

## Terms and Conditions of Use ThinkCentral

The ThinkCentral service is provided to you by Houghton Mifflin Harcourt Publishing Company ("**Houghton Mifflin Harcourt Publishing Company**", "**we**" or "**us**") through our ThinkCentral website (the "**Website**" or "**Site**"). To assist you in using our Site, and to ensure a clear understanding of the relationship arising from your use of our Site, we have created (i) these Terms and Conditions of Use (the "**Terms**"), and (ii) a Privacy Policy. Our Privacy Policy explains how we treat information you provide to us through the Site, and our Terms govern your use of our Site. Our Terms and Privacy Policy apply to casual visitors to our Site ("**Site Visitors**"), as well as to users who are authorized to access the password protected areas of the Site ("**Authorized Users**") ("**you**" or "**your**" where applicable).

PLEASE READ THIS DOCUMENT CAREFULLY BEFORE YOU ACCESS OR USE THE SITE. BY ACCESSING OR USING THE SITE, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH BELOW. IF YOU DO NOT WISH TO BE BOUND BY THESE TERMS AND CONDITIONS, PLEASE DO NOT ACCESS OUR SITE.

### 1. Your Agreement

These Terms govern: (i) your use of the Website, (ii) your receipt of, and participation in, ThinkCentral services provided through the Website (the "**Services**"); and (iii) your use of content obtained through the Site or via the Services (the "**Content**"). Please read these Terms carefully as they impose legal obligations on you and on Houghton Mifflin Harcourt Publishing Company, and establish our legal relationship. By using the Services or accessing our Site, you are acknowledging that you have read and understood these Terms and agree to be legally bound by them.

In addition, if you are an Authorized User, during the registration process for your username and password (and from time to time as we may require) you will be prompted to click an "I Accept" button, which further confirms your agreement to be legally bound by these Terms.

### 2. Types of User Accounts

The Site offers four (4) types of accounts including: (i) District Administrator Accounts, (ii) School Administrator Accounts, (iii) Teacher Accounts; and (iv) Student Accounts (collectively, "**Accounts**" unless the context otherwise permits). Each type of Account offers varying levels of functionality as described below.

#### 2.1 District Administrator Account

Those with "**District Administrator Accounts**" may import student account information onto the Site, register Student Accounts, and run and obtain reports of test results for students with registered Student Accounts (each, a "**Report**"). In addition, those with District Administrator

Accounts are responsible for designating Teacher Accounts as Pending, Approved, or Not Approved as set forth in greater detail in Section 3 (Registration; Account Approval Process).

## 2.2 School Administrator Account

A "**School Administrator Account**" has the same functionality as a District Administrator Account and shall be treated as a District Administrator Account for purposes of these Terms.

## 2.3 Teacher Account

Authorized Users with "**Teacher Accounts**" have three (3) potential levels of functionality depending on the status of the account as determined during the account approval process set out in Section **Registration** (Registration; Account Approval Process). The level of functionality is as follows:

### 2.3.1. Pending Teacher Account

"**Pending Teacher Account**" is the default type of Teacher Account and is automatically given to Authorized Users who successfully self-register pursuant to Section **Registration** (Registration; Account Approval Process). Pending Teacher Accounts are only granted limited access to certain content including, for example, eBooks, informal assessments, and similar material.

### 2.3.2. Approved Teacher Account

Authorized Users with "**Approved Teacher Accounts**" are given access to additional features of the Site including, but not limited to, the ability to import Student Accounts, create individual Student Accounts, create classes, and assign students that have been added to the system to classes. In addition, Approved Teacher Accounts have limited access to Reports.

### 2.3.3. Not Approved Teacher Account

Those Teacher Accounts deemed "**Not Approved**" pursuant to Section **Registration** (Registration; Account Approval Process) will not be granted access to password protected portions of the Site including, but not limited to, content accessible by Pending Teacher Accounts.

## 2.4 Student Accounts

Students who are registered on our Site receive a "**Student Account**," which enables them to access the Site, browse the content that has been assigned to them, take informal assessments online, and run personal reports about their own progress.

