

# 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)

November 22, 2011

## MEMORANDUM

**TO:** Honorable School Board Members

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

**SUBJECT:** Approval of Contract and Request to Place Purchase Order:  
Staff Development  
Learning Science International

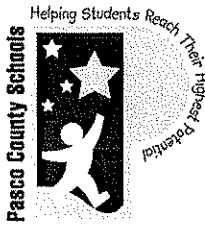
Attached please find a contract with Learning Sciences International (LSI) to provide services for iObservation. iObservation is an online instructional and leadership improvement system that collects, manages, and reports longitudinal data. The attached proposal from LSI is in two parts; one for a software license agreement and another for the training of school-based administrators. This agreement will assist the District in conforming to requirements contained in Bill 736 as well as further demonstrate our commitment to Race to the Top. Please see the attached memo from Aimee Boltze, Director of Staff Development, for additional information.

The District is permitted to negotiate for these types of services based on Florida Administrative Code Rule 6A-1.012(11) (a) and (b). The attached license agreement was reviewed and approved by Nancy Alfonso, the Board's Attorney on November 8, 2011. The cost for software licenses for 78 facilities is \$156,000 and the training portion is \$25,500 for a total cost of \$181,500. Funds for this service, material and training will be provided through the Race to the Top grant. The term for these services will be December 13, 2011-December 12, 2012.

At this time, we are requesting Board approval of this contract, and permission to place a purchase order in the amount of \$181,500. If you have any questions, please feel free to contact Aimee Boltze or me at your earliest convenience.

KDG/mw  
Attachments

Dte/Time: November 16, 2011 08:24:00



# 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)

Staff Development Department

Aimee Boltze, Director

813/ 794-2644 FAX: 813/ 794-2138

727/ 774-2644 TDD: 813/ 794-2484


352/ 524-2644 E-Mail: [aboltze@pasco.k12.fl.us](mailto:aboltze@pasco.k12.fl.us)

MEMORANDUM

SD-AB-11-10

November 22, 2011

TO: Kendra Goodman, Director of Purchasing

FROM: Aimee Boltze, Director of Staff Development 

RE: Learning Sciences International

I would like to request the opportunity to enter into a contract with Learning Sciences International to provide services for iObservation.

iObservation is a division of Learning Sciences International. It is an online instructional and leadership improvement system that collects, manages, and reports longitudinal data from classroom walkthroughs, teacher self-assessments, and teacher observations. iObservation is the only system that connects teacher growth and leadership practices to students achievement gains. Mr. John Simon, the Director of Information Services, has been involved in the process of electing iObservation as the online system for teacher evaluation and is confident in the decision to move forward.

As part of our commitment to Race to the Top and the new teacher evaluation system outlined in Bill 736, we are requesting to work with Learning Sciences International. In the upcoming 2011-2012 school year, we hope to obtain services from Learning Sciences International to facilitate the training of school-based administrators on the technological platform to support the new teacher evaluation system. The scope of work would also include technical assistance and the training of in-house trainers. The funding for services will be provided through the Race to the Top grant. The object code (434.9211.6801.0310.7300.0000) for services will fall under Professional /Technical Services Consultants and Software.

Ms. Ruth Reilly, the Assistant Superintendent for Curriculum and Instructional Services, has reviewed and approved the current proposal for the scope of work from Cambridge Education.

Thank you.

Cc:

Ruth Reilly, Assistant Superintendent for Curriculum and Instructional Services

Tina Tiede, Assistant Superintendent for Middle Schools  
David Scanga, Assistant Superintendent for Elementary Schools  
Elizabeth Brown, Executive Director of Secondary Schools  
Thomas Barker, Executive Director of Elementary Schools



DISTRICT SCHOOL BOARD OF PASCO COUNTY
STANDARD CONTRACT FORM
PROFESSIONAL AND TECHNICAL SERVICES

Requisition # \_\_\_\_\_

P.O. # \_\_\_\_\_

THIS AGREEMENT, entered into as of the 22nd day of November, 2011 by and between the District School Board of Pasco County, Florida, hereinafter referred to as the Board and LEARNING SCHOOLS INTERNATIONAL (individual/ company name) of 221 W PHILADELPHIA STREET SUITE 112 E (address) State of PA, hereinafter referred to as the Consultant. YORK, PA. 17401

