



Purchase Order Terms and Conditions

1. Definitions. “HMH” means Houghton Mifflin Harcourt Publishing Company or other affiliated entity identified on this Order as the purchaser of Products. “Master Agreement” means a written agreement entered into between HMH and Seller, if any, governing the sale and purchase of Products. “Order” shall have the meaning specified in Section 2 hereof. “Products” shall have the meaning specified in Section 7 hereof. “Seller” means the person or entity to which this Order is addressed.
2. Agreement and Acceptance. Except where this Order is issued pursuant to a Master Agreement as an ordering mechanism, this purchase order, including any attached schedules (collectively, this “Order”), is an offer to purchase, and may be accepted by Seller either in writing or by any conduct which recognizes the existence of a contract. Any such acceptance is limited to the express terms of this Order. HMH hereby objects to and rejects any proposal for additional or different terms or any attempt by Seller to vary any of the terms of this Order (any of which shall be deemed material), including all preprinted or other terms and conditions of any invoice or acknowledgement submitted by Seller. Any such proposal or attempt by Seller that would materially change the description, quantity, price, rights to use or delivery schedule of the Products shall constitute a rejection of this offer. Any other such proposal or attempt shall not operate as a rejection, but this offer shall be deemed accepted by Seller without regard thereto. This Order is HMH’s offer to Seller and does not constitute an acceptance by HMH of any proposal or offer to sell, notwithstanding any reference thereto, except to the extent of the express terms contained in this Order.
3. Entire Agreement/Changes. Except where the Order is issued pursuant to a Master Agreement as an ordering mechanism, the Order constitutes the complete and exclusive statement of the terms of the agreement between HMH and Seller with respect to the subject matter thereof and supersedes all prior oral or written agreements, commitments or understandings with respect to such subject matter. No modification or rescission of the Order shall be binding upon HMH unless in writing and manually signed by HMH. HMH’s signature on any modification or rescission shall not be deemed effective through any electronic or non-physical manner of contracting, including electronic communication, “click-through” or “shrink-wrap” forms. Notwithstanding the foregoing, HMH shall have the right to make changes at any time by written change order including changes in quantities originally ordered, available models, specifications or drawings, quantities, time and place of delivery, or methods of packaging or shipment. If any such change results in an increase or decrease in Seller’s cost or time requirements, an equitable written adjustment shall be made upon prompt notification to HMH of Seller’s proposed adjustment and HMH’s subsequent written consent. Any such claim for adjustment by Seller must be asserted in writing within thirty (30) days after the change is ordered by HMH, or will be deemed to have been waived by Seller. Nothing



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herein shall relieve Seller of its obligation to proceed with the Order as changed.

4. Shipment. All Products shall be suitably prepared and packed for shipment, and Seller shall mark the number of this Order on, and enclose a packing slip with such number in, each container. Seller shall mail invoices in duplicate and shipping documents to HMH for each shipment on the day of such shipment. If, in order to comply with the required delivery date, the Products must be shipped by more expensive means than that specified in this Order, Seller shall bear any resulting increased freight costs (unless the necessity for such change has been caused by HMH).
5. Delivery. Time is of the essence for this Order. Failure to complete delivery of items or rendering of services by the time promised shall constitute sufficient cause for termination pursuant to Section 17 hereof. If Seller fails to make timely deliveries, HMH may direct expedited delivery, and Seller shall pay any excess costs incurred. If any Products are delivered in advance of their scheduled delivery date, HMH, at its sole discretion, may: (a) return such Products to Seller at Seller's risk and expense for scheduled delivery; (b) withhold payment for such Products until the date that such Products are scheduled for delivery; and/or (c) place such Products in storage for Seller's account and at Seller's expense until the scheduled delivery date(s). Delivery in accordance with this Order does not constitute acceptance by HMH hereunder. HMH may delay delivery of all or any part of any Product without cause and at any time. At HMH's request, Seller shall hold such Product and shall deliver it only at HMH's direction. In such event, HMH shall reimburse Seller for Seller's reasonable additional costs incurred as a direct result of such delay.
6. Over/Under Allowances. Acceptable variations between quantity ordered by HMH and quantity delivered by Seller are detailed in HMH's "Over/Under Allowances" located at <https://www.hmhco.com/suppliers-and-vendors>, which shall be deemed to be Provisions hereunder.
7. Inspection and Rejection. Payment for any Product delivered hereunder shall not constitute acceptance thereof. All Products shall be received subject to HMH's rights to inspect them at any reasonable time and place (including at Seller's facilities) and in any reasonable manner and to reject (including revocation of its earlier acceptance of) any or all of such Products that are, in HMH's sole judgment, nonconforming. HMH shall not be obligated, however, to test or reject any Product, and HMH's inspection of, or failure to inspect or reject, any Product shall not affect any rights of HMH under this Order, notwithstanding HMH's knowledge of any nonconformity, its substantiality or its ease of discovery. Rejected Products may be held, and if Seller so requests may be returned to Seller, at Seller's sole risk and expense and, in addition to its other rights, HMH may cancel this Order and (whether or not it has cancelled this Order) may recover so much of the price as has been paid and may charge Seller all expenses of inspection and return, including unpacking, examining, repackaging and shipment. SELLER SHALL NOT REPLACE REJECTED PRODUCTS WITHOUT THE WRITTEN CONSENT OF HMH. If, in HMH's judgment, additional work or rework on non-conforming Products is required to make them usable to or salable by HMH (e.g., re-labeling), Seller shall perform such work or, if within two (2) business days following written request by HMH, Seller fails to confirm in writing to HMH that Seller will perform such work to resolve the problem within a timeframe meeting HMH's requirements, HMH may perform such work at Seller's expense, and the performance of work by HMH shall in no way



