



District School Board of Pasco County

20430 Gator Lane • Land O' Lakes, Florida 34638 • 813/ 794-2221

Heather Fiorentino, Superintendent


www.pasco.k12.fl.us

Department of Purchasing
Michael J. Woodall, CPPO, Purchasing Agent
813/ 794-2221 Fax: 813/ 794-2111
727/ 774-2221 TDD: 813/ 794-2484
352/ 524-2221 e-mail: mwoodall@pasco.k12.fl.us

September 18, 2012

MEMORANDUM

TO: Honorable School Board Members

FROM: Michael J. Woodall, CPPO, Purchasing Agent 

RE: READ 180 Technical Support Plan, 2012-2013 School Year
Scholastic, Inc.

Since 2005, the District has had a technical support plan for READ 180 in place with Scholastic, Inc. This plan includes phone and e-mail support, web chat, on-line support, and software maintenance updates. Please reference the attached memo from Ms. Melissa Musselwhite, Director of Exceptional Student Education (ESE) for further information.

Services during the past year have been satisfactory. Therefore, Scholastic was contacted, and has agreed in writing (attached) that they are willing to renew the contract under existing terms and conditions for the 29 schools outlined in Ms. Musselwhite's memo. The cost for support is \$1,890.00 per school, and the term of the contract will be good through August 31, 2013. The ESE Department is requesting School Board approval retroactively from September 1, 2012 due to the timeline for another department to review of the different levels of support. It was determined that the basic level of support would be sufficient for the district.

The services covered under this contract are considered technology resources, and therefore, are exempt from the competitive pricing requirement as outlined in DOE's Section 6A-1.012(11)(b).

This contract form and content was reviewed and approved by School District's attorney, Nancy Alfonso on August 7, 2010. There are no changes to the original contract except for the level of support.

We are requesting renewal of this technical support plan, and permission for the placement of purchase orders totaling \$54,810.00. The funding source will be: IDEA Part B Grant. Should you have any questions regarding this matter, please contact Ms. Musselwhite, Director of Exceptional Student Education at your earliest convenience.

MJW/dp
Attachments



District School Board of Pasco County

7227 Land O' Lakes Boulevard • Land O' Lakes, Florida 34638 • 813/ 794-2000

Heather Fiorentino, Superintendent

www.pasco.k12.fl.us

Department of Exceptional Student Education

April Stephenson, Bookkeeper

813/ 794-2764 Fax: 813/ 794-2117

727/ 774-2764 TDD: 813/ 794-2484

352/ 524-2764 email: astephen@pasco.k12.fl.us

MEMORANDUM

ESE-12/13-AS-023

DATE: September 18, 2012

TO: Michael J. Woodall, CPPO, Purchasing Agent

FROM: April Stephenson, Bookkeeper, Exceptional Student Education
Melissa Musselwhite, Director of Exceptional Student Education *mm*

RE: AGREEMENT between Scholastic Inc. and Pasco County Schools
(September 1, 2012-August 31, 2013) (REQ # 9250-30129)

The Exceptional Student Education Department is requesting School Board approval of the attached agreement between Scholastic Inc. and Pasco County Schools retroactively from September 1, 2012 through August 31, 2013, for the READ 180 basic product support plan for the twenty-nine schools listed below. The plan includes phone support, email support, web chat support, software maintenance updates, and a quarterly technical eNewsletter.

