

## TERMS OF USE

Effective Date: October 1, 2012

**PLEASE READ THIS AGREEMENT CAREFULLY. IT SETS FORTH THE LEGALLY BINDING TERMS AND CONDITIONS FOR YOUR USE OF THE SITE AND SERVICES.**

To view and print our Privacy Policy, click [here](#). To receive copies of both our Terms of Use and Privacy Policy documents by email, click [here](#).

### Overview

It's important that you read this entire Terms of Use (“**Terms**”); but, here are some of the more significant terms that we want to bring to your attention (click on section reference for details):

- Each time you use the Site, these Terms and any Additional Terms (defined below) apply. Any updates to them will apply to you; so you should check back each time you return for any updates.
- You may only use the Content (defined below) on the Site in connection with your permitted activities on the Site and not in an offline environment or in connection with another site or service. ([Section 1](#) and [Section 3](#)) You grant us a broad license to content you post or submit. ([Section 2](#))
- Individual licenses are not transferrable. ([Section 1.C](#))
- Except as set forth in the [Privacy Policy](#) that applies to the Site, you and Heinemann do not have a confidential, fiduciary, or any other special relationship by virtue of your use of the Site or your communications to Heinemann through or related to the Site. ([Section 2](#))
- You consent to our [Privacy Policy](#) and our practices detailed in it.
- Many types of disputes that may arise in connection with your access to and use of the Site are subject to mandatory arbitration – which includes your waiver of a right to a jury trial. ([Section 12](#))
- We are providing the Site to you on an “as-is” basis, without any warranty of any kind, and our liability to you in connection with your use of the Site is very limited. Many other limitations and disclaimers relate to your use of the Site. ([Section 13](#) and [Section 14](#))

### Introduction

Welcome to the Heinemann Digital Campus site available at [digitalcampus.heinemann.com](http://digitalcampus.heinemann.com) (the “**Site**”)! The Site is provided by Heinemann, a division of Greenwood Publishing Group, Inc. (collectively, “**Heinemann**,” “**we**,” “**our**” or “**us**”). These Terms govern your use of the Site, regardless of how you access or use it. By “**Site**”, we mean any Internet domain address where these Terms are posted and all features, widgets, applications, content, and downloads that are operated by us and that are available through or interact with it, and/or post links to these Terms. By using the Site, you acknowledge and accept the Site’s [Privacy Policy](#) and consent to the collection, use and management of your data in accordance with the [Privacy Policy](#). By using the Site, you further agree that Heinemann may change, alter, or modify the settings or configurations on your Device (defined below) in order to allow for or optimize your use of the Site.

### **If You Want to Use This Site,**

then carefully read these Terms, as they constitute a written agreement between you and Heinemann and they affect your legal rights and obligations. Each time you access and/or use the Site (other than to simply read these Terms), you agree to be bound by and comply with these Terms and any Additional Terms (defined below). Therefore, *do not use the Site if you do not agree.*

The business realities associated with operating the Site are such that, without the limitations that are set forth in these Terms -- such as your grants and waivers of rights, the limitations on our liability, your indemnity of us, and our arbitration of certain disputes – we would not make the Site available to you.

In some instances, both these Terms and separate guidelines, rules, or terms of use, service or sale setting forth additional or different terms and/or conditions will apply to your use of the Site or to a service or product offered via the Site (in each such instance, and collectively, “**Additional Terms**”). To the extent there is a conflict between these Terms and any Additional Terms, the Additional Terms will control unless the Additional Terms expressly state otherwise. Please also review the terms of the Site’s [Privacy Policy](#), which you accept by using the Site.

### **Linkable Table of Contents**

**It is important that you read and understand the entire Terms before using the Site. This table of contents highlights key issues and points and you can click on the headings and “More” buttons to be taken to the full explanation.**

1. **[Site Content, Ownership, Limited License, and Rights of Others](#)**

We only grant you a limited revocable license to use the Site. [More](#)

2. **[Content You Submit and Community Usage Rules](#)**

You grant us a broad license, which we may sublicense, to your content. [More](#)

3. **[Site and Content Use Restrictions](#)**

Your use is subject to our rules. [More](#)

4. **[Opening and Terminating Accounts; Profiles; and License Managers](#)**

You may open, revise and close your accounts, change your profile and manage your license. [More](#)

5. **[Procedure for Alleging Copyright Infringement](#)**

Copyright owners may give us notice of infringement. [More](#)

6. **[Procedure for Alleging Infringement of Other Intellectual Property](#)**

You can also give notice of trademark and other infringements. [More](#)

7. **[Questions and Customer Service](#)**

Click [here](#) to contact us for customer service or questions.

**8. [Terms Applicable to Purchases on the Site](#)**

If you purchase goods or services through the Site, these terms apply. [More](#)

**9. [Links by You to the Site](#)**

You may link to our sites, subject to some basic rules. [More](#)

**10. [Linked-To Websites; Advertisements; Dealings with Third Parties](#)**

We are not responsible for third parties or their apps or sites. [More](#)

**11. [Wireless](#)**

Wireless carrier charges may apply. [More](#)

**12. [Dispute Resolution](#)**

You agree to arbitrate most disputes and waive jury trial and class actions. [More](#)

**13. [Disclaimer of Representations and Warranties](#)**

We disclaim most warranties and provide the Site “As Is”. [More](#)

**14. [Limitations of our Liability](#)**

Our liability is greatly limited. [More](#)

**15. [Waiver of Injunctive or Other Equitable Relief](#)**

You waive equitable or injunctive relief. [More](#)

**16. [General Provisions](#)**

You agree to various other terms and conditions. [More](#)

## Full Details of Terms of Use

### **1. Site Content, Ownership, Limited License, and Rights of Others**

**A. Content.** The Site contains a variety of: (i) materials and other items relating to Heinemann and its products and services, and similar items from our licensors and other third parties, including all layout, information, text, data, files, images, scripts, designs, graphics, button icons, instructions, illustrations, photographs, articles, books, audio clips, music, sounds, pictures, videos, advertising copy, URLs, technology, software, interactive features, the “look and feel” of the Site, and the compilation, assembly, and arrangement of the materials of the Site and any and all copyrightable material (including source and object code); (ii) trademarks, logos, trade names, service marks, and trade identities of various parties, including those of Heinemann (collectively, “**Trademarks**”); and (iii) other forms of intellectual property (all of the foregoing, collectively “**Content**”).

**B. Ownership.** The Site (including past, present, and future versions) and the Content are owned or controlled by Heinemann and our licensors and certain other third parties. All right, title, and interest in and to the Content available via the Site is the property of Heinemann or our licensors or certain other third parties, and is protected by U.S., Canadian and international copyright, trademark, patent, or other intellectual property rights and laws to the fullest extent possible. Heinemann owns the copyright in the selection, compilation, assembly, arrangement, and enhancement of the Content on the Site.

**C. Limited License.** Subject to your strict compliance with these Terms and the Additional Terms, Heinemann grants you a limited, non-exclusive, revocable, non-assignable, personal, and non-transferable license to: (i) download (temporary storage only), display, view, use and/or play the Content (excluding source and object code in raw form or otherwise, other than as made available to access and use to enable display and functionality) on a personal computer, mobile phone or other wireless device, or other Internet enabled device (each, a “**Device**”) and/or print one copy of the Content for your personal, non-commercial use only, and (ii) to use certain Content that we may from time to time make available on the Site explicitly for you for use as part of your User-Generated Content (defined below) (“**Heinemann Licensed Elements**”), but only for such purposes as may be explicitly stated at the time that the Heinemann Licensed Elements are made available on the Site; but we and our licensors and certain other third parties, as the case may be, retain ownership of such Heinemann Licensed Elements. A License Manager may obtain multiple individual licenses and assign them to individuals in the License Manager’s organization as more fully set forth in [Section 4.C](#). The foregoing limited license (i) does not give you any ownership of, or any other intellectual property interest in, any Content, and (ii) may be immediately suspended or terminated for any reason, in Heinemann’s sole discretion, and without advance notice or liability. In some instances, we may permit you to have greater access to and use of Content and/or Heinemann Licensed Elements, subject to certain Additional Terms.

