



# 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](http://www.pasco.k12.fl.us)

Department of Purchasing  
Kendra Goodman, CPPO, CPPB, Purchasing Agent  
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June 21, 2011

## MEMORANDUM

**TO:** Honorable School Board Members

**FROM:** Kendra Goodman, CPPO, CPPB, Purchasing Agent 

**RE:** Carone Fitness, Inc. – Master Course License Agreement

The attached contract between Carone Fitness, Inc. and of Pasco eSchool is being forwarded to the Board for approval. Carone Fitness, Inc. is an Online Health & PE Curriculum licensed program appropriate for 9-12 grades, that is based on state and national academic standards which provides Health Science, Physical Education, PE Variations and Supplemental Materials. The anticipated expenditure will be \$65.00 per semester enrollment which will be approximately \$10,000 and will be FTE generated funding by successful course completions.

At this time, we respectfully request your approval to enter into the second year of a three-year contract with the above-referenced online company. This contract will commence on July 1, 2011 and expire on June 30, 2012.

Should you have any questions regarding this matter, please contact me at your earliest convenience.

KDG/dam  
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](http://www.pasco.k12.fl.us)

Pasco eSchool

JoAnne Glenn, Assistant Principal

813/ 346-1901 FAX: 813/ 346-1991

E-MAIL: [jglenn@pasco.k12.fl.us](mailto:jglenn@pasco.k12.fl.us)

June 21, 2011

To: Kendra Goodman, Purchasing Agent

From: JoAnne Glenn, Assistant Principal for Pasco eSchool

Subject: Contract for School District Virtual Instruction Program (Carone Fitness)

In accordance with Florida Statute 1002.415, 1002.37 and Senate Bill 1676, beginning with the 2009-2010 school year, each school district shall provide eligible K-12 students within its boundaries the option of participating in a virtual instruction program. The program makes instruction available to students using online and distance learning technology in the nontraditional classroom.

To provide the students with a variety of learning opportunities Pasco eSchool requests approval for the renewal of a contract to continue offering virtual courses with the following provider:

- Carone Fitness, Inc.

The cost, as outlined in the contract by the provider, is \$65 per semester enrollment.

The annual cost of the fees paid to this vendor is projected to be \$5,000. The program will be funded through FTE earned by students enrolled in grades 6-12 by credit completion per half credit.

COMPLETED

7/1/10

Carone Fitness, Inc.  
MASTER COURSE LICENSE AGREEMENT

This Master Course License Agreement (this "Agreement"), is effective as of the 14<sup>th</sup> day of July, 2010 ("Effective Date") and is made by and between Carone Fitness, Inc., with its principal place of business at 4742 W. Emma Mine Dr. Herriman, UT 84096 ("Carone Fitness"), and District School Board of Pasco County, with its principal place of business at 7227 Land o Lakes Blvd. Land o Lakes, FL 34638 ("Licensee").

NOW, THEREFORE, the parties hereto agree as follows:

1. License and Services

1.1 License of Courses. Subject to the terms and conditions of this Agreement, Carone Fitness hereby grants Licensee a non-exclusive, non-transferable, revocable, worldwide license to use, during the Term and any Extension Term of this Agreement, the courses of Carone Fitness listed in Attachment A (collectively, the "Carone Fitness Courses" and individually a "Carone Fitness Course") and periodic updates thereto, solely for the purpose of allowing Licensee and Licensee's instructors, teachers, students, staff and similar personnel to deliver the Carone Fitness Courses as part of Licensee's online and remote-accessed learning services. Licensee agrees to make the Carone Fitness Courses available for the use of its students for the entirety of the Term and any Extension Term of this Agreement. Each student of Licensee to whom Licensee delivers any Carone Fitness Course is referred to herein as an "Authorized User." Any enrollment in any Carone Fitness Course by a student Authorized User is referred to herein as a "User Enrollment." Additionally, Carone Fitness hereby grants Licensee the right to distribute the multimedia elements of Carone Fitness Courses to Authorized Users on a CD/DVD provided by Carone Fitness, only if bandwidth limitations prevent the Authorized User from accessing the multimedia elements online. Further, Carone Fitness agrees to make available to Licensee, without additional charge, any updates to the Carone Fitness Courses, if any, under the terms set forth in Attachment A.

