



# District School Board of Pasco County

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

Heather Fiorentino, Superintendent

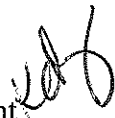
[www.pasco.k12.fl.us](http://www.pasco.k12.fl.us)

Department of Purchasing  
Kendra Goodman, CPPO, CPPB, Purchasing Agent  
813/794-2221 Fax: 813/794-2111  
727/774-2221 TDD: 813/794-2484  
352/524-2221 e-mail: [kgoodman@pasco.k12.fl.us](mailto:kgoodman@pasco.k12.fl.us)

September 6, 2011

## MEMORANDUM

**TO:** Honorable School Board Members

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

**RE:** Contract for School District Virtual Instruction Program  
Accelerate Education / FYI

As you recall, in accordance with Florida Statutes 1002.37 and 1002.415 and Senate Bill 1676, beginning with the 2009-2010 school year, each school district must provide eligible K-12 students with the option of participation in a virtual instruction program. The program makes instruction available to students using online and distance learning technology in the nontraditional classroom.

At this time, we are respectfully requesting your approval of the attached contract with Accelerate Education / FYI. The Board's attorney from McClain, Alfonzo, and Meeker & Dunn P.A. approved the contracts for Accelerate Education (parent company) and FYI via email on July 29, 2011, and July 25, 2011 respectively. See the attached memo from Ms. JoAnne Glenn, Assistant Principal for Pasco eSchool, for detailed information regarding this request.

The district is permitted to negotiate for services of this nature under Florida Administrative Code 6A-1.012(11) (a). The annual costs of the fees paid to this vendor is projected to be \$5000 and will be funded through FTE earned by students enrolled in grades 6-12 by credit completion per half credit.

KDG/mw  
Attachments

District Wide Accreditation • Southern Association of Colleges and Schools

Date/Time: August 30, 2011 10:48:00



## 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)

August 16, 2011

To: Kendra Goodman, Purchasing Agent

From: JoAnne Glenn, Assistant Principal for Pasco eSchool

Subject: Contract for School District Virtual Instruction Program (Accelerate Education/FYI)

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 and to support our schools as they work to comply with class-size requirement, Pasco eSchool requests approval for a contract to begin offering virtual courses with the following provider:

- Accelerate Education/FYI

The cost, as outlined in the contract by the provider, is determined by the number of student enrollments and by the course selection. Pricing is also contingent upon whether local teachers deliver the course or whether the vendor's teachers instruct students.

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.

**Master Services and License Agreement  
Between  
Pasco eSchool  
and  
Accelerate Education**

Pasco eSchool ("Customer") and Accelerate Education Incorporated, a Nevada corporation ("Accelerate") enter into this Master Services and License Agreement (the "Agreement") as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**1) Products and Services**

Subject to the terms and conditions set forth in this Agreement, Accelerate agrees to provide the products and perform the services described in the attached Exhibits. Accelerate reserves the right, from time to time, to add, change or discontinue any of its products or services.

**2) Title to Licensed Materials**

Customer acknowledges and agrees that Accelerate shall retain all right, title and interest in and to the all products licensed to Customer hereunder, including without limitation all content, curriculum, delivery systems, documentation, including releases and code bases, which Accelerate may from time to time provide to Customer hereunder (the "Licensed Materials") and which Customer and Accelerate agree shall be added to Exhibit A. Nothing herein transfers or conveys to Customer any ownership right, title or interest in or to the Licensed Materials or to any copy thereof or any Accelerate Intellectual Property therein.

**"Accelerate Intellectual Property"** includes everything which Accelerate makes, conceives, develops, discovers, reduces to practice or fixes in a tangible medium of expression, alone or with others, pursuant to the terms of this Agreement, including without limitation any courses created by Accelerate, and all intellectual property that Accelerate has or will develop, including developments, concepts, ideas, procedures, and original works of authorship, including but not limited to interim work product, outlines, modifications and derivative works, and all similar matters, whether or not copyrightable, and also includes all records and expressions of those matters.


**3) Grant of License**

License Terms. Accelerate hereby grants Customer a non-transferable, non-exclusive, royalty-free license to access and use the Licensed Materials listed in Exhibit A during the term of this Agreement. All such access and use of the Licensed Materials shall be subject to the terms and conditions hereof.