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be deemed to reduce, waive, invalidate, or otherwise adversely affect any warranty on such Products. For the avoidance of doubt, in addition to the obligations of Seller provided elsewhere hereunder, Seller will pay for the costs of any recall in the event the Products are recalled, either for a safety defect or a finding of a violation of an applicable safety standard.

8. Warranties. (a) Seller hereby represents and warrants to HMMH as follows: (i) Seller shall deliver good and marketable title to all goods and services furnished pursuant to this Order, including the media, articles, materials, drawings, data, information and other tangible and intangible property, and the design, delivery, installation, inspection, testing, expediting and maintenance and all related services and activities, specified as items, or required to furnish items, ordered by this Order (collectively, the “Products”). All Products (A) will be unused, of good quality and workmanship and free from all defects (latent and patent) or, in the case of services, performed in a professional and workmanlike manner consistent with best industry practices; (B) will conform to all specifications, drawings, descriptions and statements of work furnished, specified, or agreed to, by HMMH; (C) will conform to any samples and to any statements made on the containers, labels, sales literature or advertisements for such Products; (D) will be adequately contained, packaged, marked and labeled; (E) will be merchantable and will be safe and appropriate for the purpose for which goods or services of that kind are normally used; (F) will not infringe the patents or other intellectual property rights of third parties; (G) will be free and clear of all liens and other encumbrances; and (H) will be fit for HMMH’s particular purpose, if Seller knows or has reason to know such purpose for which the Products are intended. Seller shall not be liable for defects in design to the extent Products are manufactured pursuant to, and in accordance with, detailed designs furnished by HMMH. (ii) Seller is free to enter into and fully perform this Order and has obtained any and all authority necessary to do so from its governing board or body or otherwise. (b) No warranties contained in this Order and no remedies available to HMMH for the breach thereof may be limited unless and except to the extent specifically agreed to by HMMH in writing. Seller’s obligations under all such warranties shall survive and be unaffected by any inspection, testing, acceptance or use. All such warranties shall run to HMMH, its successors, assigns, and users, consumers of, and others affected by, the Products. (c) Subject to Section 7 hereof, Seller agrees promptly to replace or repair any Product not conforming to this Order or to any warranty set forth herein (each, a “Nonconforming Product”), without any expense (including transportation) to HMMH. In the event of Seller’s failure promptly to repair or replace such Nonconforming Product(s), HMMH, after reasonable notice to Seller, may do so and charge Seller for all costs incurred.
9. Price and Taxes; Price Warranties. (a) The price specified herein, unless otherwise expressly stated and subject to Section 12, includes: (i) all taxes and duties of any kind that Seller is required to pay or collect with respect to the Products (including any applicable customs, duties and import/export licenses); and (ii) all charges for labeling, packing, packaging, loading, storage and insurance. Seller shall separately list on its original invoice any such sales, use or excise taxes collectible by Seller at the time of the sale that are lawfully applicable to any Products otherwise payable by HMMH and not subject to exemption or resale certificates. All prices shall be in U.S. Dollars, unless otherwise specified or agreed by HMMH in writing. (b) If Seller fails to invoice HMMH for any amount within