1.2 Course Revisions. With the prior written approval of Carone Fitness, Licensee may make formatting revisions to a Carone Fitness Course for the purpose of integrating such Carone Fitness Course with Licensee's Content Management/Learning Management System platform ("CMS"); provided, however, that Licensee may not alter the content of any Carone Fitness Course, including, but not limited to: (i) the written text and wording; (ii) the order in which such text and wording appears; or (iii) any multimedia files; provided, however, further, that Licensee will not write or develop any derivative works or computer programs based upon any part of the Carone Fitness Courses. Licensee will notify Carone Fitness in writing of any desired formatting revision to any Carone Fitness Course, and Carone Fitness shall have at least ten (10) days to approve such formatting revision. If Licensee desires Carone Fitness to revise the content of any Carone Fitness Course (including, but not limited to, course migration and standards alignment and modifications to multi-media files), Licensee shall request the same in a written request sent to Carone Fitness, and Carone Fitness shall have the option, at its sole discretion, to make such content revisions. If Carone Fitness determines to make and provide such content revisions, the pricing of such content revision services will be separate from, and in addition to, the pricing terms of this Agreement, and the pricing, extent and timing of such content revision services shall be subject to each party's prior agreement. The parties agree that all revisions, modifications, updates, and derivatives of any kind to any Carone Fitness Course pursuant to this Agreement (whether made to the format, content or otherwise, and without regard to the author of such revisions or modifications), and all rights, rights of authorship, copyrights, trademarks and all other intellectual property rights associated with all such revisions, modifications, updates, and derivatives, shall be exclusively owned by Carone Fitness, and Carone Fitness hereby grants the same license to Licensee regarding all such revisions, modifications, and derivatives as is granted to Licensee under Section 1.1 above.

1.3 Installation Support and Teaching Support. Licensee shall provide the expertise necessary to install and integrate Carone Fitness's Courses into Licensee's CMS, and Licensee shall pay for all costs associated therewith. Carone Fitness will provide reasonable technical and curriculum

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related support to Licensee related to the initial, first installation and integration of the Carone Fitness Courses on Licensee's CMS, without additional charge to Licensee. If Licensee requests from Carone Fitness reasonable technical and curriculum related support for additional CMS installations and/or integrations (other than the initial one), Carone Fitness shall provide such additional support, but shall charge additional fees for such additional support. Carone Fitness will assign an account manager to Licensee, at no charge, to serve as a primary in-office contact and oversee Licensee's usage of the Carone Fitness Courses. If requested by Licensee, Carone Fitness will provide teaching assistance and support with respect to its Carone Fitness Courses, in accordance with the terms and conditions set forth on Attachment F.

1.4 No Resell or Other Commercial Purposes. Licensee will not resell or otherwise use any Carone Fitness Course for any commercial or any other purpose, except as otherwise expressly permitted herein. Licensee will not post any Carone Fitness Course on any third party website and will not distribute any Carone Fitness Course to third parties for redistribution.

1.5 Trademarks, Logos and Notices. Licensee will not remove or alter any trademark, logo, trade name, copyright notice, or other proprietary notice of Carone Fitness in or on any Carone Fitness Courses. Carone Fitness grants a non-exclusive, non-transferable, revocable, worldwide license to use, during the Term of this Agreement, the logos and trade names of Carone Fitness solely for the purpose of allowing Licensee and Licensee's instructors, teachers, students, staff and similar personnel to deliver the Carone Fitness Courses as part of Licensee's online and remote-accessed learning services.