Customer shall use its best efforts to prevent any improper use of the Licensed Materials or any violation of Accelerate's rights in the Accelerate Intellectual Property, and shall, under no circumstances, sell, lease, assign, sublicense or otherwise transfer the Licensed Materials except as provided herein. Customer shall not remove any proprietary, copyright, patent, trademark, design right, trade secret, or any other proprietary rights legends from the Licensed Materials. Customer agrees not to disassemble, decompile, translate into human readable form or into another computer language, reconstruct or decrypt, or reverse engineer, all or any part of the Licensed Materials. Further, Customer shall not write or develop any derivative works or computer programs based upon any part of the Licensed Materials.

**4) Term and Termination**

Initial Term. The initial term of this Agreement ("Initial Term") shall commence on the date of the Agreement and shall continue for a one (1) year period. At the end of the Initial Term, this Agreement will renew for succeeding 12-month periods (each, a "Renewal Term") by mutual agreement of the parties.

CONTRACT REVIEWED AND APPROVED:  8/23/11
---

Termination. Either party may terminate this Agreement on written notice if the other party materially breaches any term or condition of this Agreement and fails to cure such breach within ten (10) days in after the date of written notice to cure.

**5) Fees, Invoices; Late Fees; Interest**

Current pricing for the Licensed Materials is set forth in the Exhibit B attached hereto.

Accelerate shall invoice Customer for Licensed Materials in Exhibit A. Customer shall pay all invoices within thirty (30) days of the date of the invoice. In the event that any invoice for fees is not paid in full within 30 days of the invoice date, Customer shall pay an additional late payment fee equal to 2.0% of the unpaid amount, plus simple interest on the balance owing at the rate of 18% per annum beginning 60 days after the date of the invoice as well as any costs incurred by Accelerate in collecting the unpaid amount.

**6) Accelerate Representations and Warranties**

Delivery. Accelerate represents and warrants that (a) it has full power and authority to enter into, and to perform its obligations under, this Agreement; (b) it has all registrations, licenses and approvals necessary to conduct its business and to enter into and perform its obligations under this Agreement.

Functionality. Accelerate represents and warrants that it will use its best efforts to make the Licensed Materials function in a manner satisfactory to Customer and as outlined in this Agreement, and according to published documentation; however, the parties acknowledge that the technology employed has limitations beyond the control of Accelerate.

Intellectual Property. Accelerate represents and warrants that neither Accelerate, in connection with performing the Services, nor the Licensed Materials will knowingly infringe any patent, copyright, trademark or trade secret or other proprietary right of any person.

**7) Customer Warranties and Representations**

Customer represents and warrants that (a) it has full power and authority to enter into, and to perform its obligations under, this Agreement; (b) it has all registrations, licenses and approvals necessary to conduct its business and to enter into and perform its obligations under this Agreement. Customer will not knowingly infringe any patent, copyright, trademark or trade secret or other proprietary right of any person. Customer further represents and warrants that it shall have in force valid agreements with any of its employees, subcontractors or other third parties who may have access to the Licensed Materials sufficient to ensure such parties' compliance with the terms of this Agreement regarding the use and protection of the Licensed Materials and Accelerate Intellectual Property.

**8) Limited Liability**

ASIDE FROM THE WARRANTIES PROVIDED HEREIN, THE LICENSED MATERIALS ARE PROVIDED "AS IS," WITHOUT WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, QUALITY, PERFORMANCE OR FITNESS FOR A PARTICULAR PURPOSE. ACCELERATE'S MAXIMUM LIABILITY UNDER THIS AGREEMENT SHALL BE FOR DIRECT DAMAGES AND SHALL BE LIMITED TO THE REFUND OF ALL FEES PAID BY CUSTOMER UNDER THIS AGREEMENT. Accelerate WILL NOT BE LIABLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY, LOSS OF USE, INTERRUPTION OF BUSINESS, LOSS OF PROFITS, OR OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

**9) FERPA**

CONTRACT REVIEWED  
AND APPROVED:  
*Wey* 8/23/11

Accelerate warrants to Customer that it will not make available or distribute any student information in violation of the Family Educational Rights and Privacy Act ("The Buckley Amendment" or "FERPA").