SCHOOL	SCHOOL
1. ANCLOTE HIGH SCHOOL	16. MOORE MICKENS EDUC CTR
2. BAYONET POINT MIDDLE SCHOOL	17. PASCO HIGH SCHOOL
3. CENTENNIAL MIDDLE SCHOOL	18. PASCO MIDDLE SCHOOL
4. CHARLES RUSHE MIDDLE SCH	19. PAUL R SMITH MIDDLE SCHOOL
5. CHASCO MIDDLE SCHOOL	20. PINE VIEW MIDDLE SCHOOL
6. CREWS LAKE MIDDLE SCHOOL	21. R B STEWART MIDDLE SCHOOL
7. DR JOHN LONG MIDDLE SCHOOL	22. RIDGEWOOD HIGH SCHOOL
8. FIVAY HIGH SCHOOL	23. RIVER RIDGE HIGH SCHOOL
9. GULF HIGH SCHOOL	24. SEVEN SPRINGS MIDDLE SCHOOL
10. GULF MIDDLE SCHOOL	25. SUNLAKE HIGH SCHOOL
11. HUDSON HIGH SCHOOL	26. THOMAS E WEIGHTMAN MIDDLE SCH
12. HUDSON MIDDLE SCHOOL	27. WESLEY CHAPEL HIGH SCHOOL
13. J W MITCHELL HIGH SCHOOL	28. WIREGRASS RANCH HIGH SCHOOL
14. JAMES IRVIN EDUC CENTER SCH	29. ZEPHYRHILLS HIGH SCHOOL
15. LAND O LAKES HIGH SCHOOL	

Attached is the quotation. The anticipated cost is \$54,810.00. Funding source: IDEA Part B grant

The School Board will need to sign all four original agreements.

Thank you for your assistance with this request.

MM/as

xc: John Mann, Ed.D., Assistant Superintendent for Curriculum and Instructional Services



Quotation

Scholastic Education Inside Sales
 2315 Dean Street, Suite 600, St. Charles, IL 60175
 Phone: (800) 387-1437 Fax: (877) 242-5865

Prepared for: April Stephenson, Pasco County Schl Dist-34639704 7227 Land O Lakes Blvd Land O Lakes, FL 34638 813-794-2764 ASTEPHEN@PASCO.K12.FL.US	Prepared by: Deneen Scott Account Manager (800) 387-1437 X6379 dscott@scholastic.com	Date: 8/20/2012
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ISBN #	Description	QTY	Unit Price	Subtotal	Discount Amount	Total
951720	Basic Product Maintenance and Support Plan for 11-20 schools (one year, price per school)	29	\$2,100.00	\$60,900.00	\$6,090.00	\$54,810.00
614459195	ANCLOTE HIGH SCHOOL					
600045779	BAYONET POINT MIDDLE SCHOOL					
600190357	CENTENNIAL MIDDLE SCHOOL					
610799477	CHARLES RUSHE MIDDLE SCH					
600190358	CHASCO MIDDLE SCHOOL					
612351516	CREWS LAKE MIDDLE SCHOOL					
610060773	DR JOHN LONG MIDDLE SCHOOL					
617622480	FIVAY HIGH SCHOOL					
600045783	GULF HIGH SCHOOL					
600045784	GULF MIDDLE SCHOOL					
600045787	HUDSON HIGH SCHOOL					
600118076	HUDSON MIDDLE SCHOOL					
600172334	J W MITCHELL HIGH SCHOOL					
600156319	JAMES IRVIN EDUC CENTER SCH					
600045789	LAND O LAKES HIGH SCHOOL					
600045790	MOORE MICKENS EDUC CTR					
600045792	PASCO HIGH SCHOOL					
600045794	PASCO MIDDLE SCHOOL					
610060804	PAUL R SMITH MIDDLE SCHOOL					
600108831	PINE VIEW MIDDLE SCHOOL					
600045802	R B STEWART MIDDLE SCHOOL					
600108834	RIDGEWOOD HIGH SCHOOL					
600125621	RIVER RIDGE HIGH SCHOOL					
600156318	SEVEN SPRINGS MIDDLE SCHOOL					
610269426	SUNLAKE HIGH SCHOOL					
600125622	THOMAS E WEIGHTMAN MIDDLE SCH					
600167961	WESLEY CHAPEL HIGH SCHOOL					
610063816	WIREGRASS RANCH HIGH SCHOOL					
600045801	ZEPHYRHILLS HIGH SCHOOL					

