

APPENDIX D – MWE-820-14 ELEMENTARY LANGUAGE ARTS' INSTRUCTIONAL
MATERIALS

Contract MWE-820-14 between BCPS and McGraw-Hill

Appendix contents:

Executed Contract

BALTIMORE COUNTY PUBLIC SCHOOLS

S. Dallas Dance ♦ Superintendent ♦ 6901 Charles Street ♦ Towson, MD ♦ 21204

April 29, 2014

Ms. Denise Stone
Specialist, RFP, Bids & Contracts
McGraw-Hill School Education
8787 Orion Place
Columbus, OH 43240

RE: Elementary Language Arts Curriculum Materials
Contract #MWE-820-14

Dear Ms. Stone:

Enclosed for your records is an executed copy of the above referenced contract.

Thank you for working with Baltimore County Public Schools. If you have any questions, please call me at 410-887-4334, fax 410-887-7831, or e-mail ponheiser@bcps.org.

Sincerely,



Patricia Onheiser, Contracting Assistant
BCPS Office of Purchasing
6901 Charles Street, Building E
Towson, MD 21204

Enclosure

c: bid file
 contract file



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
04/04/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Northeast, Inc. New York NY Office 199 Water Street New York NY 10038-3551 USA	CONTACT NAME: PHONE (A/C No. Ext): (866) 283-7122 FAX (A/C No.): (800) 363-0105	
	E-MAIL ADDRESS:	
INSURED Georgia Holdings, Inc. McGraw-Hill School Education LLC 8787 Orion Place Columbus OH 43240 USA	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Zurich American Ins Co NAIC # 16535	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

Holder Identifier :

COVERAGES **CERTIFICATE NUMBER: 570053404114** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. *Limits shown are as requested*

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURED	WARRANTY	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			GL0509592801 General Liability	03/22/2014	04/01/2015	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$2,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HURED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION						EACH OCCURRENCE AGGREGATE <input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in HQ) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				E.L. EACH ACCIDENT E.L. DISEASE-EA EMPLOYEE E.L. DISEASE-POLICY LIMIT

Certificate No : 570053404114

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 RE: McGraw Hill Reading Wonders KWE-820-14. Board of Education of Baltimore County is included as Additional Insured in accordance with the policy provisions of the general Liability policy.

CERTIFICATE HOLDER		CANCELLATION	
Baltimore County Public Schools Attn: Patti Onheiser Contracting Assistant Office of Purchasing 6901 Charles Street, Building E Towson MD 21204 USA		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Aon Risk Services Northeast Inc</i>	

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BOARD OF EDUCATION OF BALTIMORE COUNTY
Towson, Maryland 21204

AGREEMENT (Contract #MWE-820-14)
Elementary Language Arts Curriculum

In consideration of the provisions contained herein, this Agreement is made and entered into October 22, 2013 between McGraw-Hill School Education, LLC ("Publisher") and the Board of Education of Baltimore County ("Board") for Language Arts Textbooks and materials for the *McGraw Hill Reading Wonders* curriculum a Reading/Writing/Language Arts curriculum for students in grades K - 5 beginning in the 2013 - 2014 school year ("Program") for Baltimore County Public Schools (BCPS) as specified below.

RESPONSIBILITIES OF THE PARTIES

1. FOR THE PURPOSES OF THIS CONTRACT "PUBLISHER" SHALL:

As defined and referenced herein "textbooks" includes: print and digital textbooks and all corresponding supplemental print and digital, teacher editions and/or ancillary materials to include but are not limited to workbooks, assessments, resource materials, study guides, instructor's manuals, and manipulatives. All items are listed in Exhibit "A". These materials must comply with the following Instructional Requirements:

1.1. GENERALLY

Publisher shall provide textbooks and all supporting materials in conformance with Maryland State Department of Education content standards.

1.2. FORMATS PROVIDED

Publisher upon entering into a contract with The Board shall be required to furnish the system with digital versions for literary subjects in the American Standard Code for Information Interchange (ASCII) from which Braille versions of the textbook can be produced. The Publisher shall furnish the system with digital versions in ASCII for nonliterary subjects when Braille specialty code translation software is available.

The Publisher shall provide any ancillary item free of charge or at the same price discount to the same extent that the Publisher provides the item free of charge or at a price discount to any state, public school, or school district in the United States. Free or discounted price ancillary items will be distributed equitably to all schools within Baltimore County regardless of size.

