



# Center for Digital Innovation

## MCGRAW-HILL CENTER FOR DIGITAL INNOVATION

### License Agreement

#### TERMS OF SERVICE

During the term of this Agreement, McGraw-Hill Center for Digital Innovation agrees to provide Subscriber with a subscription to the service described below (the “Service”) for the end users designated by the Subscriber for use of each “Application” purchased by Subscriber.

McGraw-Hill Center for Digital Innovation shall provide individual login information to the Service to each administrator, faculty member, and student enrolled by the Subscriber (each a designated “End User”). These Terms of Service (“Terms”) apply equally to every designated End User of the Service under the Subscription. The Subscriber is responsible for making each designated End User aware of these Terms and for ensuring compliance with them. The Subscriber is responsible for supervision and controlling all activities conducted through the Subscription. McGraw-Hill Center for Digital Innovation posts the Terms of Service on the CDI Web Site. McGraw-Hill Center for Digital Innovation may prospectively change the Terms of Service at any time. McGraw-Hill Center for Digital Innovation will post notification of changes in the Service and email them to the designated School Administrator.

#### 1. Description of Services

McGraw-Hill Center for Digital Innovation Subscribers obtain access to each Application ordered and paid for as stated on the “Subscription Form.” During the Term, McGraw-Hill Center for Digital Innovation will provide support in set-up and use to the Subscriber’s designated Technology/Curriculum Representative listed on the Subscription Form. McGraw-Hill Center for Digital Innovation may, in its sole discretion, enhance and/or expand the features of the Service from time to time at no additional cost to Subscriber (“No-cost Features”). McGraw-Hill Center for Digital Innovation may also expand or enhance the Service by providing additional content, performance or features that may, but are not required to be added by Subscriber to this Agreement at additional cost (“Cost Features”).

#### 2. Access to CDI Website and to the Applications

(a) McGraw-Hill Center for Digital Innovation grants to Subscriber the right to designate End Users and for End Users a non-exclusive, non-transferable, royalty-free right and license to access each Application via the CDI Web Site and use it for educational purposes anytime during the term, from any location, school, home, or elsewhere. Subscriber acknowledges, agrees, and accepts that this license extends only to the Applications and the End Users from the School Sites designated on the Subscription form, and that certain users (e.g., teachers or administrators) may enjoy access and use rights that are broader than those granted to others (e.g., students or parents). This license will at all times be subject to (i) these Terms of Service, (ii) and (iii) the then-current “The McGraw-Hill Companies Privacy Policy” and any related rules of usage, each of which will be posted and made available on the CDI Web Site. Subscriber agrees that it will inform users that their use of the CDI Web Site and Applications is subject to these limitations, and that it will use its best efforts to ensure their compliance.

(b) For purposes of this Agreement, the following terms have the following meanings (i) An "End User" means a student (from the School Sites and in a number not to exceed that which is specified in any Subscription Form) to whom the Subscriber may grant access to an Application, and their teachers, school administrators, and parents. For purposes of counting the number of End Users, each individual student will count as one (1) End User immediately upon enrollment in a class list for each Application. (ii) A "School Site" means each school of the Subscriber's organization that is specified in the Subscription Form. (iii) The "CDI Web Site" means the web site that McGraw-Hill Center for Digital Innovation makes available on the Internet for private access using the URL's specified by CDI.

### **3. Security for Application Content, Subscriber Information, Access Codes, User Names, and Personally Identifiable Information**

Subscriber shall provide all information promptly and accurately as necessary to enable McGraw-Hill Center for Digital Innovation to create required End User and technology profiles in a timely manner. Access to each Application will be secure. McGraw-Hill Center for Digital Innovation will provide Subscriber Access for each school or district (as defined below). Subscriber will be solely responsible for registering students in classes in order to obtain a "log-on" username and password for each Student ("Log-on"). All information concerning the Subscriber, Personal Information (defined below) concerning End Users (Students, Student scores, data, test results, dates, analyses and other information, collectively, "Subscriber Information") shall belong to the Subscriber. McGraw-Hill Center for Digital Innovation claims no ownership or other interest in Subscriber Information. With respect to Subscriber Information, Subscriber acknowledges and agrees that it shall be deemed to have been gathered and transmitted to McGraw-Hill Center for Digital Innovation by and under the authority of the Subscriber to assist Subscriber to assess the performance of its students and carry out its educational responsibilities under law. Subscriber grants to McGraw-Hill Center for Digital Innovation a non-exclusive, royalty-free, perpetual license to collect, access, and use the Subscriber Information consistent with provisions of The McGraw-Hill Companies Privacy Policy.