tech support dates for renewal period 8/31/12-8/31/13

The Premium Maintenance and Support Service includes access to the READ180/System44 Interactive Teaching System (ITS) & Digital Training Zone (DTZ), phone support, email support, Web chat, online FAQs, software updates and maintenance releases, and on-site service to resolve identified software issues that cannot be resolved remotely or over the phone. In addition to covering READ180, READ180 Next Generation, and System 44, this plan covers ReadAbout, Scholastic Phonics Inventory, Scholastic Reading Inventory, Scholastic Reading Counts!, Zip Zoom English, WiggleWorks, FASTT Math, Fraction Nation and Scholastic Math Inventory-all for one low price per school!

Subtotal	\$60,900.00	\$6,090.00	\$54,810.00
Shipping and Handling			\$0.00
Sales Tax			\$0.00
Total			\$54,810.00

Prices are valid for 90 days.

Please fax or email your purchase order - attn: Deneen Scott
 fax # 877-242-5865 email: dscott@scholastic.com

Terms and Conditions: State law requires that sales tax be added to your order unless we have a sales tax exemption certificate on file. Scholastic's terms are FOB shipping point unless otherwise noted on the purchase order. Customers must notify Scholastic in writing no less than five (5) business days in advance of any cancellation or rescheduling of training, in-classroom support, or other onsite services. If such notice is not received by Scholastic, customers will be charged (or forfeit prepayment) for cancelled or missed days. Unless otherwise noted, all services must be delivered within 24 months of purchase.

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 AND APPROVED:
[Signature] 8/21/12

ISBN #	Description	QTY	Unit Price	Subtotal	Discount Amount	Total
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No payment is necessary at the time of renewal; an invoice will be sent once the purchase order is processed.

If a check is sent in lieu of a purchase order, a copy of this quote must be attached. Thank you.

Terms and Conditions: State law requires that sales tax be added to your order unless we have a sales tax exemption certificate on file. Scholastic's terms are FOB shipping point unless otherwise noted on the purchase order. Customers must notify Scholastic in writing no less than five (5) business days in advance of any cancellation or rescheduling of training, in-classroom support, or other onsite services. If such notice is not received by Scholastic, customers will be charged (or forfeit prepayment) for cancelled or missed days. Unless otherwise noted, all services must be delivered within 24 months of purchase.

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9-5-12 *Ran*

AGREEMENT

This Agreement (the "Agreement") dated as of September 18, 2012 between Scholastic Inc., a New York corporation located at 557 Broadway, New York, New York 10012 ("Scholastic") and Pasco County Schools, located at 7227 Land O' Lakes Blvd., Land O' Lakes, FL 34638 (the "District") (together, the "parties").

WHEREAS, the District desires to purchase certain technology services as described in the attached Exhibit A (collectively, the "Services"); and

WHEREAS, Scholastic desires to perform the Services, in consideration for the Fees;

NOW THEREFORE, the Parties hereby agree as follows:

1. **Program and Services.** (i) Subject to the payment of the Fees (as defined herein), Scholastic shall provide the services as set forth in Exhibit A (the "Services"). The terms and conditions for product support services are set forth in Exhibit B (incorporated by reference) and shall apply to the Services. The Product Support Services Description applicable to the Services is attached hereto as Exhibit C.

Exhibit B is amended as follows: Section 8 (Indemnity) is amended by adding the words "To the extent permitted by law" at the start of the Section. At the end of the Section, the following is added: "As provided for under common law, and to the extent specifically authorized by Section 768.28, Florida Statutes, each party hereby agrees to indemnify and hold each other harmless from and against all damages of any nature whatsoever which are caused or materially contributed to by the negligent acts of any officer, employee, agent or other representative of such party and which are not caused or materially contributed to by any officer, employee, agent or other representative of the other party."

