

# Terms and Agreements

Please read the [Individual Customer Agreement](#) if purchasing this product for yourself.  
Please read the [Institutional Customer Agreement](#) if purchasing this product for your institution.

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Last Updated: August 21st, 2015

## PRODUCT TERMS

Please read these Product Terms (the "Terms") carefully. Your use of the Site or Scholastic Products (as defined below) constitutes your consent to these Terms.

These Terms are between you and Scholastic Inc. and/or any affiliated entities set forth in an applicable Order ("Scholastic" or "we") concerning your use of (including any access to) the text, images, audio and audiovisual recordings, software, databases, documentation and other information, content, material and services (the "Scholastic Products") made available to you through the Scholastic websites and mobile apps displaying a link to these Terms (together with any successor website(s) and app(s) thereto, the "Site"). These Terms hereby incorporate by this reference any additional terms and conditions posted by Scholastic through the Site, or otherwise made available to you by Scholastic.

If you have entered into an Individual Customer Agreement or 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 Individual Customer Agreement has been entered into by a teacher or librarian, then the word "you" in these Terms may include such teacher or librarian and his or her students or library patrons, as applicable.
- Further, 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.

BY USING THE SITE OR THE SCHOLASTIC PRODUCTS, YOU AFFIRM THAT YOU ARE OF LEGAL AGE TO ENTER INTO THESE TERMS, OR, IF YOU ARE NOT, THAT YOU

HAVE OBTAINED PARENTAL/GUARDIAN OR TEACHER/LIBRARIAN CONSENT TO DO SO.

**1. Changes.** We may change these Terms by notifying you of such changes by any reasonable means, including by posting revised Terms through the Site. Any such changes will not apply to any dispute between you and us arising prior to the date on which we posted the revised Terms incorporating such changes, or otherwise notified you of such changes.

Your use of the Site or Scholastic Products following any changes to these Terms will constitute your acceptance of such changes. The “*Last Updated*” legend above indicates when these Terms were last changed. We may, at any time and without liability, modify or discontinue all or part of the Site or Scholastic Products (including access to the Scholastic Products via any third-party links, and including any titles available through the Scholastic Products and any other content or functionality availability restrictions); charge, modify or waive any fees required to use the Site or Scholastic Products; or offer opportunities to some or all users.

**2. Information Submitted.** Your submission of information through the Site or the Scholastic Products is governed by the Scholastic Privacy Policy, currently available at <https://www.scholastic.com/edtechprivacy.htm>, or as otherwise set forth in such Privacy Policy.

**3. Jurisdictional Issues.** The Site and the Scholastic Products are controlled or operated (or both) from the United States, and are not intended to subject Scholastic to any non-U.S. jurisdiction or law. The Site and the Scholastic Products may not be appropriate or available for use in some non-U.S. jurisdictions. Any use of the Site and the Scholastic Products is at your own risk, and you must comply with all applicable laws, rules and regulations in doing so. We may limit the availability of the Site or the Scholastic Products at any time, in whole or in part, to any person, geographic area or jurisdiction that we choose.

**4. Rules of Conduct.** You will not: (a) copy, modify, create derivative works of, publicly display or perform, distribute, download, mirror, sell, rent, lease, loan, sublicense or timeshare the Site or the Scholastic Products; (b) decompile, disassemble or reverse engineer the Site or the Scholastic Products; (c) disrupt the operation of the Site or the Scholastic Products, or any third party’s use of the same; (d) remove any proprietary notices from the Site or the Scholastic Products; (e) use any robot, spider, or other device to retrieve, index, “scrape,” “data mine” or otherwise gather content from the Site or the Scholastic Products, or reproduce or circumvent the navigational structure or presentation of the same; (f) use the Site or the Scholastic Products for any commercial purpose or for the purposes of any third party, or exploit the Site or Scholastic Products except as expressly authorized herein; or (g) permit or facilitate any unauthorized access to the Site or Scholastic Products. You must

cease using the Site and the Scholastic Products if you violate these Terms, or upon our reasonable request.