### **4. Collection of Personal Information**

(a) McGraw-Hill Center for Digital Innovation enters into this Subscriber Agreement on the understanding that the Subscriber is familiar with and agrees to be responsible for compliance with the Children's Online Privacy Protection Act of 1998 ("COPPA"), the *Family Educational Rights and Privacy Act* and the US Department of Education's implementing regulations at 34 CFR Part 99 (collectively, "**FERPA**"); and all other laws rules or regulations (all collectively, "Applicable Law") concerning the collection, use, and disclosure of Personal Information about End Users accessing the Services that are the subject of this Agreement. Specifically, it is understood that the Subscriber assumes sole responsibility for:

(i) providing notice to the extent required under COPPA or other Applicable Law in connection with the collection, use and/or disclosure of Personal Information from End Users;

(ii) obtaining verifiable prior parental consent as required under COPPA or other Applicable Law in connection with the collection, use, and/or disclosure of Personal Information obtained from End Users;

(iii) providing a reasonable means for parents to review Personal Information provided by End Users to the extent required by COPPA or other Applicable Law; and

(iv) establishing and maintaining reasonable procedures to protect the confidentiality, security, and integrity of the Personal Information.

(b) McGraw-Hill Center for Digital Innovation, as vendor for the Subscriber, will also establish and maintain reasonable procedures in accordance with its policies and practices and Applicable Law to protect the confidentiality, security, and integrity of Personal Information and Subscriber Information received by McGraw-Hill Center for Digital Innovation under this Subscriber Agreement.

(c) The Subscriber acknowledges and agrees that McGraw-Hill Center for Digital Innovation has the right to use the Personal Information and Subscriber Information collected in connection with the Services for (i) purposes of performing its obligations under this Subscriber Agreement, and (ii) for research purposes in connection with quality control and the development of revised or new products or services (“Research Purposes”), provided that such Personal Information and Subscriber Information will be used by McGraw-Hill Center for Digital Innovation for Research Purposes only in the aggregate and so that the privacy of the individual's Personal Information will be maintained.

## **5. Ownership: Applications and Web Site**

Subscriber acknowledges and agrees that (i) McGraw-Hill Center for Digital Innovation or its licensors own or control all Intellectual Property Rights, embodied in the Applications (other than the Subscriber Information) and the CDI Web Site; (ii) Subscriber has no proprietary rights in such intellectual property; and (iii) Subscriber shall not (i) modify, adapt, alter, translate, or create derivative works; (ii) sublicense, lease, rent, loan, or otherwise transfer access to the Applications or the CDI Web Site to any third party; (iii) reverse engineer, decompile, disable, or otherwise attempt to derive the source code of the Applications or the CDI Web Site; or (iv) otherwise use or copy the Applications or the CDI Web Site except as expressly authorized hereunder. McGraw-Hill Center for Digital Innovation reserves all other Intellectual Property Rights. The term “Intellectual Property Right” means the rights embodied in the content of each Application, including all test questions, exercises, curriculum based measurement assessments, developments, designs, improvements, innovations, formulas, processes, techniques, programs, know-how and data related thereto, and in the CDI Web Site and in all elements of the Service whether or not patentable or registerable under copyright or similar statutes.

In addition, to the extent Subscriber is permitted to utilize materials from the Applications in digital form for use with electronic classroom teaching tools, such as white boards, such use will be limited to one copy for classroom only in conjunction with such teaching tools, and Subscriber shall not make, or permit others to make, any further or additional copies and/or other distribution of such materials from the Applications.

## **6. Support and Training**

McGraw-Hill Center for Digital Innovation will make available technical support via telephone and email between the hours of 6:30 a.m. and 4:00 p.m. PST Monday through Friday. McGraw-Hill Center for Digital Innovation will provide training for each Application via technology-based or on-site methods in accordance with McGraw-Hill Center for Digital Innovation policies and practices. Subscriber may also order additional training and professional development services for an additional charge.

## **7. Payment Terms, Activation of Application & Changes**

(a) Subscriber will pay McGraw-Hill Center for Digital Innovation the License Fee and a Training Fee (if applicable) in effect on the date of acceptance of Subscriber's order (unless a specific License Fee has been previously quoted). Upon acceptance of an order, McGraw-Hill Center for Digital Innovation will issue and send Subscriber an invoice. Subscriber will pay all Fees, NET 30 days, date of invoice. The Fees and reimbursement obligations provided are exclusive of any sales, use, excise or other taxes that may be asserted on such payments by any federal, state, provincial, or local taxing authority, which taxes will be paid by Subscriber. If payment is not received, McGraw-Hill Center for Digital Innovation may suspend the Service, among other remedies.

(b) On or about date of invoice, McGraw-Hill Center for Digital Innovation will send Subscriber a "Subscription Form" to confirm activation information. Subscriber will verify and return the "Subscription Form" (if necessary) to McGraw-Hill Center for Digital Innovation. Activation of an Application account will occur on the date the information on the Subscription Form is entered into McGraw-Hill Center for Digital Innovation's application database, or on a date requested by Subscriber and accepted by McGraw-Hill Center for Digital Innovation.

(c) A signed copy of this License Agreement must be returned to McGraw-Hill Center for Digital Innovation within 30 days of the Activation date. If the agreement is not received, McGraw-Hill Center for Digital Innovation may suspend the Service, among other remedies.

