Customer and such Users, and solely during each Subscription Period with respect to which Customer has paid to Scholastic all applicable Fees, subject to the terms and conditions of this Agreement and any other applicable terms and conditions, restrictions or instructions provided by Scholastic to Customer and/or any User, including any eligibility criteria for Users. At the end of each Subscription Period, Customer shall have sixty (60) calendar days to run any final, read-only usage reports for certain Customer Data with respect to the applicable Licensed Products. Following such sixty (60) calendar day period, Scholastic may delete or retain any or all Customer Materials associated with such Licensed Products, but Customer shall have no further access to any such retained Customer Materials, except as otherwise required by law. Any rights not expressly granted by Scholastic in this Agreement are expressly reserved to Scholastic.
 - § 3.2 *Customer License Grant.* Customer, on behalf of Customer and each User, hereby grants to Scholastic a non-exclusive, worldwide, royalty-free, perpetual, irrevocable, fully sublicensable (through multiple tiers) and transferable license to reproduce, adapt, modify, create derivative works based upon, store, host, publish, display and perform (publicly or otherwise), distribute, maintain and otherwise retain, analyze and use the Customer Materials in connection with the Licensed Products and as otherwise permitted in this Agreement, in any format or media now known or hereafter developed. Customer understands and agrees that Scholastic may be accessing the Customer Materials, including Customer Data, in order to provide the Licensed Products and as

otherwise permitted by this Agreement. For clarity, as between Customer and Scholastic, and subject to Section 3.3 below, Customer retains any ownership rights that Customer has in any Customer Materials.

- o **§ 3.3 Feedback.** Customer, on behalf of Customer and each User, agrees to assign and hereby does assign to Scholastic, and Scholastic shall exclusively own, all right, title and interest in any ideas, enhancement requests, feedback, recommendations, testimonials and other similar information related to the Licensed Products provided by or on behalf of Customer or any User, and acknowledges that Scholastic will have no confidentiality, fiduciary or other obligations with respect to any such information.

- **4. Customer Obligations.**

- o **§ 4.1 Product Terms.** Customer must comply with the Product Terms, including Sections 4 (Rules of Conduct), 5 (Prohibited Materials) and 10 (Scholastic's Proprietary Rights). Customer must also ensure that its Users comply with the Product Terms, and Customer shall be responsible for any User's violation of the Product Terms. Any violation of the Product Terms by any User will be deemed a breach of this Agreement by Customer.
- o **§ 4.2 Security; Passwords.** Customer will take all reasonable security measures to prevent unauthorized access to the Licensed Products. Customer is responsible for all activities that occur under Customer's or any User's account in connection with the Licensed Products. Such accounts are non-transferable and are solely for the personal use of Customer or the applicable User to which such account is assigned. Customer agrees to immediately notify Scholastic of any unauthorized use of any such account, or any other actual or suspected breach of security or confidentiality with respect to any such account, and, in such event, Scholastic may terminate such account without liability and without limiting any other remedy under this Agreement or applicable law. Customer assumes all responsibility, liability and risk associated with the use of any Licensed Product feature that does not require passwords, with the failure of Customer or any User to set a password where there is an option to do so, and with the level of strength or security of any password selected by Customer or any User.
- o **§ 4.3 Personally Identifiable Information.** Customer acknowledges and agrees that Personally Identifiable Information and other information collected by or on behalf of Scholastic in connection with the Licensed Products shall be governed by the Scholastic Privacy Policy (as updated from time to time), currently available at <https://www.scholastic.com/edtechprivacy.htm>, or as otherwise set forth in such Privacy Policy.
- o **§ 4.4 FERPA.** In the event that any Customer Materials contain Personally Identifiable Information, Customer agrees only to provide or otherwise make available to Scholastic such Customer Materials (a) in compliance with all applicable laws, rules, regulations and privacy policies (including the Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232(g)) and the regulations thereunder (34 CFR Part 99) (collectively, "FERPA")) (collectively, including FERPA,