**10) Confidentiality**

Each party agrees that during the existence of this Agreement and for two (2) years thereafter it will hold in strictest confidence, and will not use or disclose to any third party, any Confidential Information of the other party. The term "Confidential Information" shall mean all non-public information, whether business or technical in nature that the other party designates as being confidential, or which under the circumstances of disclosure ought to be treated as confidential. If any party has any questions as to what comprises Confidential Information of the other party, it agrees to consult with such other party prior to any disclosure. Confidential Information shall not include information that was known to the receiving party prior to disclosure, information that is independently developed by the receiving party who had no access to the other party's Confidential Information, or information that becomes publicly available through no fault of the receiving party. The restrictions on disclosure imposed by this Section shall not apply to information that is required by law or order of a court, administrative agency or other governmental body to be disclosed by the receiving party.

**11) Notice**

All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon receipt.

Notice to Customer. Unless hereinafter changed by written notice, any notice to Accelerate or Customer, other than invoices and notice with respect to invoices, shall be delivered or mailed to:

Pasco eSchool	Accelerate Education
2323 Little Road	PO Box 99790
New Port Richey, FL 34665	Seattle, WA 98139
Tel: 813-346-1900	Tel: 866-705-5575
Fax: 813-346-1991	Fax: 866-716-0880

**12) Force Majeure**

Neither party shall be considered to be in default as a result of its delay or failure to perform its obligations herein when such delay or failure arises out of causes beyond the reasonable control of the party.

**13) THIS SECTION INTENTIONALLY LEFT BLANK**

**14) THIS SECTION INTENTIONALLY LEFT BLANK**

**15) Binding Effect**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and affiliates.

**16) Entire Agreement; Assignment**

This Agreement (including the Exhibits) sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter. Neither party may assign this Agreement, in whole or in part, without the other party's written consent; provided, however, that either party may assign this Agreement without such consent in connection with any merger, consolidation, any sale of all or substantially all of such party's assets.

CONTRACT REVIEWED  
AND APPROVED  
KJ 8/23/11


**17) Severability**

If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired; provided, however, that the parties will attempt to agree upon a valid and enforceable provision which shall be a reasonable substitute for each invalid provision or unenforceable provision in light of the tenor of this Agreement and, upon so agreeing, shall incorporate such substitute provision into this Agreement.


IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first above written.

Accelerate Education

Pasco eSchool

  
\_\_\_\_\_  
Michael Axtman, President/CEO

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CONTRACT REVIEWED  
AND APPROVED:  
 8/23/11

**Exhibit A  
Licensed Materials**

**Career Planning\*  
Anatomy & Physiology\* #  
Botany & Zoology\* #**

\* Single Semester Course  
# Must include Content, Hosting and Support  
& eDynamic Courses

CONTRACT REVIEWED  
AND APPROVED:  
*Koly* 8/23/11

**Exhibit B  
Pricing and Payment Schedule**

**Refunds.** Accelerate provides a 28-day grace period for all students who enroll in an online course. If a student withdraws within 28 days from when the scheduled student start date, Accelerate will refund 50% of any course fees. This withdrawal notification must be received in writing by Accelerate before the grace period ends. There are no refunds on products other than online courses once an enrollment is made.

## High School Online Courses

### *Per Enrollment Licensing*

Grades 9-12	Individual Core and Elective
Content	85
Hosting & Support	50
Instruction	150
<b>Total</b>	<b>285</b>

- Individual Course Fee are Per Student / Per Semester / Per Course
- Above Offerings Can be Purchased as a Package or Individual
- Does not include physical materials

CONTRACT REVIEWED  
AND APPROVED:  
*wj 8/23/11*



**Exhibit C to  
Master Services and License Agreement between  
Customer and Accelerate Education**

This Exhibit is part of the Agreement between Customer and Accelerate with respect to additional responsibilities as provided herein. Except as otherwise defined in this Exhibit, all capitalized terms shall have the meanings given to them in the Agreement.