(d) Subscriber may increase Services at any time at then-current Fees. Subscriber may decrease Services prospectively only to be effective at the end of an annual term in a multi-year agreement. No credits are issued for un-used subscriptions.

## **8. Limited Warranty**

McGraw-Hill Center for Digital Innovation warrants that it has sufficient right, title, and interest in and to the CDI Web Site and each Application to grant the rights granted herein. Except as expressly stated by the Agreement, McGraw-Hill Center for Digital Innovation makes no warranty of any kind with respect to the Service, each Application, the CDI Web Site, and all content associated therewith or its use, all of which are provided “AS IS,” AS AVAILABLE,” “WITH ALL FAULTS.” McGraw-Hill Center for Digital Innovation shall make reasonable efforts to provide designated End Users with access to the Service at all times (except for periodic scheduled maintenance), but McGraw-Hill Center for Digital Innovation does not warrant that the Service will be uninterrupted or that the Service’s functions shall be error-free. MCGRAW-HILL CENTER FOR DIGITAL INNOVATION DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND OF MERCHANTABILITY.

## **9. Term and Termination**

The Initial Term of this Agreement will be through the term of each Application ordered (usually one (1) year), as stated on the Subscription Form, unless a six-month or multi-year Subscription has been ordered. Either party may terminate this Agreement at the end of any Term by providing the other party written notice of termination at least thirty (30) days prior to the end of such period.

## **10. Limitation of Liability**

IN NO EVENT WILL MCGRAW-HILL CENTER FOR DIGITAL INNOVATION BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF TEACHING, TESTING OR TRAINING TIME, BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF SUBSCRIBER INFORMATION, DATA, PERSONAL INJURY, OR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE CDI WEB SITE, OR THE APPLICATIONS. NOTWITHSTANDING ANY DAMAGES THAT SUBSCRIBER MIGHT INCUR FOR ANY REASON, SUBSCRIBER’S EXCLUSIVE REMEDY FOR ALL OF THE FOREGOING WILL BE LIMITED TO THE TOTAL FEES PAID DURING THE YEAR IN WHICH THE LOSS OR DAMAGE OCCURRED.

## **11. Confidentiality**

This Subscription Agreement creates a relationship of confidence and trust between the Subscriber and McGraw-Hill Center for Digital Innovation with respect to the Intellectual Property, and the Subscriber agrees that it will treat this Intellectual Property as confidential and that neither it nor any End User, administrator, employee, student, agent or anyone acting through the Subscriber will disclose the Intellectual Property or attempt to convey any interest in the Intellectual Property to any third party without the express written consent of McGraw-Hill Center for Digital Innovation.

## **12. U.S. Government Restricted Rights**

The software and documentation comprising the Services are provided with restricted rights. Consistent with 48 C.F.R. (FAR) 2.101 (October, 1995; December, 2001), 48 C.F.R. (FAR) 12.212 (October, 1995), 48 C.F.R. (FAR) 227.7202-1 to 227.7202-4 (June, 1995), and 48 C.F.R. (DFARS) 252.227-7013 (November, 1995), as applicable, the software and documentation are Commercial Computer Software and Commercial Computer Documentation that are being licensed to the U.S. Government (a) only as Commercial Items and (b) only with rights as customarily provided to other licensees. For any procurements not under the above-dated regulations, use, duplication or disclosure by the U.S. Government is subject to the restrictions set forth in 48 C.F.R. (DFARS) 252.227-7013(c) (1) (ii) (October, 1988) and 48 C.F.R. (FAR) 52.227-19(c) (1)-(2) (June, 1987), as applicable. Contractor is The CDI a division of The McGraw-Hill Companies, Inc., Columbus, OH United States. Unpublished-rights reserved under the copyright laws of the United States.

## **13. Miscellaneous**

(a) **Notices** Any notice, request, authorization, direction or other communication under this Agreement shall be given in writing and delivered either (i) in person, (ii) by telecopy, or (iii) by certified or first-class United States mail, postage prepaid, to the parties at the addresses disclosed on the Subscription Form. Either party may change its address for giving notice by giving the other party prior written notice of such change. Notices shall be deemed to have been given and delivered (i) upon receipt if hand delivered or telecopied, or (ii) three (3) days after being properly mailed, if mailed. Written confirmation from the sender's facsimile transmission equipment that the facsimile transmission has been successfully completed to the recipient's correct facsimile telephone number shall be conclusive evidence of receipt of a telecopied notice; the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing.

(b) **Severability** the invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

(c) **Successors and Assigns** Subscriber shall not assign any rights, duties, or obligations hereunder without the prior written consent of McGraw-Hill Center for Digital Innovation and any attempt to so assign without such written consent shall be void. McGraw-Hill Center for Digital Innovation shall be entitled to assign its rights, duties, and obligations hereunder.

(d) **Modification** No change, amendment, or modification of any provision of this Agreement shall be valid unless set forth in a written instrument signed by both parties.

(e) **Applicable law** This Agreement shall be governed by the laws of the state of New York, without regard to conflict of laws principles.

