



Houghton
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Harcourt

STANDARD PURCHASE AGREEMENT

This Purchase Agreement is by and between Houghton Mifflin Harcourt Publishing Company ("HMH") and Malverne Union Free School District ("School/District").

1. Definitions. As used herein, the following terms have the meaning set forth below:

A. Agreement. This Purchase Agreement, with all appendices, attachments, and exhibits, shall be the only terms and conditions applicable to the purchase of Products and/or subscriptions.

B. Product(s). Books and/or subscriptions to software, support services, professional development products, materials and services that may acquire pursuant to this Agreement from HMH for its own use (as listed in the attached proposal Appendix A and incorporated by reference herein).

HMH and the School/District agree that any subscription to software made under this agreement, if any, is for the term(s) listed in Appendix A and its Exhibits. If the School/District wishes to extend any subscription or license term(s), a purchase order, change order, or amendment is to be negotiated for additional fees.

HMH and the School/District agree that any software subscribed to under the Agreement, if any, is to be hosted by or through HMH. Any HMH software product the School/District wishes to self-host would be considered a new transaction outside the scope of this Agreement and separate fees are to be negotiated. Self-hosted versions of many of HMH's software products are not available for sale.

No additional purchases of any of the Products (other than in the quantities as listed in Appendix A) are covered by the Agreement. All such additional purchases by the School/District shall be at HMH's then standard applicable price(s).

2. Purchase Authorization. School/District represents and warrants that it has complied with any and all of its own requirements necessary to authorize the execution of all Purchase Agreements with HMH and that the signing party(ies) is/are authorized to sign on behalf of and contractually bind the School/District without condition other than the terms of this Agreement.

3. Purchase/Price/Delivery/Payment.

a. This Agreement is entered into by and between School/District and HMH. School/District agrees to license and/or purchase Products identified on the attached proposal Appendix A, incorporated by reference in this Agreement, in the aggregate amount of Three Hundred Eighty Four Thousand Six Hundred Eighty Nine and Sixty Five Cents (\$384,689.65). School/District is solely responsible for all purchase decisions, including ensuring the compatibility and suitability of all products and subscriptions. The School/District's billing address is:

Malverne Union Free School District
301 Wicks Lane
Malverne, NY 11565

b. The School/District hereunder shall pay all applicable local sales and use taxes and/or duties due on purchases. Proof of sales tax exempt status must be on file with HMH for any order to be treated as a sales tax exempt transaction. If applicable, the School/District's Tax Exemption Certificate Number: ~~XXXXXXXXXX~~ Confirming copy of evidence of such status is attached hereto.

c. Payment terms under this Agreement are set out in Appendix B of this agreement. Invoices unpaid after Thirty (30) days from the payment dates in Appendix B shall accrue interest at a rate of 1.5% per month until paid. HMH shall have the right to suspend any service or product rights under until such time as all outstanding and overdue invoices are paid in full. HMH reserves the right to seek reimbursement for the costs of collection and attorneys' fees in connection with overdue and unpaid invoices.

d. All payments to HMH should be sent to the following:

Mailed to:



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Houghton Mifflin Harcourt Publishing
Company 14046 Collections Center Drive
Chicago, IL 60693

For overnight mail, use the same address and
add the following information: Attention: Lockbox
Manager Phone: (800) 376-2703

Bank Wire Transfers to:

Bank of America
100 Federal Street
Boston, MA 02110
Account Name: Houghton Mifflin
Harcourt Publishing Company Account
Number: 004602286354
ABA Routing #: 026009593
SWIFT Code: BOFAUS3N

ACH/EFT Transfers to:

Bank of America
100 Federal Street
Boston, MA 02110
Account Name: Houghton Mifflin
Harcourt Publishing Company Account
Number: 004602286354
ABA Routing #: 011000138

Any questions regarding remittance options,
please contact HMH accounts receivable at
accounts.receivable@hnhco.com or 800-521-
3185.

4. Limited Warranty; Disclaimers.

Warranties for all Products purchased under this Agreement shall be provided "as is". HMH makes no other warranties with respect to the Products, either express or implied. HMH provides no representations or warranties that the School/District hardware or software environments and their configuration are compatible or suitable for the operation of HMH Products in the School/District setting. HMH specifically and expressly disclaims any and all other warranties, including but not limited to the implied warranties of merchantability or fitness for a particular purpose or that any services provided hereunder shall be uninterrupted or error-free.

5. HMH Intellectual Property Rights; Confidentiality. The intellectual property contained in the HMH Products is considered

"Confidential and/or Proprietary Information" to HMH and are protected by copyright and other intellectual property rights. School/District, as an end user, is authorized to use HMH Products subject to the applicable trademark, copyright and other intellectual property, federal and state laws of the U.S.

6. Indemnification. To the extent allowed by law and subject to the right of School/District to raise the deferral of sovereign governmental or qualified immunity against 3rd party claims. School/District agrees to 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 this Agreement or from improper or unauthorized use, distribution and operation of the HMH Products.