WITNESSETH THAT:

The Board and the Consultant do mutually agree as follows:

- 1. This contract is for professional, technical, or personnel services. The Consultant is and shall remain an independent consultant and not an employee or agent of the Board for the purpose of providing services not otherwise available to the Board.
2. The Consultant shall, in a satisfactory, competent, and professional manner, as determined by the Board, perform the following:

TECHNICAL TRAINING DAY 1, DAY 2, & DAY 3
ELECTRONIC MATERIALS FOR TRAINING
(TMS EXCLUDES THE SITE LICENSES)

The Board shall furnish services, data, and information, etc., to the Consultant as follows:

None

- 3. The Consultant shall commence performance of this Contract on the 13th day of DECEMBER 20 11 and shall complete performance to the satisfaction of the Board no later than the 19th 12th day of DECEMBER, 20 12.

- 4. The Board shall pay compensation and expenses to the Consultant as indicated. The honorarium for personal services shall be the standard ordinary and normal charges for the Consultant based upon his qualifications and the nature of services provided. If the Consultant is to be reimbursed for travel expenses, the expenses charged for travel shall not exceed those allowable under the customary practices and policies by the Board.

PAYMENT FOR TRAINING - EXCLUDING SITE LICENSES
\$25,500.00 ALL INCLUSIVE PER THE ATTACHED PROPOSAL

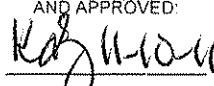
CONTRACT REVIEWED AND APPROVED: [Signature]

The Board shall remit payment of the compensation in Section 4 as follows:

(EXCLUDING SITE LIBRARY)

ONSITE TECHNICAL TRAININGS		
DAY 1 - TOTAL COST	\$ 9,000	ELECTRONIC TRAINING MATERIALS \$ 1,000
DAY 2 - TOTAL COST	\$ 4,500	" " " \$ 1,000
DAY 3 - TOTAL COST	\$ 9,000	" " " \$ 1,000
TRAINING = \$ 22,500 MATERIALS = \$ 3,000.00 GRAND TOTAL - \$ 25,500.00		

5. It is agreed that this is a "Flat Fee" Contract. At no time will the amount paid to the Consultant exceed the amount in Section 4 without a written amendment endorsed by both the Board and the Consultant.
6. The Consultant shall maintain such records and accounts as will assure a proper accounting of compensation and reimbursement of expenses. These records will be retained for a period of three years and shall be made available upon request by the Board for audit purposes.
7. The Consultant shall make financial, program, progress, evaluation, and any other reports as may be requested from time to time by the Board.
8. The Consultant 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.
9. The Consultant shall comply with all applicable laws, ordinances, codes, and statutes of any and all local, state, or national governing bodies included within this section. The Consultant 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. Also, all the funds, services, materials, property, etc. inclusive in this Contract shall not be used in the performance of any partisan political activity or to further the election or defeat of any candidate for public office.
10. The Consultant may publish and copyright the results of this Contract without prior review by the Board, providing that:
  - a. Such publications acknowledge that the performance of this Contract was supported by the Board.
  - b. The Board reserves a royalty fee, nonexclusive or irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use all the materials.
  - c. Consultant shall furnish twenty (20) copies of each publication to the Board and additional copies are available free upon request.
  - d. Such actions are in compliance with Chapter 286, Florida Statutes.
11. Any discovery or invention arising from, or developed as a result of this Contract shall be promptly reported to the Board to determine whether patent protection shall be sought to protect the public interest. Neither the Consultant nor any individual employee under this Contract shall have proprietary interest in any such discovery.
12. Should the Consultant be unable to comply with the provisions of this Contract, he may propose a Contract amendment to the Board. There is no obligation on the part of the Board to concede to such a proposal. Unless the Contract is properly amended, in the event of a non-compliance, all liability for payment by the Board shall expire on the day following the specified expiration date, as specified in Paragraph 3.
13. 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.
14. As provided for under common law, and to the extent specifically authorized by Section 768.28, Florida Statutes, the Contractor 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.