You are responsible for obtaining, maintaining and paying for all hardware, telecommunications and other services and resources needed to use the Site and the Scholastic Products.

**5. Prohibited Materials.** You will not post any material that is: (a) threatening, harassing or otherwise disrespectful; (b) false, defamatory or fraudulent; (c) obscene, indecent, profane, discriminatory or otherwise objectionable; (d) a promotion, advertisement, solicitation, or offer to buy or sell any product or service; (e) infringing or violating any copyright, trademark, trade secret, right of publicity, right of privacy or other proprietary right; (f) violating any confidentiality or other contractual or fiduciary obligation; (g) intended to harm or disrupt any software, hardware or network; or (h) otherwise tortious or illegal.

**6. Registration; User Names and Passwords.** You may need to register to use all or part of the Site or Scholastic Products. You represent and warrant that any information you provide in connection with any such registration is complete and accurate, and that you will promptly update any such information as necessary from time to time. We may reject, or require that you change, any user name, password or other information that you provide to us in registering. Your user name and password are for your personal use only, and should be kept confidential; you, and not Scholastic, are responsible for any use or misuse of your user name or password, and you must promptly notify us of any actual or suspected confidentiality breach or unauthorized use of your user name or password, or your account.

**7. Submissions.** Users of the Site and the Scholastic Products may make available certain materials (each, a "Submission") through or in connection with the Site or the Scholastic Products, including on profile pages or on interactive services that may make such Submissions available to other users within a designated user group and/or to the general public. Scholastic has no control over and, except to the extent expressly provided otherwise by applicable law or by the Scholastic Privacy Policy, Scholastic is not responsible for any use or misuse (including any distribution) by any third party of Submissions, including the further distribution of Submissions by any user in a designated user group and/or by the general public. IF YOU CHOOSE TO MAKE ANY OF YOUR PERSONALLY IDENTIFIABLE OR OTHER INFORMATION PUBLICLY AVAILABLE THROUGH THE SITE OR THE SCHOLASTIC PRODUCTS, YOU DO SO AT YOUR OWN RISK.

**8. License; Feedback.** You hereby grant 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 your Submissions in connection with the Site and/or Scholastic Products, and as otherwise permitted in these Terms, in any format or media now known or hereafter developed.

In addition, you agree to assign and hereby do 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 Site and/or Scholastic Products provided by you or on your behalf ("Feedback"), and you acknowledge that Scholastic will have no confidentiality, fiduciary or other obligations with respect to any Feedback.

You represent and warrant that you have all rights necessary to grant the rights granted in this Section 8, and that your Submissions and Feedback are not fraudulent, tortious or otherwise in violation of any applicable law or any right of any third party. You further irrevocably waive any "moral rights" or other rights with respect to attribution of authorship or integrity of materials regarding any Submissions and Feedback that you may have under any applicable law under any legal theory.

**9. Monitoring.** We may (but have no obligation to) monitor any use of the Site or Scholastic Products, and monitor, evaluate, alter or remove Submissions before or after they appear on the Site or the Scholastic Products.

**10. Scholastic's Proprietary Rights.** As between you and Scholastic, the Site and the Scholastic Products, and any corrections, modifications, additions, improvements and enhancements thereto, and all intellectual property rights therein, are owned exclusively by Scholastic and its licensors. Subject to these Terms, you may access and use the Site and the Scholastic Products solely for your personal, non-commercial use during the term of the applicable Subscription Period under the applicable Customer Agreement, and solely in accordance with any applicable documentation or usage restrictions that Scholastic may make available to you or that are otherwise set forth in such Customer Agreement. For clarity, the word "you" in this Section 10 and elsewhere in these Terms includes (a) your classroom's students or your library's patrons, if you are a teacher or librarian, respectively, who is a party to an Individual Customer Agreement, or (b) your school district's or school's teachers or students or your library's patrons, as applicable, if you are a party to an Institutional Customer Agreement.