## 3. Registration; Account Approval Process

In order to obtain access to the protected areas of our Site, you must first have a username and password, which is either activated or created during the registration process. As set forth in greater detail below, the registration process varies depending on the type of Account that is being created.

### 3.1 Teacher Accounts

Teachers may self-register on the Site by selecting the appropriate district and school, providing their user information, and entering the individual access code that accompanies the print material package that they receive along with the program that was purchased. Upon self-registration, the teacher is given a Pending Teacher Account and allowed access to the Site as described in Section 2.3.1 (Pending Teacher Account).

### 3.2 District and School Administrator Account

After a successful program order has been placed, we will send an individual access code to the party named on the "key technical contact" portion of the order form. Provision of this individual access code, along with the user information and selection of the appropriate school district, will allow for the creation of either a District or School Administrator Account. After creation of a District or School Administrator Account, the Authorized User shall be able to participate in the account approval process, which is as follows:

#### 3.2.1. Account Approval Process; Teacher Accounts

As discussed above, Teacher Accounts have three (3) potential levels of functionality: (i) Pending, (ii) Approved; and (iii) Not Approved. Authorized Users with District and School Administrator Accounts are responsible for determining what type of functionality should be given to a particular Teacher Account. As such, both District and School Administrator Accounts have access to a page on our Site that contains a list of all self-registered Teacher Accounts along with the first and last name of those Authorized Users who have self-registered. District and School Administrator Account holders can then determine the level of functionality that should be given to Teacher Accounts in their particular school district. Those teachers who have not been approved may contact us and we may, in our sole discretion, provide the requesting teacher with the contact information of the appropriate individual possessing a District or School Administrator Account.

### 3.3 Student Accounts

Those Authorized Users with a District or School Administrator Account or an Approved Teacher Account can either import student accounts or manually register particular students in order to create a Student Account. In order to register a Student Account, the registering party must provide: (i) the student's first and last name (or other identifier), (ii) grade, (iii) username; and (iv) password. Registering parties may also provide additional information about students during registration including: (a) a middle initial, (b) student ID, (c) gender, (d) English

proficiency, (e) ethnicity, (f) special conditions, (g) special services; and (h) economic status. All of the registration information set forth in this Section **Student Accounts** (Student Accounts) shall be referred to as "**Student Registration Information.**"

#### 4. Obtaining a Password; Use of Your Password

Authorized Users will obtain a username and password in order to access the password protected areas of our Website, and to enjoy certain Services and Content. Please keep in mind that we will treat anyone who uses your password as you. We will provide this user with all of the rights and privileges that we provide to you, and we will hold you responsible for the activities of a person using your password. Therefore, we recommend that you maintain your username and password in confidence, and that you refrain from disclosing this information to anyone who might "pretend" to be you with respect to the Services and your participation on our Website. We also recommend that you notify us immediately if you suspect that someone is using your password in this manner.

We expect that students will share their passwords with their parents or legal guardians, to allow them to assist with assignments, monitor their work, and otherwise assist in the learning process. Parents and guardians who use passwords in this manner are subject to these Terms and to our Privacy Policy.

#### 5. Houghton Mifflin Harcourt Publishing Company Grant of Rights to Site Visitors

As a Site Visitor, you are granted the right to access all areas of the Website other than the password protected areas ("**Permitted Visitor Areas**" or "**Areas**"). You may access and view Permitted Visitor Areas for your personal and non-commercial use only, and you may not modify, copy, distribute, or otherwise use Content or Services available in these Areas.

#### 6. Houghton Mifflin Harcourt Publishing Company Grant of Rights to Authorized Users

In this Section, Houghton Mifflin Harcourt Publishing Company gives to Authorized Users all of the rights and privileges they will need to participate fully in the goals of our Site and its related Content. We also impose restrictions on your use of our Content outside of the Site.