ninety (90) days after Seller's delivery of any Products, Seller will be deemed to have waived any right it may have to invoice for and collect such amount. (c) Seller shall provide to HMH all early payment discounts that Seller provides to any of its other customers from time to time. Seller represents and warrants that the prices and payment terms under this Order are not less favorable to HMH than those currently extended to any other customer for the same or substantially similar products in similar quantities. If Seller reduces its prices for any Product before this Order is completed, Seller shall reduce the prices under this Order accordingly. Such reduced prices shall be inclusive, and no additional charges of any type shall be added unless otherwise expressly specified in this Order or authorized in writing by HMH. At HMH's option, Seller shall promptly refund to HMH, or apply as a credit against future payments due under this Order, the amount of any overpayments that result from such price reductions for Products not yet accepted by HMH. All claims by Seller for payment due or to become due from HMH shall be subject to deduction or setoff by HMH by reason of any claim arising out of this or any other transaction between HMH and Seller.

10. **Indemnification.** (a) In the performance of this Order, Seller shall take all necessary precautions to prevent the occurrence of any injury (including death) of any persons, or of any damage to any property arising out of acts or omissions of Seller, its affiliates, or any of their respective officers, directors, agents, employees, subcontractors or other representatives (collectively, "Representatives"). Seller shall, severally as applicable, at all times hereafter indemnify, defend and hold harmless HMH, its affiliates, and all of their respective Representatives from and against any and all loss, liability, cost or expense, and any and all suits, actions or claims by, or liability to, any third party, for loss, damage or injury to persons or property, in each case including attorneys' fees, court costs and other expenses associated with or incurred in connection therewith (collectively, "Losses") which is based on or in any manner arises out of or is incidental to: (i) any breach by Seller of any warranty, representation or covenant contained in this Order; (ii) any defective or nonconforming Product; or (iii) any act or omission by Seller, its affiliates, or any of their respective Representatives in connection with the performance or nonperformance of this Order by Seller. (b) Seller shall, at its own expense, indemnify, defend and hold harmless HMH, its affiliates, and all of their respective Representatives, successors, assigns, customers and licensees from and against any and all Losses (including royalties) arising from, relating to, or in connection with any alleged or actual infringement, misappropriation or violation of any United States or foreign patent, trademark, copyright, trade secret or other intellectual property or proprietary right based on or arising from any Product (including, without limitation, the manufacture, sale, offer for sale, importation, or use of any Product), and HMH may be represented by and actively participate through its own counsel in any such suit or proceedings. If any Product, or any part or use thereof, is held to constitute such an infringement, misappropriation or violation, Seller shall, at its own expense, either procure for HMH the right to continue using such Product or part thereof, or replace the same with a substantially equal but non-infringing, non-misappropriating and non-violating Product while still maintaining substantially the same fit, form and function and still meeting the requirements of this Order. In the event Seller does not or cannot procure such rights, or replace such Product, Seller shall promptly refund to HMH all payments made under this Order.



