

Woodcock Assessment and Intervention Suite

Terms of Use

PLEASE READ THESE TERMS OF USE CAREFULLY. BY ACCESSING, USING, OR DISPLAYING THE PRODUCT, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THESE TERMS OF USE, JUST AS IF YOU HAD SIGNED THESE TERMS OF USE. IF YOU ARE A “COVERED ENTITY” AS DEFINED UNDER HIPAA, PLEASE PAY PARTICULAR ATTENTION TO THE BUSINESS ASSOCIATE INFORMATION INCLUDED IN SECTION 14 (APPLICABILITY OF HIPAA). IF YOU DO NOT AGREE WITH THE PROVISIONS CONTAINED IN THESE TERMS OF USE, YOU MUST DECLINE REGISTRATION AND NOT ACCESS, USE, OR DISPLAY THIS PRODUCT.

FOR YOUR CONVENIENCE, A SET OF DEFINED TERMS IS INCLUDED AT THE END OF THESE TERMS.

1. License.

These terms of use (the “Terms” or “Terms of Use”) constitute a legal agreement concerning an HMH online assessment platform (the “Product”) and are between you, either as an individual or business entity (“You” or “Your”), and Houghton Mifflin Harcourt Publishing Company (“HMH”). Subject to Your compliance with these Terms, HMH grants to You a personal, limited, nontransferable, nonsublicensable, nonexclusive license during the Term to access and use the Product in accordance with the Product’s functionality and HMH’s documentation accompanying this Product.

2. Grant of Rights in Submitted Data; Storage.

By providing Submitted Data, You grant HMH a royalty-free, nonexclusive, transferrable, sublicensable, worldwide license to use the Submitted Data for all purposes contemplated under these Terms as well as the Product’s documentation and functionality. You acknowledge and agree that HMH may use or disclose Submitted Data to provide maintenance and support for the Product. HMH does not claim ownership in Submitted Data and retains only those rights in Submitted Data reasonably necessary or otherwise required in order to provide the Product, and as otherwise contemplated under these Terms and associated HMH documentation. Submitted Data that HMH receives from You is subject to the Privacy Policy (click the following link to access the [Privacy Policy](#)) (the “Privacy Policy”).

By providing Submitted Data, You represent and warrant that You own such Submitted Data and Feedback (including intellectual property rights therein), or that You have obtained sufficient authority and right to the Submitted Data and Feedback in order to grant the rights to HMH contemplated under these Terms and associated HMH documentation.

YOU ARE ADVISED TO EXPORT AND SAFEGUARD SUBMITTED DATA AND BACK UP IMPORTANT INFORMATION FREQUENTLY. If You choose to provide Submitted Data to HMH via the Product’s functionality, HMH will back up the Submitted Data in the Product database and will take steps to securely store said backups, all in accordance with Relevant Information Security Standards. Notwithstanding anything to the contrary, You hereby release HMH from any claim or liability relating to any failure in HMH’s database system and backup practices.

3. **Computing Resources; Passwords.**

Use of the Product requires, at a minimum, computing resources needed to access and browse the Internet. Such computing resources may include, as specified in applicable HMH documentation: (i) a personal computer and/or mobile device; (ii) software, including browser software and operating system software; and (iii) other specified client-side computing resources (collectively “Client-Side Computing Resources”). You shall be responsible for ensuring that You (a) have access to requisite Client-Side Computing Resources, and (b) are sufficiently familiar with and trained regarding such Client-Side Computing Resources.

You may be provided with a username and password, or other credentials, in order to access the Product (collectively, the “Login Credentials”). HMH will treat anyone who uses Your Login Credentials as “You.” HMH shall not be responsible for Your sharing or other misuse of Login Credentials and HMH shall hold You responsible for the activities of a person using Your Login Credentials. HMH therefore recommends that You maintain Your Login Credentials in confidence, and that You notify HMH immediately if You suspect that someone is using Your Login Credentials in an inappropriate manner.

4. **Use of the Product and Test Reports.**

You agree to use the Product and Test Reports in accordance with these Terms and in accordance with all federal, state, and local laws and regulations. You understand and agree that the Product and Test Reports are meant to be used as tools to supplement You in the overall assessment process, and are not intended or designed to be used alone or replace Your professional judgment. You assume all responsibility for the use or misuse of the Product and Test Reports. You agree to use the Product and Test Reports in accordance with HMH’s [Test Security Policy](#), and in accordance with the current *Standards for Educational and Psychological Testing* published by American Educational Research Association (AERA), American Psychological Association (APA) and (National Council on Measurement in Education (NCME) (collectively, the “Policies and Standards”).