**D. Rights of Others.** In using the Site, you must respect the intellectual property and other rights of Heinemann and others. Your unauthorized use of Content may violate copyright, trademark, privacy, publicity, communications, and other laws, and any such use may result in your personal liability, including potential criminal liability. Heinemann respects the intellectual property rights of others. If you believe that your work has been infringed by means of an improper posting or distribution of it via the Site, then please see [Section 5](#) and [Section 6](#) below.

## 2. Content You Submit and Community Usage Rules

### A. User-Generated Content.

(i) **General.** Heinemann may now or in the future offer users of the Site the opportunity to create, build, post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available on or submit through the Site (collectively, “**submit**”) messages, text, illustrations, files, images, articles, books, course materials, graphics, photos, comments, responses, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, personally identifiable information, or other information or materials and the ideas contained therein (collectively, but excluding Heinemann Licensed Elements included therein, “**User-Generated Content**”). Heinemann may allow you to do this through your Profile Page (defined below), forums, blogs, message boards, social networking environments, content, creation tools, gameplay, social communities, e-mail, and other communications functionality. Subject to the rights and license you grant in these Terms, you retain whatever legally cognizable right, title, and interest that you have in your User-Generated Content.

(ii) **Non-Confidentiality of Your User-Generated Content.** Except as otherwise described in the Site’s posted [Privacy Policy](#) or any Additional Terms, you agree that: (a) your User-Generated Content will be treated as non-confidential – regardless of whether you mark them “confidential,” “proprietary,” or the like – and will not be returned, and (b) Heinemann does not assume any obligation of any kind to you or any third party with respect to your User-Generated Content. Upon Heinemann’s request, you will furnish us with any documentation necessary to substantiate the rights to such content and to verify your compliance with these Terms or any Additional Terms. You acknowledge that the Internet and mobile communications may be subject to breaches of security and that you are aware that submissions of User-Generated Content may not be secure, and you will consider this before submitting any User-Generated Content and do so at your own risk.

In your communications with Heinemann, please keep in mind that we do not seek any unsolicited ideas or materials for products or services, or even suggested improvements to products or services, including, without limitations, ideas, concepts, inventions, or designs for music, web sites, apps, software, books, scripts, screenplays, motion pictures, television shows, theatrical productions, or otherwise (collectively, “**Unsolicited Ideas and Materials**”). Any Unsolicited Ideas and Materials you post on or send to us via the Site are deemed User-Generated Content and licensed to us as set forth below. In addition, Heinemann retains all of the rights held by members of the general public with regard to your Unsolicited Ideas and Materials. Heinemann’s receipt of your Unsolicited Ideas and Materials is not an admission by Heinemann of their novelty, priority, or originality, and it does not impair Heinemann’s right to contest existing or future intellectual property rights relating to your Unsolicited Ideas and Materials.

(iii) **License to Heinemann of Your User-Generated Content.** Except as otherwise described in any applicable Additional Terms, which specifically govern the submission of your User-Generated Content), you hereby grant to Heinemann, and you agree to grant to Heinemann, the non-exclusive, unrestricted, unconditional, unlimited, worldwide, irrevocable, perpetual, and cost-free right and license to use, copy, record, distribute, reproduce, disclose, sell, re-sell, sublicense (through multiple levels), display, publicly perform, transmit, publish, broadcast, translate, make derivative works of, and otherwise use and exploit in any manner whatsoever, all or any portion of your User-Generated Content (and derivative works thereof), for any purpose whatsoever in all formats, on or through any means or medium now known or hereafter developed, and with any technology or devices now known or hereafter developed, and to advertise, market, and promote the same. Without limitation, the granted rights include the right to: (a) configure, host, index, cache, archive, store, digitize, compress, optimize, modify, reformat, edit, adapt, publish in searchable format, and remove such User-Generated Content and combine same with other materials, and (b) use any ideas, concepts, know-how,

or techniques contained in any User-Generated Content for any purposes whatsoever, including developing, producing, and marketing products and/or services. In order to further effect the rights and license that you grant to Heinemann to your User-Generated Content, you also hereby grant to Heinemann, and agree to grant to Heinemann, the unconditional, perpetual, irrevocable right to use and exploit your name, persona, and likeness in connection with any User-Generated Content, without any obligation or remuneration to you. Except as prohibited by law, you hereby waive, and you agree to waive, any moral rights (including attribution and integrity) that you may have in any User-Generated Content, even if it is altered or changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such rights (if any) in a manner that interferes with any exercise of the granted rights. You understand that you will not receive any fees, sums, consideration, or remuneration for any of the rights granted in this Section 2(A)(iii).

(iv) **Heinemann’s Exclusive Right to Manage our Venue.** Heinemann may, but will not have any obligation to, review, monitor, display, post, store, maintain, accept, or otherwise make use of, any of your User-Generated Content, and Heinemann may, in its sole discretion, reject, delete, move, re-format, remove or refuse to post or otherwise make use of User-Generated Content without notice or any liability to you or any third party in connection with our operation of User-Generated Content venues in an appropriate manner. Without limitation, we may do so to address content that comes to our attention that we believe is offensive, obscene, lewd, lascivious, filthy, violent, harassing, threatening, abusive, illegal or otherwise objectionable or inappropriate, or to enforce the rights of third parties or these Terms or any applicable Additional Terms, including without limitation, the content restrictions set forth below in the **Rules** (defined in **Section 2(B)**). Such User-Generated Content submitted by you or others need not be maintained on the Site by us for any period of time and you will not have the right, once submitted, to access, archive, maintain, or otherwise use such User-Generated Content on the Site or elsewhere.

(v) **Representations and Warranties Related to Your User-Generated Content.** Each time you submit any User-Generated Content, you represent and warrant that you are at least the age of majority in the jurisdiction in which you reside and are the parent or legal guardian, or have all proper consents from the parent or legal guardian, of any minor who is depicted in or contributed to any User-Generated Content you submit, and that, as to that User-Generated Content, (a) you are the sole author and owner of the intellectual property and other rights to the User-Generated Content, or you have a lawful right to submit the User-Generated Content and grant Heinemann the rights to it that you are granting by these Terms and any Additional Terms, all without any Heinemann obligation to obtain consent of any third party and without creating any obligation or liability of Heinemann; (b) the User-Generated Content is accurate; (c) the User-Generated Content does not and, as to Heinemann’s permitted uses and exploitation set forth in these Terms, will not infringe any intellectual property or other right of any third party; and (d) the User-Generated Content will not violate these Terms (including the Rules) or any Additional Terms, or cause injury or harm to any person.

(vi) **Enforcement.** Heinemann has no obligation to monitor or enforce your intellectual property rights to your User-Generated Content, but you grant us the right to protect and enforce our rights to your User-Generated Content, including by bringing and controlling actions in your name and on your behalf (at Heinemann’s cost and expense, to which you hereby consent and irrevocably appoint Heinemann as your attorney-in-fact, with the power of substitution and delegation, which appointment is coupled with an interest).

**B. Community Usage Rules.** As a user of the Site, these Community Usage Rules (“**Rules**”) are here to help you understand the conduct that is expected of members of the Site’s online communities (“**Communities**”).