11. Insurance. From the effective date of this Order and for at least three (3) years thereafter, Seller shall maintain and require its subcontractors to maintain: (a) commercial general liability insurance, including contractual liability and personal injury, with minimum limits of \$1,000,000 per occurrence; (b) automobile liability insurance of \$1,000,000 combined single limit per accident; (c) coverage insuring against liability for any injury, damage or loss arising out of an alleged hazard, defect or deficiency of Seller's goods or services (including the Products), in an amount not less than U.S. \$10,000,000 per occurrence; (d) umbrella liability coverage in the amount of \$5,000,000; and (e) workers' compensation and employer's liability insurance covering all employees engaged in the performance of this Order within statutory limits for workers' compensation and employer's liability limits of (i) bodily injury by accident \$1,000,000 each accident, (ii) bodily injury by disease \$1,000,000 policy limit, and (iii) bodily injury by disease \$1,000,000 each employee. Each insurance policy required by this Order shall name HMH and its affiliates as additional insured and shall be endorsed to be primary and noncontributing to any other applicable insurance. Seller shall, prior to commencing performance under this Order and if requested by HMH, furnish certificates evidencing such insurance that expressly provide that no termination or modification shall take place without thirty (30) days' prior written notice to HMH
12. Title/Risk of Loss. Unless otherwise specified on the face of this Order, (a) Seller will accurately prepare and file appropriate import and customs documentation and otherwise arrange for shipment of the Products from Seller's place of final manufacture or final assembly ("Place of Final Manufacture/Assembly") to the "ship to" address(es) specified in this Order, using HMH's designated carriers and otherwise in accordance with HMH's instructions and HMH's Supplier Distribution Standards, (b) HMH shall be responsible for any applicable duties and customs if this Order specifies that Seller's Place of Final Manufacture/Assembly for the Products is outside of the United States, (c) except where this Order provides otherwise, HMH shall be responsible for freight and insurance costs for such shipments in accordance with HMH's instructions, and (d) any risk of damage to or loss or delay of, and title to, the Products shall pass to HMH upon delivery by Seller to HMH (or HMH's designee) at Seller's Place of Final Manufacture/Assembly, except that Seller shall be liable for damage caused by improper packing, packaging or crating.
13. Product Servicing.
 - (a) Seller shall maintain an efficient and high-quality repair and replacement service for all damaged, defective or otherwise malfunctioning Products and a reasonably adequate inventory of spare Products for timely repair and replacement of such Products. Seller shall promptly and properly make all necessary repairs and replacements of the Products as and when required, in accordance with the highest technical standards.
 - (b) Seller shall comply with HMH's "Defective Product Policy" located at <http://hmhco.com/fulfillment/index.html>, which shall be deemed to be Provisions hereunder.
 - (c) Seller's repairs and replacements shall be at its own expense for those covered by its warranties, but Seller may, if approved in advance by HMH, charge a commercially reasonable amount to HMH or the HMH customer requesting the service, as the case may be, for those not covered by Seller's warranties. For avoidance of doubt, any repair or replacement needed to address a recall (including



a safety recall carried out under Section 15(b) of the U.S. Consumer Product Safety Act, as amended by the Consumer Product Safety Improvement Act of 2008, and as further amended from time to time (“CPSA”)) shall be at Seller’s sole expense.

- (d) HMH may instruct HMH customers to work through HMH’s or Seller’s customer service department to handle returns and to resolve claims of deliveries with missing, damaged, defective or otherwise non-conforming Products. Seller will (i) accept returns sent to Seller by HMH or HMH customers, in accordance with HMH’s then current returns policy, and (ii) at Seller’s expense, promptly provide and ship suitable replacements for all claims of defective Products (in accordance with HMH’s Defective Product Policy), or missing or damaged Products submitted by HMH to Seller. In addition, HMH may elect at any time to complete any repairs and/or replacements itself or to forward malfunctioning Products to Seller for repair and/or replacement by Seller. If HMH elects at any time to complete any repairs and/or replacements itself, then Seller shall provide all necessary spare Products to HMH as and when requested by HMH to allow it to complete the repairs and/or replacements in a proper and timely manner, together with any service information necessary or reasonably requested by HMH for that purpose. Seller shall supply the spare Products to HMH free of charge for repairs and/or replacements by HMH that are covered by Seller’s warranties but shall supply the spare Products to HMH at Seller’s net cost for those not covered by Seller’s warranties. Seller also shall reimburse HMH’s reasonable costs (including labor costs) incurred to provide repairs and/or replacements that are covered by Seller’s warranties.
- (e) Except as may be otherwise agreed in writing by Seller and HMH, this Section 13 shall survive until at least the later of (i) the duration of Seller’s warranties with respect to the Products and (ii) the expiration of the three (3) year period commencing upon the last sale of Products to or for HMH under this Order. Seller’s warranties with respect to each Product shall commence on the date of manufacture of the applicable Product and remain in effect hereafter for at least two (2) years after the sale of such Product to the applicable HMH customer.
- (f) To the extent HMH designates service centers outside HMH to perform any of the services that HMH is authorized to perform under this Section 13, the provisions of this Section 13 shall extend and apply to those service centers as well.