CONTRACT REVIEWED  
AND APPROVED:  


This form is a waiver, release, indemnification agreement, and hold harmless, which acts to release the District School Board of Pasco County, its individual members, schools, personnel, employees, agents and assigns (hereinafter collectively referred to as School Board) from any and all damages or injuries which may result in your participation in LST- TECHNICAL TRAINING.

I agree to hold the School Board harmless for any injuries or damages, arising out of participation in the aforementioned event, regardless of whether such injuries or damages arise out of the accidental, negligent or reckless acts of School Board, or some third party. I agree to release the School Board of all liability and injuries or damages, arising out of participation in the aforementioned event, regardless of whether such injuries or damages arise out of the accidental, negligent or reckless acts of School Board, or some third party.

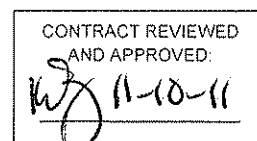
I agree to indemnify, pay, and reimburse School Board for any and all judgments, attorney fees, costs, payments, and medical bills incurred by the School Board resulting from my participation in the aforementioned event, or any claims arising out of such aforementioned event.

I agree that should any portion of this form be held invalid under controlling Florida law, then the remainder of this form shall remain intact and in force, to the extent that it is not invalid under controlling Florida law. I specifically acknowledge that my individual duty to indemnify the School Board for the above-referenced liability is not dependent on the validity of any other portions of this document, including the release of liability.

15. The Board may, from time to time, request changes in the scope of the services of the Consultant to be performed hereunder. Such changes including any increase or decrease in the amount of the Consultant's compensations which are mutually agreed upon by and between the Board and the Consultant, must be incorporated in written amendment to this Contract.
16. 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.
17. This Contract, any and all parts thereof, can be terminated without giving cause with 10 days written notice by either party. Upon termination, the Consultant shall receive compensation and expenses to the date of termination.
18. The Consultant agrees that all papers, documents, evaluations, product, etc. are the property of the Board.
19. EMPLOYMENT/EMPLOYEE BACKGROUND CHECKS
  - a. Vendors conducting business, with the District School Board of Pasco County, who will (1) be at the school when students are present, (2) have direct contact with students, or (3) have access to or control of school funds must be Level 2 fingerprinted by the District's Human Resources Department. 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.
  - b. The Company/Consultant shall be fully and solely responsible (the liabilities and responsibilities of the employees are not eliminated) for all matters regarding the personal safety of school personnel and students. By signing this document you are attesting to the fact that your employees working on School Board property, have been properly screened, Level 2 (criminal background checks, fingerprinting, etc.) in accordance with Florida State Statute 1012.32(2)(a) and 1012.465(1) and have not been found guilty or pled guilty or nolo contendere (no contest) regardless of adjudication, to any crime listed in State Statute 435.04, including but not limited to: murder, rape, molestation, aggravated assault, aggravated battery, kidnapping, sexual battery, lewdness and indecent exposure, incest, child abuse, negligent treatment of children, etc. Any costs associated with the screening are the sole responsibility of the Company/Consultant.

20. INSURANCE

The Vendor/Proposer shall purchase and maintain insurance for protection from claims under worker's compensation acts: claims resulting from negligent acts or omissions for damages because of bodily injury including personal injury, sickness, disease or death on any of the Vendor's employees or any other person; claims for damages because of injury to or destruction of personal property including loss of use resulting there from and claims arising out of the performance of this agreement and caused by negligent acts or omissions for which the Vendor is legally liable. All insurance provided under this contract shall be through an insurance carrier acceptable to the Owner. The insurance carrier shall be rated "A" or better by Best's Key Rating Guide.