"Applicable Law"), and (b) in accordance with all necessary permissions, rights and consents as required by and in full compliance with all Applicable Law. Both Scholastic and Customer acknowledge that FERPA imposes obligations and restrictions onto "educational institutions or agencies" (such as Customer), including with respect to the handling and disclosure of Personally Identifiable Information contained in the educational records Customer maintains regarding its students. With respect to any Customer Materials that may be accessed, obtained, received, extracted or otherwise used by Scholastic (or which may otherwise be disclosed in any manner to Scholastic by or on behalf of Customer), in individualized or aggregate form, in connection with the Licensed Products provided pursuant to this Agreement, Customer hereby: (1) acknowledges and agrees that Scholastic can rely, is relying and will continue to rely on Customer's full compliance with the applicable obligations imposed by Applicable Law, as any such obligations may be amended or modified from time to time; and (2) expressly waives and releases Scholastic from and against any and all claims, actions, damages and liability arising in connection with Customer's provision of such Customer Materials to Scholastic (and any required consents in connection therewith) and Scholastic's receipt and use of such Customer Materials on behalf of Customer in accordance with the provisions of Applicable Law and the terms and conditions of this Agreement.

- **5. Student Education Record Data.** Any student education record data contained in Customer Data (such data, "Student Data") will remain the property of, and under the control of, Customer. Scholastic will use Student Data only to provide the Licensed Products and as otherwise specifically permitted by this Agreement, including as set forth in the Scholastic Privacy Policy. For purposes of this Section 5, "student education record data" does not include information that cannot be used to identify an individual student.
- **§5.1 Access and Correction.** Any parent or legal guardian of a student who is under eighteen (18) years of age and any student who is at least eighteen (18) years of age may review Personally Identifiable Information in such student's Student Data and correct erroneous information in such Student Data by contacting Customer.
- **§5.2 Security.** Scholastic will use reasonable organizational, technical and administrative measures, including designation and training of responsible individuals, to protect the security and confidentiality of Student Data within Scholastic's possession or control.
- **§5.3 Unauthorized Disclosure.** In the event of unauthorized disclosure of Student Data while within the possession or control of Scholastic, Scholastic will notify Customer of such disclosure, and Customer will notify a parent or legal guardian of each affected student who is under eighteen (18) years of age and each affected student who is at least eighteen (18) years of age of such disclosure.
- **§5.4 Termination.** Upon termination or expiration of this Agreement, to the extent required by applicable law, Scholastic will return to Customer all Student Data, or destroy the same, in accordance with such reasonable written instructions as may be given by Customer; however, except

to the extent prohibited by applicable law, Scholastic may retain back-up and similar copies of Student Data that Scholastic is unable to destroy using commercially reasonable measures. Upon Customer's written request, Scholastic will certify to Customer that Scholastic has destroyed such Student Data.

- o §5.5 Advertising. Scholastic will not use any Personally Identifiable Information contained in Student Data to engage in targeted advertising.