1.3. STANDARDS

The Publisher agrees that all instructional materials listed in "Exhibit A" that are furnished and supplied under the terms of this contract comply with the standards set forth in the edition of *Manufacturing Standards and Specifications for Textbooks* approved by the National Advisory Commission on Textbook Specifications at the time said instructional materials were adopted by The Board. If, at any time during the contract period, the Office of Purchasing determines that instructional materials furnished and supplied under the terms of this contract has faulty manufacturing characteristics or is made of inferior materials, the instructional materials shall be replaced with complying materials by the Publisher without cost to the Board.

All instructional materials listed in "Exhibit A" supplied by the Publisher under the terms of this contract shall be identical in respect to material; quality and workmanship; composition; design; decoration and subject matter; size, both as to form and number of pages; and quality as to content, material, style of binding and mechanical execution to the instructional materials submitted by the Publisher as the official sample on file with the Board. Such sample shall be the standard of comparison for determining whether or not the Publisher shall have complied with this agreement.

1.4. UPDATES

The *McGraw Hill Reading Wonders* curriculum is a Reading/Writing/Language Arts curriculum for students in grades K - 5.

The Publisher will provide teacher training and staff development that will remain in place for as long as BCPS continues to use the materials. All training and pricing for training is included in Exhibit "B".

2. FOR THE PURPOSES OF THIS CONTRACT THE BOARD SHALL PROVIDE:

2.1. TERM

The duration of this Agreement will be from date of Agreement execution to October 30, 2019. Once awarded, the contract shall remain in force and effect for a period not to exceed six (6) years from the date of award. BCPS reserves the right to request to extend the contract for four (4) additional one (1) year periods. All renewals must be by mutual agreement of the parties. BCPS reserves the right to make changes to curriculum at any time, which may result in the curriculum being approved under this adoption cycle to be reevaluated.

2.2. TERMINATION

- 2.2.1. Termination for Non-Appropriation of Funds:** BCPS may terminate this contract, in whole or in part due to insufficient funding upon written notice to Publisher. BCPS shall pay for all of the purchases, if any, incurred up to the date of the termination notice.
- 2.2.2. Termination for Default:** When Publisher has not performed or has unsatisfactorily performed the contract payment shall be withheld at the discretion of BCPS. Failure on the part of Publisher to fulfill contractual obligations shall be considered just cause for termination of the contract.
- 2.2.3. Termination for Convenience:** BCPS has the right to withdraw from the terms of the contract, without showing cause, by providing sixty (60) calendar days written notice to Publisher. BCPS shall pay all reasonable costs incurred by Publisher up to the date of termination. Publisher shall not be reimbursed for any anticipatory profits. Publisher agrees that Publisher does not have a right to termination for convenience.
- 2.2.4. Other causes:** The Publisher declares and warrants that all of the statements made in the affidavits filed by it with the Board through its Office of Purchasing as a condition precedent to the award of this contract are true. In case it shall be discovered that any of the said statements and declarations therein shall be found to be untrue, the Publisher agrees that this contract may, at the election of the Board, be forfeited and voided, and the Board is authorized to recover damages, unless it be shown that such misstatement or non-disclosure of fact was unintentional or an oversight on the part of the Publisher, the burden of such showing shall be upon the Publisher.
- 2.2.5.** In case there shall be a material breach of any provision of this contract or if it shall be discovered that the same has been procured through fraud or collusion on the part of the Publisher or any agent, representative, officer, or attorney or any person acting for and on behalf of the Publisher or any member of The Board, this contract may be canceled.

3. COMPENSATION

- 3.1.** In consideration of the responsibilities set forth in this contract, the Board shall make an initial purchase from the Publisher in the amount of \$4,740,784.85. The amount shall be during fiscal year 2014. Additional purchases will be made on an "as needed" basis both through the

ecommerce system used by BCPS, procurement cards (VISA) and traditional purchase orders.

- 3.2. The Board will pay Publisher the fees, charges or other amounts specified in this agreement within thirty (30) days of date of receipt of an invoice. Publisher may issue an invoice upon the shipment of the textbooks and related instructional materials.
- 3.3. The product offered by the Publisher shall be new, not used, and the latest version of the product. Should a product be discontinued and/or upgraded during the course of the contract, the bidder shall offer to BCPS a new alternate product meeting and/or exceeding the established specifications, under the same terms, conditions and prices as the originally offered item.
- 3.4. Pricing reflected in the cost proposal reflects 2013 catalog prices. The Publisher will contractually guarantee that pricing for products and services for the first six years of the contract. After that time the Publisher may request annual price increases not to exceed the CPI index.
- 3.5. The Board will pay shipping costs of three (3) percent the Boards payments to the Publisher for Textbooks and related instructional materials. To the extent The Board claiming exemption from any applicable taxes, The Board shall provide The Publisher with a valid exemption number at the time each applicable Purchase Order is executed.
- 3.6. Payment of Interest by State Agency is waived or does not apply to instructional materials since payment is subject to specific moneys appropriated in the annual appropriations of the County of Baltimore.
- 3.7. All invoices are to be submitted and mailed in accordance with the instruction as shown on the purchase order (unless otherwise noted).
- 3.8. Invoices shall be returned for correction unless they contain the following information: Description of Service, Payment Cost and the BCPS Purchase Order Number.