Limits of coverage shall be:

	Coverage:	Minimum Required:
1.	Worker's Compensation	Statutory
2.	Public Liability	Combined Limit
	Bodily Injury: Each Person	\$1,000,000.00
	Bodily Injury: Each Accident	\$1,000,000.00
	Property Damage: Each Accident	\$1,000,000.00
3.	Automobile Liability & Property Damage	Combined Limit
	Bodily Injury: Each Person	\$200,000.00
	Bodily Injury: Each Accident	\$500,000.00
	Property Damage	\$100,000.00

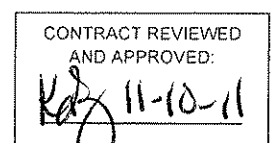
The Owner shall receive thirty (30) days' prior written notice of any cancellation, non-renewal or reduction of coverage of any of the policies. Upon notice of such cancellation, non-renewal or reduction, the Vendor shall procure substitute insurance so as to assure the Owner that the limits of coverage are maintained continuously throughout the period of this agreement.

## 21. 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.



22. Other provisions: NONE  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the Board and the Consultant have executed this Agreement as of this date.

ATTEST:

DISTRICT SCHOOL BOARD OF PASCO COUNTY

PROFESSIONAL CONSULTANT

By: *Gendra Goodman*  
Superintendent of Purchasing Agent

By: LEARNING SERVICES INTERNATIONAL / P.S.  
Consultant  
*Alfreda Owen* (ALFIEDA OWEN)

By: *[Signature]*  
Department/School Administrator

Social Security #: \_\_\_\_\_  
(or) E.I.N. 33-0998789

By: \_\_\_\_\_  
Board Chair (If Over \$50,000)

Mailing Address:  
221 W. PHILADELPHIA STREET - SUITE 112E

Recorded in Board Minutes:  
\_\_\_\_\_  
Date

YORK, PA. 17401

FUND	COST CENTER	PROJECT	OBJECT	FUNCTION	GENERAL LEDGER	SUB PROJECT/ PROGRAM



To Whom It May Concern:

Learning Sciences International (LSI) is the sole source provider of the iObservation™ system through a proprietary, patented Professional Growth System (Patent No. US 7,007,073 B2) and patent pending (Application No. 19795-0003). iObservation is a platform containing exclusive content that connects real-time data on principal leadership, teachers' instruction, and student achievement within a professional growth system.

The iObservation system offers exclusive electronic access to the following content and research identified with the authors:

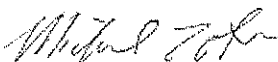
- Observation and Feedback Protocol by Robert J. Marzano, PhD
- Framework for Teaching by Charlotte Danielson
- Leadership Performance Matrix by Douglas B. Reeves, PhD

iObservation is trademarked and copyrighted by LSI. LSI has unique expertise in the field of teacher effectiveness due to our longstanding research in the field and our exclusive partnership with Dr. Robert Marzano. LSI has secured exclusive worldwide rights to the electronic use for Dr. Marzano's research-based strategies in his Observation and Feedback Protocol for teacher growth and effectiveness. In addition, iObservation reveals exclusive content developed by Dr. Marzano to support teachers' practical and systematic implementation of 41 key strategies to increase their effectiveness, delivered in a comprehensive model of instruction.

For additional information, please contact us at 1-877-574-1638 or visit [www.iObservation.com](http://www.iObservation.com).

Thank you for your interest in our systems and services.

Sincerely,



Michael Toth, CEO



**Learning Sciences International**  
LEARNING AND PERFORMANCE MANAGEMENT

**Quotation**

Company Address Learning Sciences International  
175 Cornell Rd., Suite 18  
Blairsville, PA 15717  
US

Quote Number 00000660  
Created Date 11/1/2011  
Expiration Date 12/1/2011

Program Partner Robert La Grassa

Notes this proposal is for train the trainer. Recommend that first cohort attendees go through as learners and pick out those who will become trainers and shadow 2nd cohort. Also recommend train the trainers be good in instruction as well as good with technology

Payment Terms Net 30 Days

Make checks payable to Learning Sciences International  
Fax Signed Quote to: 724.459.6373

Contact Name Aimee Boltze  
Phone (813) 794-2644  
Email aboltze@pasco.k12.fl.us

Bill To Name Pasco County  
Bill To 7227 Land O Lakes Boulevard  
Land O Lakes, FL 34638  
US