2. **Fees.** The District agrees to pay for the Services a total purchase price of Fifty Four Thousand, Eight Hundred Ten Dollars (\$54,810.00) (the "Fees"). All invoices shall be paid within sixty (60) days of receipt. If such payments are not made within sixty (60) days, Scholastic may terminate this Agreement upon thirty (30) days prior written notice of such breach, unless such breach is promptly cured.

3. **Term.** The term of this Agreement shall be from September 1, 2012 through August 31, 2013.

4. **Waiver.** (i) The failure of either party at any time to require performance by the other of any provision of this Agreement will in no way affect the full right to require such performance at any time thereafter. Nor will the waiver by either party of a breach of any provision hereof be construed as a waiver of any succeeding breach of that provision.

(ii) Any provision of this Agreement that is invalid or unenforceable in any jurisdiction or under any circumstances will be ineffective to the extent of such invalidity or unenforceability only and without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or enforceability in any jurisdiction or

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circumstance will not invalidate or render unenforceable such provision in any other jurisdiction or circumstance.

5. **Notices.** All notices hereunder will be in writing and will be effective upon delivery, upon deposit in the U.S. Mail if sent by certified or registered mail, return receipt requested, with proper postage affixed, or sent by overnight courier, or by fax with receipt confirming transmission and sent to the address specified below:

If to the District:
Pasco County Schools
7227 Land O' Lakes Blvd.
Land O' Lakes, FL 34638

If to Scholastic:
Scholastic Inc.
568 Broadway
New York, NY 10012
Attention: Beth Polcari

With a copy to:
Scholastic Inc.
557 Broadway
New York, NY 10012
Attention: Executive Vice President and General Counsel

6. **Assignment.** The District shall not assign or transfer this Agreement to any person, firm, corporation, or any other entity, without the prior written consent of Scholastic.

7. **Third Parties.** Nothing in this Agreement, express or implied, is intended or will be construed to confer upon or give to any person, firm, corporation or any other entity other than the parties hereto any remedy or claim under or by reason of this Agreement or any term, covenant or condition hereof, all of which will be for the sole and exclusive benefit of the parties hereto.

8. **Headings and Survival.** The headings of the paragraphs of this Agreement are inserted as a matter of convenience and for reference purposes only, are of no binding effect, and in no respect define, limit or describe the scope of this Agreement or the intent of any paragraph herein. Sections 6-8 shall survive termination or expiration of this Agreement.

9. **Relationship of the Parties.** It is acknowledged and agreed that each party is a separately established entity, and that no party is the partner or legal representative of the other, nor does any party have the authority to bind the others to any legal obligation.

10. **Termination.** This Agreement may be terminated by either party at any time upon breach or alleged breach of any material term or provision of this Agreement by

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the other which is not cured within thirty (30) days after written notice of such breach or alleged breach is given.

11. **Full Agreement.** This Agreement (together with the exhibits attached hereto) constitutes the entire understanding and agreement between the parties concerning the subject matter herein, and supersedes all prior agreements or representations, oral or written.

12. **Governing Law.** This Agreement shall be governed by the laws of the State of Florida without regard for its choice of law principles. The parties agree to submit to the exclusive jurisdiction of the courts in the State of Florida for any disputes or claims arising from or in connection with this Agreement. The governing law for Exhibit B shall also be Florida.

13. **Confidentiality.** Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business plans, employees and students' personal information, clients, technology, and products, including the terms and conditions of this Agreement ("Confidential Information"): Confidential Information will include, but not be limited to, each party's proprietary software and customer, employee, student information. Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by this Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors on a need to know basis), any of the other party's Confidential Information and will take reasonable precautions to protect the confidentiality of such Confidential Information.