4. BEST CUSTOMER

The BCPS expects to receive pricing of the best customer of the Supplier/Contractor. If during the life of any resulting contract a better price is offered to another customer, or the Publisher discounts their price then that best price shall be offered to the BCPS.

5. PRICING

- 5.1.** During the term of this contract the Publisher shall stipulate the price at which each textbook will be sold to the Board, and that all copies supplied to the Board will be equal to or better than the official copy filed with the Curriculum Selection Committee. The Board may approve the substitution of a later edition in lieu of the textbook originally selected. The Publisher shall stipulate in the contract that:
- 5.1.1.** The price for which the textbook is to be furnished will be the lowest at which the same textbook will be sold or offered for sale for the purpose of securing a state or local selection or adoption elsewhere in the United States during the six (6) months prior to the date of the execution of the contract.
- 5.1.2.** Publisher will reduce the contract price of the textbook, if the price of the same textbook is reduced below such contract price elsewhere in the United States, and that it will file with the Office of Purchasing a sworn statement of such reduction made elsewhere.
- 5.1.3.** If Publisher prepares any supplementary or abridged or special editions of any of the textbooks, and shall sell such editions elsewhere at a lower price than that stipulated in the contract, it will file copies of any and all such editions, together with the prices thereof, with the Office of Purchasing.
- 5.1.4.** Publisher has not entered into any understanding, agreement or combination to control the prices or restrict competition in the sale of textbooks in any manner or in any area where its textbooks are sold.
- 5.1.5.** Publisher will furnish the textbooks to the Board during the term of the contract in such amounts as may be required.
- 5.2.** In the event that a Publisher whose price proposal has been accepted shall publish at any time before the expiration of the adoption period a new or revised edition of the adopted textbook, the Board may require such Publisher to substitute such new or revised edition for the adopted edition at a price to be mutually agreed upon by the Publisher and the Office of Purchasing, but not in excess of the lowest price at which the same textbook will be sold or offered for sale for the purpose of securing a state or local selection or adoption elsewhere in the United States during the twelve (12) months preceding the date of submitting such new or revised edition. A contract shall be made for such new or revised edition as for any other selection. Each Publisher submitting a proposal before the

Curriculum Committee shall expressly agree to this provision as a part of the selection process and the contract awarded if successful.

- 5.3. In the event that a Publisher shall publish a textbook for a subject during the period for which adoptions for that subject have not expired, such Publisher may submit a proposal for such textbook at the time and in the manner other proposals are submitted. The Board may adopt such book for the balance of the adoption period.
- 5.4. "Exhibit A" is incorporated into this contract for any and all purposes. The Publisher will for the period indicated under the term of this contract, sell, supply, and furnish the instructional material(s) listed in "Exhibit A" to the Board for use in the public schools.
- 5.5. The prices contracted to be paid the Publisher f.o.b. BCPS' schools or warehouse for the instructional materials listed in "Exhibit A" shall never exceed the lowest price at which the Publisher offers those instructional materials for adoption or sale to any state, public school, or school district in the United States.
- 5.6. The instructional materials listed in "Exhibit A" will be delivered to the Board upon order from the Office of Purchasing in such quantities and at such times as the Office of Purchasing may order, and the instructional materials will be shipped promptly to such persons and to such places as the Office of Purchasing may direct in the requisition. Proposals for pricing changes will only be accepted through written notice to the Manager, Office of Purchasing.
- 5.7. To participate in this contract the Publisher will be required to complete a "Supplier Agreement with e-Commerce Suite." Publisher who fails to complete the Supplier Agreement will not be able to submit price changes. Purchase Orders will be transmitted through eCommerce Suite Online catalog process electronically directly to the Publisher. Please note: no transaction fees will apply to the Publisher for orders received. BCPS will pay these transaction fees. Should other entities (e.g., other school districts) place orders through eCommerce Suite, transaction fees may apply.