(i) **Nature of Rules.** Your participation in the Communities is subject to all of the Terms, including these Rules:

- **Your User-Generated Content.** All of your User-Generated Content either must be original with you or you must have all necessary rights in it from third parties in order to permit you to comply with these Terms and any Additional Terms. Your User-Generated Content should not contain any visible logos, phrases, or trademarks that belong to third parties. Do not use any User-Generated Content that belongs to other people and pass it off as your own; this includes any content that you might have found elsewhere on the Internet. If anyone contributes to your User-Generated Content or has any rights to your User-Generated Content, or if anyone appears or is referred to in the User-Generated Content, then you must also have their permission to submit such User-Generated Content to Heinemann. (For example, if someone has taken a picture of you and your friend, and you submit that photo to Heinemann as your User-Generated Content, then you must obtain your friend's and the photographer's permission to do so.)
- **Speaking of Photos: No Pictures, Videos, or Images of Anyone Other Than You and Your Friends and Family.** If you choose to submit photos to the Site, link to embedded videos, or include other images of real people, then make sure they are of you or of you and someone you know – and only if you have their express permission to submit it.
- **Act Appropriately.** All of your Site activities must be venue appropriate, as determined by us. Be respectful of others' opinions and comments so we can continue to build Communities for everyone to enjoy. If you think your User-Generated Content might offend someone or be embarrassing to someone, then chances are it probably will and it doesn't belong on the Site. Cursing, harassing, stalking, insulting comments, personal attacks, gossip, and similar actions are prohibited. Your User-Generated Content must not threaten, abuse, or harm others, and it must not include any negative comments that are connected to race, national origin, gender, sexual orientation, physical handicap or any other prohibited grounds of discrimination. Your User-Generated Content must not be defamatory, slanderous, indecent, obscene, pornographic, or sexually explicit.
- **Do Not Use for Commercial or Political Purposes.** Your User-Generated Content must not advertise or promote a product or service or other commercial activity, or a politician, public servant, or law.
- **Do Not Use for Inappropriate Purposes.** Your User-Generated Content must not promote any infringing, illegal, or other similarly inappropriate activity. User-Generated Content that constitutes "junk mail", "spam", "chain letters", "pyramid schemes" or other forms of solicitation is prohibited.
- **Be Honest and Do Not Misrepresent Yourself or Your User-Generated Content.** Do not impersonate any other person, user, or company, and do not submit User-Generated Content that you believe may be false, fraudulent, deceptive, inaccurate, or misleading, or that misrepresents your identity or affiliation with a person or company.
- **Others Can See.** We hope that you will use the Communities to exchange information and content and have venue appropriate discussions with other members. However, please remember that the Communities are public or semi-public and User-Generated Content that you submit on the Site within a Community may be accessible and viewable by other users. Do not submit personally identifying information (e.g., name, password, phone number, address, credit card number, medical information, e-mail address, or other personally identifiable information



or contact information) on Community spaces and take care when disclosing this type of information to others.

- **Don't Share Other Peoples' Personal Information.** Your User-Generated Content should not reveal another person's address, phone number, e-mail address, social security number, credit card number, medical information, financial information, or any other personally identifiable information unless you have their consent to do so.
- **Don't Damage the Site or Anyone's Computers or Other Devices.** Your User-Generated Content must not submit viruses, Trojan horses, spyware, or any other technologies or malicious code that could impact the operation of the Site or any computer or other Device.

If you submit User-Generated Content that Heinemann reasonably believes violates these Rules, then we may take any legally available action that we deem appropriate, in our sole discretion. However, we are not obligated to take any action not required by law. We may require at any time, proof of the permissions referred to above in a form acceptable to us. Failure to provide such proof may lead to, among other things, the User-Generated Content in question being removed from the Site.

(ii) **Your Interactions With Other Users; Disputes.** You are solely responsible for your interaction with other users of the Site, whether online or offline. We are not responsible or liable for the conduct or content of any user. We reserve the right, but have no obligation, to monitor or become involved in disputes between you and other users. Exercise common sense and your best judgment in your interactions with others (*e.g.*, when you submit any personal or other information) and in all of your other online activities.

C. **Alerting Us of Violations.** If you discover any content that violates these Terms, then you may report it to [digitalcampus@heinemann.com](mailto:digitalcampus@heinemann.com). For alleged infringements of intellectual property rights, see [Section 5](#) and [Section 6](#), below.

### 3. **Site and Content Use Restrictions**

A. **Site Use Restrictions.** You agree that you will not: (i) aside from your purchase of goods or services offered for sale by Heinemann or its affiliates, use the Site for any political or commercial purpose (including, without limitation, for purposes of advertising, soliciting funds, collecting product prices, and selling products); (ii) use any meta tags or any other "hidden text" utilizing any Heinemann Trademarks or trade names; (iii) engage in any activities through or in connection with the Site that seek to attempt to or do harm any individuals or entities or are unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third party, or are otherwise objectionable to Heinemann; (iv) reverse engineer, decompile, disassemble, reverse assemble, or modify any Site source or object code or any software or other products, services, or processes accessible through any portion of the Site; (v) engage in any activity that interferes with a user's access to the Site or the proper operation of the Site, or otherwise causes harm to the Site, Heinemann, or other users of the Site; (vi) interfere with or circumvent any security feature of the Site or any feature that restricts or enforces limitations on use of or access to the Site, the Content, or the User-Generated Content; (vii) harvest or otherwise collect or store any information (including personally identifiable information about other users of the Site, including e-mail addresses, without the express consent of such users); (viii) attempt to gain unauthorized access to the Site, other computer systems or networks connected to the Site, through password mining or any other means; or (ix) otherwise violate these Terms or any Additional Terms.

B. **Content Use Restrictions.** You also agree that, in using the Site: (i) you will not monitor, gather, copy, or distribute the Content (except as may be a result of standard search engine activity or use of a standard browser) on the Site by using any robot, rover, "bot", spider, scraper, crawler, spyware, engine, device,



software, extraction tool, or any other automatic device, utility, or manual process of any kind; (ii) you will not frame or utilize framing techniques to enclose any such Content (including any images, text, or page layout); (iii) you will keep intact all Trademark, copyright, and other intellectual property notices contained in such Content; (iv) you will not use such Content in a manner that suggests an unauthorized association with any of our or our licensors' products, services, or brands; (v) you will not make any modifications to such Content (other than to the extent of your permitted use of the Heinemann Licensed Elements, if applicable); (vi) you will not copy, modify, reproduce, archive, sell, lease, rent, exchange, create derivative works from, publish by hard copy or electronic means, publicly perform, display, disseminate, distribute, broadcast, retransmit, circulate or transfer to any third party or on any third-party application or website, or otherwise use or exploit such Content in any way for any purpose except as specifically permitted by these Terms or any Additional Terms or with the prior written consent of an officer of Heinemann or, in the case of Content from a licensor, the owner of the Content; and (vii) you will not insert any code or product to manipulate such Content in any way that adversely affects any user experience.

**C. Availability of Site and Content.** Heinemann may immediately suspend or terminate the availability of the Site and Content (and any elements and features of them), in whole or in part, for any reason, in Heinemann's sole discretion, and without advance notice or liability.

**D. Reservation of All Rights Not Granted as to Content and Site.** These Terms and any Additional Terms include only narrow, limited grants of rights to Content and to use and access the Site. No right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. All rights not expressly granted to you are reserved by Heinemann and its licensors and other third parties. *Any unauthorized use of any Content or the Site for any purpose is prohibited.*

#### **4. Opening and Terminating Accounts, Profiles and License Managers**

**A. Opening and Terminating Accounts.** In order to access or use some (or potentially all) of the features on the Site, you must first register through our online registration process [here](#) and create a unique personal profile (the "**Profile Page**"), which will allow you to find and communicate with colleagues and educators. The Site's practices governing any resulting collection, use, disclosure and management of your personal information are disclosed in its [Privacy Policy](#). If you are under the age of majority in the jurisdiction in which you reside, then you are not permitted to register as a user, create a Profile Page or otherwise submit personal information to Heinemann.

