



Issue Paper

DATE:

May 22, 2024

AGENDA ITEM (ACTION ITEM):

Consider/Approve a sales contract with Houghton Mifflin Harcourt (HMH) for the renewal of student licenses for literacy and numeracy interventions for the 24-25 school year.

APPLICABLE BOARD POLICY:

01.1 - Legal Status of the Board

HISTORY/BACKGROUND:

HMH provides individual licensing for Read 180, The Code (System 44), Math 180 and the data platform, ED (educational database). Nine schools are using these programs for reading and math interventions. HMH has transitioned from providing a hosting fee for unlimited licenses to an individual cost per student.

FISCAL/BUDGETARY IMPACT:

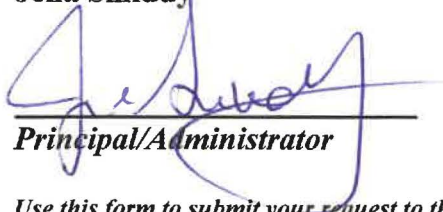
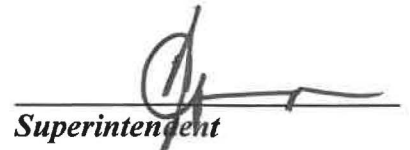
\$49,540.50 - ARP

RECOMMENDATION:

Approve a sales contract with Houghton Mifflin Harcourt (HMH) for the renewal of student licenses for literacy and numeracy intervention for the 24-25 school year.

CONTACT PERSON:

Jena Smiddy


Principal/Administrator
District Administrator
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.



Houghton Mifflin Harcourt

Proposal #008966349

Prepared For

Kenton Co School District

Attention:

Missy Hicks

missy.hicks@kenton.kyschools.us

For the Purchase of:

Math 180 on Ed Dedicated/pull-out (Stand-Alone)

Prepared By

Jonathan Broyles

jonathan.broyles@hmc.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.

For greater detail, the complete Terms of Purchases may be reviewed here:

<http://www.hmhco.com/common/terms-conditions>

Coupon Code: PRODPB10

Send **Check Payments** to:
Houghton Mifflin Harcourt Publishing Company
14046 Collections Center Drive
Chicago, IL 60693

Attention:
Missy Hicks
missy.hicks@kenton.kyschools.us

HMH Confidential and Proprietary

Send **Orders** to:
orders@hmc.com
FAX: 800-269-5232

Proposal for Kenton Co School District

ISBN	Title	Price	Quantity	Value of all Materials	Value of Free Materials	Value of Charged Materials
Stage B						
Student Licenses						
1866600 9780358937265	Read 180 on Ed Student Digital Subscription 1 Year	\$109.00	365	\$39,785.00	\$3,978.50	\$35,806.50
Includes: Read 180 on Ed Student License 1 Year Implementation Success						
Total for Student Licenses		\$35,806.50				
Teacher Licenses						
1835546 9780358740643	Read 180 on Ed Teacher Digital Subscription 1 Year	\$299.00	44	\$13,156.00	\$13,156.00	
Includes: Read 180 on Ed Teacher License 1 Year Access to Teacher's Corner						
Total for Teacher Licenses		\$0.00				
Total for Stage B		\$35,806.50				
Math 180						
Student Licenses						
1867368 9780358937449	Math 180 on Ed Student Digital Subscription 1 Year	\$109.00	140	\$15,260.00	\$1,526.00	\$13,734.00
Includes: Math 180 on Ed Student License, 1 Year Implementation Success						
Total for Student Licenses		\$13,734.00				
Teacher Licenses						
1821211 9780358654605	Math 180 on Ed Teacher Digital Subscription 1 Year	\$299.00	11	\$3,289.00	\$3,289.00	
Includes: Math 180 on Ed Teacher License, 1 Year Access to Teacher's Corner						
Total for Teacher Licenses		\$0.00				
Total for Math 180		\$13,734.00				
Professional Services - Math 180						
Implementation Success Plan						
1821115 9780358653707	Getting Started: Introduction to Math 180 on Ed Live Online 2-Hour Grade 5-12	\$800.00	1	\$800.00	\$800.00	
This two-hour Getting Started session introduces teachers to their new program's structure, essential resources, and implementation recommendations. Teachers will also explore Ed, HMH's teaching and learning platform, and the professional learning pathway on Ed.						
Getting Started is the initial step toward a successful first 30 days. Ongoing training and support will be also provided on Ed. There, teachers will access a guided learning pathway based on their grade level and implementation timeline. A recommended sequence of topics, which includes live sessions, videos, interactive media, and related resources, will help teachers plan, teach, and assess student learning using their new HMH program. After teachers complete each pathway topic, they receive a certificate of completion.						
Total for Implementation Success Plan		\$0.00				
Total for Professional Services - Math 180		\$0.00				
Professional Services - Read 180						
Implementation Success Plan						

Coupon Code: PRODPB10

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Proposal for Kenton Co School District

ISBN	Title	Price	Quantity	Value of all Materials	Value of Free Materials	Value of Charged Materials
1833602 9780358732082	Getting Started Introduction to Read 180 on Ed Live Online 2-Hour Grade 3-12 This two-hour Getting Started session introduces teachers to their new program's structure, essential resources, and implementation recommendations. Teachers will also explore Ed, HMH's teaching and learning platform, and the professional learning pathway on Ed. Getting Started is the initial step toward a successful first 30 days. Ongoing training and support will be also provided on Ed. There, teachers will access a guided learning pathway based on their grade level and implementation timeline. A recommended sequence of topics, which includes live sessions, videos, interactive media, and related resources, will help teachers plan, teach, and assess student learning using their new HMH program. After teachers complete each pathway topic, they receive a certificate of completion.	\$800.00	1	\$800.00	\$800.00	
Total for Implementation Success Plan				\$0.00		
Total for Professional Services - Read 180						\$0.00