Customer shall ensure that all authorized users of the fitness courses licensed to Customer by Accelerate ("Fitness Courses") agree in writing to be bound by and to comply with the consent and release terms of use ("Terms of Use") set forth below, and the code of conduct ("Code of Conduct") set forth below, if any. If an authorized user is a minor, Customer shall require that the Terms of Use and Code of Conduct (if any) be executed by the parent or other legal guardian of each such minor, granting the parent's permission for such minor to access and use the Fitness Courses, acknowledging the risks of participation in the Fitness Courses and releasing Accelerate and its licensors from all liability related to such participation. Customer shall provide Accelerate with a copy of each and all of the signed consents. The Terms of Use shall be worded in substantially the same manner as provided below.

Terms of Use

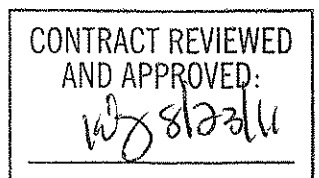
The following waiver must be signed by any authorized user over the age of 18 or by the parents of any authorized users who are under the age of 18.

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

Signed: \_\_\_\_\_

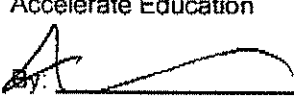
Print Name: \_\_\_\_\_

Date: \_\_\_\_\_



IN WITNESS WHEREOF, the parties have executed this Exhibit to be effective as of the effective date of the Agreement.

Accelerate Education

By:  Michael Aufman

Title: President / CEO

Customer

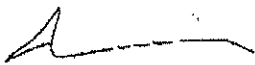
By: \_\_\_\_\_


Title: \_\_\_\_\_


CONTRACT REVIEWED  
AND APPROVED:  


Attachment A - Accelerate Education

- A) This contract is subject to Act of God or government regulation, disaster, strikes, civil disorder, or other emergency making it illegal or impossible to provide facilities or hold the events. Should Accelerate Education cancel this contract for reasons other than Act of God, etc., and another date time cannot be mutually agreed upon, Accelerate Education shall refund all monies (including deposits) to the School Board.  
  
In addition, when the Department of Homeland Security issues a "Red Alert Status," the District School Board of Pasco County has the right to cancel this agreement without penalty and Accelerate Education shall refund all monies (including deposits) to the School Board within thirty (30) calendar days.
- B) As provided for under common law, and to the extent specifically authorized by Section 768.28, Florida Statutes, Accelerate Education hereby agrees to indemnify and hold the District 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 (vendor name) and which are not caused or materially contributed to by any officer, employee, agent or other representative of the District.
- C) Termination of Contract: This contract may be terminated when it is in the best interest of the District within 30 days notice. Contracts cancelled by the vendor because of non-performance may result in exclusion from participating on any other similar contracts offered by any public school in Pasco County, FL. Contracts cancelled because of non-performance will be excluded from future business with the District for the full term of the contract plus one year.
- D) Venue for any and all legal action regarding or arising out of the transaction covered herein shall be solely in the appropriate Court in and for Pasco County, State of Florida.
- E) This contract is governed by the laws put forth by the State of Florida.
- F) The School Board normally issues payment for services within 30 days from receipt of invoices, provided the services have been received in a satisfactory and proper manner. No advance payments will be made.
- G) The company and/or individual shall remain independent and not an employee or agent of the Board for the purpose of providing services not otherwise available to the Board.
- H) Accelerate Education shall not assign, sublet, or otherwise dispose of, without first obtaining the written consent of the Board, any portion of services to be performed under this Contract.
- I) Accelerate Education shall comply with all applicable laws, ordinances, codes, and statutes of any and all local, state, or national governing bodies included within this section. Accelerate Education shall comply with the regulations of the Civil Rights Act of 1964, in which no person in the United States shall on the grounds of race, creed, color, or national origin be excluded from participation in or be denied the proceeds of, or be subject to discrimination in the performance of this Contract.
- J) Vendors conducting business, with the District School Board of Pasco County, who will (1) be at the school when students are present, or (2) have direct contact with students, or (3) have access to or control of school funds must be Level 2 fingerprinted by Human Resources. If any of the above applies to this contract, you must have those individuals Level 2 fingerprinted and screened by the District's Human Resource Department prior to commencement of services or work.