All other rights in the Site and Scholastic Products not expressly granted herein are expressly reserved by us. All trade names, trademarks, service marks and logos on the Site or the Scholastic Products not owned by us are the property of their respective owners. You may not use our or our licensors' trade names, trademarks, service marks or logos (including our

SCHOLASTIC mark and our Red Bar logo) in connection with any product or service that is not ours, or in any manner that is likely to cause confusion. Nothing contained on the Site or the Scholastic Products should be construed as granting any right to use any trade names, trademarks, service marks or logos without the express prior written consent of the owner.

**11. Third Party Materials; Links.** Certain Site or Scholastic Products functionality may make available access to materials made available by third parties, including Submissions (“Third Party Materials”), or allow for the routing or transmission of such Third Party Materials, including via links.

We neither control nor endorse, nor are we responsible for, any Third Party Materials, including the accuracy, integrity, quality, legality, usefulness or safety of Third Party Materials, or any intellectual property rights therein. Nothing in these Terms shall be deemed to be a representation or warranty by Scholastic with respect to any Third Party Materials. We have no obligation to monitor Third Party Materials, and we may block or disable access to any Third Party Materials (in whole or part) through the Site or Scholastic Products at any time. In addition, the availability of any Third Party Materials through the Site or Scholastic Products does not imply our endorsement of, or our affiliation with, any provider of such Third Party Materials, nor does such availability create any legal relationship between you and any such provider.

YOUR USE OF THIRD PARTY MATERIALS IS AT YOUR OWN RISK AND IS SUBJECT TO ANY ADDITIONAL TERMS, CONDITIONS AND POLICIES APPLICABLE TO SUCH THIRD PARTY MATERIALS (SUCH AS TERMS OF SERVICE OR PRIVACY POLICIES OF THE PROVIDERS OF SUCH THIRD PARTY MATERIALS).

**12. DISCLAIMER OF WARRANTIES**

THE SITE, THE SCHOLASTIC PRODUCTS AND THIRD PARTY MATERIALS ARE MADE AVAILABLE TO YOU “AS IS” WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY. SCHOLASTIC DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SITE, THE SCHOLASTIC PRODUCTS AND THIRD PARTY MATERIALS TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE. ALL DISCLAIMERS OF ANY KIND (INCLUDING IN THIS SECTION AND ELSEWHERE IN THESE TERMS) ARE MADE ON BEHALF OF BOTH SCHOLASTIC AND ITS PARENT, SUBSIDIARIES AND OTHER AFFILIATES AND THEIR RESPECTIVE SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, REPRESENTATIVES, LICENSORS, SUPPLIERS AND SERVICE PROVIDERS (COLLECTIVELY, THE “AFFILIATED ENTITIES”).

While we try to maintain the timeliness, integrity and security of the Site and the Scholastic Products, we do not guarantee that they are or will remain updated, complete, correct or secure, or that access to the Site or Scholastic Products will be uninterrupted. The Site and Scholastic Products may include inaccuracies, errors and materials that violate or conflict with these Terms. Additionally, third parties may make unauthorized alterations to the Site or Scholastic Products. If you become aware of any such alteration, contact us at [atm&c@scholastic.com](mailto:atm&c@scholastic.com) with a description of such alteration and its location.