14. Product Recalls.

- (a) Seller shall notify HMH promptly of (i) any legal claim brought or threatened against it or those acting by or through it, or (ii) any actual or threatened governmental investigation, audit, recall or other action that comes to Seller’s attention, in either case, with respect to any Products based on alleged hazards or defects in the design, manufacture, packaging, or labeling of the Products or other adverse claim regarding the Products. Upon receiving such notice, subject to applicable laws, HMH may assume sole control of the defense of any such claim, including the power to conduct and conclude any and all negotiations, compromises or settlements. Seller shall promptly cooperate and comply with all reasonable requests from HMH for information, materials or assistance with respect to the conduct of such defense.
- (b) Seller shall give HMH written notice immediately after determining that any Product (i) fails or is alleged to have failed to comply with any product safety requirements contained in the applicable



specifications for such Product or applicable product safety rules, specifications or standards promulgated by any governmental authority or (ii) constitutes, or contains a hazard or defect which could create, a substantial risk of injury to users or the public. Seller shall promptly furnish to HMH documentation and information regarding the Product necessary or helpful to HMH, as determined in HMH's sole discretion, in responding to any request by the governmental authority. HMH and Seller shall work together under HMH's product safety program to determine if a safety hazard or defect in any Product requires a report to the governmental authority and, if such a report is required, what shall be appropriate remedial actions. Seller shall provide its best commercially reasonable remedial services and treatment for the Product that is at least as rigorous as Seller is providing or has provided for its other products under like circumstances. For avoidance of doubt, Seller shall supply HMH (A) with written notice immediately (within 24 hours) of receipt of any complaint, investigation, premises inspection or inquiry from the U.S. Consumer Product Safety Commission ("U.S. CPSC") regarding any Product, and (B) with a copy of any written documentation provided by Seller to the U.S. CPSC related to any Product.

(c) If any recall, repair/rework, replacement or refund program ("Recall Program") is needed to correct one of the situations outlined above, whether voluntary or required, Seller shall implement and administer the Recall Program except to the extent HMH elects to do so. In any event, Seller shall reimburse HMH for all reasonable costs and expenses incurred by HMH in connection with the Recall Program. Costs and expenses include the cost of locating, identifying and notifying customers or others, the cost of repairing, repurchasing or replacing recalled Products, and any costs of packing, shipping or recycling recalled Products. If Seller implements and administers the Recall Program, HMH shall cooperate with Seller, at Seller's expense, in implementing and administering the Recall Program, and promptly provide all reasonable records requested regarding the Recall Program to Seller. To the extent HMH elects to implement and administer the Recall Program, Seller shall cooperate with HMH, at Seller's expense, in implementing and administering the Recall Program, and promptly provide all reasonable records requested regarding the Recall Program to HMH. If HMH implements and administers a Recall Program, all costs associated with such Recall Program shall be the responsibility of Seller.

15. Proprietary Information; Confidentiality. Seller shall treat all information furnished by HMH in connection with this Order as confidential and shall not disclose or use any such information for any purpose, other than performance of this Order, without the express written permission of HMH. For purposes of this Section 15, the term "information" shall include business plans, network architecture, system architecture and equipment, designs, engineering data, patterns, drawings, specifications, instructions or other technical or proprietary information, and information which will become the property of HMH hereunder, and any and all derivative works thereof or thereto. Upon completion or termination of this Order, Seller shall return all such information to HMH. Notwithstanding the foregoing, Seller shall have the right to make limited disclosure of the terms of this Order to its affiliates and its and their Representatives, where necessary to enable Seller to perform its obligations and exercise its rights hereunder, provided that all such persons and entities to whom disclosure is made shall first agree, in writing, to abide by this Section 15. Seller shall be



primarily liable for any breach of this Section 15 by persons or entities to whom Seller makes such disclosure. Seller shall not issue any press release or make any other public disclosure with respect to the existence or terms of this Order, or any other business arrangement between HMH and Seller, or use the name or any trademarks, service marks, designs or logos of HMH, without the prior written consent of HMH, except to the extent (and solely to the minimum extent) that disclosure is necessary for legal or governmental proceedings. Any confidentiality obligations of HMH, its affiliates, or their respective Representatives shall be pursuant only to a separate written agreement.