  
Accelerate Education Date 8/5/2011

  
 Kendra Goodman, CPPO, CPPB Date 8/23/11  
 Purchasing Agent  
 District School Board of Pasco County

  
 School Administrator Date 8/11/11



RECEIVED

7-25-11 *DLW*

**FYI ONLINE COURSE CONTENT AND LICENSE AGREEMENT**

This Course Content and License Agreement (“**Agreement**”), is effective on \_\_\_\_\_ (“**Effective Date**”) and is made by and between **FYI Online, Inc.**, a Florida corporation, with its principal place of business at 4040 NE 2<sup>nd</sup> Avenue, Suite 401, Miami, Florida 33137 (“**FYI Online**”) and Pasco eSchool, a Florida school, with its principal place of business at 2323 Little Road, New Port Richey, FL 34655 (“**Client**”).

**1. Services.**

1.1 FYI Online Courses. FYI Online agrees to provide Client’s Authorized Users (as defined below) with access to the FYI Online Courses listed in Attachment A, pursuant to the terms and conditions set forth in this Agreement (collectively, the “**FYI Online Courses**” and individually a “**FYI Online Course**”). “**Authorized Users**” (or individually an “**Authorized User**”) means the student or those students on whose behalf Client is authorized to purchase access to the FYI Online Courses. Each enrollment in any FYI Online Course by an Authorized User is referred to herein as a “**User Enrollment**”. As used herein, the singular shall also include the plural, and vice versa.

The parties may include additional FYI Online Courses or additional Authorized Users under this Agreement through a mutually agreed upon written amendment to Attachment A.

1.2 Customer Support. FYI Online will provide customer service and technical support as described more fully on Attachment B.

**2. Payment.**

2.1 General. Client will pay FYI Online for the FYI Online Courses as follows:

(a) Pricing. FYI Online will charge Client for User Enrolments in FYI Online Courses based upon the pricing set forth in Attachment C, according to the payment schedule defined therein.

(b) Learning Material Purchases FYI Online will invoice Client for learning material purchases, if any, upon shipment of the learning materials.

(c) Course Development Services. Client will pay for any modification to FYI Online Courses requested by Client (“**Course Development Services**”) pursuant to a separate, mutually agreed upon Statement of Work.

*[Faint, illegible text]*

CONTRACT REVIEWED AND APPROVED AS AMENDED:  
*WJ* 8/23/11

(d) Training/Consulting. Client will pay for any and all training and/or consulting services pursuant to a separate, mutually agreed upon Statement of Work (Attachment D).

2.2 Payments for Learning Management System. FYI Online may contract with a third party vendor for a learning management system for use with the FYI Online Courses. Client agrees to pay for the uploading and maintenance of FYI courses within the Learning Management System requested by Client. Furthermore, Client will pay for any requested special services from the Learning Management System to be performed by FYI Online.

2.3. Taxes. Amounts stated under this Section 2 do not include applicable sales, use, gross income, occupational, or similar taxes; import or export fees; duties, imports or tariffs; or any other taxes, duties, charges, or fees of any kind which may be levied in connection with the transactions covered under this Agreement. Such taxes are the responsibility of the Client, and Client will indemnify and hold FYI Online harmless from any liability with respect to such taxes.

### 3. **Outreach.**

3.1 Surveys. Client agrees to cooperate with FYI Online and permit FYI Online to conduct customer satisfaction surveys of Authorized Users, at FYI Online's expense.

3.2 Joint Press Release. The parties will jointly prepare a press release related to this Agreement, to be released within fifteen (15) days following the Effective Date. All future press releases, and the release date thereof, must be reviewed and approved by both parties.

4. **Privacy Policy**. FYI Online has the right to use for legitimate business purposes all data and information collected in connection with this Agreement with the exception of student names and personal student information as defined under the Family Educational Rights and Privacy Act (FERPA). In using such data and information, FYI Online will not disclose the identity or information related to individual Authorized Users or Client without receiving prior written permission. FYI Online's use of such data and information is subject to the terms of FYI Online's privacy policy in effect during the term of this Agreement.

