

SUBSCRIBER AGREEMENT
For
TABE Online for The School Board of Broward County, Florida

CTB/McGraw-Hill LLC ("CTB") agrees to provide the products and services (collectively, "Services") selected by **The School Board of Broward County, Florida ("Subscriber")** under this Agreement ("Agreement"), and the attached Customer Specifications form. CTB and Subscriber hereby agree as follows:

1. Term

The "Term" of this Agreement commences on the July 1, 2008 and shall continue through June 30, 2009 unless terminated earlier pursuant to Section 12(d) of this Agreement.

2. Additional Services

Additional Services, such as training or additional subscriptions, may be added to this agreement by mutual agreement of the parties at a later date by subscriber requesting such services by contacting CTB; in such event CTB shall issue an amendment to this Agreement and separately invoice for such services.

3. Activation of Services & Invoice

Subscriber's activation of the TABE online Services under this Agreement shall be on the commencement date of this Agreement, July 1, 2008. The cost of this unlimited usage of the TABE online Services during the Term of this Agreement is \$80,000. Payment terms are net forty-five (45) days of invoice. In the event that payment is not made according to the payment terms hereunder, CTB may suspend the Services until such payment is received. In the event of early termination by Subscriber for convenience or by CTB for Subscriber breach, no refunds will be issued for unused Services.

4. Copyright, Licenses and Proprietary Rights

The CTB World Wide Web site and all content placed thereon ("CTB Information") by CTB is the property of CTB and its licensors and is protected by United States and international copyright laws. All copyright, patent trademark and other proprietary rights in the CTB Site and CTB Information, including all software, text, graphics, test items, norms, multimedia assets, design elements and all other materials, data, information, domain names originated or used by CTB at this are reserved to CTB and its licensors. Subscriber shall not modify the CTB Information or CTB Site or reproduce, create derivative works, upload, post, transmit, or download or distribute any CTB Information, or reverse engineer, decompile, derive or disable any code. CTB/McGraw-Hill grants to Subscriber a non-exclusive, non-transferable right and license to access the Service via the CTB Web Site and a right to designate end users to use the Service for educational purposes anytime during the Term. Subscriber acknowledges, agrees, and accepts that this license extends only to the Services and to end users from the site locations designated on the Customer Specifications form. This license will at all times be subject to this Subscriber Agreement and to the then-current "The McGraw-Hill Companies Privacy Policy" and any related rules of usage, each of which will be posted and made available on the designated CTB Web Site. Subscriber agrees that it will inform end users that their use of the CTB Web Site and Service is subject to these limitations, and that it will use its best efforts to ensure their compliance.

CTB shall hold harmless and defend Subscriber against any and all suits based on any third-party claim (herein "Claim") that the used of the CTB Information and CTB Site by Subscriber under this Agreement infringes on any United States patent right or copyright, provided CTB is promptly notified in writing of such Claim against Subscriber and further provided that Subscriber permits CTB to defend, compromise, or settle the Claim and gives CTB all available information, reasonable assistance, and authority to enable CTB to do so. This indemnity shall not apply to any infringement arising out of the alteration or modification of the CTB Information or CTB Site by Subscriber or any use of the CTB Information or CTB Site which is not authorized herein.

5. Security of Subscriber Information

Subscriber agrees to use the CTB Site and the CTB Information solely for the educational assessment purposes. All Personal Information (defined below) concerning Students, scores, data, test results and analyses (collectively, "Subscriber Information") belongs to Subscriber. CTB claims no ownership or other interest in Subscriber Information. Subscriber Information is gathered and transmitted to CTB by Subscriber to carry out Subscriber's educational responsibilities under law. Subscriber is responsible for accurately inputting Subscriber Information into CTB Web Site on time to meet Subscriber's schedules without which accuracy the results of the Services will not be as intended. CTB will assign the Subscriber a master user "Access Code" and Subscriber will be solely responsible for assigning "log-on"

passwords to its designated users. Subscriber Information and the Access Code constitute Confidential Information under Section 11. Each party will establish appropriate privacy policies and commercially reasonable practices in implementing this Agreement. Subscriber acknowledges that Subscriber Information will be communicated online, directly or indirectly, by or under the authority of the Subscriber to and from CTB, including transmission to computers or servers of or under control of CTB, or its vendors.