##### 6.1 Limited Right to Access and Use for Educational Purposes

Subject to your compliance with these Terms, Houghton Mifflin Harcourt Publishing Company hereby grants to you a limited right to access and use the Website and the Services and Content made available to you via the Website. The limited rights that we grant to you pursuant to this Section **Limited Right to Access and Use for Educational Purposes** (Limited Right to Access and Use for Educational Purposes) is strictly limited to your personal, educational, and non-commercial use. You shall not print any Content or other material from our Site unless expressly given permission to do so by Houghton Mifflin Harcourt Publishing Company. This Section **Limited Right to Access and Use for Educational Purposes** (Limited Right to Access and

Use for Educational Purposes) does not allow you to publicly display or publicly perform the Content (either in or outside an educational context), and you shall not use a projection device (including, but not limited to, WhiteBoard, SMARTBoard, or ACTIVboard) to project the Content available on our Site, unless you obtain a further express license to do so. Licenses allowing such use are available and may be obtained by contacting Houghton Mifflin Harcourt Publishing Company at [HSPHRWorders@harcourt.com](mailto:HSPHRWorders@harcourt.com).

## 6.2 Right to Print Reports

Subject to your compliance with these Terms, Houghton Mifflin Harcourt Publishing Company hereby grants to those with: (i) District Administrator Accounts, (ii) School Administrator Accounts; and (iii) Approved Teacher Accounts, a limited right to print copies of Reports so long as: (a) you make and use the copies solely for educational purposes, (b) the number of copies that you make is reasonable in light of such purposes; and (c) you retain all copyright or other proprietary notices that may appear on the copies.

## 6.3 Duration of Rights

The rights enjoyed pursuant to Section **Limited Right to Access and Use for Educational Purposes** (Limited Right to Access and Use for Educational Purposes) and Section **Right to Print Reports** (Right to Print Reports) shall continue for the duration of these Terms, unless your password or Account is revoked or suspended, as set out in Section **Revocation or Suspension of Use Privileges** (Revocation or Suspension of Use Privileges).

## 6.4 Reservation of Rights

Any rights granted pursuant to these Terms must be expressly provided herein, and no rights will be implied pursuant to these Terms, based on any course of conduct or other construction or interpretation thereof. All rights not expressly granted are reserved by Houghton Mifflin Harcourt Publishing Company.

## 7. Your Grant of Rights to **Houghton Mifflin Harcourt Publishing Company; Authority**

### 7.1 Student Registration Information

By providing Student Registration Information on the Website, you authorize us to use said information as we deem necessary to fulfill our obligations pursuant to these Terms and to provide the Services and Content that we offer via our Site. You acknowledge that you have received parental consent to provide us with the applicable student's Student Registration Information and that you have informed the student's parents or guardians about the student's use of, and access to, the Site.

### 7.2 All Other Content

All other content that you provide via our Website shall be treated by us as non-confidential and non-proprietary to you. By providing content on the Website, you authorize us to use and allow others to use, distribute, modify, and copy said content without compensation to you and for so long as we deem warranted (collectively, "**Use Rights**"). Moreover, in providing this content to our Website, you warrant that you have sufficient authority and right to provide said information, and to provide these Use Rights.

## 8. Houghton Mifflin Harcourt Publishing Company Ownership; Reservation of Rights

The information, software, artwork, text, video, audio, pictures, content, trademarks, trade dress, and other intellectual property on the Website, or embodied in the Services or the Content, are the proprietary property of Houghton Mifflin Harcourt Publishing Company and its licensors, and are protected by U.S. and international copyright and other intellectual property laws. Houghton Mifflin Harcourt Publishing Company retains all of its rights with respect to the Website, the Services, and the Content except those expressly granted to you in these Terms. You agree not to duplicate, publish, display, distribute, modify, or create derivative works from the material on the Website except as expressly allowed in Section **Limited Right to Access and Use for Educational Purposes** (Limited Right to Access and Use for Educational Purposes) and Section **Right to Print Reports** (Right to Print Reports), or unless specifically authorized in writing by Houghton Mifflin Harcourt Publishing Company.