### **13. LIMITATION OF LIABILITY**

SCHOLASTIC WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND, UNDER ANY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER THEORY, INCLUDING DAMAGES FOR LOSS OF PROFITS, USE OR DATA, LOSS OF OTHER INTANGIBLES, LOSS OF SECURITY OF SUBMISSIONS (INCLUDING UNAUTHORIZED INTERCEPTION BY THIRD PARTIES OF ANY SUBMISSIONS), EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. WITHOUT LIMITING THE FOREGOING, SCHOLASTIC WILL NOT BE LIABLE FOR DAMAGES OF ANY KIND RESULTING FROM YOUR USE OF OR INABILITY TO USE THE SITE, THE SCHOLASTIC PRODUCTS OR THIRD PARTY MATERIALS. YOUR SOLE AND EXCLUSIVE REMEDY FOR DISSATISFACTION WITH THE SITE, THE SCHOLASTIC PRODUCTS OR THIRD PARTY MATERIALS IS TO STOP USING THE SAME. THE MAXIMUM AGGREGATE LIABILITY OF SCHOLASTIC FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL BE THE GREATER OF (A) THE TOTAL AMOUNT, IF ANY, ACTUALLY PAID BY YOU TO SCHOLASTIC TO USE THE SITE OR THE SCHOLASTIC PRODUCTS WITH RESPECT TO THE SIX (6) MONTHS PRECEDING THE DATE ON WHICH THE FIRST APPLICABLE CLAIM AROSE; AND (B) TEN U.S. DOLLARS (\$10.00). ALL LIMITATIONS OF LIABILITY OF ANY KIND (INCLUDING IN THIS SECTION AND ELSEWHERE IN THESE TERMS) ARE MADE ON BEHALF OF BOTH SCHOLASTIC AND THE AFFILIATED ENTITIES.

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.

**14. Suspension; Termination.** These Terms are effective so long as you are permitted by Scholastic to use the Site and Scholastic Products. Scholastic may terminate or suspend your use of the Site or Scholastic Products at any time and without prior notice, including if Scholastic believes that you have violated these Terms. Upon any such termination or

suspension, your right to use the Site and Scholastic Products will immediately cease. Sections 2–5, 7–9, 10 (excluding the rights granted by Scholastic therein) and 11–20 shall survive any expiration or termination of these Terms.

**15. Governing Law; Arbitration.** These Terms are governed by the laws of the State of New York, U.S.A., without regard to its principles of conflicts of law, and regardless of your location. EXCEPT FOR DISPUTES THAT QUALIFY FOR SMALL CLAIMS COURT, ALL DISPUTES ARISING OUT OF OR RELATED TO THESE TERMS OR ANY ASPECT OF THE RELATIONSHIP BETWEEN YOU 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 YOU AGREE THAT SCHOLASTIC AND YOU ARE EACH WAIVING THE RIGHT TO TRIAL BY A JURY. YOU AGREE THAT ANY ARBITRATION UNDER THESE TERMS WILL TAKE PLACE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED AND YOU ARE AGREEING TO GIVE UP THE ABILITY TO PARTICIPATE IN A CLASS ACTION. The arbitration will be administered by the American Arbitration Association under its Consumer Arbitration Rules, as amended by this Agreement. The Consumer Arbitration Rules are currently available online at <https://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTAGE2021425&revision=1atestreleased>. The arbitrator will conduct hearings, if any, by teleconference or videoconference, rather than by personal appearances, unless the arbitrator determines upon request by you or by us that an in-person hearing is appropriate. Any in-person appearances will be held at a location which is reasonably convenient to both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, such determination should be made by the AAA or by the arbitrator. The arbitrator's decision will follow the provisions of these Terms 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 these Terms 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. Notwithstanding any of the foregoing, nothing in these Terms will preclude you from bringing issues to the attention of federal, state or local agencies and, if the law allows, they can seek relief against us for you.

**16. Information or Complaints.** If you have a question or complaint regarding the Site or the Scholastic Products, please send an e-mail to [custserv@scholastic.com](mailto:custserv@scholastic.com). You may also contact us by writing to Scholastic Inc, Teacher Store, 557 Broadway, New York, NY 10012, Attn: EVP & General Counsel, or by calling us at 1-800-SCHOLASTIC. Please note that e-

mail communications will not necessarily be secure; accordingly you should not include credit card information or other sensitive information in your e-mail correspondence with us.

**17. Copyright Infringement Claims.** Notification of a copyright infringement claim must be submitted to the following:

Legal Dept.