6. Outside Content

CTB cannot accept responsibility or liability for any material or content placed on the CTB Web site by Subscribers, Students, or others or that is accessed through "links" to a third-party Web site. CTB does not screen, edit or review materials submitted by others that may reside in or be assessed through the CTB Web Site other than CTB Information. Subscriber or those acting through Subscriber shall not upload, post, link or transmit any obscene, offensive, illegal or otherwise inappropriate material to the CTB Web Site. CTB has no duty to review, edit or remove such materials but may do so at any time for any reason.

7. Collection, Use and Protection of Personal Information

Subscriber agrees to be responsible for compliance with the Children's Online Privacy Protection Act of 1998 ("COPPA"), the *Family Educational Rights and Privacy Act* and the US Department of Education's implementing regulations at 34 CFR Part 99 (collectively, "**FERPA**"); and all other laws rules or regulations (all collectively, "Applicable Law") concerning the collection, use and disclosure of Personal information about Students that access the Services. Specifically, Subscriber assumes sole responsibility for: (i) providing notice to the extent required by Applicable Law; (ii) obtaining verifiable prior parental consent as required under Applicable Law; (iii) providing a reasonable means for parents to review Personal Information as required by Applicable Law; and (iv) establishing and maintaining reasonable procedures to protect the confidentiality, security and integrity of the Personal Information.

CTB shall have the right to use the Personal Information and Subscriber Information for purposes of performing this Agreement and for research purposes for development of assessment tests, statistical analysis and norms ("Research purposes"), provided that such Personal Information will be used only in the aggregate so that the privacy of the individual's Personal Information will be maintained.

8. Limited Warranty

CTB makes no warranty of any kind with respect to each Service, the CTB Web Site and CTB Information or its access or use, all of which are provided "AS IS," "AS AVAILABLE," "WITH ALL FAULTS." CTB shall make reasonable efforts to provide Subscribers with access to the Service at all times (except for periodic scheduled maintenance), but CTB/McGraw-Hill LLC does not warrant that the Service will meet Subscriber's requirements, be accurate, be uninterrupted or that the Service's functions shall be error-free. CTB/MCGRAW-HILL LLC DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND OF MERCHANTABILITY.

9. Limitation of Liability

IN NO EVENT WILL CTB BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF TEACHING, TESTING OR TRAINING TIME, BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF SUBSCRIBER INFORMATION, PERSONAL INFORMATION, DATA OR CORRUPTION OF DATA, PERSONAL INJURY, OR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE CTB WEB SITE, OR THE SERVICES, REGARDLESS HOW OR WHETHER SUCH LIABILITY IS BASED IN TORT, CONTRACT OR OTHERWISE. NOTWITHSTANDING ANY DAMAGES THAT SUBSCRIBER MIGHT INCUR FOR ANY REASON, SUBSCRIBER'S EXCLUSIVE REMEDY FOR ALL OF THE FOREGOING WILL BE LIMITED TO THE TOTAL FEES PAID FOR THE OFFENDING SERVICE DURING THE YEAR IN WHICH THE LOSS OR DAMAGE FIRST OCCURRED EVEN IF CTB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH OCCURANCE OR CLAIM, INCLUDING ANY CLAIM BY SUBSCRIBER OR A CLAIM OF ANYONE GAINING ACCESS THROUGH SUBSCRIBER. SUBSCRIBER ACKNOWLEDGES AND AGREES THAT THE FEES PAYABLE HEREUNDER ACCURATELY ALLOCATE THE RISK SET FORTH FOR EACH PARTY IN ENTERING THIS AGREEMENT AND THAT CTB WOULD NOT ENTER INTO THIS AGREEMENT BUT FOR THE LIMITATIONS ON CTB'S LIABILITY STATED HEREIN.