Ship To Name Pasco County  
Ship To 7227 Land O Lakes Boulevard  
Land O Lakes, FL 34638  
US

Product	Prod Code	Line Item Description	Quantity	Sales Price	Total Price
Full Package Marzano Protocol + Library	IO300-M1		78.00	\$2,000.00	\$156,000.00
iObservation Day 1 (Evaluator Edition)	PD000-M4-E	train the trainer model	2.00	\$4,500.00	\$9,000.00
iObservation Day 2 (Evaluator Edition)	PD000-M5-E	train the trainer model; 2 cohorts AM session and PM session on same day	2.00	\$2,250.00	\$4,500.00
iObservation Day 3 (Evaluator Edition)	PD000-M6-E	train the trainer model	2.00	\$4,500.00	\$9,000.00
Reproduction License (2yr exp.) Workbook: iObservation Day 1 (Evaluator Edition)	PD000-M4-E-WR-FL		1.00	\$1,000.00	\$1,000.00
Reproduction License (2yr exp.) Workbook: iObservation Day 2 (Evaluator Edition)	PD000-M5-E-WR-FL		1.00	\$1,000.00	\$1,000.00
Reproduction License (2yr exp.) Workbook: iObservation Day 3 (Evaluator Edition)	PD000-M6-E-WR-FL		1.00	\$1,000.00	\$1,000.00
		Subtotal		\$181,500.00	
Visit our website at <a href="http://www.iobservation.com">www.iobservation.com</a>		Total Price		\$181,500.00	
		Grand Total		\$181,500.00	

Quote Acceptance Information

Please Make checks payable to Learning Sciences International  
Fax Signed Quote to: 724.459.6373

## Quotation

By signing I accept Quote and Learning Sciences Terms and Conditions listed on page 2

Signature \_\_\_\_\_

Name \_\_\_\_\_

Date \_\_\_\_\_

Terms & Conditions of Sales

**Learning Sciences International, LLC**  
**Terms & Conditions of Sale**

**Customer Acknowledgment**

Customer acknowledges agreement with these Terms and Conditions of Sale by the placement of an order to purchase products or services from Learning Sciences International, LLC.

**Prices**

Prices quoted are good for 30 days from the date of proposal or quote, unless otherwise stated in writing.

**Terms**

Purchase order or payment is required prior to order fulfillment. Make checks payable to "Learning Sciences International" and submit to 175 Cornell Road, Suite 18, Blairsville, PA 15717.

**Purchase Orders**

Original copies of purchase orders should be sent to Learning Sciences International, 175 Cornell Road, Suite 18, Blairsville, PA 15717 or faxed to 724.459.6373.

**Payments**

Standard payment terms are net 30 from date of invoice. Seller reserves the right to charge interest at the rate of 0.5% per month on past due balances. Seller also reserves the right to submit invoices greater than 90 days past due to a third party agency for collection.

**Scheduling**

On-site training and professional development sessions requires 30 days advance notice. Purchase orders or payment must be received before training dates can be reserved. Trainings scheduled at the Customer's request less than 30 days advance notice are subject to a \$500 premium or additional pre-session charges of \$500 may apply.

**Cancellation**

On-site training and professional development sessions may be rescheduled prior to 30 days in advance without penalty. Districts who cancel within the 30 day window will be charged \$500 fee + travel expenses incurred (including cancellation and airline booking fees.)

**Shipping and Handling**

Shipping and Handling for print materials shown at standard ground rates. Please allow 7-10 business days for order processing and delivery. Expedited or overnight shipping available for some items. Additional fees may apply.

LSI will fulfill your order based on the quantity of materials shown on your purchase order. Should you request additional copies of materials, you will be invoiced for the materials plus shipping and handling. Expedited or overnight shipping may apply.

**Additional Terms and Conditions**

Additional Terms and Conditions for users of the iObservation System and/or Terms and Conditions for On-site Training Delivery will be provided in separate agreement(s.)