16. Termination for Convenience. In addition to any other provisions for termination hereunder, HMH may terminate all or any part of this Order without cause and at any time by written notice to Seller. In the event of such termination, Seller shall immediately stop, and cause its suppliers and subcontractors to stop, all work and deliveries under this Order, with the goal of minimizing the cost of termination. Within thirty (30) days after such termination, HMH shall pay to Seller a percentage of the total Order price reflecting the percentage of the Order unpaid and completed prior to cancellation plus reasonable costs actually incurred by Seller and directly resulting from such termination (the “Termination Payment”). HMH may verify supporting documentation of such costs. Seller will not be paid for any work done or deliveries initiated after receipt of the notice of termination, nor for any costs incurred by Seller or its suppliers or subcontractors which could reasonably have been avoided. No amount for anticipated profit on work not performed or on unfinished Products will be recoverable by Seller. In no event shall the sum of the Termination Payment plus payments made or due Seller for the non-terminated parts of this Order exceed this Order’s total price. Seller shall promptly refund to HMH any payments in excess of the sum of the Termination Payment plus payments made or due for such non-terminated parts. The termination of any part of this Order pursuant to this Section 16 shall not affect either party’s obligations as to any non-terminated parts of this Order.
17. Termination for Cause. HMH may, by written notice to Seller, terminate this Order, in whole or in part, for default if: (a) Seller fails to perform in accordance with any requirement of this Order or fails to make sufficient progress thereby endangering the timely performance of this Order; (b) Seller ceases to conduct business in the normal course, is declared insolvent, undergoes any procedure for the suspension of payment, makes a general assignment for the benefit of creditors or a petition for bankruptcy, reorganization, dissolution or liquidation is filed by or against it; or (c) any receiver, trustee or custodian is appointed to take possession of all or a substantial part of Seller’s assets or any committee of Seller’s creditors is formed for the purposes of monitoring or investigating the financial affairs of Seller or enforcing such creditors’ rights. Any such termination shall be at no cost to HMH except for completed Products delivered and accepted by HMH prior to such termination, and Seller shall repay to HMH any payments made in excess thereof. The termination of any part of this Order pursuant to this Section 17 shall not affect either party’s obligations as to any non-terminated parts. In the event of termination pursuant to this Section 17, HMH may procure or otherwise obtain, upon such terms and in such manner as HMH may deem appropriate, goods and services similar to Products not provided to HMH hereunder, and Seller shall be liable to HMH for any damages arising therefrom, including attorneys’ fees and excess costs



incurred by HMH. The obligations hereunder which by their terms might apply after the completion or termination of this Order (including Sections 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23 and 25) shall survive such completion or termination.

18. HMH's Property; Assignment Of Works. (a) Unless otherwise agreed in writing, any tangible property including jigs, patterns, dies, tooling, equipment, hardware, material, documents, drawings and any other items purchased by, furnished by, charged to, or paid for by HMH ("Tangible Property"), shall be and remain the property of HMH. Seller shall, at its own expense, maintain all Tangible Property in good condition and repair and adequately insured, and shall indemnify HMH for all loss or damage thereto. Seller shall not substitute any property for Tangible Property, shall not use such property except in fulfilling HMH's Order(s) or as otherwise directed in writing by HMH, and shall comply promptly with all written disposal and shipping instructions furnished by HMH with respect thereto. (b) Seller acknowledges and agrees that all research, experimental, design and development work, and all written or other fixed media materials, specially prepared for HMH, and any and all discoveries, inventions and designs, whether or not patentable, conceived or reduced to practice by Seller or its employees, subcontractors, agents or other representatives in connection with the performance of this Order (collectively, the "Works"), shall be promptly disclosed to HMH, shall be the exclusive property of HMH and shall be considered "works made for hire" under the United States copyright laws to the extent such laws are applicable. The parties agree that to the extent that the ownership of all of the intellectual property rights in and to any Work does not vest, solely and exclusively, in HMH pursuant to the previous sentence, Seller hereby irrevocably assigns, transfers and conveys all of its rights, title and interest in such Work to HMH and shall cause any third party having any rights in such Works to similarly assign, transfer and convey to HMH such third party's rights therein and thereto. HMH shall have the right, at its own expense, to obtain and to hold in its own name, patents and such other protection it deems appropriate for any Works. Seller and its Representatives shall, upon request by HMH, cooperate in and execute all papers necessary to assign any such rights to HMH or to perfect HMH's right to own, use and protect HMH's proprietary rights under this Section 18(b). The decisions whether to file, prosecute and maintain applications for patents, copyrights or other proprietary rights shall be made solely by HMH. Seller shall retain title in and to the portions of its software Products that both (i) pre-date this Order and (ii) are not the property of HMH under another agreement between HMH and Seller or otherwise. Seller hereby grants to HMH a perpetual, non-exclusive, worldwide, fully paid, transferable, license to use, copy, modify, and create derivative works from all portions of its software Products.
19. Limitations on Liability. In no event shall HMH be liable for anticipated profits or for incidental or consequential damages. HMH's liability on any claim of any kind for any loss or damage arising out of or in connection with this Order or from the performance or breach thereof shall in no case exceed the price allocable to the Product upon, or in connection with, which such claim is based. HMH shall not be liable for penalties of any kind.
20. Compliance With Law. Seller hereby represents and warrants as follows: (a) Seller and all Products shall comply with all applicable permits and licenses and all requirements of applicable laws,