- **6. Warranties.**

- o § 6.1 *Mutual Warranties*. Each party hereby represents and warrants to the other party that: (a) it is a duly organized entity, validly existing and in good standing under the laws of the state of its formation; (b) it has the requisite power and authority to execute and deliver this Agreement and to fully perform its obligations under this Agreement; and (c) it is not subject to any contractual obligation that would reasonably be expected to interfere in any way with its full performance of its obligations under this Agreement.
- o § 6.2 *Customer Warranties*. Customer represents and warrants that: (a) for all Customer Materials, and for all User access to and use of the Licensed Products, Customer is solely responsible for obtaining, and Customer hereby represents and warrants to Scholastic that it has previously obtained, all of the necessary and applicable rights, permissions and consents, including parental consents, to make available (and to permit Users and other third parties, such as Customer's third-party data hosting providers, to make available) the Customer Materials to Scholastic, and for Scholastic to use such Customer Materials in accordance with this Agreement, including Scholastic's use of Customer Data in accordance with the Scholastic Privacy Policy; (b) Customer is and will continue to be in compliance in all respects with all Applicable Law in connection with its and its Users' use of the Licensed Products; (c) the Customer Materials shall not include any Social Security Numbers; (d) Customer, and not Scholastic or any third party, is responsible for responding to any request from a parent or legal guardian of a User, or to any request from a User who is at least eighteen (18) years old, for access to, or other action with respect to, such User's Personally Identifiable Information or student education record data; and (e) all information provided by or on behalf of Customer in connection with any Order is and will remain complete and accurate.
- **7. DISCLAIMER OF WARRANTIES**. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6 ABOVE, CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES TO BE BOUND BY THE DISCLAIMERS SET FORTH IN SECTION 12 OF THE PRODUCT TERMS, CURRENTLY AVAILABLE ABOVE HERE: PRODUCT TERMS SECTION 12.
- **8. LIMITATION OF LIABILITY**. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES TO BE BOUND BY THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 13 OF THE PRODUCT TERMS, CURRENTLY AVAILABLE ABOVE HERE: PRODUCT TERMS SECTION 13.

- **9. Indemnity.** Except to the extent prohibited under applicable law, Customer agrees to defend, indemnify and hold harmless Scholastic and the Affiliated Entities (as defined in the Product Terms) from and against all claims, losses, costs and expenses (including reasonable attorneys' fees) arising out of (a) Customer's or any User's use of, or activities in connection with, the Licensed Products; and (b) any violation or alleged violation of any covenant, representation, warranty or other provision of this Agreement by Customer.
- **10. Term; Termination.** The term of this Agreement commences on the Effective Date and shall continue until terminated as set forth herein. Scholastic may terminate this Agreement upon written notice to Customer if Customer breaches any term or condition of this Agreement, or upon written notice to Customer at any time if no Subscription Period is then in effect. Customer may terminate this Agreement upon thirty (30) days' prior written notice to Scholastic, subject to Customer's payment to Scholastic of all Fees set forth in this Agreement (including in all Orders). In addition, Scholastic may suspend any or all rights granted to Customer and/or any User under this Agreement at any time and without prior notice, including if Scholastic believes that Customer has violated this Agreement. For clarity, upon any termination of this Agreement, all rights granted to Customer and any Users under this Agreement (including under the Product Terms and any Orders) will automatically cease. Sections 1, 2 (with respect to any Fees incurred under this Agreement prior to its termination), 3.2, 3.3, 4.1, 4.3, 4.4 and 5-13 shall survive any termination of this Agreement.
- **11. Publicity.** No public statement, press release or other announcement relating to this Agreement, the Licensed Products or the other party shall be issued by either party hereunder, nor shall either party use any name, trademark or logo of the other party (which, with respect to Scholastic, includes the SCHOLASTIC mark and the Red Bar logo) without the prior written consent of such other party. Notwithstanding the foregoing, Scholastic may use Customer's name and logo in Scholastic's customer lists, including publicly available lists.
- **12. Confidentiality.** Except as otherwise required by law, Customer acknowledges and agrees that the terms and conditions of this Agreement (including pricing and other terms of any Orders) shall be kept confidential by Customer at all times, and Customer shall not divulge such knowledge to any third party, or use such knowledge other than to fulfill Customer's obligations or exercise its rights under this Agreement, without Scholastic's prior written consent.
- **13. Governing Law; Arbitration.** ANY DISPUTES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING THE PRODUCT TERMS) OR ANY ASPECT OF THE RELATIONSHIP BETWEEN CUSTOMER AND SCHOLASTIC, WHETHER BASED IN CONTRACT, TORT, STATUTE, FRAUD, MISREPRESENTATION OR ANY OTHER LEGAL THEORY, WILL BE RESOLVED THROUGH FINAL AND BINDING ARBITRATION BEFORE A NEUTRAL ARBITRATOR INSTEAD