## IOBSERVATION LICENSE AGREEMENT

This License Agreement (the "Agreement") is made this 8th day of November 2011 (the "Effective Date") by and between Learning Sciences International, a Pennsylvania Limited Liability Company ("LSI") and The District School Board of Pasco County, an Organization organized and existing under the laws of Florida with its principal offices at 7227 Land O Lakes Boulevard, Land O Lakes, FL 34638 (the "Organization").

### Background

LSI has developed a proprietary, internet based, electronic data collection and management system known as iObservation that school districts can use to observe professionals in their practice, collect data and provide professional development (the "Platform"). The iObservation system helps districts and schools create alignment across classrooms by establishing a common language of professional practice using powerful real-time data, content, materials and forms, whether owned by LSI or licensed by LSI from third parties ("LSI Partners") that is used to support professional improvement (the "Content"). The Platform and Content are collectively referred to as the "System". The iObservation System is designed to implement Organization's goals, whether for its members' professional growth, development or performance management, in accordance with Organization's established policies and procedures. LSI and Organization wish to enter into a contractual arrangement pursuant to which LSI will provide Organization with a license to use the iObservation System, subject to the terms and conditions set forth in this Agreement.

### Agreement

NOW, THEREFORE, in consideration of their mutual promises and covenants contained herein, and intending to be bound legally hereby, the parties agree as follows:

1. LICENSE TO ACCESS SYSTEM. LSI agrees to provide the Organization, including its administrators and teachers (collectively, the "End-Users") who are granted user-accounts by the Organization, with a limited, non-exclusive, non-transferable, non-assignable, object code license to use the System, as further specified herein. Such access shall be governed by the terms of this Agreement. All rights not expressly granted to the Organization herein are retained by LSI and/or LSI Partners.
  - 1.01 The Organization, at its own expense, will provide and maintain the wireless laptops necessary that meet LSI requirements to effectively and reliably access the System as well as optional peripheral hardware for documentation in the classroom, including cameras and scanners. LSI is not responsible for providing Organization with technical support on hardware or on wireless access and internet connectivity.
  - 1.02 LSI will use its best efforts to provide access to the System on ninety-nine percent (99%) of the time. Notwithstanding the foregoing, the Organization acknowledges that access to the System may be interrupted or disrupted from time to time due to reasons that include but is not limited to scheduled system maintenance, and that LSI will not be liable for any damages, direct or indirect, arising out of any interruption to or disruption of access to the System. The Organization acknowledges that service interruptions may result from the Organization's wireless internet connectivity, and that LSI shall not be responsible for the same.
  - 1.03 LSI shall initially provide the Organization with access to the System by providing a Organization administrator observer, to be designated by Organization, with a unique user identification and password. This user identification and password shall allow the designated Organization administrator observer to access the System.
  - 1.04 End-Users of the Organization who are issued a user identification and password to access the System shall abide by the rules set forth in this Section 1.04. The

Organization shall comply with, and shall be responsible for, End-User compliance with the rules set forth in this Section 1.04. LSI reserves the right, at anytime and in LSI's sole discretion, to terminate System access for any End-User failing to comply with the terms of this Section 1.04.