1.6 Ownership remains with Carone Fitness. Except for the license rights expressly provided in this Agreement, Carone Fitness retains ownership of, and all right, title and interest in and to: (a) the Carone Fitness Courses; (b) any Carone Fitness logo or trade name; (c) any trademark, trade name, patent, copyright, technology, trade secret or know-how affixed to, incorporated in or relating to the Carone Fitness Courses; and (d) any Carone Fitness created or owned patent, copyright, technology, trade secret or know-how affixed to, incorporated into the Carone Fitness Courses. Licensee is not acquiring any right, title or interest of any nature whatsoever in the Carone Fitness Courses or any Carone Fitness logo or trade name, except the license rights expressly provided in this Agreement. Licensee will use good faith efforts to cooperate with Carone Fitness in the protection of Carone Fitness's intellectual property rights, at Carone Fitness's reasonable request. Upon the expiration or termination of this Agreement, Licensee shall return to Carone Fitness all of Carone Fitness's proprietary information in Licensee's possession, including, but not limited to, all copies and code of the Carone Fitness Courses.

## 2. Payment

### 2.1 Pricing, Payment Schedule and Terms

(a) The license fees payable to Carone Fitness for User Enrollments in Carone Fitness Courses, and the terms of invoicing, are set forth in Attachment B. Unless otherwise set forth in Attachment B, each User Enrollment enrolled at least fourteen (14) days in standard sixteen (16) week Carone Fitness Course is to be included in calculation of the license fees, and each User Enrollment enrolled at least seven (7) days in a summer or credit-recovery eight (8) week Carone Fitness Course is to be included in calculation of the license fees. No credits or refunds of license fees will be given to Licensee for any cancellation or withdrawal for any reason of a User Enrollment after the fourteen (14) day or seven (7) day grace period as specified above.

(b) Payment of all Carone Fitness's invoices will be due and payable to Carone Fitness within thirty (30) days after the date of the invoice, except that any prepayments that may be required by Attachment B are due and payable to Carone Fitness before the start of a semester. If any portion of any amount payable to Carone Fitness under this Agreement is not paid when due, Licensee shall owe to Carone Fitness, in addition to such past due amount, the following: (i) a one-time late payment penalty in an amount equal to five percent of such past due amount (the "Late Payment Penalty"); and (ii) interest on such past due amount, until paid (the "Late Payment Interest"), at the annual rate of twelve percent with such interest compounding monthly.

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AND APPROVED  
Katy 6/25/10

2.2 Additional Learning Materials. The Carone Fitness Courses may require the student to have additional learning materials and equipment that are not provided under this Agreement. Licensee and/or its Authorized Users will be required to obtain such additional learning materials and equipment from a third-party.

2.3 User Enrollment Data; CMS Access. Licensee will provide Carone Fitness with enrollment census reports containing the Licensee's number of student Authorized Users utilizing Carone Fitness Courses on a quarterly basis. Carone Fitness may request additional enrollment census reports from Licensee. Carone Fitness shall treat such reports as Confidential Information (as defined in Section 6 below). Licensee will allow Carone Fitness reasonable access to Licensee's registration records relating to enrollments in Carone Fitness Courses to allow Carone Fitness to verify the number of User Enrollments. Further, Licensee will allow Carone Fitness reasonable access to audit Carone Fitness Courses on Licensee's CMS to allow Carone Fitness to verify User Enrollments and compliance with this Agreement.

3. Publicity. Any press releases related to Carone Fitness Courses or this Agreement, whether individual or joint, and the release date thereof, must be reviewed and approved by both parties before publication.

4. Privacy Policy. Carone Fitness and Licensee have the right to use for legitimate INTERNAL business purposes all data and information collected in connection with this Agreement. In using such data and information, Carone Fitness will not disclose the identity of individual Authorized Users or Licensee without receiving prior written permission from Licensee. Carone Fitness's use of such data and information is subject to the terms of Carone Fitness's privacy policy in effect during the term of this Agreement.

5. Licensee's Obligations.

5.1 System Requirements. Carone Fitness will assist with integration Carone Fitness's Courses to Licensee's CMS as set forth in Section 1.3 above. Licensee shall be responsible for insuring that Authorized Users have (a) a suitable Internet connection, (b) access to a computer that meets the minimum hardware and software requirements specified by Carone Fitness ("System Requirements") set forth in Attachment C, and (c) personal email accounts. Licensee acknowledges and agrees that Carone Fitness is not able to, and does not, provide support to Authorized Users with respect to their Internet connection, computer hardware, computer software, or personal email accounts.