7. Limitation of Liability. HMH SHALL NOT BE LIABLE TO SCHOOL/DISTRICT FOR ANY UNAUTHORIZED USE OF THE DIGITAL PRODUCTS, OTHER PRODUCTS OR ANY SERVICES FOR ANY PURPOSES OTHER THAN AS DESCRIBED IN THIS AGREEMENT. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUE. IN NO EVENT SHALL HMH'S TOTAL AGGREGATE LIABILITY IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE FEES PAID OR PAYABLE BY SCHOOL/DISTRICT DURING THE MOST RECENT TWELVE (12) MONTH PERIOD DURING THE TERM OF THIS AGREEMENT.

8. Term of Agreement. The terms in the attached proposal in Appendix A and Appendix B will govern the term of this Agreement and the scope of the license and use of Products.

9. Assignment. School/District shall not assign or otherwise transfer its rights or delegate its obligations hereunder without HMH's prior written consent. Any attempted assignment, transfer, or delegation without such consent shall be void. HMH may freely assign this



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Agreement, including any of the obligations and rights to payment set forth herein. Neither party shall have any right of set off in connection with rights and obligations associated with this Agreement.

10. Termination of Agreement. (a) HMH may terminate this Agreement with respect to another party or parties for uncured material breach by the other party or parties (in which case the Agreement will remain in effect with respect to HMH and the non-breaching parties through the remainder of the Term). In addition, any District may terminate this Agreement with respect to itself for uncured material breach by HMH of HMH's obligations hereunder to that District (in which case the Agreement will remain in effect with respect to HMH and any other parties not seeking termination of their rights and duties hereunder). To terminate the Agreement with respect to a breaching party, the non-breaching party shall provide written notice of breach to the breaching party, specifying in detail the breach itself and the grounds for such breach. The breaching party shall have sixty (60) days from receipt of the notification to cure said breach. Failure to make payments on invoices due shall constitute material breach of this Agreement. In the event the breach is not cured, the non-breaching party shall give the breaching party formal notification of termination of this Agreement. Upon said notice the due date of all invoices shall be accelerated such that they become due and payable as of the date of termination. The provisions of Sections 5 through 16, shall survive termination of this Agreement.

(b) In addition, any District may terminate this Agreement after the first anniversary of the Effective Date, to take effect at the end of its then-current fiscal operating year, if the District does not receive budget approval from its governing authority in sufficient amounts to pay the next fiscal year's fees set forth in the District's Payment Plan. In the event of termination under this subsection, the District shall notify HMH promptly in writing upon denial of its budget request for such fees.

(c) In the event of an early termination or non-renewal of this Agreement prior to the end of the Term of this Agreement, HMH shall retain all fees previously paid HMH hereunder, the license

to the Products shall terminate effective as of the date of non-renewal or early termination with respect to the terminated District, and each terminated District shall promptly cease using the Products and return or destroy all files thereof to HMH. Upon HMH request, an officer of the District will provide written certification of the District's compliance with the foregoing provisions. HMH shall have no liability to a District or any third party in connection with any termination or suspension for breach of this Agreement.

In addition, each District shall pay HMH for all services delivered by HMH, but unpaid to HMH prior to the termination date. In the event of early termination, the District agrees not to replace the programs or software purchased under this agreement with one of similar functionally and/or software for the term of any unpaid portion of the original payment schedule not to exceed five (5) years.

11. Force Majeure. Except for School/District's payment obligations under this Agreement, no party shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 90 days, a party may cancel unperformed services upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures.

12. Governing Law. This Agreement shall be construed and enforced in accordance with the Commonwealth of Massachusetts without regard to its conflicts of laws provisions. Any action or proceeding brought by either party against the other arising out of or relating to this Agreement shall be brought only in a local, state or federal court of competent jurisdiction in Massachusetts.



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13. Notices. All notices and other communications required or permitted under this Agreement shall be served in person, by US Mail, or Federal Express or equivalent carrier at the following address:

If to HMH:

Houghton Mifflin Harcourt
Attn: VP and General Counsel
125 High Street
Boston, MA 02110

If to School/District:

Malverne Union Free School District
301 Wicks Lane
Malverne, NY 11565

14. Miscellaneous. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining portions of this Agreement shall remain in force and in effect and be construed so as to best effectuate the intention of the parties upon execution. The paragraph headings contained herein are for reference only. The waiver of one default shall not waive subsequent defaults of the same or different kind.

15. Export. Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the services. The School/District agrees that such export control laws govern its use of the Services (including technical data) and any Services deliverables provided under this Agreement, and the School/District agrees to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). The School/District agrees that no data, information, software programs and/or materials resulting from Services (or direct product thereof) will be exported, directly

or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws.

16. Entire Agreement. This Agreement, including other agreements and documents incorporated herein by reference, constitute the entire understanding and agreement between HMH and School/District with respect to the subject matter hereof and supersedes all prior agreements, representations, understandings, negotiations and communications between the parties pertaining thereto. Any modifications or amendments to this Agreement must be in writing signed by a duly authorized agent or representative of HMH and School/District. Specifically, any contrary, inconsistent, or additional terms incorporated in any other documents will be of no force or effect whatsoever.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed and intend to be legally bound thereby.

School/District: Malverne UFSD

Signature: Josephine Botta

Print Name: Josephine Botta

Title: Board President

Effective Date: 6/8/2021

Houghton Mifflin Harcourt Publishing Company

Signature: Bill Benear

Print Name: Bill Benear

Title: Director, Revenue Operations

Effective Date: 6/8/2021