"Owner" refers to the party disclosing Proprietary Information hereunder, whether such party is the District School Board of Pasco County or Scholastic and whether such disclosure is directly from Owner or through Owner's employees or agents; and "Recipient" refers to the party receiving any Proprietary Information hereunder. Recipient hereby acknowledges and agrees that the Proprietary Information shall remain the sole and exclusive property of Owner. The disclosure of the Proprietary Information to Recipient does not confer upon Recipient any license, interest or rights of any kind in or to the Proprietary Information, except as provided under this Agreement. Recipient shall protect the Proprietary Information of Owner the same degree of protection and care Recipient uses to protect its own Proprietary Information, but in no event less than reasonable care. Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party's Confidential Information.

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Exceptions: Information will not be deemed Confidential Information hereunder if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secretly or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first written above.

SCHOLASTIC INC.

By: Beth Polcari

Printed Name: Beth Polcari

Title: SVP Business Finance & Operations

PASCO COUNTY SCHOOLS

By: _____

Printed Name: _____

Title: Board Chairperson

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EXHIBIT A
Services Description

READ 180 Basic Product Support includes Phone Support, Email Support, Web Chat Support, Software Maintenance Updates, and a Quarterly Technical eNewsletter.

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EXHIBIT B

Scholastic Inc. Product Support Terms and Conditions (the "Terms and Conditions")

BY ACCEPTING AND USING THE SERVICES (AS DEFINED HEREIN), YOU ARE INDICATING YOUR AGREEMENT TO BE BOUND BY ALL OF THESE SUPPORT TERMS AND CONDITIONS, WHICH GOVERN AND APPLY TO YOUR USE OF PRODUCT SUPPORT SERVICES FOR SCHOLASTIC SOFTWARE AND PRODUCTS (THE "SERVICES") BY THE ENTITY PURCHASING SUCH SERVICES. YOU UNDERSTAND AND AGREE THAT YOU (OR YOUR AGENT) ARE ACTING ON BEHALF OF THE ENTITY IDENTIFIED ON THE PURCHASE ORDER (OR OTHER AGREEMENT) FOR THE SERVICES SUBMITTED TO, AND ACCEPTED BY SCHOLASTIC, TO ACCEPT THESE TERMS AND CONDITIONS. THAT ENTITY SHALL BE CONSIDERED THE "CUSTOMER" AS THAT TERM IS USED HEREIN. YOU HEREBY REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO BIND THE CUSTOMER TO THESE TERMS AND CONDITIONS. IF YOU ARE NOT WILLING OR ABLE TO BIND THE CUSTOMER TO THESE TERMS AND CONDITIONS, YOU ARE NOT AUTHORIZED TO USE OR ACCEPT THESE SERVICES AND SHOULD PROMPTLY CEASE ANY AND ALL USE THEREOF AND RETURN TO SCHOLASTIC THE PRODUCT SUPPORT SERVICES KIT THAT CONTAINS THIS DOCUMENT. TOGETHER WITH ANY OTHER APPLICABLE AGREEMENT EXECUTED BY AUTHORIZED REPRESENTATIVES OF THE PARTIES (REFERRED TO HEREIN, TOGETHER WITH THESE TERMS AND CONDITIONS, AS THE "SERVICES AGREEMENT"), THESE TERMS AND CONDITIONS REPRESENT THE ENTIRE AGREEMENT CONCERNING THE SERVICES BETWEEN THE CUSTOMER AND SCHOLASTIC, AND SUPERSEDE ANY PRIOR PROPOSAL, REPRESENTATION, OR UNDERSTANDING BETWEEN THE PARTIES.