5.2 Passwords. Licensee and/or Authorized Users will use passwords to access the Carone Fitness Courses. Licensee agrees to comply with Carone Fitness's policies and procedures, relating to the issuance, protection and administration of such passwords. Licensee will ensure that only Licensee and/or Licensee's Authorized Users shall have access to the Carone Fitness Courses. Unless Carone Fitness provides prior written consent, Licensee shall not allow anyone other than an Authorized User to access the Carone Fitness Courses.

5.3 Parental Consent. If an Authorized User is a minor, Licensee will obtain a participation consent and release agreement executed by the parent or other legal guardian of each such minor Authorized User, granting the parent's permission for such minor Authorized User to access and use the Carone Fitness Courses, and acknowledging the risks of fitness participation in Carone Fitness Courses and assuming all responsibility for such, and releasing Carone Fitness from all liability related to such participation. Such participation consent and release agreement shall be worded in the same manner as paragraph 1 of the Terms of Use attached hereto as Attachment D.

5.4 User Requirements; Indemnification. Licensee will take all reasonable and necessary actions to ensure that all Authorized Users of the Carone Fitness Courses agree in writing (including, but not limited to, through the Licensee's CMS) to be bound by and to comply with Carone Fitness's terms of use ("Terms of Use") set forth in Attachment D, if any, and Carone Fitness's code of conduct ("Code of

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Katy 6/25/10

**Conduct**) set forth in Attachment E. If any Licensee hereby releases Carone Fitness and its owners and agents (the "Releasees"), and agrees to defend, indemnify and hold the harmless the Releasees, from and against any and all claims, losses, damages, costs, liabilities and expenses of whatever kind or character, on account of any actual or alleged loss, injury or damage (including, but not limited to, any loss, injury or damage arising from the Releasee's own negligence) to any person or to any property arising out of or in connection with any Authorized User's participation in the Carone Fitness Courses or any Authorized User's failure to comply with the Terms of Use or the Code of Conduct. Carone Fitness reserves the right to suspend or discontinue an Authorized User from accessing the Carone Fitness Courses at any time if the Authorized User violates the Terms of Use or Code of Conduct. Licensee agrees to work in good faith with Carone Fitness to ensure that Authorized Users comply with the Terms of Use and Code of Conduct, and Licensee will notify Carone Fitness of any activity by its Authorized Users in material violation of the Terms of Use or Code of Conduct.

**6. Confidentiality.** Each party agrees that, during the term of this Agreement and for two (2) years thereafter, it shall not disclose to any third party the terms or conditions of this Agreement or any Confidential Information of the other party, except as expressly authorized herein or as required by law. The term "Confidential Information" shall mean all non-public information that either party designates as being confidential, or which, under the circumstances of disclosure ought to be treated as confidential, including, without limitation, information relating to unreleased Carone Fitness Courses, and the name, birth date and other personal data of Authorized Users and any information that could reasonably lead someone to discover such identity. Notwithstanding the foregoing, "Confidential Information" shall not include information that was known to the receiving party prior to the disclosing party's disclosure to the receiving party, or information that becomes publicly available through no fault of the receiving party, provided, however, that Authorized User data may never be disclosed.

*The District School Board of Pasco County operates under the Sunshine Law. Katz*

**7. Representations and Warranties; Disclaimer of Warranties.**

**7.1 Representations and Warranties.** Each party hereby represents and warrants to the other party that: (a) it has the power and authority to enter into this Agreement and is permitted by applicable law and regulations to enter into this Agreement; (b) it will comply with all applicable laws in the performance of its obligations under this Agreement, in particular with any federal and state rules regarding student records, privacy, and the commercial use of student information, including but not limited to the Family Educational Rights and Privacy Act; and (c) it is not subject to any other agreement that would conflict with its ability to perform its obligations under this Agreement. Licensee represents and warrants to Carone Fitness that Licensee has had an adequate opportunity, prior to the execution of this Agreement, to review the Carone Fitness Courses and make adequate inquiries and informed decisions regarding the Carone Fitness Courses.