During registration, you will create a username and password which may permit you access to certain areas of the Site not available to non-registered users, including your settings for your Profile Page. You agree that: (i) You will not use a username (or e-mail address) that is already being used by someone else, may impersonate another person, belongs to another person, violates the intellectual property or other right of any person or entity, or is offensive. We may reject the use of any password, username, or e-mail address for any other reason in our sole discretion; (ii) You will provide true, accurate, current, and complete registration information about yourself in connection with the registration process and, as permitted, to maintain and update it, including on your Profile Page, continuously and promptly to keep it accurate, current, and complete; (iii) You are solely responsible for all activities that occur under your account, password, and username – whether or not you authorized the activity; (iv) You are solely responsible for maintaining the confidentiality of your password and for restricting access to your Device so that others may not access any password protected portion of the Site using your name, username, or password; (v) You will immediately notify us of any unauthorized use of your account, password, or username, or any other breach of security at: [digitalcampus@heinemann.com](mailto:digitalcampus@heinemann.com); and (vi) You will not sell, transfer, or assign your account or any account rights.

We will not be liable for any loss or damage (of any kind and under any legal theory) to you or any third party arising from your inability or failure for any reason to comply with any of the foregoing obligations.

If any information that you provide, or if we have reasonable grounds to suspect that any information that you provide, is false, inaccurate, outdated, incomplete, or violates these Terms, any Additional Terms, or any applicable law, then we may suspend or terminate your account. We also reserve the more general and broad right to terminate your account or suspend or otherwise deny you access to it or its benefits – all in our sole discretion, for any reason, and without advance notice or liability.

**B. Profiles.** Your Profile Page may not include any form of prohibited User-Generated Content, as outlined in [Section 2\(A\)](#) above and in our [Rules](#). Without limiting the foregoing, Profile Pages may not include content that you are attempting to sell through the Site, and cannot be used to conduct commercial activities, including, but not limited to, transactions, advertising, fundraising, contests or other promotions absent our prior written consent. We may offer you the ability to set preferences relating to your profile or Site activities, but settings may not become effective immediately or be error free, and options may change from time-to-time. We assume no responsibility or liability for users' profile material.

Profile Pages may only be set up by an authorized representative of the individual that is the subject of the Profile Page. We do not review Profile Pages to determine if they were created by an appropriate party, and we are not responsible for any unauthorized Profile Pages that may appear on the Site. If there is any dispute as to whether a Profile Page has been created or is being maintained by an authorized representative of the individual who is the subject of that Profile Page, then we shall have the sole right, but are not obligated, to resolve such dispute as we determine is appropriate in our sole discretion. Such resolution may include, without limitation, deleting or disabling access to Profile Pages, or any portion thereof, at any time without notice.

**C. License Managers and Multi-Seat Accounts.** If you purchase special access rights to the Site either through the Site or directly from Heinemann, such purchase will enable the purchaser such as a school or school district to obtain a multi-seat license, whereupon your Site account will be given special access and permission rights to allow a certain number of specific, individual users to access and use the Site under your master account. Such individuals users will still be required to register and accept these Terms, but their license and account will be contingent upon your continued designation of such individual as one of your multi-seat account users. Therefore, each purchaser of multi-seat access rights to the Site will be required to designate one license manager for their account. The license manager is the only individual permitted to invite others to access the Site under your account and, potentially, special content or activities that you may be permitted by us to make available via the Site only to your account users. License managers are prohibited from exceeding the number of designated users that the licensing manager has specifically purchased from us.

## **5. Procedure for Alleging Copyright Infringement**

**A. DMCA Notice.** Heinemann will respond appropriately to notices of alleged copyright infringement that comply with the U.S. Digital Millennium Copyright Act (“DMCA”), as set forth below. If you own a copyright in a work (or represent such a copyright owner) and believe that your (or such owner's) copyright in that work has been infringed by an improper posting or distribution of it via the Site, then you may send us a written notice that includes all of the following:

- (i) a legend or subject line that says: “DMCA Copyright Infringement Notice”;
- (ii) a description of the copyrighted work that you claim has been infringed or, if multiple copyrighted works are covered by a single notification, a representative list of such works;
- (iii) a description of where the material that you claim is infringing or is the subject of infringing activity is located that is reasonably sufficient to permit us to locate the material (please include the URL of the Site on which the material appears);
- (iv) your full name, address, telephone number, and e-mail address;

- (v) a statement by you that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law;
- (vi) a statement by you, made under penalty of perjury, that all the information in your notice is accurate, and that you are the copyright owner (or, if you are not the copyright owner, then your statement must indicate that you are authorized to act on the behalf of the owner of an exclusive right that is allegedly infringed); and
- (vii) your electronic or physical signature.

Heinemann will only respond to DMCA Notices that it receives by mail, e-mail, or facsimile at the addresses below:

By Mail: Houghton Mifflin Harcourt Publishing Company, 222 Berkeley Street, Boston, Massachusetts 02116; Attn: Legal (DMCA Agent)

By E-Mail: [copyright@hmhpub.com](mailto:copyright@hmhpub.com)

By Facsimile: (617) 351-1125

It is often difficult to determine if your copyright has been infringed. Heinemann may elect to not respond to DMCA Notices that do not substantially comply with all of the foregoing requirements, and Heinemann may elect to remove allegedly infringing material that comes to its attention via notices that do not substantially comply with the DMCA.

Please note that the DMCA provides that any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability.

We may send the information that you provide in your notice to the person who provided the allegedly infringing work. That person may elect to send us a DMCA Counter-Notification.

Without limiting Heinemann's other rights, Heinemann may, in appropriate circumstances, terminate a repeat infringer's access to the Site and any other website owned or operated by Heinemann. See [Section 4](#), above.

**B. Counter-Notification.** If access on the Site to a work that you submitted to Heinemann is disabled or the work is removed as a result of a DMCA Notice, and if you believe that the disabled access or removal is the result of mistake or misidentification, then you may send us a DMCA Counter-Notification to the addresses above. Your DMCA Counter-Notification should contain the following information:

- (i) a legend or subject line that says: "DMCA Counter-Notification";
- (ii) a description of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled (please include the URL of the Site from which the material was removed or access to it disabled);
- (iii) a statement under penalty of perjury that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled;
- (iv) your full name, address, telephone number, e-mail address, and the username of your account;

- (v) a statement that you consent to the jurisdiction of the Federal District Court for the judicial district in which your address is located (or, if the address is located outside the U.S.A., to the jurisdiction of the United States District Court for the Central District of California), and that you will accept service of process from the person who provided DMCA notification to us or an agent of such person; and
- (vi) your electronic or physical signature.

Please note that the DMCA provides that any person who knowingly materially misrepresents that material or activity was removed or disabled by mistake or misidentification may be subject to liability.

If we receive a DMCA Counter-Notification, then we may replace the material that we removed (or stop disabling access to it) in not less than ten (10) and not more than fourteen (14) business days following receipt of the DMCA Counter-Notification. However, we will not do this if we first receive notice at the addresses above that the party who sent us the DMCA Copyright Infringement Notice has filed a lawsuit asking a court for an order restraining the person who provided the material from engaging in infringing activity relating to the material on the Site. You should also be aware that we may forward the Counter-Notification to the party who sent us the DMCA Copyright Infringement Notice.