## 9. Links to Third Party Sites

Our Website may contain links and other references to third party Websites (collectively "**Linked Sites**"). Houghton Mifflin Harcourt Publishing Company has no control over these Linked Sites or their content and does not assume responsibility or liability for any content, opinions, or materials available on Linked Sites. Houghton Mifflin Harcourt Publishing Company does not endorse the content of any Linked Site, nor does Houghton Mifflin Harcourt Publishing Company warrant that a Linked Site will be free of computer viruses or other harmful code that can impact your computer or other web access device.

Although we take no, and assume no, responsibility for Linked Sites, if you experience a problem with a Linked Site, please let us know at [support@thinkcentral.com](mailto:support@thinkcentral.com), and we will investigate the link and take appropriate action.

## 10. Code of Conduct; Authorized User Obligations

10.1 Code of Conduct As a condition to your use of the Website, the Services, and the Content you agree to follow our Code of Conduct, as set out below. Under this Code, you shall not:

- Use the Website in a manner that could disable, overburden, or impair the Site or interfere with any other party's use and enjoyment of the Site, such as through sending "spam" email.

- Seek to obtain access to any materials or information through "hacking" or through other means we have not intentionally made available to you through the Website.
- Submit material that is intentionally false, defamatory, unlawfully threatening, or unlawfully harassing. For example, you will not submit material that is intended to harass an individual or group because of their sex, race, religious beliefs, national origin, physical attributes or sexual preference.
- Infringe any third party's copyright, patent, trademark, trade secret, or other proprietary rights or rights of publicity or privacy. Electronic materials—such as music, videos, games, images, and text in electronic form—can easily be copied, modified and sent over networks (such as the Internet). These electronic materials are thus extremely vulnerable to unauthorized distribution and copyright infringement. These materials may not be transmitted over the Website without the copyright owner's permission, or without a legitimate "fair use" justification for the transmittal.
- Disseminate materials that invade the privacy of others, such as personally identifiable information, or other materials that reveal personal, private or sensitive information about another person, without that person's consent.
- Distribute information that users have submitted for use on the Website other than as provided for by these Terms.
- Transmit or display obscene materials, particularly those that contain child pornography or other pornographic images or content.
- Frame, or assist third parties in framing, any of the web pages contained in the Website. Such framing is strictly prohibited under these Terms.
- Transmit materials that contain any viruses, Trojan horses, worms, time bombs, cancelbots, or other computer-programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, or personal information.
- Create direct or indirect links to other websites.
- Seek to use for financial gain the Website, related computer facilities, or information available on the Website.
- Use the Website for any purpose that is unlawful or prohibited by these Terms. For example, you will not use the Website, Services, or Content to violate any law, statute, or regulation (including, without limitation, those governing export control, consumer protection, unfair competition, anti-discrimination, or false advertising).

- Post, or cause to be posted, in any area generally accessible to users, any personally identifiable information on the Site including, but not limited to: (i) home or other physical address, (ii) email address, (iii) telephone number, (iv) social security; or (v) any combination of this, or similar, information that could be used to identify a user.

We will enforce our Code of Conduct wherever we deem necessary. Please understand, however, that Houghton Mifflin Harcourt Publishing Company does not control—and does not necessarily endorse—any non- Houghton Mifflin Harcourt Publishing Company provided content that is transmitted via our Site. When you participate on the Website, you do so at your own risk, and we expressly disclaim responsibility for non- Houghton Mifflin Harcourt Publishing Company provided content or information found while using our Site.

## 10.2 Authorized User Obligations

Given the structure of our Site and the interaction between Authorized Users, Houghton Mifflin Harcourt Publishing Company recognizes that certain Authorized Users may be in the best position to monitor the activities of Student Accounts. To this end those Authorized Users with: (i) District Administrator Accounts, (ii) School Administrator Accounts; and (iii) Teacher Accounts (collectively, "**Monitors**") shall be obligated to monitor and report to Houghton Mifflin Harcourt Publishing Company any violation of our Code of Conduct by users of those Student Accounts that were registered by the applicable Monitor. The grant of rights given to you pursuant to Section **Limited Right to Access and Use for Educational Purposes** (Limited Right to Access and Use for Educational Purposes) and Section **Right to Print Reports** (Right to Print Reports) are expressly contingent upon your assent to the obligations set forth in this Section **Authorized User Obligations** (Authorized User Obligations).