**7.2 Disclaimer.** EXCEPT AS OTHERWISE SET FORTH IN SECTION 7.1 ABOVE, CARONE FITNESS DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, AND DUTIES OF ANY KIND (IF ANY), EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. CARONE FITNESS DOES NOT REPRESENT OR WARRANT THAT THE CARONE FITNESS COURSES WILL MEET LICENSEE'S BUSINESS REQUIREMENTS, OR THAT THE OPERATION OF THE CARONE FITNESS COURSES WILL BE ERROR FREE OR UNINTERRUPTED, OR THAT ALL PROGRAMMING ERRORS CAN BE CORRECTED. FURTHER, CARONE FITNESS GIVES NO WARRANTY OF COPYRIGHT OR OTHER NON-INFRINGEMENT.

**8. Indemnity.**

**8.1 Duty to Indemnify.** As provided for under common law, and to the extent specifically authorized by Section 768.28, Florida Statutes, each of the parties to this Agreement hereby agrees to indemnify and hold the other party hereto 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, and agent or other representative of the indemnifying party and which are not caused or materially contributed to by any officer, employee, agent, or other representative of the indemnified party.

ACCEPTED AND APPROVED  
*Katz 6/25/10*

8.2 Process. If an action is brought for which indemnity is sought under this Section 8.1, the party seeking indemnity will send written notice to the other party specifying the nature of the action and the total damages or other relief sought. The party seeking indemnity will reasonably cooperate with the indemnifying party at the indemnifying party's expense in connection with the defense of any such action. The party seeking indemnity reserves the right to employ separate counsel and participate in the defense at its expense.

9. Limitation of Liability and Exclusion of Certain Damages

9.1 Exclusion of Certain Damages. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OR CAUSE OF ACTION OR THE ALLEGED BASIS OF THE CLAIM, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.2 Limitation on Liability. IN NO EVENT SHALL CARONE FITNESS' TOTAL AGGREGATE LIABILITY TO LICENSEE FOR ANY CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, IN CONNECTION WITH INDEMNIFICATION OBLIGATIONS IN SECTION 8.1 ABOVE), REGARDLESS OF THE FORM OR CAUSE OF ACTION OR THE ALLEGED BASIS OF THE CLAIM, EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY RECEIVED BY CARONE FITNESS UNDER THIS AGREEMENT. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY REGARDLESS OF THE FORM OR THE CAUSE OF ACTION OR ALLEGED BASIS OF THE CLAIM, AND EVEN IF THE REMEDIES OTHERWISE PROVIDED UNDER THIS AGREEMENT, AT LAW OR IN EQUITY, FAIL OF THEIR ESSENTIAL PURPOSE.

10. Term and Termination

10.1 Term. This Agreement shall commence on the Effective Date and continue for a three (3) year term, unless earlier terminated as provided in this Section 10 (the "Term"). At the end of the Initial Term, this Agreement shall be automatically extended for successive one year terms (each such one year term being referred to herein as an "Extension Term"), unless written notice of a party's intention to terminate is given the other party thirty (30) days prior to expiration of the initial Term or any Extension Term.

*renewable annually by mutual agreement*

10.2 Termination Without Cause. In addition to the rights to terminate provided in Section 10.1, either party may terminate this Agreement without cause or reason, at any time, effective six (6) months after written notice of termination is received by the other party.

10.3 Termination For Cause. In addition to the rights to terminate provided in Sections 10.1 and 10.2, either party may suspend performance or terminate this Agreement immediately upon written notice to the other party, if (i) the other party is perceived to be in material breach of any provision of this Agreement and (ii) the other party has failed to cure that breach within thirty (30) days after receipt of written notice thereof or has failed to take reasonable steps to cure such breach if it cannot be cured within such thirty (30) day period. Additionally and without limiting the foregoing, Carone Fitness may suspend performance or terminate this Agreement immediately upon written notice to Licensee, if Licensee is fifteen (15) days overdue on any payment due to Carone Fitness under this Agreement.

10.4 Effect of Expiration/Termination. Upon the expiration or termination of this Agreement for any reason, all access to the Carone Fitness Courses will promptly cease and Licensee will pay all pro-rated amounts due to Carone Fitness up to the date of expiration/termination. The following Sections will survive the expiration or termination of this Agreement: 4, 6, 7, 8, 9 and 11.