## **6. Procedure for Alleging Infringement of Other Intellectual Property**

If you own intellectual property other than copyrights and believe that your intellectual property has been infringed by an improper posting or distribution of it via the Site, then you may send us a written notice to the addresses set forth above that includes all of the following:

- (a) a legend or subject line that says: “Intellectual Property Infringement Notice”;
- (b) a description of the intellectual property that you claim has been infringed;
- (c) a description of where the material that you claim is infringing or is the subject of infringing activity is located that is reasonably sufficient to permit us to locate the material (please include the URL of the Site on which the material appears);
- (d) your full name, address, telephone number, and e-mail address;
- (e) a statement by you that you have a good faith belief that use of the material in the manner complained of is not authorized by the owner of the intellectual property, its agent, or the law;
- (f) a statement by you, made under penalty of perjury, that all the information in your notice is accurate, and that you are the owner of the intellectual property at issue (or, if you are not the owner, then your statement must indicate that you are authorized to act on the behalf of the owner of the intellectual property that is allegedly infringed); and
- (g) your electronic or physical signature.

We will act on such notices in our sole discretion. Any user of the Site that fails to respond satisfactorily to Heinemann with regard to any such notice is subject to suspension or termination. We may send the information that you provide in your notice to the person who provided the allegedly infringing material.

## **7. Questions and Customer Service**

If you have a question regarding using the Site, you may contact Heinemann Customer Support by sending an e-mail to [digitalcampus@heinemann.com](mailto:digitalcampus@heinemann.com) or calling our toll-free number at: 800-541-2086 ext. 1100. We want to hear from you and will make good faith efforts to satisfy you. You acknowledge that the provision of customer support is at Heinemann's sole discretion. We may provide you with customer support from time-to-time, at our sole discretion, provided that you have created an account.

## **8. Terms Applicable to Purchases on the Site**

**A. Generally.** To purchase any goods and/or services on our Site, you must be at least the applicable age of majority in your jurisdiction of residence. Prior to the purchase of any goods or services on our Site, you must provide a valid credit card number and associated payment information, which may include the following: (i) your name as it appears on the card, (ii) your credit card number, (iii) the credit card type, (iv) the date of expiration; and (v) any activation numbers or codes needed to charge your card. By submitting that information to us, you hereby agree that you authorize us to charge your card at our convenience but within thirty (30) days of credit card authorization. All sales of products and services are final and all charges from those sales are non-refundable except in our sole discretion, unless otherwise provided in applicable Additional Terms. For each product or service that you order on the Site, you agree to pay the price applicable (including any sales taxes, surcharges and any delivery fees for the delivery service you select) as of the time you submitted the order. Heinemann will automatically bill your credit card or other form of payment submitted as part of the order process for such price. Please note that we do not provide price protection or refunds in the event of a price drop or promotional offering. All prices on the Site are in U.S. Dollars.

**B. Course Credits and Other Third Party Offers.** We may offer on the Site the availability to purchase third party products or services, and may facilitate your ability to order from these parties such as by means of a link or an order form. We are not responsible for these third parties or their products or services. One example is continuing educational credits offered through third party providers for successful completion of our courses. When you order such credits, we will provide information required by the provider to facilitate its determination as to what if any credits are available. However the purchase and award of such credits, and whether they will be accepted by your employer, professional certification organization, state or any other third party are not our responsibility.

**C. Methods of Payment, Credit Card Terms and Taxes.** All payments must be made by Visa, MasterCard, Discover, or American Express. We currently do not accept cash, personal or business checks or any other payment form, although in the future we may change this policy. Your card issuer agreement governs your use of your designated card, and you must refer to that agreement and not these Terms to determine your rights and liabilities as a cardholder. You hereby represent and warrant that you will not use any credit card or other form of payment unless you have all necessary legal authorization to do so. You agree to pay all fees and charges incurred in connection with your purchases (including any applicable taxes) at the rates in effect when the charges were incurred. Unless you notify Heinemann of any discrepancies within sixty (60) days after they first appear on your credit card statement, you agree that they will be deemed accepted by you for all purposes. If Heinemann does not receive payment from your credit card issuer or its agent, you agree to pay all amounts due upon demand by Heinemann or its agents.

**D. Order Acceptance Policy.** Your receipt of an electronic or other form of order confirmation does not signify our acceptance of your order, nor does it constitute confirmation of our offer to sell. Heinemann reserves the right at any time after receipt of your order to accept or decline your order for any reason. Heinemann further reserves the right any time after receipt of your order, without prior notice to you, to supply less than the quantity you ordered of any item. Your order will be deemed accepted by Heinemann upon our delivery of products or services that you have ordered. We may require additional verifications or information before accepting any order. Notwithstanding the foregoing, you agree that, if we cancel all or a portion of your order or if we provide you less than the quantity you ordered, your sole and exclusive remedy is either that: (a) we will issue a credit to your credit card account in the amount charged for the cancelled portion

or the quantity not provided (if your credit card has already been charged for the order); or (b) we will not charge your credit card for the cancelled portion of the order or the quantity not provided. Do not assume that a cancellation or change of an order you have placed with Heinemann has been effected until you receive a confirmation from Heinemann via email or the Site. As stated above, you will be responsible for, and your credit card or third-party payment account may be charged for, the payment of all fees associated with orders already processed or shipped before your cancellation/change request or a request to terminate your account was received.

**E. No Responsibility to Sell Mispriced Products or Services.** We do our best to describe every product or service offered on this Site as accurately as possible. However, we are human, and therefore we do not warrant that specifications or pricing on the Site is complete, accurate, reliable, current, or error-free. In the event of any errors relating to the pricing or specifications of any item, product or service, Heinemann shall have the right to refuse or cancel any orders in its sole discretion. If we charged your credit card prior to cancellation, we will issue a credit to your credit card account in the amount of the charge.

**F. Modifications to Prices or Billing Terms.** The purchase of products and services on the Site is subject to availability. PRODUCTS AND SERVICES DISPLAYED ON THE SITE MAY NOT BE AVAILABLE AT ALL TIMES AND MAY BE SUBSTITUTED OR DISCONTINUED AT ANY TIME. HEINEMANN RESERVES THE RIGHT, AT ANY TIME, TO CHANGE ITS PRICES AND BILLING METHODS FOR PRODUCTS OR SERVICES EFFECTIVE IMMEDIATELY UPON POSTING ON THE SITE OR BY E-MAIL DELIVERY TO YOU.

## **9. Links by You to the Site**

We grant you a limited, non-exclusive, revocable, non-assignable, personal, and non-transferable license to create hyperlinks to the Site, so long as: (a) the links only incorporate text, and do not use any trademarked logos or graphics that are owned by or licensed to Heinemann, (b) the links and the content on your website do not suggest any affiliation with Heinemann or cause any other confusion, and (c) the links and the content on your website do not portray Heinemann or its products or services in a false, misleading, derogatory, or otherwise offensive matter, and do not contain content that is unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third party or are otherwise objectionable to Heinemann. Heinemann reserves the right to suspend or prohibit linking to the Site for any reason, in its sole discretion, without advance notice or any liability of any kind to you or any third party.