orders, regulations and standards (collectively, “Provisions”) including Provisions relating to product safety, equal employment opportunity, nondiscrimination based on race, color, creed, religion, sex, age, disabilities, or ethnic origin, wages and hours, occupational safety and health, and immigration, including CPSA and successor Provisions. (b) Seller shall deliver each Product accurately marked as to country of origin, accurately classified and valued for tariff purposes, with import documentation accurately and timely filed. To the extent Seller ships or has shipped Products or other items to foreign destinations or imports Products or other items into the United States that Seller (or its suppliers or subcontractors) produced or had produced in a foreign plant of manufacture, Seller will comply, and cause its suppliers and subcontractors to comply, with all laws and regulations governing its and their respective activities and operations in each country of manufacture, including those applicable to the export of any materials supplied by HMH for the production of Products for HMH as well as all laws and regulations applicable to the distribution of finished product from Seller’s plant of manufacture to the country of importation, including U.S. export control and U.S. and foreign country of origin laws and regulations. (c) Seller will, and will cause its suppliers and subcontractors to, refrain from any activities that will or are reasonably likely to cause HMH or any of its affiliates to be in violation of (i) any embargo or sanctions laws, or (ii) the U.S. Corrupt Foreign Practices Act or any other anti-corruption laws. Without limiting the foregoing, Seller shall comply with HMH’s “CPSIA Requirements for Vendors” located at <http://hnhco.com/fulfillment/index.html>, which shall be deemed to be Provisions hereunder. Seller shall, severally as applicable, at all times hereafter indemnify, defend and hold harmless HMH and its affiliates (and their respective Representatives), and HMH’s assigns and intended beneficiaries, from and against any and all loss, liability, cost or expense (including punitive or special damages, attorneys’ fees and allocated in-house legal expenses) arising out of any breach of this Section 20.

21. Product Safety. Without limiting Seller’s other obligations hereunder, Seller represents, warrants and covenants as follows:

- (a) Each Product delivered under this Order will comply with all applicable state and U.S. federal laws, including (i) CPSA, and all rules and regulations promulgated thereunder (including ASTM F963 and all regulations pertaining to lead content in children’s products or products containing “small parts” as defined by CPSC rules and regulations, or requiring tracking labels on children’s products), (ii) the Federal Hazardous Substances Act and all regulations promulgated thereunder, (iii) all other applicable laws and regulations of the United States (and any state thereof) governing children’s products, including, toys, games, puzzles, or other related products, and (iv) any other applicable industry standards governing children’s products, including toys, games, puzzles, or other related products. Further, Seller will secure the testing required by CPSC regulations with approved third party laboratories, maintaining the test records, and generating general and children’s product certificates of conformance.
- (b) With respect to products primarily intended for use by children as defined in the CPSA and related regulations and regulatory interpretations, Seller will furnish to HMH a Children’s Product Certificate confirming that each Product is in compliance with each applicable consumer product safety rule, or other rule, ban, standard or regulation issued under any law enforced by U.S. CPSC.



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Seller will, at Seller's sole expense, (i) establish a reasonable testing program for the Products, (ii) obtain all necessary testing at one or more third party conformity assessment bodies that has been accredited for such testing by the U.S. CPSC, and (iii) generate, maintain, and provide to HMH promptly upon request, all supporting documents and records as required by U.S. CPSC regulations or other applicable law. For imported Products, Seller will comply with all requirements related to filing the Children's Product Certificate with the U.S. Customs and Border Protection Service.