6. DELIVERY

- 6.1. The instructional materials will be received on or before the first day of August prior to the opening day of school of the year for which the instructional materials are ordered if an order from the Office of Purchasing is placed on or before July 1 of the year for which the instructional materials are ordered, or the first weekday day thereafter; and

- 6.2. All other supplemental orders for instructional materials ordered for use after the beginning of a school year will be shipped within seven (7) calendar days following receipt of the order from the Office of Purchasing. The Publisher shall, at the time an order for instructional materials is acknowledged, provide to schools an accurate shipping date for instructional materials that are back-ordered.
- 6.3. The Publisher shall maintain an inventory sufficient enough to receive and fill orders for the instructional materials listed in "Exhibit A." The Publisher will maintain a sufficient stock of its adopted instructional materials to supply all immediate demands for the instructional materials listed in "Exhibit A."
- 6.4. Upon delivery to the public school in compliance with the Office of Purchasing order, the instructional materials shall become the property of the Board.
- 6.5. A school within Baltimore County may order replacements for textbooks that have been lost or damaged directly from the textbook Publisher or the manufacturer for the board-contracted price for the term of the agreement.
- 6.6. The Publisher agrees that if at any time during the period of this contract any instructional materials listed in "Exhibit A" or any edition(s) substantially similar to the official sample on file with the Board shall be sold at a lower price f.o.b. the Publisher's shipping point to any state, public school, or school district in the United States, then such lower price shall immediately become the contract price between the Publisher and the Board, provided the Board desires to accept such instructional materials in the revised or changed edition.
- 6.7. The limit on the cost set by the Board that may be paid from the Board for instructional materials is the sum set forth on "Exhibit A" opposite the title of the instructional materials listed in "Exhibit A" under the heading "Maximum State Cost" listed in "Exhibit A" and that the price at which the instructional material shall be sold and furnished to the Board is the sum set opposite the name of each instructional material under the heading "Contract Price". The Board may not pay the Publisher an amount that exceeds the cost limit set by the Board.
- 6.8. The Office of Purchasing shall have the right to prescribe the forms on which bills or invoices shall be rendered, the manner in which such bills or invoices shall be verified, and the method or means by which it shall be shown that instructional materials billed or invoiced have, as a matter of fact, been delivered by the said Publisher as is herein agreed.

The Publisher shall provide delivery services as needed, when needed by BCPS personnel. Delivery shall be *INSIDE* to any and all Baltimore County Public Schools

designated locations. All contract pricing shall include **F.O.B. Destination shipping**. If shipping costs are not shown separately, the parties agree that shipping costs are included in the total price to the BCPS. BCPS reserves the right to designate the best mode of shipment to the schools if they so desire.

- 6.8.1. All school deliveries shall be made during the hours of 8:30 A.M. and 3:00 P.M. local time and only on regular school days, except where noted by Purchasing Office.
- 6.8.2. All warehouse deliveries shall be made during the hours of 8:00 A.M. to 3:00 P.M. on all regular scheduled school days, except where noted by the Purchasing Office.
- 6.8.3. All deliveries shall be made inside school, warehouse, and office buildings.
- 6.8.4. The Publisher shall be held responsible for and shall be required to make good at their expense, any and all damage done or caused by their employees in the execution of the contract.
- 6.8.5. All materials must be securely packed in accordance with accepted trade practices.
- 6.8.6. BCPS purchase order number must be plainly visible on the exterior of each container.
- 6.8.7. A packing slip and/or delivery ticket shall be included in each shipment. This ticket shall contain the following information: Purchase Order Number, Vendor Name, Name of the Article, Item Number, Quantity and Delivery Location, (Example: ABC Elementary School). Failure to comply with this condition may be considered sufficient reason to refuse to accept the goods.
- 6.8.8. BCPS reserves the right to have inspectors on the premises of the Publisher during the process of manufacture of any products being furnished under this contract for as long as may be considered necessary by BCPS. All expenses of the inspectors shall be borne by BCPS.
 - 6.8.8.1. The presence of the inspectors at the site of manufacture of the products shall not relieve the Publisher of responsibility for faulty workmanship of materials which may be discovered at any time after delivery and prior to final acceptance in accordance with the specifications. In case of factory inspection of items being manufactured for BCPS, every facility shall be afforded inspectors by the manufacturers for the prosecution of their work.

6.8.9. Although shipping cost can be incorporated in the unit price, the percentage of shipping for the initial shipment to BCPS shall not exceed 3 percent during the term of the contract. This special freight rates will apply through the term of the agreement. BCPS reserves the right to contract with an independent shipper if it is in BCPS' best interest and remove the stated shipping percentage from the unit price for the purchase of the material only.