## **10. Linked-To Websites; Advertisements; Dealings with Third Parties**

**A. Linked Sites; Advertisements.** The Site may contain links, as part of third-party offers on the Site (e.g., from credit issuing institutions) or otherwise, to or from third-party websites (“**Linked Sites**”), including websites operated by advertisers, licensors, licensees, and certain other third parties who may have business relationships with Heinemann. Heinemann may have no control over the content, operations, policies, terms, or other elements of Linked Sites, and Heinemann does not assume any obligation to review any Linked Sites. Heinemann does not endorse, approve, or sponsor any Linked Sites, or any third-party content, advertising, information, materials, products, services, or other items. Furthermore, Heinemann is not responsible for the quality or delivery of the products or services offered, accessed, obtained by or advertised at such sites. Finally, Heinemann will under no circumstances be liable for any direct, indirect, incidental or special loss or other damage, whether arising from negligence, breach of contract, defamation, infringement of copyright or other intellectual property rights, caused by the exhibition, distribution or exploitation of any information or content contained within these third-party Linked Sites. Any activities you engage in connection with any of the same are subject to the privacy and other policies, terms and conditions of use and/or sale, and rules issued by the operator of the Linked Sites. Heinemann disclaims all liability in connection therewith. We encourage you to review the terms and privacy policies of third parties before using their websites.

**B. Dealings with Third Parties.** Any interactions, correspondence, transactions, and other dealings that you have with any third parties found on or through the Site (including on or via Linked Sites) are solely between you and the third party (including issues related to content, payments, delivery of goods, warranties (including product warranties), privacy and data security, and the like). Heinemann disclaims all liability in connection therewith.

## **11. Wireless**

**A. Wireless Features.** The Site may offer certain features and services that are available to you via your wireless Device. These features and services may include the ability to access the Site's features and upload content to the Site, receive messages from the Site, and download applications to your wireless Device (collectively, "**Wireless Features**"). Standard messaging, data, and other fees may be charged by your carrier to participate in Wireless Features. Fees and charges may appear on your wireless bill or be deducted from your pre-paid balance. Your carrier may prohibit or restrict certain Wireless Features and certain Wireless Features may be incompatible with your carrier or wireless Device. You should check with your carrier to find out what plans are available and how much they cost. Contact your carrier with questions regarding these issues.

**B. Terms of Wireless Features.** You agree that as to the Wireless Features for which you are registered for, we may send communications to your wireless Device regarding us or other parties. Further, we may collect information related to your use of the Wireless Features. If you have registered via the Site for Wireless Features, then you agree to notify Heinemann of any changes to your wireless contact information (including phone number) and update your accounts on the Site to reflect the changes.

## **12. Dispute Resolution**

Certain portions of this Section 12 are deemed to be a "written agreement to arbitrate" pursuant to the Federal Arbitration Act. You and Heinemann agree that we intend that this Section 12 satisfies the "writing" requirement of the Federal Arbitration Act.

**A. First – Try to Resolve Disputes and Excluded Disputes.** If any controversy, allegation, or claim arises out of or relates to the Site, the Content, your User-Generated Content, these Terms, or any Additional Terms, whether heretofore or hereafter arising (collectively, "**Dispute**"), or to any of Heinemann's actual or alleged intellectual property rights (an "**Excluded Dispute**", which includes those actions set forth in Section 12(D)), then you and we agree to send a written notice to the other providing a reasonable description of the Dispute or Excluded Dispute, along with a proposed resolution of it. Our notice to you will be sent to you based on the most recent contact information that you provide us. But if no such information exists or if such information is not current, then we have no obligation under this Section 12(A). Your notice to us must be sent to: Houghton Mifflin Harcourt Publishing Company, 222 Berkeley Street, Boston, MA 02116, Attn: General Counsel. For a period of sixty (60) days from the date of receipt of notice from the other party, Heinemann and you will engage in a dialogue in order to attempt to resolve the Dispute or Excluded Dispute, though nothing will require either you or Heinemann to resolve the Dispute or Excluded Dispute on terms with respect to which you and Heinemann, in each of our sole discretion, are not comfortable.

### **B. Forums for Alternative Dispute Resolution.**

(i) **Arbitration.** If we cannot resolve a Dispute as set forth in Section 12(A) within sixty (60) days of receipt of the notice, then either you or we may submit the Dispute to formal arbitration in accordance with this Section 12(B). If we cannot resolve an Excluded Dispute as set forth in Section 12(A) within sixty (60) days of receipt of the notice, then either you or we may submit the Excluded Dispute to formal arbitration only if you and Heinemann consent, in a writing signed by you and an Officer or legal representative of Heinemann, to have that Excluded Dispute subject to arbitration. In



such a case (and only in such a case), that Excluded Dispute will be deemed a “Dispute” for the remainder of this Section 12(B).

Upon expiration of the applicable sixty-day period and to the fullest extent permitted by applicable law, a Dispute will be resolved solely by binding arbitration in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association (“AAA”). If the Dispute has a claimed value of not more than \$250,000, then the arbitration will be heard and determined by a single neutral arbitrator who is a retired judge or a lawyer with not less than fifteen (15) years experience as a practicing member of the bar in the substantive practice area related to the Dispute, who will administer the proceedings in accordance with the AAA’s Supplementary Procedures for Consumer Related Disputes. If the Dispute has a claimed value of more than \$250,000, or if Heinemann elects in its sole discretion to bear the costs of arbitration in excess of those that would occur for a proceeding before a single neutral arbitrator, then the arbitration will be heard and determined by a three-member panel, with one member to be selected by each party and the third (who will be chair of the panel) selected by the two party-appointed members or by the AAA in accordance with the Commercial Arbitration Rules. The arbitrator or arbitration panel, as the case may be, will apply applicable law and the provisions of these Terms and any Additional Terms, will determine any Dispute according to the applicable law and facts based upon the record and no other basis, and will issue a reasoned award. If you and Heinemann do not both consent to the arbitration of an Excluded Dispute as set forth in the immediately preceding paragraph of this Section 12(B)(i), then this paragraph and the remainder of this Section 12(B) will not apply to the Excluded Dispute.

If a party properly submits the Dispute to the AAA for formal arbitration and the AAA is unwilling or unable to set a hearing date within sixty (60) days of the filing of a “demand for arbitration,” then either party can elect to have the arbitration administered by the Judicial Arbitration and Mediation Services Inc. (“JAMS”) using JAMS’ streamlined Arbitration Rules and Procedures, or by any other arbitration administration service that you and an officer or legal representative of Heinemann consent to in writing. The substantive practice area requirements for the arbitrator and the \$250,000 threshold for the number of arbitrators assigned to the Dispute set forth in the paragraph above for the AAA arbitration will also apply to any such arbitration under JAMS or another arbitration service. You can obtain AAA and JAMS procedures, rules, and fee information as follows:

AAA: 800.778.7879

JAMS: 949.224.1810

<http://www.adr.org/>

<http://www.jamsadr.com/>

(ii) **Nature, Limitations, and Location of Alternative Dispute Resolution.** In arbitration, as with a court, the arbitrator must honor the terms of these Terms (and any Additional Terms) and can award the prevailing party damages and other relief (including attorneys’ fees). However, WITH ARBITRATION (A) THERE IS NO JUDGE OR JURY, (B) THE ARBITRATION PROCEEDINGS AND ARBITRATION OUTCOME ARE SUBJECT TO CERTAIN CONFIDENTIALITY RULES, AND (C) JUDICIAL REVIEW OF THE ARBITRATION OUTCOME IS LIMITED. All parties to the arbitration will have the right, at their own expense, to be represented by an attorney or other advocate of their choosing. If an in-person arbitration hearing is required, then it will be conducted in the “metropolitan statistical area” (as defined by the U.S. Census Bureau) where you are a resident at the time the Dispute is submitted to arbitration. You and we will pay the administrative and arbitrator’s fees and other costs in accordance with the applicable arbitration rules; but if applicable arbitration rules or laws require Heinemann to pay a greater portion or all of such fees and costs in order for this Section 12 to be enforceable, then Heinemann will have the right to elect to pay the fees and costs and proceed to arbitration. Discovery will be permitted pursuant to the applicable arbitration rules. The arbitrator’s decision must consist of a written statement stating the disposition of each claim of the Dispute, and must provide a statement of the essential findings and conclusions on which the decision and any award

(if any) is based. Judgment on the arbitration decision and award (if any) may be entered in or by any court that has jurisdiction over the parties pursuant to Section 9 of the Federal Arbitration Act.