5. **Ownership of the Product and Test Reports.**

The Product and Test Reports were created as a result of considerable investment by HMH and embody and are protected by various intellectual property rights of HMH and its licensees including, but not limited to, copyright and trade secrets (the “HMH Intellectual Property Rights”). You acknowledge and agree that between You and HMH, HMH is the sole and exclusive owner of all of the rights to, title to, and interest in the Product and Test Reports, and to all associated HMH Intellectual Property Rights. The placement of a copyright notice on any portion of the Product and Test Reports does not mean that they have been publicly released and will not derogate any claim by HMH of trade secret protection. Title to the Product as well as Test Reports, and copies thereof, and all intellectual property rights protecting the Product and Test Reports shall remain with HMH and/or its licensors, and Product and Test Reports shall remain the property of HMH.

6. **Use Restrictions.**

(a) You agree not to copy, duplicate, publish, distribute, display, modify, create derivative works of, or alter physical or electronic characteristics of the Product. You agree not to dismantle or reverse engineer any part of the Product. You shall not grant sublicenses to, assign, transfer, or rent the Product.

(b) Because the Product and Test Reports are protected by the HMH Intellectual Property Rights, except as expressly provided in this Section 6 (Use Restrictions), the Product and Test Reports shall not be disclosed by You in response to requests made pursuant to HIPAA or any other data disclosure law that exempts disclosure of information or documents protected as trade secrets. You agree that You will not otherwise, directly or indirectly, disclose any trade secrets of HMH without the prior written consent of HMH.

(c) Subject to the restrictions included in Section 6(d) below, You may print, copy, display, and otherwise distribute Test Reports, provided that such actions are in compliance with Your obligations under the Policies and Standards and are otherwise in compliance with all applicable laws, regulations, and professional standards and obligations. You represent and warrant that You have obtained the necessary permissions from examinees and other applicable third parties relating to Your use of the Test Reports. You hereby release HMH from any claim or liability relating to Your use of the Test Reports.

(d) Notwithstanding anything to the contrary, You shall not, under any circumstance, import into any Test Reports; copy, display, or reproduce any test question without HMH's prior written permission; or otherwise provide, as Submitted Data, test questions from tests that are associated with this Product.

(e) Your use of the Product to generate Test Reports is based on the number of Paper Record Forms that You purchase from HMH, and You are only entitled to fill out one Electronic Record Form for each Paper Record Form purchased; however, any number of different Test Reports may be generated from a single Electronic Record Form.

(f) Any license granted under these Terms to You must be expressly provided herein, and there shall be no licenses or rights implied pursuant to these Terms, based on any course of conduct, or other construction or interpretation thereof. All rights and licenses not expressly granted to You by HMH are reserved.

7. Maintenance of Product; Service Levels and Support.

HMH shall use commercially reasonable efforts to make the Product available to You without significant interruption. If the Product experiences a significant interruption that is not due to scheduled downtime, HMH shall use timely and commercially reasonable efforts to restore required functionality (the "Availability Commitment"). The Availability Commitment does not apply to downtime that HMH schedules, for example, to install software updates and patches.

You may contact HMH's technical support for help in operation of the Product during HMH's regular business hours. In addition to taking reasonable steps to respond to reproducible errors or bugs in the Product commensurate with the severity of the error or bug, technical support may also provide You with information regarding Product availability.

HMH shall maintain disaster recovery, system and data backup, and business continuity for the Product, all in compliance with Relevant Information Security Standards.

8. Information Security.

HMH shall implement and maintain for the Product information security controls that comply with Relevant Information Security Standards. You acknowledge that information security controls rely in part on Your proper use of Login Credentials.

9. **HMH's Use of Submitted Data and Feedback; De-Identified Information.**

HMH may, from time to time, modify and otherwise anonymize Submitted Data so that it constitutes De-Identified Information, and then extract De-Identified Information. HMH will only use De-Identified Information for lawful purposes including, but not limited to, quality assurance, research, and/or test development. HMH may de-identify Usage Information in accordance with HIPAA and FERPA and use this De-Identified Information to develop, evaluate, and provide improved educational products and services, as permitted under HIPAA and FERPA. You acknowledge and agree that HMH shall be free to use De-Identified Information in compliance with HIPAA and FERPA requirements.

10. **Limited Warranty.**

HMH warrants that this Product will not infringe on any valid United States copyrights existing at the time this Product is made available, provided that this warranty does not extend to any infringement arising out of the use of the Product in combination with systems, equipment, or platforms not supplied by HMH or any use of the Product outside of the United States. If You promptly notify HMH of any such infringement claim of which You have knowledge or notice, and accord HMH the right, at its sole option and expense, to handle the defense of the infringement claim, HMH will indemnify and hold You harmless from and against such infringement claim. If such an infringement claim arises, or if HMH becomes aware of the possibility of such a claim, then HMH may, at its sole discretion (a) furnish You with a noninfringing replacement within sixty (60) days, or (b) terminate these Terms in whole or in part by refunding any fees You paid for use of this Product. This is Your exclusive remedy for any breach of this warranty against infringement.

EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS SECTION 10 (LIMITED WARRANTY), HMH MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCT. ALL OTHER WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED.

11. **Term and Termination.**

The term of these Terms begins on the earlier of (i) the date these Terms are electronically accepted by You, or (ii) the date You first begin to use the Product ("Term"). Unless terminated earlier pursuant to this Section 11 (Term and Termination), the Term shall continue for as long as You have access to the Product.

Either party shall have the right to terminate these Terms if the other party breaches any of its obligations under these Terms and fails to cure the same within thirty (30) days after receipt of written notice of default, except that there shall be no cure period for Your breach of HMH's rights under Section 4 (Use of the Product and Test Reports), Section 5 (Ownership of the Product and Test Reports), or Section 6 (Use Restrictions). Your obligations under this Section 11 (Term and Termination), as well as the provisions of Section 5 (Ownership of the Product and Test Reports), Section 9 (HMH's Use of Submitted Data and Feedback; De-Identified Information), Section 13 (Limitation of Liability; Consequential Damages Waiver), and Section 17 (General) shall survive any termination of these Terms.

HMH reserves the right to terminate these Terms for convenience by providing You with reasonable notice and thereafter allowing You a reasonable opportunity (not to exceed thirty (30) days) to export

a copy of Your Submitted Data. If these Terms are terminated for any reason, HMH may make a reasonable effort to allow You access to the Product for not more than thirty (30) days for the sole purpose of exporting Submitted Data (the “Submitted Data Retrieval Period”). Upon conclusion of the Submitted Data Retrieval Period, HMH shall destroy copies of Submitted Data stored on its servers and any rights You have in the Product shall terminate.

12. Indemnification.

EXCEPT AS PROVIDED IN SECTION 13 (LIMITATION OF LIABILITY; CONSEQUENTIAL DAMAGES WAIVER) OF THESE TERMS, AND TO THE EXTENT PERMITTED BY LAW, YOU AGREE TO INDEMNIFY AND HOLD HMH HARMLESS AGAINST ALL CLAIMS, LIABILITIES, DEMANDS, DAMAGES, OR EXPENSES (INCLUDING ATTORNEYS’ FEES AND EXPENSES) ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF THE PRODUCT COVERED BY THESE TERMS AND/OR YOUR FAILURE TO PERFORM THE OTHER TERMS OF THESE TERMS.

HMH RECOGNIZES THAT SCHOOLS AND OTHER ENTITIES MAY BE EXEMPTED BY LAW FROM CERTAIN INDEMNIFICATION OBLIGATIONS, INCLUDING THOSE SET OUT IN THIS SECTION 12 (INDEMNIFICATION). THE INDEMNIFICATION OBLIGATIONS SET OUT IN THIS SECTION 12 (INDEMNIFICATION) DO NOT APPLY TO APPLICABLE EXEMPTED SCHOOLS AND OTHER ENTITIES.

13. Limitation of Liability; Consequential Damages Waiver.

HMH’S TOTAL LIABILITY FOR LOSS OR DAMAGE RELATING TO THESE TERMS AND/OR THE PRODUCT OR YOUR USE OR INABILITY TO USE THE PRODUCT, REGARDLESS OF THE FORM OF ACTION, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE AMOUNT PAID BY YOU TO HMH FOR PAPER RECORD FORMS DURING THE SIX (6)-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE ACTION OR CLAIM. THIS IS YOUR EXCLUSIVE DAMAGES REMEDY.

IN NO EVENT SHALL HMH BE LIABLE TO YOU FOR ANY CLAIM MADE AGAINST YOU BY ANY OTHER PARTY OR FOR ANY CLAIM MADE BY YOU FOR LOST BUSINESS OR PROFITS, OR FOR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, EVEN IF HMH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM, LOSS, OR DAMAGE.

14. Applicability of HIPAA.

If You are a “Covered Entity” under HIPAA, You and HMH agree that the Business Associate Addendum will govern HIPAA-related matters (click on the following link to view and accept the [Business Associate Addendum](#)). If You are a school or not a Covered Entity, this Section 14 (Applicability of HIPAA) does not apply.