7. **BACKORDER REPORTS**

During the entire term of the contract the Publisher shall provide backorder reports as requested for all backordered materials by items and/or school. Backorder reports shall be e-mailed to mwebster@bcps.org. Publisher shall provide other aggregate reports, for example Total Expenditure reports.

8. **CUSTOMER SERVICE**

8.1. Publisher shall provide the name and toll free number of the local Sales Representative. Said Representative shall be the Board contact for negotiations regarding price, free material, and shipping. Representative shall supply an EXCEL spreadsheet to be utilized as a template for the Order Form to include the following items: ISBN number, Title, vendor item number, unit cost, unit cost with shipping.

8.2. Publisher shall provide the name and toll free number of a dedicated customer service representative to be the single contact at the Publisher's business office. This representative shall have full knowledge of BCPS pricing structure, will be the contact to receive purchase orders and ensure that purchase orders are processed. Services shall include but are not limited to any question from BCPS school personnel regarding missing or backorder items and replacement of damaged materials.

9. **CONFIDENTIAL INFORMATION**

9.1. In the course of their dealings, the parties may disclose to one another confidential information relating to their business ("Confidential Information"). Neither party will disclose the other party's Confidential Information to any third party without the prior written consent of the other party, nor will either party make use of any of the other party's Confidential Information except in the performance of rights or obligations under these Terms. Each party will use at least the same degree of care to avoid disclosure of the other party's Confidential Information as it uses with respect to its own Confidential Information, but in no event shall less than reasonable care be used.

- 9.2.** Confidential Information does not include information: (a) generally available to or known to the public, (b) previously known to the recipient without any obligation of confidentiality, (c) independently developed by the recipient outside the scope of these Terms without any use of the other party's Confidential Information, (d) lawfully disclosed to the recipient by a third party under no obligation of confidentiality, or (e) disclosed pursuant to a valid court order or as required by a judicial court or tribunal of competent jurisdiction.

10. INSURANCE

- 10.1.** In the event Publisher, as part of the award is responsible for installation and/or product demonstration, Publisher will be responsible for hiring personnel to perform such services at its own costs. Such personnel will be considered employees of Publisher and are under its/Publisher control and direction. Publisher shall maintain Worker's Compensation in the statutory amount in accordance with the laws of the state in which the work of this contract is to be performed.
- 10.2.** Prior to the commencement of any work, Publisher is required to submit a certificate of insurance evidencing Worker's Compensation in the amount required above. This certificate will indicate the amounts of insurance carried by Publisher of the following types, if required above: Comprehensive General Liability Insurance, Comprehensive Automobile Insurance, Excess Liability Insurance, and any other insurance coverage maintained by the vendor. The Certificate of Insurance will state that such insurance is in force and cannot be canceled or released except upon thirty (30) days prior written notice to the Board of Education of Baltimore County.
- 10.3.** All required insurers allowed doing business in the State of Maryland and acceptable to the Board must underwrite insurance coverage. The insurers must also have a policyholders' rating of "B" or better, and a financial size of "Class VII" or better in the latest evaluation by A.M. Best Company. The Board hereby grants specific approval for the acquisition of workers compensation and employer's liability insurance from the Injured Worker's Insurance Fund of Maryland.

11. INDEMNIFICATION

- 11.1.** Publisher will, at its sole cost and expense, indemnify and hold the Board, its agents, employees, attorneys and representatives harmless from all claims, liens or demands that result in losses, liabilities, defense costs and expenses (including, but not limited to attorney's fees and costs of litigation) arising out of the terms, conditions and performance under the contract.

11.2. The Publisher agrees to indemnify, hold harmless, and defend The Board from and against all damages, costs, and expenses, including reasonable attorney fees, incurred in connection with any claim by any third party that the publication, referenced in "Exhibit A", and any related instructional materials developed and owned by the Publisher infringe upon any US copyright, patent, trademark, or secret of such third party; provided that The Board notifies the Publisher by certified mail, return receipt requested, immediately upon knowledge, of any claim, suit, action or proceeding for which it may be entitled to indemnification under this agreement. The Board further agrees that the Publisher shall have sole control over its defense or settlement, and The Board agrees to provide reasonable assistance at the expense of the Publisher in the defense of same.

11.2.1 Notwithstanding anything herein to the contrary, for clarification, it is understood that excluded are any materials or content previously created by or for Contractor prior to the Contract or otherwise any of Contractor's materials or content not created specifically for the County under this Contract, including any revisions and other derivative works or materials thereof (collectively, the "Contractor-Owned Materials"). The Contractor-Owned Materials shall be and remain the property of the Contractor and all rights, including without limitation, copyright, trade secret rights and patent rights, in and to the Contractor-Owned Material are and shall be and remain the sole property of the Contractor.