Scholastic Inc.

557 Broadway

New York, NY 10012

Phone: 212-343-6726

Email: [tm&c@scholastic.com](mailto: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.

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Last Updated: November 5<sup>th</sup>, 2015

## INDIVIDUAL CUSTOMER AGREEMENT

This Individual 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. Customer represents and warrants that he or she is of legal age to enter into this Agreement, and has the legal authority to do so. Please note that your Internet browser will typically permit you to print or save a copy of this Agreement.

Scholastic may change this Agreement, including the Product Terms, by notifying Customer of such changes by any reasonable means, including by posting a revised Agreement through the Scholastic websites or mobile apps through which Scholastic makes available the Licensed Products (together with any successor website(s) and app(s) thereto, the “Site”). Any such changes will not apply to any dispute between Customer and Scholastic arising prior to the date on which Scholastic posted the revised Agreement incorporating such changes, or otherwise notified Customer of such changes. Customer’s use of the Licensed Products following any changes to this Agreement will constitute Customer’s acceptance of such changes. The “*Last Updated*” legend above indicates when this Agreement was last changed.

- **1. Definitions.**

- **§ 1.1** “Customer” means the person identified on the applicable Order.
- **§ 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, which may, for clarity, include Customer.
- **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”). Customer may be asked to supply certain relevant information, such as a credit card number and its expiration date and billing address. CUSTOMER REPRESENTS AND WARRANTS THAT IT HAS THE RIGHT TO USE ANY CREDIT CARD OR OTHER PAYMENT METHOD SUBMITTED IN CONNECTION WITH THIS AGREEMENT. By submitting such information, Customer grants to Scholastic the right to provide such information to third parties for purposes of facilitating payment. Verification of information may be required prior to the acknowledgment or completion of any transaction. Customer agrees to pay all charges incurred by or on behalf of Customer in connection with this Agreement. With respect to any renewal of a Subscription Period, Scholastic may increase the Fees and other charges, or add new fees or charges, upon advance notice (which may include notice posted on the Site). In addition, Customer is responsible for any taxes applicable to transactions in connection with this Agreement. Refunds and exchanges will be subject to the terms and conditions of this Agreement and Scholastic’s applicable refund and exchange practices, as determined by Scholastic from time to time.

IF CUSTOMER PAYS ANY FEES BY CREDIT OR DEBIT CARD AND THE ORDER INDICATES THAT A LICENSE IS SUBJECT TO AUTOMATIC RENEWAL, THEN THE SUBSCRIPTION PERIOD FOR SUCH LICENSE WILL RENEW AUTOMATICALLY FOR AN ADDITIONAL SUBSCRIPTION PERIOD EQUAL TO THE DURATION OF THE ORIGINAL SUBSCRIPTION PERIOD (FOR EXAMPLE, IF THE ORIGINAL SUBSCRIPTION PERIOD IS ANNUAL, IT WILL BE AUTOMATICALLY RENEWED FOR ANOTHER ONE-YEAR TERM AT THE END OF THE CURRENT SUBSCRIPTION PERIOD), UNLESS TERMINATED BY SCHOLASTIC OR UNTIL CUSTOMER NOTIFIES SCHOLASTIC BY TELEPHONE, MAIL OR E-MAIL (SCHOLASTIC'S RECEIPT OF WHICH MUST BE CONFIRMED BY SCHOLASTIC VIA E-MAIL) OF HIS OR HER DECISION TO TERMINATE THE SUBSCRIPTION TO THE APPLICABLE LICENSED PRODUCT(S). SCHOLASTIC WILL AUTOMATICALLY CHARGE CUSTOMER'S ACCOUNT UPON RENEWAL OF A SUBSCRIPTION PERIOD AT THE RATE FOR SUCH SUBSCRIPTION PERIOD THEN IN EFFECT, AS POSTED ON THE SITE. THE FEES WILL BE BILLED AUTOMATICALLY TO CUSTOMER'S CREDIT OR DEBIT CARD AT THE START OF THE APPLICABLE SUBSCRIPTION PERIOD, INCLUDING AT THE START OF EACH RENEWAL SUBSCRIPTION PERIOD, UNLESS CUSTOMER TERMINATES HIS OR HER SUBSCRIPTION TO THE APPLICABLE LICENSED PRODUCT(S) BEFORE THE RELEVANT SUBSCRIPTION PERIOD BEGINS. IF CUSTOMER HAS AN ANNUAL OR BIENNIAL SUBSCRIPTION PERIOD SUBJECT TO AUTO-RENEWAL, SCHOLASTIC WILL NOTIFY CUSTOMER OF SUCH SUBSCRIPTION PERIOD'S PENDING AUTO RENEWAL PRIOR TO THE DATE OF SUCH RENEWAL, OR AS OTHERWISE REQUIRED BY LAW. CUSTOMER MUST CANCEL HIS OR HER SUBSCRIPTION TO THE APPLICABLE LICENSED PRODUCT(S) BEFORE THE SUBSCRIPTION PERIOD RENEWS IN ORDER TO AVOID BILLING OF THE FEES FOR SUCH RENEWAL SUBSCRIPTION PERIOD TO CUSTOMER'S CREDIT OR DEBIT CARD. CUSTOMER MAY CONTACT SCHOLASTIC'S CUSTOMER SERVICE AT [custserv@scholastic.com](mailto:custserv@scholastic.com) OR 1-800-SCHOLASTIC.