10. Confidentiality

This Agreement creates a relationship of confidence and trust between the Subscriber and CTB with respect to each party's "Information" exchanged hereunder, and the Subscriber agrees that it will treat Information as confidential to the extent required by law and that neither Subscriber or any administrator, employee, student, agent or anyone acting

through the Subscriber will disclose the CTB Information or infringe, violate or attempt to convey any interest in the intellectual property contained therein without the express written consent of CTB or access or use the Information except as authorized by this Agreement. However, nothing herein shall preclude Subscriber's compliance with Section 119.07, Florida Statutes.

11. U.S. Government Restricted Rights

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

12. Miscellaneous

- (a) Notices: Any notice, request, authorization, direction or other communication under this Agreement shall be given in writing by any means of transmission, physical or electronic or by U.S. Mail.
- (b) Severability: The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.
- (c) Successors and Assigns: Subscriber shall not assign any rights, duties, or obligations hereunder without the prior written consent of CTB and any attempt to so assign without such written consent shall be void. CTB shall be entitled to assign its rights, duties, and obligations hereunder.
- (d) Termination: Either party may terminate this Agreement for convenience by giving the other party thirty (30) days written notice. In the event of a breach by Subscriber, CTB shall notify the Subscriber and Subscriber shall have ten (10) days to cure said breach. If Subscriber does not cure said breach, CTB may terminate the contract at the end of the ten (10) day cure period.
- (e) Modification: No change, amendment, or modification of any provision of this Agreement shall be valid unless set forth in a written instrument signed by both parties.
- (f) Applicable law: This Agreement shall be governed by the laws of the State of Florida, without regard to conflict of law principles.
- (g) No Waiver of Sovereign Immunity: Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable.
- (h) No Third Party Beneficiaries: The parties hereto expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. Neither party intends to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.
- (i) Non-Discrimination: The parties shall not be discriminated against any employee or participant in the performance of its duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.
- (j) Entire Agreement: This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

The remainder of this page has been intentionally left blank.
Signatures follow on next page.

14. Signature

The undersigned is duly authorized by Subscriber to execute this Agreement and understands and agrees to these Terms of Service:

CTB:
CTB/McGraw-Hill LLC, a subsidiary of
The McGraw-Hill Companies, Inc.

Subscriber:
The School Board of Broward County, Florida

By: _____
Signature

By: _____
Signature

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Effective Date: July 1, 2008

Tax ID No. _____

Address: _____

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Corporate Seal)

THE SCHOOL BOARD OF
BROWARD COUNTY, FLORIDA

ATTEST:

By _____
Robin Bartleman, *Chair*

James F. Notter,
Superintendent of Schools

Approved as to Form and Legal Content



School Board Attorney

**Customer Specifications
CTB/McGraw-Hill**

Site Name: The School Board of Broward County, Florida

Street Address: 600 SE Third Avenue

City: Fort Lauderdale_

State: Florida **Zip:** 33301

Subscriber Contact Person:

Fayne Johnson (Curriculum Specialist)

Telephone: 754-321-2630

Email: fayne.johnson@browardschools.com

Technical Contact Person: _____

Telephone: _____

Email: _____

General Information

Number of Students: _____

Number of Teachers: _____

Typical Workstation Hardware/Software Configuration

	PC Configuration	Macintosh Configuration	Internet Connection
Processor:	_____	_____	<input type="checkbox"/> High Speed (56k)
Processor Speed:	_____	_____	<input type="checkbox"/> Dial-up
Operating System (version)	_____	_____	<input type="checkbox"/> Other: _____
Memory (amount of RAM)	_____	_____	

Site Internet Capabilities

Check one below that best describes this site:

- Expert:** All staff members have received appropriate training and are very comfortable with using online systems. Onsite network and PC support is also available during work hours.
- Solid:** Staff members have had some experience with online systems and use the Internet on a regular basis. Network and PC support is available, although hours are either limited or only accessible over the phone.
- Novice:** Staff members are new to using online systems and have limited access to the Internet. Network and PC support is not readily available or easily accessible.
- None:** Staff members are not accustomed to using any computer based educational tools or not familiar with using Internet. Network and PC support may not be available.