- (c) Products made outside the United States have been lawfully imported into the United States and Seller has not received any notice that any of the Products are subject to any past or current product liability or infringement claim or any claim that the Products violate an applicable safety standard or contain a defect requiring a recall under the CPSA (each, a "Product Liability Claim"), nor is Seller aware of any circumstances that would be reasonably likely to give rise to a Product Liability Claim. Seller shall promptly notify HMH in writing if Seller becomes aware of any such circumstance or of any Product Liability Claim against Seller or any of Seller's suppliers, subcontractors, distributors or resellers involving any Product. Seller shall promptly notify HMH in writing if Seller receives any written or oral communication related to the Products from U.S. CPSC, the U.S. Customs and Border Patrol, or from a State Attorney General office or other State or local consumer protection agency.
- (d) Seller acknowledges that the CPSA imposes certain reporting obligations for products that contain defects that could pose safety hazards to consumers. If Seller ever becomes aware that it may have a duty to make a report to U.S. CPSC with respect to a Product that Seller provided for or to HMH, Seller will notify HMH immediately. Except as otherwise explicitly directed by HMH, Seller will have primary responsibility for reporting any such condition to U.S. CPSC in compliance with the reporting obligations of that agency and any failure to make a required report in a timely manner shall be deemed a material breach of this Order. However, HMH retains the right to make its own report, or supplement Seller's report, as HMH, in HMH's sole discretion, deems advisable. Seller will provide HMH with a complete copy of any report it files with U.S. CPSC at least 24 hours prior to any filing of such report with U.S. CPSC. For purposes of this Section 21, all relevant terms have the meaning given to them by the CPSA or by the implementing regulations found at 16 C.F.R. Part 1115. For all matters relating to product safety, the representatives designated by HMH to receive communications and to respond to questions shall be as provided in HMH's "CPSIA Requirements for Vendors" located at <http://hnhco.com/fulfillment/index.html>.

22. Government Contracts. HMH is a contractor under various contracts with agencies of the U.S. federal government. The following applies to Seller as a subcontractor, to the extent that goods or services provided by Seller are, in whole or in part, necessary to the performance of any such U.S. federal government contract, or to the extent that Seller performs, undertakes or assumes any portion of the contractor's obligation under any such U.S. federal government contract:

This contractor and subcontractor shall abide by the requirements of 41 C.F.R. §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, gender



identity, sexual orientation, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status, or disability.

23. Social Responsibility and Supplier Code of Conduct. Seller will, and will cause its suppliers and subcontractors to, comply with HMH's "Supplier Code of Conduct" located at <http://hnhco.com/fulfillment/index.html>, which shall be deemed to be Provisions hereunder.
24. Distribution Standards. Seller will comply with HMH's "Supplier Distribution Standards" located at <http://hnhco.com/fulfillment/index.html>, which shall be deemed to be Provisions hereunder.
25. Miscellaneous. The state and federal courts within the Commonwealth of Massachusetts, United States, having jurisdiction over Suffolk County, shall have the sole and exclusive jurisdiction to hear and determine any dispute or controversy arising from or concerning this Order. All rights and obligations of the parties hereto shall be construed in accordance with the laws of the Commonwealth of Massachusetts, United States, without reference to its principles of conflicts of laws. Both parties hereby exclude the application of the Sale of Goods (United Nations Convention) Act 1995 to this Agreement. HMH shall not be liable for any delay in, or failure of, delivery or acceptance, or any other impairment of its performance under this Order, in whole or in part caused by the occurrence of any contingency beyond its control, except that HMH shall be responsible for Seller's direct additional costs in holding Products or delaying performance under this Order at HMH's request. HMH may assign any or all of its rights or delegate any or all of its obligations under this Order to one or more third parties without the consent of Seller. Seller may not assign any of its rights, or delegate or subcontract any of its obligations, under this Order to any third party without the prior written consent of HMH. Any waiver by either party of a breach of any provision, or failure to insist upon strict adherence to any term, of this Order shall not operate as, or be construed to be, a waiver of any other breach of such provision or term or of any breach of any other provision or term of this Order. Any such waiver must be in writing. The parties hereto are independent contractors and not joint venturers. No party hereto shall have any authority whatsoever to bind or obligate the other party. Each party shall be responsible for its own employees, representatives and subcontractors, and each shall be obligated for all payments, including any payments required to be made or withheld by any law or regulation regarding tax, insurance or other benefit, and for all taxes and other filings which each is respectively required to make in respect of such person or employment. The determination that any provision of this Order is void, invalid or unenforceable shall not affect this Order, all of such provisions being inserted conditionally on their being considered legally valid, and this Order shall be construed and performed in all respects as if such void, invalid or unenforceable provisions were omitted insofar as the primary purpose of this Order is not frustrated. The headings herein have been inserted for reference only and shall not affect the construction or interpretation of this Order. The word "includes" (or "including") means "includes (or including) without limitation."

UPDATED: 10/10/2018