1. These Terms and Conditions apply to Services provided for the following Scholastic software (collectively, the "Software"): READ 180, System 44, ReadAbout, FASTT Math, Scholastic Reading Inventory, Scholastic Reading Counts, Scholastic Phonics Inventory, Wiggle Works, Zip Zoom English, rSkills Tests Software, Scholastic Math Inventory, and Fraction Nation.
2. Services.
 - (a) The Services are described fully in the Product Support Services Description, and may be updated or modified by Scholastic from time to time, at any time, in a manner which does not materially and adversely impact Customer's ability to use the Services. To be eligible for Services, the Software must be (i) in good operating condition and (ii) at either the most current or the immediately preceding revision levels. In the event that any Software does not conform to subsection (ii) of the previous sentence, upon notice by Scholastic, Customer shall have thirty (30) days to bring such Software into conformance, or else Scholastic will have the right to terminate these Terms and Conditions and any Services Agreement applicable thereto.
 - (b) Scholastic does not provide support for hardware or software not supplied or approved by Scholastic, nor for products for which Customer does not allow Scholastic to, or into which Scholastic is unable to, incorporate modifications (collectively, the "Non-qualified Products"). Customer is responsible for removing Non-qualified Products to allow Scholastic to perform the Services. If the Services are made more difficult because of Non-qualified Products, Scholastic may, in its discretion, charge Customer for the extra work at Scholastic's standard rates.
 - (c) Services do not cover any damage or failure caused by: (a) use of non-Scholastic media and supplies or use of items not designated for use with products being serviced; or (b) site conditions that do not conform to Scholastic's site specifications; or (c) fire or water damage, neglect, improper use, electrical disturbances, transportation by Customer, work

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or modification by people other than Scholastic employees or subcontractors, or other causes beyond Scholastic's control.

3. Fees. All fees must be prepaid by Customer at the start of the term for which the Services are being provided.
 - (a) The fees for each renewal term shall be Scholastic's then-current fees for the services. Scholastic shall notify Customer at least sixty (60) days in advance of the expiration of a renewal term of such upcoming expiration. Invoices shall be payable within thirty (30) days from the receipt of Scholastic's invoice.
 - (b) Customer will be charged an eight (8) hour minimum for any site visits not defined by the Premium Support and Installation Service, including but not limited to, customer technology or network issues. Customer will be invoiced for these charges. Each such invoice shall be payable within thirty (30) days from the receipt of Scholastic's invoice.
 - (c) If Customer fails to pay any amount by its due date, Scholastic reserves the right to charge Customer a late fee of the greater of one and one half percent (1.5%) per month or the maximum amount permitted by law, together with Scholastic's expenses and collection costs, including reasonable attorneys' fees, incurred in enforcing these Terms and Conditions. Payments shall be paid in U.S. currency.
 - (d) All fees for are exclusive of all taxes, and Customer agrees to pay all applicable national, state and local sales, use, value-added, and other taxes, customs duties, and similar tariffs and fees based on the Services provided hereunder, other than taxes imposed on Scholastic's net income.
4. Customer Responsibilities.
 - (a) Customer is fully responsible for the security of its proprietary and confidential information and for maintaining procedures external to the products to reconstruct lost or altered files, data, or programs (such as routine backups and basic repairs). Customer acknowledges that Customer has no ownership interest in any diagnostic hardware that may be provided by Scholastic or software in any Scholastic-loaned modem or other remote access device.
5. FERPA. The Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232(g)) and the regulations thereunder (34 CFR Part 99) (collectively, "FERPA") impose obligations and restrictions onto "educational institutions or agencies" (such as Customer), including, without limitation, with respect to the handling and disclosure of personally identifiable information contained in the educational records Customer maintains regarding its students. With respect to any data that may be accessed, obtained, received, extracted, or otherwise used by Scholastic (or which may be disclosed in any manner to Scholastic by or on behalf of Customer), in individualized or aggregate form, in connection with Customer's use of the Services, in whole or in part, pursuant to the Services Agreement and/or these Terms and Conditions, as well as any services provided by Scholastic in connection with the Services, Customer hereby: (1) acknowledges and agrees that Scholastic can rely, is relying, and will continue to rely on Customer's full compliance with the applicable obligations imposed by FERPA, as any such obligations may be amended or modified from time to time; and (2) expressly waives and releases Scholastic from and against any and all claims, actions, damages and liability arising or that may arise in connection with Scholastic's access to, receipt of, or use of such data.
6. Term and Termination. Unless otherwise specified in the Services Agreement, these Terms and Conditions are effective upon activation of the Services and shall continue until terminated in accordance herewith. Customer may terminate these Terms and Conditions at any time by providing Scholastic with at least sixty (60) days advance written notice of Customer's election to so terminate, at which time Scholastic's obligations hereunder shall immediately cease. Scholastic may terminate these Terms and Conditions, upon thirty (30) days advance written notice to Customer (i) in the event of a breach by Customer of any term