11. Miscellaneous

CONTRACT REVIEWED AND APPROVED  
*Katy* 6/25/10

11.1 Relationship of parties. Carone Fitness and Licensee are independent contractors with respect to one another, and except as otherwise provided for herein, this Agreement will not be interpreted to create any agency, joint venture, employment or partnership relationship.

11.2 Force Majeure. For a reasonable time period, each party will be excused from delay or failure in performance due to causes beyond such party's reasonable control including without limitation, acts of God, government action, regulations, riots, wars, floods, and earthquakes.

11.3 Notices. Any notices given under this Agreement shall be delivered either by messenger or overnight delivery service, or sent by facsimile with a confirmation sent via certified or registered mail, postage prepaid and return receipt requested, and shall be deemed to have been given on the day when actually received by the party to whom the notice is given.

Carone Fitness Contact Person(s):

Katie Carone, President of Carone Fitness, Inc.  
4742 W. Emma Mine Dr.  
Herriman, UT 84096  
Phone: (801) 683-7056  
Fax: (801) 606-2778  
Email: katie@caronefitness.com

Licensee Contact Person(s):

Name: John Glenn  
Address: 3323 Little Road  
New Port Rynow, FL 34855  
Phone: 913-346-1902  
Fax: 913-346-1991

11.4 Assignment. Neither party will assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party. Subject to the previous sentence, this Agreement will be binding upon, enforceable by, and inure to the benefit of the parties and their respective successors and assignees.

11.5 Waiver. No waiver of any provision of this Agreement will be effective unless it is in a signed writing, and no such waiver will constitute a waiver of any other provision(s) or of the same provision on another occasion.

11.6 Governing Law; Forum for Resolution of Disputes. This Agreement will be governed by and construed under the laws of the State of Florida (except to the extent federal law is controlling on the subject matter), without application of its conflicts or choice of law rules. All disputes brought by either party arising under this Agreement will be brought in a federal or state court of competent jurisdiction in Salt Lake County, Utah, as permitted by law, and each party hereby submits to the exclusive jurisdiction and venue in such courts and waives and waives any objection it may now or hereafter have to venue or to convenience of forum.

*Passer*  
*why*

11.7 Attorney's Fees. In any action to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party will be entitled to recover its costs, including attorneys' fees, through all levels, including appeal.

*responsibility*  
*why*

11.8 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

INITIALS OF EACH  
AND APPROVED

*KJ* *6/25/10*



11.9 No Third Party Beneficiaries. This Agreement is for the benefit of, and shall be enforceable by, the parties only. This Agreement is not intended to confer any right or benefit on any third party. No action may be commenced or prosecuted against a party by any third party claiming as a third party beneficiary of this Agreement.

11.10 Entire Agreement. This Agreement (along with its attachments and exhibits) constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements, oral or written. Changes, modifications or waivers to this Agreement (including any of its attachments and exhibits) must be in writing and signed by both parties; provided, however, that Carone Fitness may unilaterally make modifications to the Terms of Use and Code of Conduct referred to in Attachments D and E, and Licensee agrees to comply with such modifications provided that (1) such modifications that affect any Authorized User are communicated to Licensee a reasonable amount of time before their effective date; and (2) such modifications are reasonable in scope and content. *Attachments A-G incorporated herein kdc*

IN WITNESS WHEREOF, Licensee and Carone Fitness hereby set their hand, effective as of the Effective Date.

Carone Fitness, Inc.