11.3. Following written notification of infringement claim, the Publisher may, at its expense and at its sole absolute discretion, either 1.) Procure for The Board the right to continue the use of the alleged infringing publication and/or related instructional materials of the Publisher; 2.) replace the publication and/or related instruction materials; or 3.) Terminate this agreement without any further obligation to The Board, and pay to The Board an amount equal to the value of the allegedly infringing publication an/or related instructional materials.

12. LEGAL COMPLIANCE

Contractor shall comply in all respect with Federal, State (including Maryland Motor Vehicle laws) and Local Regulations, including laws regarding eligibility to work in the United States. The laws of Maryland shall govern the provisions of this Contract. Any disputes, legal cases or other controversies shall be pursued in Maryland Courts consistent with and subject to Maryland State Law. Additionally, if applicable, all materials, supplies, equipment, or services

supplied, as a result of this Contract shall comply with the applicable U.S. and Maryland Occupational Safety and Health Act Standards.

13. EPA COMPLIANCE

Materials, supplies, equipment, or services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable.

14. RETENTION OF RECORDS

The Contractor shall retain and maintain all records and documents relating to this contract for three (3) years after final payment by the BCPS hereunder or any applicable statute of limitation, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the BCPS, including the Supervisor of Purchasing or the Supervisor of Purchasing designee, at all reasonable time.

15. AUDIT RIGHTS

The Publisher will keep accurate records of the number of copies of the textbooks and instructional material made and distributed, the number of end users of the textbooks and materials and their location. The Board may enter Publisher's premises during business hours on thirty (30) days notice for the purpose of examining, or having examined (at the Board's own expense), the Publisher's relevant books, records and computers to verify fulfillment of Publisher's obligations under these Terms and/or any applicable Order Agreement.

16. CRIMINAL BACKGROUND CHECKS

16.1. A person not directly employed by the school system that has uncontrolled access to children shall be fingerprinted at the Publisher's expense. Independent contractors hired where no uncontrolled access is anticipated do not need to be fingerprinted. However, BCPS will require such personnel working on school grounds to undergo a criminal background check.

16.2. Employees from a Government Agency: Those working in a school including school nurses, health aides, Health Department employees and State and Federal agency employees routinely working in schools will be fingerprinted.

16.3. Outsourced Staffing: personnel working within BCPS through an agency will be processed as follows:

Those that are paid outside the school payroll system that have uncontrolled access to children or that are assigned duties in a school

where unsupervised contact with children is likely, are required to be fingerprinted and will complete the BI process with the exception of the I-9 form.

- 16.4. Those that are paid outside the school payroll system that will work at facilities where no contact with children is anticipated are not required to be fingerprinted, however, will complete the Background Check Application form and Authorization and Release for the Procurement of an Investigative Consumer Report. A Consumer Investigative Report will be prepared on each of these employees. The employee or the contractor absorbs the cost for such report.
- 16.5. The Publisher shall advise BCPS of the intention to use any employees that are hired or obtained from any penal pre-release or work-release programs. In the event such employees are used, notification to BCPS shall include name and violation for each individual. BCPS reserves the right to reject any employee listed based upon the nature of the violation. The Publisher shall take reasonable precautions when selecting such individuals and provide whatever safeguards are necessary for effective supervision. Publisher's employees are not permitted inside school buildings when the nature of the contract requires work outside of school buildings.

17. CHILD SEX OFFENDER NOTIFICATION

- 17.1. Maryland law requires certain child sex offenders to register with the local law enforcement agency. One of the purposes of this law, found in Article 27§ 792, is to inform school systems when a child sex offender is residing or working in the area. When the child sex offender registers, the local police are required to notify the Superintendent of Schools, and the Superintendent, in turn, is required to send a notice to school principals.
- 17.2. As a Contractor working for BCPS we require that you do not employ convicted child sex offenders to work on projects for our school system if they, as a result, are required to perform delivery, installation, repair, construction or any other kind of services on BCPS property.
- 17.3. To assist you in identifying convicted child sex offenders, the Purchasing Office has the list of convicted child sex offenders, which you are welcome to view. The BCPS Office of School Security maintains this list and distributes updates to us as new offenders are identified.

18. ANTI-BRIBERY

The Contractor warrants that neither it nor any of its officers, directors, or partners nor any of its employees who are directly involved in obtaining or

performing contracts with any public body has been convicted or bribery, attempted bribery or conspiracy to bribe under the laws of any state or of the federal government or has engaged in conduct since July 1, 1977, which would constitute bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government.