**C. Limited Time to File Claims.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IF YOU OR WE WANT TO ASSERT A DISPUTE (BUT NOT A EXCLUDED DISPUTE) AGAINST THE OTHER, THEN YOU OR WE MUST COMMENCE IT (BY DELIVERY OF WRITTEN NOTICE AS SET FORTH IN SECTION 12(A)) WITHIN ONE (1) YEAR AFTER THE DISPUTE ARISES -- OR IT WILL BE FOREVER BARRED.

**D. Injunctive Relief.** The foregoing provisions of this Section 12 will not apply to any legal action taken by Heinemann to seek an injunction or other equitable relief in connection with, any loss, cost, or damage (or any potential loss, cost, or damage) relating to the Site, any Content, your User-Generated Content and/or Heinemann's intellectual property rights (including such Heinemann may claim that may be in dispute), Heinemann's operations, and/or Heinemann's products or services.

**E. Small Claims Matters Are Excluded from Arbitration Requirement.** Notwithstanding the foregoing, either of us may bring qualifying claim of Disputes (but not Excluded Disputes) in small claims court, subject to Section 12(G).

**F. No Class Action Matters.** Disputes will be arbitrated only on an individual basis and will not be consolidated with any other arbitrations or other proceedings that involve any claim or controversy of any other party. But if, for any reason, any court with competent jurisdiction or any arbitrator selected pursuant to Section 12(B)(i) holds that this restriction is unconscionable or unenforceable, then our agreement in Section 12(B) to arbitrate will not apply and the Dispute must be brought exclusively in court pursuant to Section 12(G).

**G. Federal and State Courts in Suffolk County.** Except to the extent that arbitration is required in Section 12(B), and except as to the enforcement of any arbitration decision or award, any action or proceeding relating to any Dispute or Excluded Dispute may only be instituted in state or federal court in Suffolk County, Massachusetts. Accordingly, you and Heinemann consent to the exclusive personal jurisdiction and venue of such courts for such matters.

### **13. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES**

YOUR ACCESS TO AND USE OF THE SITE IS AT YOUR SOLE RISK.

THE SITE, INCLUDING THE CONTENT, IS PROVIDED ON AN "AS IS", "AS AVAILABLE", AND "WITH ALL FAULTS" BASIS. Therefore, to the fullest extent permissible by law, Heinemann and its subsidiaries and each of their respective employees, directors, members, managers, shareholders, agents, vendors, licensors, licensees, contractors, customers, successors, and assigns (collectively, "**Heinemann Parties**") hereby disclaim and make no representations, warranties, endorsements, or promises, express or implied, as to:

- (a) the Site (including the Content and the User-Generated Content);
- (b) the functions, features, or any other elements on, or made accessible through, the Site;
- (c) any products, services, or instructions offered or referenced at or linked through the Site;
- (d) security associated with the transmission of your User-Generated Content transmitted to Heinemann or via the Site;

- (e) whether the Site or the servers that make the Site available are free from any harmful components (including viruses, Trojan horses, and other technologies that could adversely impact your Device);
- (f) whether the information (including any instructions) on the Site is accurate, complete, correct, adequate, useful, timely, or reliable;
- (g) whether any defects to or errors on the Site will be repaired or corrected;
- (h) whether your access to the Site will be uninterrupted;
- (i) whether the Site will be available at any particular time or location; and
- (j) whether your use of the Site is lawful in any particular jurisdiction.

EXCEPT FOR ANY SPECIFIC WARRANTIES PROVIDED HEREIN OR IN ADDITIONAL TERMS PROVIDED BY A HEINEMANN PARTY, HEINEMANN PARTIES HEREBY FURTHER DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION, AND FREEDOM FROM COMPUTER VIRUS.

Some jurisdictions limit or do not allow the disclaimer of implied or other warranties so the above disclaimers may not apply to the extent such jurisdictions' laws are applicable.

#### **14. LIMITATIONS OF LIABILITY OF HEINEMANN PARTIES**

UNDER NO CIRCUMSTANCES WILL ANY HEINEMANN PARTIES BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGES OF ANY KIND, including personal injury or death or for any direct, indirect, economic, exemplary, special, punitive, incidental, or consequential losses or damages of any kind that are directly or indirectly related to:

- (a) the Site (including the Content and the User-Generated Content);
- (b) your use of or inability to use the Site, or the performance of the Site;
- (c) any action taken in connection with an investigation by Heinemann Parties or law enforcement authorities regarding your access to or use of the Site;
- (d) any action taken in connection with copyright or other intellectual property owners or other rights owners;
- (e) any errors or omissions in the Site's technical operation; or
- (f) any damage to any user's computer, hardware, software, modem, or other equipment or technology, including damage from any security breach or from any virus, bugs, tampering, fraud, error, omission, interruption, defect, delay in operation or transmission, computer line, or network failure or any other technical or other malfunction, including losses or damages in the form of lost profits, loss of goodwill, loss of data, work stoppage, accuracy of results, or equipment failure or malfunction.

The foregoing limitations of liability will apply even if any of the foregoing events or circumstances were foreseeable and even if Heinemann Parties were advised of or should have known of the possibility of such losses or damages, regardless of whether you bring an action based in contract, negligence, strict liability, or tort (including whether caused, in whole or in part, by negligence, acts of god, telecommunications failure, or destruction of the Site).

Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages of the sort that are described above, so the above limitation or exclusion may not apply to you.

**EXCEPT AS MAY BE PROVIDED IN ANY ADDITIONAL TERMS, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL HEINEMANN PARTIES' TOTAL LIABILITY TO YOU, FOR ALL POSSIBLE DAMAGES, LOSSES, AND CAUSES OF ACTION IN CONNECTION WITH YOUR ACCESS TO AND USE OF THE SITE AND YOUR RIGHTS UNDER THESE TERMS, EXCEED AN AMOUNT EQUAL TO THE AMOUNT YOU HAVE PAID HEINEMANN IN CONNECTION WITH THE TRANSACTION(S) THAT UNDERLIE THE CLAIM(S); PROVIDED, HOWEVER, THIS PROVISION WILL NOT APPLY IF A COURT OR TRIBUNAL WITH APPLICABLE JURISDICTION FINDS SUCH TO BE UNCONSCIONABLE. FOR PURPOSES OF CLARITY, THE PRIOR SENTENCE DOES NOT EXPAND OR LIMIT ANY EXPRESS, WRITTEN PRODUCT WARRANTY THAT IS PROVIDED BY HEINEMANN OR A MANUFACTURER OF A PHYSICAL PRODUCT.**

Residents of California are entitled to the following specific consumer rights information: you may contact the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs by mail at: 400 R St., Suite 1080, Sacramento, California, 95814, or by telephone at (916) 445-1254. Their website is located at: <http://www.dca.ca.gov>.

#### **15. Waiver of Injunctive or Other Equitable Relief**

IF YOU CLAIM THAT YOU HAVE INCURRED ANY LOSS, DAMAGES, OR INJURIES IN CONNECTION WITH YOUR USE OF THE SITE, THEN THE LOSSES, DAMAGES, AND INJURIES WILL NOT BE IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION OR TO OTHER EQUITABLE RELIEF OF ANY KIND. THIS MEANS THAT, IN CONNECTION WITH YOUR CLAIM, YOU AGREE THAT YOU WILL NOT SEEK, AND THAT YOU WILL NOT BE PERMITTED TO OBTAIN, ANY COURT OR OTHER ACTION THAT MAY INTERFERE WITH OR PREVENT THE DEVELOPMENT OR EXPLOITATION OF ANY WEBSITE, APPLICATION, CONTENT, USER-GENERATED CONTENT, PRODUCT, SERVICE, OR INTELLECTUAL PROPERTY OWNED, LICENSED, USED OR CONTROLLED BY HEINEMANN (INCLUDING YOUR LICENSED USER-GENERATED CONTENT) OR A LICENSOR OF HEINEMANN.