15. Federal Government Terms and Conditions.

If You are the United States Government or any agency or instrumentality thereof, the Product (including, but not limited to, any related databases, documentation, technical data, and programmer’s tools) delivered to the U.S. Government is “commercial computer software” or “commercial technical data” pursuant to the applicable Federal Acquisitions Regulation and agency-

specific supplemental regulations. As such, the use, duplication, disclosure, modification, and adaptation is subject to the restrictions as provided in FAR 52.227-19 (DEC 2007), and all rights of the U.S. Government shall not exceed the minimum rights set forth in FAR 52.227-19 (DEC 2007). If You are the United States Government or any agency or instrumentality thereof and subject to Department of Defense Federal Acquisition Regulations, then the Product (including, but not limited to, any related databases, documentation, technical data, and programmer's tools) is provided subject to DFARS 252.227-7015 (Technical Data–Commercial Items) and DFARS 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). Should the Product be deemed to not constitute “commercial computer software” or “commercial technical data,” then it shall be given to the U.S. Government with RESTRICTED RIGHTS.

16. **Consent Regarding Students' Personal Information.**

Please note that FERPA requires parental consent before a service provider (such as HMH) is given access to personal information contained in a student's educational records. Under FERPA, this parental consent requirement is met where the service provider acts as a type of “school official” by performing services for the school that would otherwise be performed by the school's own employees. HMH fulfills FERPA requirements for qualifying as a school official by, among other steps, giving the school direct control with respect to the use and maintenance of the education records at issue (including associated personal information), and refraining from re-disclosing or using this personal information except for purposes of providing the Product. HMH will comply with access requests as required by FERPA.

17. **General.**

THESE TERMS SHALL BE GOVERNED BY, CONSTRUED, AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS. The foregoing choice of law notwithstanding, copyright, trademark, and patent claims are subject only to U.S. Federal law and U.S. Federal court interpretation thereof. These Terms shall not be assignable by You, either in whole or in part. HMH reserves the right to assign the rights and obligations under these Terms for any reason and in HMH's sole discretion, subject to the Relevant Information Security Standards. The Privacy Policy must be read in conjunction with these Terms, and the provisions of our Privacy Policy are incorporated herein. These Terms and our Privacy Policy constitute the entire agreement of You and HMH concerning this matter, and supersede all discussions, proposals, bids, understandings, agreements, invitations, orders, and other communications, oral or written, on this subject. These Terms may not be waived, amended, or modified in any way without the prior written permission of HMH. If we modify these Terms, then such modification shall take effect proactively, upon Your subsequent access to the site. You may print out a copy of these Terms and the Privacy Policy for Your records. If any one or more provisions of these Terms are found to be illegal or unenforceable, the remaining provisions will be enforced to the maximum extent possible. To the extent any purchase order from You conflicts with or amends these Terms in any way, these Terms, as unmodified, shall prevail. To the extent the Privacy Policy conflicts with or amends these Terms in any way, the Privacy Policy, as unmodified, shall prevail.

18. **Definitions.**

For purposes of these Terms, the following capitalized terms have the meanings set forth below. Additional terms are defined in context.

(a) **De-Identified Information.** The term “De-Identified Information” means information that meets each of the following criteria: the information (i) does not identify a particular natural person; (ii)

does not identify, by network Internet Protocol address, raw hardware serial number, or raw MAC address, a particular device or computer associated with or used by a person; (iii) does not identify the school or natural person at issue by name or address; and (iv) is not reasonably linkable to a particular natural person or school because of technical, legal, or other controls.

(b) **FERPA.** The term “FERPA” means the Family Educational Rights and Privacy Act, 20 USC §1232g, and the Protection of Pupil Rights Amendment (“PPRA”), including associated regulations.

(c) **HIPAA.** The term “HIPAA” means the Health Insurance Portability and Accountability Act, 42 U.S.C. §§ 1320d et seq., and the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), including associated regulations under HIPAA and the HITECH Act.

(d) **Paper Record Form.** The term “Paper Record Form” means a hard copy of the applicable test that You purchased from HMH.

(e) **Electronic Record Form.** The term “Electronic Record Form” means a digital copy of the applicable test record that You purchased from HMH.

(f) **Policies and Standards.** The term “Policies and Standards” has the meaning set out in Section 4 (Use of the Product and Test Reports) of these Terms.

(g) **Relevant Information Security Standards.** The term “Relevant Information Security Standards” means the higher information security standards required under either (i) FERPA, or (ii) HIPAA.

(h) **Submitted Data.** The term “Submitted Data” means any information You provide to HMH directly through Your use of the Product’s interface including, but not limited to, information about examinees. The term “Submitted Data” expressly excludes De-Identified Information and any other information that You provide to HMH through means other than the Product, such as through e-mail.

(i) **Test Report.** The term “Test Report” means those test-specific reports as well as other materials and outputs generated by the Product based on Your Submitted Data including, but not limited to, basic scoring and interpretive reports.

(j) **Usage Information.** The term “Usage Information” means information that does not directly identify a particular person, but that may be linkable to a particular computer, device, operating system, platform, or software instance (via a unique device ID or otherwise).

Effective Date: June 2014