### 5. **User Requirements.**

5.1 System Requirements. The FYI Online Courses are made available over the Internet. To use the FYI Online Courses, Authorized Users must have (a) a suitable Internet connection, and (b) access to a computer that meets the minimum hardware and software requirements specified by FYI Online from time to time ("**System Requirements**"), and which are initially set forth on

Attachment E. Authorized Users are required to have personal email accounts. Client acknowledges that it is responsible for ensuring that Authorized Users can comply with the System Requirements. Client also acknowledges that FYI Online 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. Client will indemnify, defend and hold FYI Online harmless against any course withdrawal or Authorized User's termination resulting from Authorized User's failure to comply with this section.

5.2 Passwords. Client and/or Client's Authorized Users will use passwords to access the FYI Online Courses. Client agrees to comply with FYI Online's policies and procedures, as communicated from time to time to Client, relating to the issuance, protection and administration of such passwords. Client will ensure that only Client and/or Client's Authorized Users shall have access to the FYI Online Courses. Unless FYI Online provides prior written consent, Client shall not afford anyone other than an Authorized User to access the FYI Online Courses. Client acknowledges, understands and agrees that password protection by Client, to all Authorized Users, for all FYI Online content, is mandatory.

5.3 Parental Consent. If applicable, Client will obtain or require Authorized User to obtain any necessary parental consent for each Authorized User student to access and use the FYI Online Courses.

5.4 User Requirements. All Authorized Users of the FYI Online Courses must comply with the FYI Online terms of use ("Terms of Use"). FYI Online reserves the right to suspend or discontinue an Authorized User from accessing the FYI Online Courses at any time if the Authorized User violates the Terms of Use. Client agrees to work in good faith to ensure that Authorized Users comply with the Terms of Use and will notify FYI Online of any activity by its Authorized Users in violation of the Terms of Use.

5.5 No Commercial Purposes. Client will not resell or otherwise use for a commercial purpose any FYI Online Courses.

5.6 All Rights Reserved. The FYI Online Courses are owned and licensed by FYI Online and protected by national and international copyright and trademark laws. Clients will not remove or alter any trademark or other proprietary notice in or on any FYI Online Courses. Further, Client will not write or develop any derivative works or computer programs based upon any part of the FYI Online Courses. FYI Online expressly reserves all right, title and interest in and to the FYI Online Courses.

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

and as required by law.

OK  
CJ  
WJ

other party, except as expressly authorized herein. 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. "Confidential Information" includes, without limitation, information relating to unreleased FYI Online Courses. "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.

7. **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.

8. **Indemnity.**

8.1 Duty to Indemnify. Each party will indemnify, defend, and hold the other party and its officers, employees, consultants and agents harmless from any and all actions, causes of action, claims, demands, costs, liabilities, expenses and damages arising out of or in connection with any breach or alleged breach of any representation or warranty set forth in Section 7 above or arising out of any negligence, or willful misconduct by the indemnifying party.

OK  
CJ  
Defense  
WJ

8.2 Process. If an action is brought for which indemnity is sought under this Section 8, 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. **WARRANTY DISCLAIMER EXCEPT AS SET FORTH IN SECTION 7 ABOVE, FYI ONLINE DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, AND DUTIES OF ANY KIND (IF ANY), EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE OR WARRANTY OF FYI ONLINE COURSES AND/OR FYI ONLINE'S LEARNING MANAGEMENT SYSTEM. FYI ONLINE DOES NOT REPRESENT OR WARRANT THAT THE FYI ONLINE COURSES WILL MEET CLIENT'S BUSINESS REQUIREMENTS, THE OPERATION OF THE FYI ONLINE COURSES WILL BE ERROR FREE OR UNINTERRUPTED, OR THAT ALL**

CONTRACT REVIEWED AND APPROVED AS AMENDED:  
WJ 8/23/11

PROGRAMMING ERRORS CAN BE CORRECTED. THERE IS NO WARRANTY OF NON-INFRINGEMENT OR TITLE.

**10. LIMITATION OF LIABILITY & EXCLUSION OF CERTAIN DAMAGES.**

10.1 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.

10.2 LIMITATION ON LIABILITY. IN NO EVENT SHALL FYI ONLINE'S TOTAL AGGREGATE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OR CAUSE OF ACTION OR THE ALLEGED BASIS OF THE CLAIM, EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY RECEIVED BY FYI ONLINE 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.

**11. Term and termination.**

11.1 Term. This agreement shall commence on the Effective Date and continue for a one (1) year term, unless earlier terminated as provided in this Section 11 (the "Term").