OF IN A COURT BY A JUDGE OR JURY, AND EACH PARTY AGREES THAT IT IS WAIVING THE RIGHT TO TRIAL BY A JURY. EACH PARTY AGREES THAT ANY ARBITRATION UNDER THIS AGREEMENT WILL TAKE PLACE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED, AND EACH PARTY IS AGREEING TO GIVE UP THE ABILITY TO PARTICIPATE IN A CLASS ACTION. The arbitration will be administered by the American Arbitration Association under its Commercial Arbitration Rules, as amended by this Agreement. Any in-person appearances requested by the arbitrator shall be held in New York Kenton County, New York Kentucky. The arbitration decision shall be based upon the laws of New York Kentucky State, without regard to its principles of conflicts of law. Arbitration proceedings shall be conducted in English and in a manner that preserves confidentiality. The arbitrator's decision will follow the provisions of this Agreement and will be final and binding. The arbitrator will have authority to award temporary, interim or permanent injunctive relief or relief providing for specific performance of this Agreement or any other applicable agreement between us, but only to the extent necessary to provide relief warranted by the individual claim before the arbitrator. The award rendered by the arbitrator may be confirmed and enforced in any court having jurisdiction thereof. For clarity, Section 15 of the Product Terms shall not apply to any dispute between Customer and Scholastic.

- **14. Miscellaneous.** This Agreement does not, and shall not be construed to, create any partnership, joint venture, employer-employee, agency or franchisor-franchisee relationship between Customer and Scholastic. If any provision of this Agreement is found to be unlawful, void or for any reason unenforceable, that provision will be deemed severable from this Agreement and will not affect the validity and enforceability of any remaining provision. Customer may not assign, transfer or sublicense any or all of its rights or obligations under this Agreement without Scholastic's express prior written consent. Scholastic may assign, transfer, sublicense or subcontract any or all of its rights or obligations under this Agreement without restriction. No waiver by either party of any breach or default under this Agreement will be deemed to be a waiver of any preceding or subsequent breach or default. Any heading, caption or section title contained in this Agreement is for convenience only, and in no way defines or explains any section or provision. All terms defined in the singular shall have the same meanings when used in the plural, where appropriate and unless otherwise specified. Any use of the term "including" or variations thereof in this Agreement shall be construed as if followed by the phrase "without limitation." This Agreement, including the Product Terms and any Orders or other terms and conditions incorporated into this Agreement, is the entire agreement between Customer and Scholastic relating to its subject matter, and supersedes any and all prior or contemporaneous written or oral agreements or understandings between Customer and Scholastic relating to such subject matter. Notices to Customer (including notices of changes to this Agreement) may be made via posting to the Site (as defined in the Product Terms) or by e-mail (including in each case via links), or by regular mail. Notices to Scholastic shall be sent in writing by

registered mail, return receipt requested, to: Scholastic Inc., 557 Broadway, New York, NY 10012, Attn: SVP, Corporate Finance; with a copy to: Scholastic Inc., 557 Broadway, New York, NY 10012, Attn: EVP & General Counsel. Without limitation, a printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. Scholastic will not be responsible for any failure to fulfill any obligation due to any cause beyond its reasonable control. Solely to the extent of any irreconcilable conflict between any Order, this Customer Agreement and/or the Product Terms, the terms and conditions of the Customer Agreement shall govern, followed by the terms and conditions of the Product Terms followed by the terms and conditions of the Order.

15. Cancellation:

(a) For Classroom Magazine products:

- (i) If the cancellation from Customer is received within 30 days of receipt of their first magazine, no balance is due.
- (ii) If the cancellation from Customer is outside of the 30-day guarantee, cancellations can be requested at any time and the customer's balance is prorated based upon the number of issues they received prior to them stopping their magazine shipment.

(b) For all other digital education products:

- (i) If the cancellation from Customer is requested in the first 30 days of service, no balance is due.
- (ii) If the cancellation from Customer is outside of the 30-day guarantee, cancellations can be requested at any time and the customer's balance due is prorated based upon the number of months of active service they had service prior to the cancelation request.

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