#### **16. General Provisions**

**A. Updates to Terms.** Heinemann reserves the right to modify these Terms and any Additional Terms, at any time without prior notice (“**Updated Terms**”). You agree that we may notify you of the Updated Terms by posting them on the Site so that they are accessible via a link on the Site, and that your use of the Site after we post the Updated Terms (or engaging in such other conduct as we may reasonably specify) constitutes your agreement to the Updated Terms. Therefore, you should review these Terms and any Additional Terms on a regular and frequent basis. The Updated Terms will be effective as of the time that Heinemann posts them on the home page of the Site, or such later date as may be specified in them.

**B. Heinemann’s Consent or Approval.** As to any provision in these Terms or any Additional Terms that grants Heinemann a right of consent or approval, or permits Heinemann to exercise a right in its “sole discretion,” Heinemann may exercise that right in its sole and absolute discretion. No Heinemann consent

or approval may be deemed to have been granted by Heinemann without being in writing and signed by an Officer of Heinemann.

**C. Applicable Law.** These Terms and any Additional Terms will be governed by and construed in accordance with, and any Dispute and Excluded Dispute will be resolved in accordance with, the laws of the Commonwealth of Massachusetts, without regard to its conflicts of law provisions.

**D. Indemnity.** You agree to, and you hereby, defend, indemnify, and hold Heinemann Parties harmless from and against any and all claims, damages, losses, costs, investigations, liabilities, judgments, fines, penalties, settlements, interest, and expenses (including attorneys' fees) that directly or indirectly arise from or are related to any claim, suit, action, demand, or proceeding made or brought against any Heinemann Party, or on account of the investigation, defense, or settlement thereof, arising out of or in connection with, whether occurring heretofore or hereafter: (i) your User-Generated Content; (ii) your use of the Site and your activities in connection with the Site; (iii) your breach or alleged breach of these Terms or any Additional Terms; (iv) your violation or alleged violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental or quasi-governmental authorities in connection with your use of the Site or your activities in connection with the Site; (v) information or material transmitted through your Device, even if not submitted by you, that infringes, violates, or misappropriates any copyright, trademark, trade secret, trade dress, patent, publicity, privacy, or other right of any person or entity; (vi) any misrepresentation made by you; and (vii) Heinemann Parties' use of the information that you submit to us (including your User-Generated Content) (all of the foregoing, "**Claims and Losses**"). You will cooperate as fully required by Heinemann Parties in the defense of any Claim and Losses. Notwithstanding the foregoing, Heinemann Parties retain the exclusive right to settle, compromise, and pay any and all Claims and Losses. Heinemann Parties reserve the right to assume the exclusive defense and control of any Claims and Losses. You will not settle any Claims and Losses without, in each instance, the prior written consent of an officer of a Heinemann Party.

**E. Operation of Site; Availability of Products and Services; International Issues.** Heinemann controls and operates the Site from its U.S.-based offices in the U.S.A., and Heinemann makes no representation that the Site is appropriate or available for use beyond the U.S.A. and Canada. If you use the Site from other locations, you are doing so on your own initiative and are responsible for compliance with applicable local laws regarding your online conduct and acceptable content, if and to the extent local laws apply. The Site may describe products and services that are available only in the U.S.A., Canada (or parts of such territories) and are not available worldwide. We reserve the right to limit the availability of the Site and/or the provision of any content, program, product, service, or other feature described or available on the Site to any person, entity, geographic area, or jurisdiction, at any time and in our sole discretion, and to limit the quantities of any content, program, product, service, or other feature that we provide. You agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms or to any sale of goods carried out as a result of your use of the Site.

**F. Export Controls.** Software related to or made available by the Site may be subject to export controls of the U.S.A. No software from the Site may be downloaded, exported, or re-exported: (i) into (or to a national or resident of) any country or other jurisdiction to which the U.S.A. has embargoes (which, as of the effective date of these Terms, includes Cuba, North Korea, Iran, Sudan, and Syria), or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders, or (iii) to anyone on the U.S. Department of Commerce's Bureau of Industry and Security Entities List as published in the Export Administration Regulations (including entities engaged in weapons of mass destruction proliferation in various countries and persons and entities that are suspected of diverting U.S. origin items to embargoed countries or terrorist end-uses). You are responsible for complying with all trade regulations and laws both foreign and domestic. Except as authorized by law, you agree and warrant not to export or re-export the software to any county, or to any person, entity, or end-user subject to U.S. export controls or sanctions, including, without limitation, as set forth in subsections (i) – (iii) above.

**G. Severability; Interpretation.** If any provision of these Terms, or any Additional Terms, is for any reason deemed invalid, unlawful, void, or unenforceable by a court or arbitrator of competent jurisdiction, then that provision will be deemed severable from these Terms or the Additional Terms, and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms or the Additional Terms (which will remain in full force and effect). To the extent permitted by applicable law, you agree to waive, and you hereby waive, any applicable statutory and common law that may permit a contract to be construed against its drafter. Wherever the word “including” is used in these Terms or any Additional Terms, the word will be deemed to mean “including, without limitation,”.

**H. Communications.** When you communicate with us electronically, such as via e-mail and text message, you consent to receive communications from us electronically. We will try to promptly respond to all inquiries but are not obligated to do so. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

**I. Investigations; Cooperation with Law Enforcement; Termination; Survival.** Heinemann reserves the right, without any limitation, to: (i) investigate any suspected breaches of its Site security or its information technology or other systems or networks, (ii) investigate any suspected breaches of these Terms and any Additional Terms, (iii) investigate any information obtained by Heinemann in connection with reviewing law enforcement databases or complying with criminal laws, (iv) involve and cooperate with law enforcement authorities in investigating any of the foregoing matters, (v) prosecute violators of these Terms and any Additional Terms, and (vi) discontinue the Site, in whole or in part, or, except as may be expressly set forth in any Additional Terms, suspend or terminate your access to it, in whole or in part, including any user accounts or registrations, at any time, without notice, for any reason and without any obligation to you or any third party. Any suspension or termination will not affect your obligations to Heinemann under these Terms or any Additional Terms. Upon suspension or termination of your access to the Site, or upon notice from Heinemann, all rights granted to you under these Terms or any Additional Terms will cease immediately, and you agree that you will immediately discontinue use of the Site. The provisions of these Terms and any Additional Terms, which by their nature should survive your suspension or termination will survive, including the rights and licenses you grant to Heinemann in these Terms, as well as the indemnities, releases, disclaimers, and limitations on liability and the provisions regarding jurisdiction, choice of law, no class action, and mandatory arbitration.

**J. Assignment.** Heinemann may assign its rights and obligations under these Terms and any Additional Terms, in whole or in part, to any party at any time without any notice. These Terms and any Additional Terms may not be assigned by you, and you may not delegate your duties under them, without the prior written consent of an officer of Heinemann.

**K. No Waiver.** Except as expressly set forth in these Terms or any Additional Terms, (i) no failure or delay by you or Heinemann in exercising any of rights, powers, or remedies under will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms or any Additional Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.

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**N. Connectivity.** You are responsible for obtaining and maintaining all Devices and other equipment and software, and all internet service provider, mobile service, and other services needed for your access to and use of the Site and you will be responsible for all charges related to them.

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