19. GIFTS

Publisher are hereby notified that the giving or offering a gift or series of gifts to a Board official or employee is improper and may result in disqualification from future work on the grounds that the donor/offeror is no longer a responsible bidder or vendor. The subject Code further states that Board officials and employees shall not "solicit any gift, or accept any gift or series of gifts exceeding \$25 in value in a calendar year from any person, entity, or employee of an entity that is under the authority of the school system or has or is negotiating a contract with the school system, except where such gifts would not present a conflict or interest as determined by the Ethics Panel. For purposes of this section, gift includes the transfer of any service or thing of economic value regardless of form without adequate and lawful consideration.

20. MODIFICATIONS AND AMENDMENTS

Amendments and/or Modifications to this Agreement shall be made only with the express written concurrence with both parties.

21. SUB-CONTRACTORS

The Publisher shall give their constant personal attention to the faithful execution of this contract, shall keep the same under their own control, and shall not assign by power of attorney or otherwise, the work or any part thereof without the previous written consent of Purchasing Manager. The Publisher shall provide the name of the sub-contractor(s) he intends employing, the portion of the materials/labor to be furnished, their place of business, and such other information as requested by the bid specifications and/or Purchasing Agent/Manager. The information may be used in considering the potential performance capabilities of the sub-contractor(s).

The Publisher shall not, without prior written consent of BCPS, assign any of the moneys payable under the contract.

21.1 Notwithstanding the foregoing, this Agreement may be assigned by McGraw-Hill School Education LLC to an affiliate or in connection with a merger, consolidation, or sale of substantially all assets, without consent of Baltimore County Public Schools.

22. TOBACCO PRODUCTS

The use of Tobacco products is not permitted on school property. The use of tobacco products is not permitted in or on property owned by the Board of Education of Baltimore County. Failure to comply with this requirement is considered a material breach.

23. CODE OF ETHICS

The Ethics Code Policies of the Board of Education of Baltimore County (Policy Number 8360 – 8366) shall govern this contract.

24. NONDISCRIMINATION IN EMPLOYMENT

The Publisher and Board agree not to discriminate in any manner against an employee or applicant for employment on the basis of race, sex, sexual orientation, age, national origin, religion, disability or socioeconomic status in matters affecting employment.

25. MULTI-AGENCY PROCUREMENT

25.1. BCPS reserves the right to extend the terms and conditions of this contract to any and all other agencies within the state of Maryland that require these commodities and/or services. A copy of the contract pricing and the terms and conditions incorporated in this contract will be supplied to requesting agencies. This shall include private schools, parochial schools, and/or state, community, and private colleges located within the state of Maryland, as well as other state agencies.

25.2. Each participating jurisdiction or agency shall enter into its own contract with the Publisher and this contract shall be binding only upon the principals signing such an agreement. Invoices shall be submitted in duplicate "directly" to the ordering jurisdiction for each unit purchased. Disputes over the execution of any contract shall be the responsibility of the participating jurisdiction or agency that entered into that contract. Disputes must be resolved solely between the participating agency and the Publisher. The Board does not assume any responsibility other than to obtain pricing for the specifications provided.

26. NOTICES

26.1. Any notices required to be given under this Agreement shall be given, in writing, to the attention of the person identified below. Notice will be deemed to have been given when: it has been placed in the hands of the addressee, or it has been placed in the U.S. Mail, postage prepaid, certified and return receipt requested.

To the Board:

Manager, Office of Purchasing
Division of Business Services
Baltimore County Public Schools
6901 N. Charles Street
Building E
Towson, MD 21204

To the Contractor:

Steven R. Engel
McGraw-Hill School Education
8787 Orion Place
Columbus, OH 43240

- 26.2. No delay or failure in exercising any right under these Terms, or any partial or single exercise of any right, will constitute a waiver of that right or any other rights under these Terms. No consent to a breach of any express or implied term set out in these Terms constitutes consent to any subsequent breach.
- 26.3. If any provision of these Terms is, or becomes, unenforceable, it will be severed from these Terms and the remainder of these Terms will remain in full force and effect.
- 26.4. These Terms are binding upon and will inure to the benefit of both parties, and their respective successors and assigns. Either party may assign or otherwise transfer its rights under these Terms to a third party ("assignment") on the condition that (a) the third party delivers to the non-assigning party a duly executed document agreeing to be bound by these Terms and (b) the assignment is part of a bona fide internal corporate reorganization or an arm's length commercial transaction.
- 26.5. The Board will ensure that, to the extent permitted hereunder, the Textbook and Instructional Materials (and any direct products thereof) is exported or re-exported in compliance with applicable statutes or regulations (including U.S. export laws) relating to the country of destination, or to the users or uses of the textbooks and instructional materials.