- **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.
- **§ 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.**
  - **§ 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 his or her 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.
  - **§ 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.

- **§ 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.
- **§ 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 and/or Customer’s organization), including with respect to the handling and disclosure of Personally Identifiable Information contained in the educational records Customer maintains regarding his or her 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’s educational agency. 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, Scholastic will, to the extent required by applicable law, 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.
  - **§5.5 Advertising.** Scholastic will not use any Personally Identifiable Information contained in Student Data to engage in targeted advertising.
  
- **6. 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 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 all use of the Licensed Products by Customer and his or her Users; (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.** CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES TO BE BOUND BY THE DISCLAIMERS SET FORTH IN SECTION 12 OF THE PRODUCT TERMS, CURRENTLY AVAILABLE ABOVE AND 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 AND HERE: [PRODUCT TERMS SECTION 13](#).
- **9. 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 5–10 shall survive any termination of this Agreement.
- **10. Governing Law; Arbitration.** This Agreement is governed by the laws of the State of New York, U.S.A., without regard to its principles of conflicts of law, and regardless of Customer's location. EXCEPT FOR DISPUTES THAT QUALIFY FOR SMALL CLAIMS COURT, ALL 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 Consumer Arbitration Rules, as amended by this Agreement. The Consumer Arbitration Rules are currently available online at <https://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTAGE2021425&revision=latestreleased>. The arbitrator will conduct hearings, if any, by teleconference or videoconference, rather than by personal appearances, unless the arbitrator determines upon request by Customer or by Scholastic that an in-person hearing is appropriate. Any in-person appearances will be held at a location which is reasonably convenient to both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, such determination should be made by the AAA or by the arbitrator. 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. Notwithstanding any of the foregoing, nothing in these Terms will preclude Customer from bringing issues to the attention of federal, state or local agencies and, if the law allows, they can seek relief against Scholastic for Customer.

- **11. 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 his or her 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 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.

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Last Updated: November 5<sup>th</sup>, 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.
- **§ 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.**
  - **§ 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.
  - **§ 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.

- **§ 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.
- **§ 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.
- **§5.5 Advertising.** Scholastic will not use any Personally Identifiable Information contained in Student Data to engage in targeted advertising.
  
- **6. Warranties.**
  - **§ 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.
  - **§ 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 5 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 County, New York. The arbitration decision shall be based upon the laws of New York 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.