## 11. Monitoring of Content and Services; Removal

We expect Authorized Users to act responsibly, and to respect the rights of others. We seek to protect the integrity and security of our computing systems, and the right to protect our community of users from claims of intellectual property infringement and other claims or threats, such as those detailed in our Code of Conduct. Toward these ends, we reserve the right in our discretion to: (i) monitor your use of the Website and the Services and Content provided therein, (ii) restrict or foreclose access to all or certain portions of the Site, Services or Content; and (iii) take other actions that we deem necessary to protect our users. Due to this monitoring, you cannot expect that information provided through our Website will remain "private" or otherwise free of our review. Please refer to our Privacy Policy for a precise statement concerning your expectations of privacy.

Although we have no, and assume no, obligation to monitor activities on our Website, please understand that we may employ filters designed to detect and block the transmission of material that contains sexually explicit or otherwise inappropriate language. We may notify teachers when we detect the use of such language. We reserve the right to edit, refuse to post,

or remove any information or material, in whole or in part, that we believe, in our sole discretion, is incompatible with our Code of Conduct.

## 12. Revocation or Suspension of Use Privileges

We reserve the right at any time to terminate or suspend your access to all or some portions of our Website if you engage in activities that we conclude, in our discretion, breach our Code of Conduct or these Terms.

Users should also understand that our Code of Conduct is based in many instances on principles of state and federal law. Users who violate our Code of Conduct accordingly may be exposed under these state and federal laws to criminal charges, and civil liability to harmed parties for compensatory damages and attorney's fees. Houghton Mifflin Harcourt Publishing Company reserves the right at all times to disclose information it deems necessary to satisfy any applicable law, regulation, legal process, or governmental request as consistent with our Privacy Policy.

## 13. Privacy and Your Disclosure of Information

We value your privacy and the privacy of all of our users. Please review our Privacy Policy for information on how we collect, use, and protect your personally identifiable information. These protections, however, do not apply to information you choose to disclose via our Website. Although Authorized Users are bound, under these Terms, to refrain from disseminating information from our Website, we cannot assure you that this will be the case.

## 14. Warranty Disclaimer

Houghton Mifflin Harcourt Publishing Company does not promise that the Website will be error-free or uninterrupted, or that the Site will provide specific results from your use of any content, search, or link on it. The Site, and all Services and Content within them are delivered on an "AS IS" and "AS AVAILABLE" basis. Houghton Mifflin Harcourt Publishing Company does not warrant or represent that files you download from the Site will be free of viruses or other harmful features. HOUGHTON MIFFLIN HARCOURT PUBLISHING COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. YOU EXPRESSLY AGREE THAT USE OF THE SITE AND RELATED SERVICES IS AT YOUR SOLE RISK.

## 15. Limitation of Liability

UNDER NO CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, TORT, OR NEGLIGENCE, WILL HOUGHTON MIFFLIN HARCOURT PUBLISHING COMPANY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) THAT ARISE OUT OF OR ARE RELATED TO YOUR USE OF THE HOUGHTON MIFFLIN HARCOURT PUBLISHING COMPANY SITE, THE SERVICES, OR THE

CONTENT. IN NO EVENT SHALL HOUGHTON MIFFLIN HARCOURT PUBLISHING COMPANY'S AGGREGATE LIABILITY TO YOU FOR ANY LOSS, DAMAGE, OR CLAIM RELATED TO OR ARISING OUT OF THE HOUGHTON MIFFLIN HARCOURT PUBLISHING COMPANY'S SITE, THE SERVICES, OR THE CONTENT EXCEED THE TOTAL AMOUNTS, IF ANY, ACTUALLY PAID BY YOU TO HOUGHTON MIFFLIN HARCOURT PUBLISHING COMPANY FOR ACCESSING THIS SITE DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.