27. GOVERNING LAW AND VENUE

- 27.1. This Agreement is subject to and will be construed and interpreted under the laws of the State of Maryland. All lawsuits arising out of this Agreement must be filed in the appropriate court located in Baltimore County.
- 27.2. This contract is made and executed pursuant to the laws of Maryland and is to be construed with reference thereto and is performable in Maryland. The Publisher expressly agrees, covenants and binds itself to perform all of the obligations and to submit to all of the conditions imposed upon it by the said laws, and the enumerations herein of such obligations and conditions of this contract are not to be taken as exclusive, but all of the

requirements, obligations and stipulations as imposed upon it by the said laws and by rules adopted by the Board are made a part of this agreement and are accepted by the Publisher as binding upon it. The Publisher acknowledges that included among the requirements, obligations and stipulations imposed upon the Publisher by said laws, whether or not enumerated in this contract or in any other document, is a requirement to furnish to the Board upon request of the Office of Purchasing complete and satisfactory copies of computerized instructional material files of instructional material purchased by this contract for production of Braille instructional materials or other versions of instructional materials to be used by students with disabilities. Computerized instructional material files shall be provided in one of several optional formats specified by the Board and/or any specified format from which versions of the instructional materials can be produced for students with disabilities.

- 27.3. The venue of any suit on this contract, or in reference thereto, against the Publisher herein shall be laid in Baltimore County, Maryland, and the Publisher hereby designates the Office of Purchasing as its agent in Maryland upon who service of process, if any in such suit against it may be had.
- 27.4. This agreement and contract shall be binding upon the Publisher named herein and upon all successors, assignees, designees, or others succeeding to Publisher's interest or obligations in and to the terms of this agreement and contract.
- 27.5. The Publisher may not become associated or connected with, directly or indirectly, any combination in restraint of trade in instructional materials or enter into any understanding or combination to control prices or restrict competition in the sale of instructional materials for use in this State.

28. LIMITED LIABILITY

The Board of Education of Baltimore County is subject to the provisions of Md. Code Ann., Educ. Section 4-105 and Md. Code Ann., Cts. & Jud. Proc. Section 5-518 limiting liability to \$100,000. Pursuant to the provisions of the aforementioned statutes, the Board of Education of Baltimore County is a member of the Maryland Association of Boards of Education Group Insurance Pool for comprehensive liability coverage to \$100,000.

29. WAIVER OF SUBROGATION

- 29.1. To the fullest extent permitted by law, the Publisher, its invitees, employees, officials, volunteers, agents and representatives waive any right of recovery against the Board of Education of Baltimore County for any and all claims.

29.2. This agreement, consisting of the Terms and all Purchase Orders referencing the same, is the entire understanding and agreement between The Board and the Publisher with respect to the textbooks and instructional material, and it supersedes all prior negotiations, commitments and understandings, verbal or written, any purchase order issued by The Board and any terms (in any form or medium) provided with or in the textbook and instructional material. These Terms or a Purchase Order may only be amended or otherwise modified by written agreement signed by the authorized signatories of both parties.

30. CERTIFICATION REGARDING U.S. GOVERNMENT DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

30.1. Publisher certifies, by the signing of this contract, that neither they nor their principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal, State or Local government department or agency.

30.2. Under the STATE FINANCE AND PROCUREMENT, ARTICLE 16-309 "If a person or business is debarred or suspended based on an offense listed in 16-202 (Bribery), the person or business may not be considered for the award of, be awarded, or perform directly or indirectly, a contract with a public body during the time period of debarment."

30.3. Where Publisher is unable to certify to any of the statements in this certification, Publisher shall attach an explanation to this contract as Exhibit C.

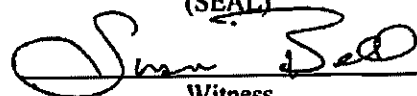
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

Accepted by:

McGraw-Hill School Education:



Signature Owner/Partner/Corporate Officer

(SEAL)



Witness

Steven R. Engel, Director-Finance
Typed/Printed Name and Title

4/3/14
Date

Accepted by:

BOARD OF EDUCATION OF BALTIMORE COUNTY



President of the Board



Superintendent

Reviewed for Legal Form and Sufficiency*
(Subject to Execution by the duly authorized
Superintendent and President of the Board
of Education of Baltimore County.)



OFFICE OF LAW

*(Approval of Legal Form and Sufficiency
Does Not Convey Approval or Disapproval
of the Substantive Nature of this
Transaction. Approval is based upon
Typeset Document. All Modifications
Require Re-Approval.)