11.2 Termination. For Cause. Either party may suspend performance or terminate this Agreement immediately upon written notice to the other party at any time if the other party is in material breach of any provision of this Agreement and 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. Without limiting the foregoing, FYI Online may suspend performance or terminate this Agreement immediately upon written notice to Client if Client is fifteen (15) days overdue on any payment due to FYI Online under this Agreement.

11.3 Effect of Expiration/Termination. Upon the expiration or termination of this Agreement, all access to the FYI Online Courses will promptly cease, and Client will pay all amounts due to FYI Online up to the date of expiration/termination. The following Sections will survive the expiration or termination of this Agreement: 4, 5.6, 6, 7, 8, 9, 10, 11.3, 12 and 13.



12. **Ownership of FYI Online Courses.** As between the parties, FYI Online retains all title to and ownership of and all proprietary rights with respect to the FYI Online Courses and curriculum, and all copies, portions and modifications thereof (by whomever made or paid for). Under no circumstances shall Client, as a result of this Agreement, obtain any ownership interest in or other right to any technology, trade secrets, know-how, trademarks, pending patent and trademark applications, products, courses, curriculum or other matters of FYI Online.

13. **Miscellaneous**


13.1 Relationship of parties. Client and FYI Online 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. Nothing contained herein shall affect, limit or alter in any way the business activities of FYI Online or any of its related companies.

13.2 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, earthquakes.

13.3 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 received by the party to whom the notice is given.

FYI Online Contact Person(s)	Client Contact Person(s)
<p><b>Christopher Gentile, CEO</b>            4040 NE 2<sup>nd</sup> Ave., Suite 401            Miami, FL 33137            (305) 284-9065 (Phone)            (305) 576-9643 (Fax)            Email: <a href="mailto:Chrisg@fyionlinelearning.com">Chrisg@fyionlinelearning.com</a></p>	<p>Pasco eSchool            2323 Little Road            New Port Richey, FL 34655            Tel: 813-346-1900            Fax: 813-346-1991</p> <p>Email:</p>

13.4 Assignment. Neither party will assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party. Notwithstanding the immediately preceding sentence, either party may assign this Agreement without the other party's prior written consent as part of a

CONTRACT REVIEWED AND  
 APPROVED AS AMENDED:  


merger, or a sale or transfer of a majority of the assigning party's assets. This Agreement will be binding upon, enforceable by, and inure to the benefit of the parties and their respective successors and permitted assignees.

13.5 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.

13.6 Governing Law; Venue. 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 regard to its conflict of laws provisions. All disputes brought by either party arising under this Agreement will be brought in a court of competent jurisdiction in ~~Miami-Dade County, Florida~~, as permitted by law, and each party hereby submits to the exclusive jurisdiction and venue in such courts. Client waives all defenses of lack of personal jurisdiction and forum nonconveniens. Process may be served on either party in the manner authorized by applicable law or court rule.

ok  
ccf  
Pasco  
WJ

13.7 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.

13.8 Severability. If any term of this Agreement is found by a court of competent jurisdiction to be in whole or in part unenforceable, then the remainder of this Agreement shall continue in effect so long as the Agreement still expresses the intent of the parties. If the intent of the parties cannot be preserved, this Agreement shall be null and void.

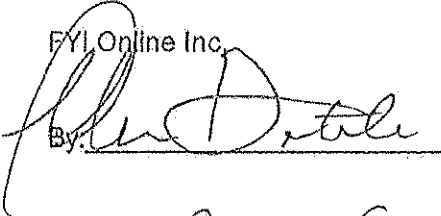
13.9 No Third Party Beneficiaries. This Agreement is for the benefit of, and shall be enforceable by, the parties only. This Agreement is not intended to confer any right or benefit on any third party. No action may be commenced or prosecuted against a party by any third party claiming as a third-party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

13.10 Entire Agreement. This Agreement 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 must be in writing and signed by both parties.

CONTRACT REVIEWED AND  
APPROVED, AS AMENDED:  
WJ 8/23/11

IN WITNESS WHEREOF, FYI Online and Client agree to the terms and conditions set forth in this Agreement.

FYI Online Inc.