- 1.04.1 End-Users shall not disclose their assigned user identifications and passwords to any person, nor allow any person to use their user identifications and passwords to access the System. End-Users are responsible for any and all activities that occur on their account. The Organization agrees to notify LSI immediately of any unauthorized use of an End-User account or any other breach of security of which the Organization becomes aware. LSI shall not be liable for any loss to the Organization or any End-User resulting from someone else using an End-User's password or account, either with or without the End-User's knowledge.
- 1.04.2 End-Users shall not modify, copy, download, transmit, distribute, perform, reproduce, publish, license, transfer, sell, use to create works from or use the System, including, but not limited to the Content provided by LSI in any way other than for the observational and professional development purposes for which the System was developed without the expressed written consent of LSI.
- 1.04.3 End-Users shall not alter any material on the System, and shall not "mirror" (ie: create a replica of the System or features on the System) any material contained within the System through hacking, password mining, denial of service attacks, or any other means.
- 1.04.4 End-Users shall not use the System in any manner that could disable, overburden, or impair any LSI server, or interfere with any other person's use and enjoyment of the System through hacking, password mining or any other means. End-Users shall not obtain or attempt to obtain any materials or information through any means not intentionally made available through the System.
- 1.04.5 End-Users' right to use the System may be further limited by federal law or the laws of regulations in an End-User's particular state or locality.
- 1.04.6 The Organization agrees and acknowledges that LSI is the owner or licensee of all rights in the System, including the Platform and the Content that appears on the System, and neither the Organization nor any End-User will challenge those rights or do anything that might impair or damage those rights. The System, including the Platform and the Content, is protected by patent, copyright, trademark and other laws of the United States and other countries. Any unauthorized use of any Content on the System may violate such laws. The trademarks, logos and service marks used and displayed on the System (the "Trademarks") are registered and unregistered trademarks of LSI, LSI Partners and others. Under no circumstances may the Organization or any End-User use any of the Trademarks, whether owned by or licensed to LSI or LSI Partners. If the Organization or any End-User makes any copies of the System, or portions of the System, such copies must include the appropriate copyright, trademark or other proprietary notices. No links may be established to any part of the System's website, and no information or Content on the System's website may be framed without the prior written approval of LSI.
- 1.04.7 Where applicable, Organization and each End-User shall maintain the confidentiality of all information provided by students and their parents

that is necessary to properly use the System's services.

1.04.8 The Organization, through its End-Users, shall ensure that no information or material uploaded onto the System shall contain unlawful (including, without limitation, unlicensed or unauthorized copyrights belonging to third parties), obscene, libelous, defamatory, harassing, hateful or racially, ethnically or otherwise objectionable language, image, or video. The Organization agrees and understands that LSI does not screen, review or control the information uploaded onto the System by the Organization and its End-Users. LSI is not responsible for the information or material submitted to the System by the Organization or its End-Users. Prior to any such information or material being unloaded on the System by or for the Organization or its End-Users, the Organization or its End-User shall obtain any and all necessary consents and permissions from all third parties who own rights in any such information or material and the Organization or its End-User shall execute a statement, if requested by LSI, confirming that any and all necessary consents and permissions have been obtained from all third parties who own rights in any such information or material.

2. LICENSE TO USE AND SHARE FORMS. The Organization agrees and understands that any forms, look-fors, rubrics or videos produced by the Organization or the Organization's End-Users and uploaded onto the System may be shared by LSI with other customers of LSI. To that end, the Organization hereby grants LSI a non-exclusive, perpetual, royalty-free license to use such forms, look-fors, rubrics or videos on the System, and to share the same with other districts and educational customers of LSI.
3. CONFIDENTIALITY AND SECURITY.
  - 3.01 The Organization will ensure that use of the System by End-Users will be for the sole purpose of enhancing professional practice through observational learning. The Organization agrees to implement security procedures that are reasonably sufficient to ensure that End-User accounts are not improperly accessed.
  - 3.02 LSI will implement industry standard security measures designed to limit unauthorized third party access to LSI' servers.
4. SET-UP/CONFIGURATION. LSI shall provide certain set-up and configuration services necessary for the Organization to properly utilize the System. LSI will configure the system to include licenses and data reporting capabilities as purchased by the Organization.
5. TECHNICAL SUPPORT. LSI shall provide the Organization with access to a telephone number that administrative staff may call to address routine questions regarding the System. E-mail support shall also be available. Toll-free number and e-mail support shall be available 8:00 a.m. to 5:00 p.m., all continental US time zones, Monday through Friday, excluding holidays.
6. FEES AND PAYMENT TERMS.
  - 6.01 Fees for the licenses and services provided for herein are set forth in the proposal or quotation.
  - 6.02 All fees set forth are due in full to LSI within thirty (30) days of invoice. All fees subsequently agreed to by the parties for additional services shall be payable within thirty (30) days of the parties executing a written addendum to this Agreement describing the services to be provided and the prices therefore, such addendum to be signed by both parties.
  - 6.03 Professional development services can be provided at additional fees.