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hereof, or (ii) for any reason, at any time. No refund will be due if Customer terminates these Terms and Conditions, or if Scholastic terminates due to Customer's breach hereof.

7. Limited Warranty. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SCHOLASTIC AND ITS AFFILIATES AND LICENSORS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES FOR INFORMATION, DATA, DATA PROCESSING SERVICES, DATA OR CONTENT MAINTENANCE OR STORAGE, IMPROVEMENTS, CUSTOMER SERVICE SUPPORT, UPTIME OR UNINTERRUPTED ACCESS, OR ANY WARRANTY OF ACCURACY, CORRECTNESS, PRECISION, TIMELINESS, THOROUGHNESS, COMPLETENESS, COMPATIBILITY, USE OR APPLICATION, ADEQUACY AND SUITABILITY, AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.
8. Indemnity. Customer will, at its own expense, indemnify, defend and hold harmless Scholastic, its affiliates and licensors, and their respective directors, officers, trustees, employees and agents, from and against any action, damages, suits, claims, liabilities, costs and expenses (including reasonable attorneys' fees) based on a claim arising from or relating to these Terms and Conditions or Customer's use of the Services. Scholastic shall have exclusive right to control such defense. In no event shall Customer settle any such claim, lawsuit, or proceeding in any manner that materially prejudices the indemnified party's rights without the indemnified party's prior written approval.
9. Limitation of Liability. SCHOLASTIC'S CUMULATIVE LIABILITY TO CUSTOMER OR ANY OTHER PARTY FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS SHALL NOT EXCEED THE FEES PAID TO SCHOLASTIC FOR THE USE OF THE SERVICES FOR THE YEAR DURING WHICH SUCH LIABILITY ARISES. IN NO EVENT SHALL SCHOLASTIC, NOR ANY OF ITS SUBSIDIARIES, DIVISIONS, AFFILIATES, AGENTS, REPRESENTATIVES OR LICENSORS BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF SCHOLASTIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER ACKNOWLEDGES THAT SCHOLASTIC HAS SET ITS FEES AND ENTERED INTO THE SERVICES AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.
10. Trademarks. SCHOLASTIC, TOM SNYDER PRODUCTIONS, READ 180, SYSTEM 44, READABOUT, FASTT MATH, SCHOLASTIC READING INVENTORY INTERACTIVE, SRI, SCHOLASTIC READING COUNTS!, SRC, SCHOLASTIC PHONICS INVENTORY, SPI, SCHOLASTIC ACHIEVEMENT MANAGER, WIGGLE WORKS, ZIP ZOOM, RSKILLS TEST SOFTWARE, SCHOLASTIC MATH INVENTORY, FRACTION NATION, and all related logos are trademarks and/or registered trademarks of Scholastic. No right, title, license, or interest to such trademark is granted hereunder, and Customer agrees that no such right, title, license, or interest shall be asserted by Customer with respect to such trademark. Customer agrees that it will not use Scholastic's or its licensors' names or marks or employee names, or adaptations thereof, in any advertising, promotional, or sales literature without Scholastic's or its licensors' prior written consent. Customer shall inform Scholastic promptly in writing of any alleged infringement of Scholastic's or its licensors' rights and of any evidence thereof.
11. Force Majeure. Neither party will be liable to the other for any failure or delay in performance under these Terms and Conditions due to circumstances beyond its reasonable control, including acts of God, acts of war, accident, labor disruption, acts, omissions, and defaults of third parties, and official, governmental, and judicial action not the fault of the party failing or delaying in performance.