Licensee: \_\_\_\_\_

By: *Katie Carone*  
Katie Carone, President

By: *JoAnne Green*  
Print Name: JoAnne Green  
Title: Assistant Principal

ATTACHMENT A

Carone Fitness Courses Licensed to Licensee

- 1. Fitness Fundamentals I
- 2. Fitness Fundamentals II
- 3. Walking Fitness
- 4. Running
- 5. Strength Training
- 6. Flexibility Training
- 7. Intro to Group Sports
- 8. Intro to Individual Sports
- 9. Health & Personal Wellness
- 10. Life Skills
- 11. Nutrition
- 12. Exercise Science
- 13. Exercise Library

Additional Terms:

- 1. Included in the foregoing Carone Fitness Courses are all applicable notes, transcripts, exercises and animations associated with each title to be housed and delivered on the Licensee learning management system.
- 2. The length of any Carone Fitness Course offered by Licensee cannot exceed the period of (5) five months. Any Authorized User who wishes to be enrolled for longer than the specified (5) five month period must re-enroll in a Carone Fitness course.
- 3. Carone Fitness will provide updated content to the above licensed courses, if any, upon request on an annual basis.
- 4. If requested, Carone Fitness will deliver to Licensee complimentary CD Rom(s) or DVDs containing the multimedia elements of the licensed Carone Fitness Courses, for distribution by Licensee in accordance with the terms set forth in Section 1.1 of the Master License Agreement.
- 5. Additional Carone Fitness courses may be licensed by Licensee as agreed upon by both parties. This contract is applicable to any additional Carone Fitness courses licensed by Licensee.

CONFIRMED  
AND APPROVED

*Katy* 6/25/10

**ATTACHMENT B**

**Content License Fees and Invoicing**

License Fees:

1. Licensee will pay to Carone Fitness fees, per User Enrollment, as follows:

**Content-Only Licensing Fees Per Student Per Course Per Semester**

# of Students Per Semester	Discount from Original Pricing	Price	Additional Pre-pay Discount	Pre-pay Price
1-499	16%	\$75.00	5%	\$86.50
500-999	20%	\$72.00	5%	\$68.40
1000+	30%	\$63.00	5%	\$59.85

- Teaching services are available upon advanced 30 day request for an additional \$100.00 per student per course teaching fee.
2. The above fees are based on the number of User Enrollments enrolled in any Carone Fitness courses for fourteen (14) days or more throughout one calendar semester. If licensee has no official semester dates in place, the following dates will apply per semester:
- Fall: September 1- Jan 15
  - Spring: Jan 16- May 31
  - Summer: June 1- August 31
3. Licensee may pre-purchase bulk semester User Enrollments with an additional discount, as listed above. Pre-purchased User Enrollments can be used by Licensee at any time within twelve (12) months after the purchase date. Pre-purchased User Enrollments are NON-REFUNDABLE in the event of the termination or expiration, for any reason, of the Master License Agreement.
4. Any User Enrollments that are in addition to the pre-purchased amount will be billed separately according to the pricing schedule above, unless another pre-purchase is made.
5. In the event that the Master License Agreement is extended beyond the Initial Term, Carone Fitness shall be entitled to unilaterally increase the Fees set forth in this Attachment B as often as annually, upon written notice to Licensee of an increase.

Reporting & Invoicing

1. Licensee will provide Carone Fitness with quarterly reports of User Enrollment and access to all User Enrollment data, as set forth in Section 2.3 of the Master License Agreement. In addition to Section 2.3, Carone Fitness may request additional User Enrollment reports and data at any time, and Licensee will deliver any requested reports and data to be delivered to Carone Fitness within ten (10) working days of the request.
2. Invoicing and payment procedures are as follows:
- Pre-paid enrollments must be purchased prior to the start of a semester or school year for which the enrollments will be used.
  - *Mid-semester:* A mid-semester invoice may be issued for students who have been enrolled in a Carone Fitness course for fourteen (14) days or more.
  - *End of semester:* An end of semester invoice will be issued for students who have been enrolled in a Carone Fitness course for fourteen (14) days or more since the previous

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 katie carone

- invoice. If the total number of enrollments for the semester has increased by the end of the semester to change the payment bracket as indicated above, a credit will be given
- User enrollments that exceed the period of five (5) months in any Carone Fitness course will be counted as an additional enrollment.

3. Payment of all Carone Fitness's invoices will be due to Carone Fitness within thirty (30) days after the date of the invoice.