Total Savings:	\$21,949.50
Subtotal Purchase Amount:	\$49,540.50
Shipping & Handling:	\$0.00
Sales Tax:	\$0.00
Total Cost of Proposal (PO Amount):	\$49,540.50

Coupon Code: PRODPB10

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Chicago, IL 60693

Attention:
Missy Hicks
missy.hicks@kenton.kyschools.us

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orders@hnhco.com
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Proposal for Kenton Co School District

Total Cost of Proposal (PO Amount): \$49,540.50

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:	Sold to:
Kenton County School District	Kenton County School District
1055 Eaton Dr	1055 Eaton Dr
Ft Wright, KY 41017-9655	Ft Wright, KY 41017-9655
- 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.
- Any proposed shipping or tax amount provided on this proposal, is based on the Ship To account location quoted within.
- If the location of your delivery changes, please include the proper sales tax and shipping charges for that location in the applicable Purchase Order
- 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: 3/1/2024

Proposal Expiration Date: 6/28/2024



Houghton Mifflin Harcourt

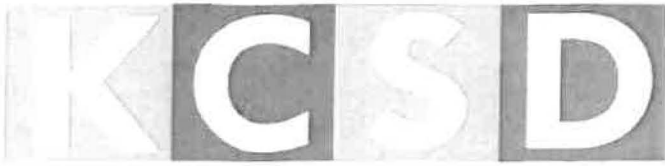
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HMH Confidential and Proprietary



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 Data Security and Breach
Protocols**

Vendors, such as Houghton Mifflin Harcourt Publishing Company (hereinafter “vendor” or “non-affiliated third party”), 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 receives personal information from the KCBOE pursuant to KCBOE’s use of vendor’s products Into Literature and Writable.

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; and using contact information found here: <https://education.ky.gov/districts/tech/Pages/Data-Security-Privacy.aspx>, 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 a determination of a confirmed 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, promptly and within seventy-two (72) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor hereby agrees that the KCBOE may withhold payment(s) owed to the vendor for any violation of the Act’s notification requirements.

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 a reasonable apportionment of the actual 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.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Education 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).
- The vendor may use de-identified information in accordance with FERPA.

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, promptly and within seventy-two (72) hours, any 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 includes, 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 may be 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 may be 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.

Houghton Mifflin Harcourt Publishing Company

Vendor Name

125 High Street, Boston, MA 02110

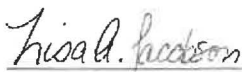
Vendor Address

617.351.5415

Vendor Telephone

Lisa.jacobson@hnhco.com

Vendor Email Address



Signature by Vendor's Authorized Representative

Lisa Jacobson, Sr Director, Bids and Contracts

Print Name

May 11th 2023

Date



**Houghton
Mifflin
Harcourt**

**FIRST AMENDMENT TO HMH TERMS OF PURCHASE BETWEEN
HOUGHTON MIFFLIN HARCOURT PUBLISHING AND KENTON COUNTY
SCHOOL DISTRICT (“Amendment”)**

THIS FIRST AMENDMENT (“1st Amendment”) is entered into as of the 4th day of July 2023 (“Amendment Effective Date”), and amends the HMH Terms of Purchase, (“Agreement”) by and between Kenton County School District (“School/District”), and Houghton Mifflin Harcourt Publishing Company (“HMH”) as it relates to District’s purchase through Cost Proposal #008686281. Capitalized terms in this 1st Amendment and not defined herein shall have the same definition as provided in the Agreement.

WHEREAS, the Parties desire to adjust the following clauses included in the Agreement.

Delete and Replace 18. Jurisdiction; Venue; Choice of Law: “THE STATE COURTS OF THE STATE OF KENTUCKY SITTING IN KENTON COUNTY AND, IF THE JURISDICTIONAL PREREQUISITES EXIST AT THE TIME, THE UNITED STATES DISTRICT COURT FOR KENTUCKY 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 STATE OF KENTUCKY, 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.”

Entire Agreement: For clarity, there are no other changes to the Terms of Purchase between the parties. The Agreement, as modified by the 1stAmendment, sets forth the entire agreement between the parties with respect to the matters set forth herein and supersedes all prior and contemporaneous discussions or understandings between them relating thereto. Except as expressly modified in this 1st Amendment, the Agreement, as previously amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have duly executed this Amendment this 4th day of July 2023.

**KENTON COUNTY
SCHOOL DISTRICT**

**HOUGHTON MIFFLIN HARCOURT
PUBLISHING COMPANY**

By: _____

By: *Lisa A. Jacobson*

Printed Name: _____

Printed Name: Lisa A. Jacobson

Title: _____

Title: Sr. Director, Bids and Contracts

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.

The **K-12 Learning Platforms Terms of Use** governs all users access to and use of Products on HMH learning platforms 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. HMM's list prices and other terms shown are subject to change without notice. HMM 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 HMM's sole and absolute discretion. In the event of any errors relating to the pricing or specifications of any Products, HMM shall have the right to refuse or cancel any orders in its sole discretion.
4. **BILLING AND PAYMENT.** All amounts owing from Customer to HMM with respect to any Products purchased from HMM are subject to timely payment due within thirty (30) days of the date set forth on HMM'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 HMM 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 HMM in a valid credit memo, Customer may not charge back to HMM 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. HMM shall process any credit to Customer's account in accordance with HMM'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 HMM 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 HMM's Products will be delivered. HMM 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 HMM 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 HMM'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. HMM's shipping point (whether to an HMM 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 16%. Minimum charge is \$10.00. HMM 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 16%. 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.