#### 16. Indemnity

You agree to defend, indemnify, and hold Houghton Mifflin Harcourt Publishing Company and its subsidiaries, affiliates, officers, directors, agents, and employees harmless from any liability to third parties, including reasonable attorneys' fees, arising from or related to your breach of these Terms.

#### 17. Contact for Alleged Copyright Infringement

Houghton Mifflin Harcourt Publishing Company respects the intellectual property rights of others and requires that its users do the same. If you believe that content on the Site or other activity taking place on the Site constitutes infringement of a work protected by copyright, please notify our agent, designated under the Digital Millennium Copyright Act (17 U.S.C. §512) (the "**DMCA**") to respond to such concerns, as follows:

Nancy King  
General Manager: Permissions, Copyrights, and Contracts  
Houghton Mifflin Harcourt Publishing Company  
6277 Sea Harbor Drive  
Orlando, FL 32887  
Phone: 407.345.2000  
Fax: 407.345.2418  
Email: nancy.king@harcourt.com

Your notice must comply with the DMCA. Upon receipt of a compliant notice, we will respond and proceed in accordance with the DMCA.

#### 18. Access to the Harcourt Site

You are solely responsible for the costs of obtaining access to the Site. That access may involve third-party fees (such as Internet Service Provider or airtime charges), as well as necessary equipment.

#### 19. Additional Terms for Certain Services or Sites

We may offer certain sites or services that are subject to additional or different terms and conditions. We will notify you if the site or service you are accessing is subject to terms and

conditions that differ from these Terms, and you will have the opportunity to decline to participate in such sites or services, if you do not agree with the differing terms and conditions.

## 20. Modifications to these Terms

We reserve the right to modify, in our sole discretion, these Terms. If we modify these Terms, any such modifications will take effect proactively, upon your subsequent access to the Website.

## 21. Assignment

These Terms shall not be assignable by you, either in whole or in part. Houghton Mifflin Harcourt Publishing Company reserves the right to assign its rights and obligations under these Terms.

## 22. General

These Terms shall be governed in all respects by the laws of the State of Florida without giving effect to its conflicts of law provisions. Both parties submit to the personal jurisdiction of and venue in the state and federal courts in the State of Florida, in the judicial district in which Houghton Mifflin Harcourt Publishing Company resides. The parties further agree that any cause of action arising under these Terms shall exclusively be brought in such courts. If any provision of these Terms is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. Headings are for reference purposes only and in no way define, limit, construe, or describe the scope or extent of such section. Houghton Mifflin Harcourt Publishing Company's failure to act with respect to a breach by you or others does not waive its right to act with respect to subsequent or similar breaches. These Terms and the terms and conditions contained herein set forth the entire understanding and agreement between Houghton Mifflin Harcourt Publishing Company and you with respect to the subject matter hereof and supersede any prior or contemporaneous understanding, whether written or oral.

## 23. Survival

The following provisions shall survive the termination of these Terms and shall apply indefinitely:

Section **Your Grant of Rights to Houghton Mifflin Harcourt Publishing Company; Authority**  
(Your Grant of Rights to Houghton Mifflin Harcourt Publishing Company; Authority)  
Section **Houghton Mifflin Harcourt Publishing Company Ownership; Reservation of Rights**  
(Houghton Mifflin Harcourt Publishing Company Ownership; Reservation of Rights)  
Section **Warranty Disclaimer** (Warranty Disclaimer)  
Section **Limitation of Liability** (Limitation of Liability)  
Section **Indemnity** (Indemnity)

Section **Assignment** (Assignment)  
Section **General** (General)  
Section **Survival** (Survival)

#### 24. Contact Us

You may contact us for any reason at the following addresses:

Attention: Tech Support  
Phone: 800.419.3900  
Email: [support@thinkcentral.com](mailto:support@thinkcentral.com)

#### 25. Effective Date

The effective date of these Terms is August 3, 2007.

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