ACCEPTED, REVIEWED  
AND APPROVED  
*Katy Wloski*

ATTACHMENT C

System and Software Requirements

1. To view multimedia elements of Carone Fitness Courses, users need the following free downloadable software:
  - \* Java Player
  - \* Flash Player
  - \* Quicktime Player
  - \* Adobe Reader

SEARCHED, INDEXED,  
SERIALIZED, FILED,  
AND APPROVED  
*Katy K. Bishop*

ATTACHMENT D

Terms of Use  
Carone Fitness Courses

The following waiver must be signed by any Authorized User over the age of 18 or by the parents of any Authorized User who are under the age of 18. According to Section 5.3 of the Master License Agreement, Licensee will obtain participant or parental consent as indicated.

1. I understand that my participation, or the participation of my child, in Carone Fitness Courses involves risks of serious injury or death, and for myself, and for my heirs, legal representatives, and successors in interest, I fully assume all of the risks of such participation, including, but not limited to, the following: dangers arising from equipment failure and inadequate safety equipment, health risks of extreme or rigorous physical activity, pre-existing medical conditions, and risks arising from the negligence of Carone Fitness, Inc. and the Licensees of the Carone Fitness Courses, and their respective principals, instructors, employees, and heirs (the "Releasees"). Further, for myself, and for my heirs, legal representatives, and successors in interest, I hereby release the Releasees, and agree to defend, indemnify and hold harmless the Releasees, from and against any and all claims, losses, damages, costs, liabilities and expenses of whatever kind or character, on account of any actual or alleged loss, injury or damage (including, but not limited to, any loss, injury or damage arising from the Releasee's own negligence) to any person or to any property arising out of or in connection with my participation in Carone Fitness Courses.

2. Carone Fitness grants you, the participant in Carone Fitness Courses, the right to use the Carone Fitness Courses solely as necessary for the purpose of participating in such Courses through your educational institution. Your participation in such Courses is made possible only by license agreement between Carone Fitness and your educational institution. You are not acquiring any right, title or interest of any nature whatsoever in the Carone Fitness Courses, or any part thereof, or any Carone Fitness logo or trade name by your participation in such Courses. Further, you hereby agree that you will not use or copy any part of the Carone Fitness Courses for any reason whatsoever, except as necessary to participate in such Courses through your educational institution. All Carone Fitness Courses are protected by copyright and other laws.

APPROVED  
Katie Carone  
6/25/10

ATTACHMENT E

Code of Conduct

NONE

REVIEWED  
AND APPROVED  
*Katy W/25/10*

ATTACHMENT F

Teaching Services

1. Carone Fitness agrees to provide teaching services for Carone Fitness Courses, if requested by Licensee. Teaching service fees are outlined on Attachment B.
2. Licensee agrees to provide notice to Carone Fitness at least thirty (30) days in advance if teaching services are requested.
3. Licensee agrees to provide Carone Fitness Instructors with appropriate training of the Licensee CMS.
4. Licensee agrees to provide Carone Fitness Instructors with appropriate Student/User information within three (3) days of student enrollment in Carone Fitness Courses. Required user information includes first and last name, email address, phone number, and supervisor name and contact information.

ALL AGREES  
Katy Blasio



**Agreement:**

This agreement and the documents referenced herein contain the final, complete, and exclusive expression of the understanding of the parties hereto with respect to the transactions contemplated by this Agreement and supersedes any prior or contemporaneous agreement or representation, oral or written, by or between the parties related to the subject matter hereof. This contract may be modified only by written instrument executed by both parties. This contract is governed by the laws of Florida. Venue for this contract is Pasco County, Florida.

Carone Fitness, Incorporated

District of School Board of Pasco County

By: Katie Carone  
Authorized Signature

By: Kendra Goodman  
Authorized Signature

Name: Katie Carone  
Title: CEO  
Date: 6-24-2010

Name: Kendra Goodman  
Title: Purchasing Agent  
Date: 6/25/10

JoAnnell Seem 6/30/10  
Administrator Date

2 Attachment "G"

**Attachment G**

This Attachment G is in connection with, and applicable to, Carone Fitness, Incorporated, and the District School Board of Pasco County (DSBPC).

**Confidential Information:**

Confidential Information: 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 vendor 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.

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.

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CONTRACT REVIEWED  
AND APPROVED  
*[Signature]*