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AND APPROVED:

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12. Assignment; Subcontracting. Customer may not assign, transfer, or sublicense, without the prior written consent of Scholastic, its rights, duties, or obligations under these Terms and Conditions, in whole or in part, to any person or entity, and any attempt by Customer to do so shall be void. Customer acknowledges that Scholastic may use subcontractors in its performance of Services.
13. Governing Law. These Terms and Conditions and the Services Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be entirely performed within that state. The exclusive venue for any action relating to these Terms and Conditions shall be the state and federal courts in New York County, New York, and each party expressly consents to the jurisdiction of such courts.
14. Severability. Should any term of these Terms and Conditions be declared void or unenforceable by any court of competent jurisdiction, such declaration shall have no effect on the remaining terms hereof.
15. No Waiver. The failure of either party to enforce any rights granted hereunder or take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

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AND APPROVED:

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EXHIBIT C
Scholastic Education Product Support Services Description
Software

Scholastic will provide product support for READ 180, System 44, ReadAbout, FASTT Math, Scholastic Reading Inventory, Scholastic Reading Counts, Scholastic Phonics Inventory, Wiggle Works, Zip Zoom English and rSkills Tests Software.

Accessing Product Support

Clients may contact Scholastic Product Support in the following ways:

- Phone: 1-800-283-5974 (Monday-Friday, 7 am to 8 pm EST, excluding holidays)
When calling to speak to a representative, the Customer's Scholastic web product account login information will be required to allow support staff to effectively work with the Customer.
- Email: techsupport@scholastic.com
Because details are important in diagnosing a technical issue via email, we recommend using Scholastic's Support Request form, located on the product support web page.

Our goal is to respond to technical voicemails and emails within 24 business hours of receiving them, Monday through Friday, and to emails and voicemails received on the weekend and holidays on the following work day. Should it be necessary to leave a voicemail, the Client must provide a brief description of the problem, and a suggested timeframe when someone will be available to receive a return call from a Scholastic representative.

- Website: www.scholastic.com/education/productsupport
Information on the Support website is available 24-hours a day, 7 days a week. Here Customers will find additional product support resources including:
 - Product system requirements and configuration documentation
 - Product FAQs
 - A product knowledgebase of searchable information
 - Technical Support Links to non-Scholastic hardware and software vendors
 - Web chat
- On-Site Service:
On-Site Service is included at no additional charge for all customers with a Premium Maintenance and Support Plan. When the need arises, a highly trained, experienced Scholastic technician may visit your school to troubleshoot identified software issues that were unable to be resolved over the phone.

Product Support Escalation and Resolution Process

Technical issues will be escalated according to the following guidelines:

- Level 1: Initial reports of technical issues will be handled by a Level 1 technical support representative. If the representative is unable to resolve the issue in approximately 20 minutes they will be elevated to a Level 2 representative.
- Level 2: Level 2 technical support representatives will work for up to two business days to diagnose and resolve issues. If they are unable to do so they will escalate to Level 3.
- Level 3: Once an issue is escalated to Level 3, the team will determine whether an onsite visit is required (available for customers with Premium Maintenance and Support Plans only).



Scholastic uses the following guidelines to respond to reported technical issues, based on severity. Note that these are guidelines and that Scholastic will make a good faith effort to resolve all issues in a timely manner. However, note that some technical issues result in resolution times that may exceed those laid out in the chart below.

Severity Level	Description	Target Response Time	Target Resolution Time
1	Material inability to access software	1 hour or less	Within twenty-four (24) hours
2	Issue that meaningfully affects student/teacher ability to use software	2 hours or less	Within five (5) business days
3	Minor issue with the service	1 business day	Within twenty two (22) business days

CONTRACT REVIEWED
AND APPROVED:
J. W. 9/7/12