By: 

By: \_\_\_\_\_

Print Name: CHRISTOPHER GENTILE

Print Name: \_\_\_\_\_

Title: Pres/CEO

Title: \_\_\_\_\_

Date: 7/25/11

Date: \_\_\_\_\_

*OK*  
*CG*  
*WJ* Replaces Section 8.1:

As provided for under common law, and to the extent specifically authorized by Section 768.28, Florida Statutes, FYI Online, hereby agrees to indemnify and hold the District 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 FYI Online and which are not caused or materially contributed to by any officer, employee, agent or other representative of the District.

ATTACHMENT A  
FYI ONLINE COURSES

Art History\* — 2 semesters

Music Appreciation\*

Ethics\*

Financial Literacy\*

Creative Writing\*

Digital Arts\*

Essentials of Business\*

Media Studies\*

Research\*

Business Communication\*

Physical Education\*

\* Single Semester Course

CONTRACT REVIEWED AND  
APPROVED AS AMENDED:

*WJ 8/22/11*

**ATTACHMENT B  
CUSTOMER SERVICE / TECHNICAL SUPPORT**

Client will designate a Technical Support Specialist to attend to all technical support issues with Client and its Authorized Users. When the need for technical support arises for Client and/or its Authorized Users, the first point of contact should be the Client's Technical Support Specialist. The Client's Technical Support Specialist will determine if in fact the issue is a curriculum one, and if so, will route a request for assistance appropriately to FYI Online via the email ticketing system.

FYI Online provides a technical support ticketing system to manage issues relating to course content and/or technical matters. Only your designated Technical Support Specialist will have access to the ticketing system. Our standard business practice is to have issues reviewed and, if needed, corrected within 24 to 72 hours, depending on the issue. Our ticketing system is designed to keep you updated on the progress of the issue, and the expected time of completion.

Please provide the following information about your designated Technical Support Specialist:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone 1: \_\_\_\_\_

Telephone 2: \_\_\_\_\_

Email Address: \_\_\_\_\_

CONTRACT REVIEWED AND  
APPROVED AS AMENDED:  
*WJ* 8/23/11

**ATTACHEMNT C  
PRICING & PAYMENT TERMS**

The Client will pay FYI Online, Inc. a license fee according to the chart below.

**1. High School Online Courses**

***Per Enrollment Licensing***

Grades 9-12 Content	Individual Core and Elective 85
------------------------	------------------------------------

- Individual Course Fee are Per Student / Per Semester / Per Course
- Does not include physical materials

The Client will report total enrollment numbers in each of the full courses and each of the Credit Recovery courses on the last day of each month, starting August 31, 2011 and each month thereafter, detailing the start date for each enrollment.

Refunds. FYI provides a 28-day grace period for all students who enroll in an online course. If a student withdraws within 28 days from when the scheduled student start date, FYI will refund 50% of any course fees.

The Client will pay FYI invoices within 30 days of receipt of invoices.

It is the responsibility of the Client to accurately report enrollments on a monthly basis as detailed above, however FYI Online may, at its sole discretion, gather enrollment data from Moodle or any other Learning Management System providers, directly, should it see fit to do so.

FYI Online, Inc.  
11111  
11/23/11

CONTRACT REVIEWED AND  
APPROVED, AS AMENDED:  
*WJG 8/23/11*

## ATTACHMENT D TRAINING

### Teacher and Administrator Web Based Training

FYI Online will provide web-based training for the teachers and administrators in the following areas:

#### Teacher Web Based Training - 2 hours

- Overview of the FYI Online courses
- How the courses are structured
- Overview of the assessment model
- Course structure in LMS
- Login
- Grade book

#### Administrator Web Based Training- 1 hour

- Overview of the LMS Environment
- Features of the administrator role
- Enrolling users

**Web based Teacher & Administrator Training will be charged at the rate of \$250.00 / hour.**

#### CMS Support Services

Technical Support: Basic support for non-preferential (See Attachment D) corrections, software or hardware issues or any issue that is considered a non-client generated error, will be corrected at no charge to the client. Usability issues, requested changes to LMS or courses, installation of special features, etc. will be charged at the rate of \$125.00 / hour. *Support services-billed in 15-minute increments*