7. DISCLAIMER OF WARRANTIES. LSI MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

8. LIMITATION OF LIABILITY AND INDEMNIFICATION.

8.01 LSI hereby indemnifies and holds the Organization, its representatives, employees, successors and assigns, harmless from all actions, causes of action, claims, suits, disputes, damages, judgments and demands in any form whatsoever, at law or in equity, which may arise out of or result from any claim that the Organization's use of the System infringes or violates third party copyright or patent rights. LSI shall defend and settle, at its sole expense, all suits or proceedings arising out of the foregoing. If an infringement is found to have been committed, or if LSI deems it probable that such an infringement has been or is likely to be committed, LSI may, in its sole discretion and at LSI's expense: (a) procure for the Organization the right to continue to use the System; (b) replace the System with a non-infringing program containing equivalent functionality; (c) modify the System so that an infringement is not committed; or (d) discontinue the System and refund to the Organization an amount equal to a pro rata portion of the System license fees paid to LSI by the Organization during the previous twelve (12) months. The remedies in this Section 8.01 are the Organization's sole remedies in the event of a third-party infringement claim. The Organization must notify LSI of claims subject to this Section 8.01 within thirty (30) days of the Organization's receiving notice of such claim, or the indemnification provisions of this Section 8.01 shall be void.

8.02 Indemnification/Hold Harmless: As specified in Florida Statute, Section 725.06, the proposer agrees to indemnify and hold the School District harmless from all third-party claims and all costs, including attorney's fees, incurred by the School District in defending same, to the extent such claims are based on a defect in a product or part thereof, supplied of such a product or part thereof to conform.

8.03 Indemnification for Goods and Services: During the term of this agreement, the proposer shall indemnify, hold harmless, and defend the School District of Pasco County, Florida, its agents, servants and employees from any and all costs and expenses, including but not limited to, attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which the School District, its agents, servants and employees may pay or become obligated to pay on account of any actions founded thereon, arising or alleged to have arisen out of the products, goods, or services furnished by the proposer, his agents, servants or employees, or any of his equipment when such persons or equipment are on premises owned or controlled by the School District for the purpose of performing services.

9. PROPRIETARY INFORMATION.

9.01 Each party acknowledges that this Agreement creates a relationship of confidence and trust between the parties with respect to any information disclosed by one to the other during the course of this Agreement, whether written or oral, including, but not limited to, the names, addresses and other information relating to students, training materials, software or System documentation, software source code, secret processes, business models, formulas, trade secrets, techniques, inventions (whether or not patentable) and know-how regardless of the format in which it is furnished (hereinafter collectively called "Proprietary Information"). Each party shall hold such Proprietary

Information communicated to it by the other, and documents containing it, such as customer lists, specifications, training materials, sales and service manuals, samples and correspondence, in trust and confidence at all times during the term of this Agreement and after its termination or expiration, and will refrain from using or disclosing any Proprietary Information except when acting pursuant to this Agreement.

- 9.02 All Proprietary Information received from a party during the term of this Agreement shall remain the property of that party and shall be treated as proprietary by the other party, with the same degree and care with which the other party treats its own Proprietary Information, and shall not be divulged or disclosed to others except as specifically authorized by this Agreement or with the prior written consent of the party from which such proprietary information was received. Each party agrees that it will not, without the prior written consent of the other party, communicate such Proprietary Information to any person or organization other than to those of its employees to whom it shall be necessary to disclose such information in order to carry out the purposes of this Agreement. Each party agrees to use its best efforts to prevent its employees from disclosing any Proprietary Information to any other person or organization.
- 9.03 Each party agrees to promptly return all Proprietary Information provided in written form or any other media upon the written demand therefore by the other party, unless it is necessary to retain such information to satisfy obligations under this Agreement or other related agreements (including, specifically, publication subscriptions), or such information must be retained to comply with applicable laws.
- 9.04 For purposes of this section, the term "Proprietary Information" shall not include: information that is in the public domain; information known to the recipient party as of the date of this Agreement as shown by the recipient's written records, unless the recipient party agrees to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source that is not under an obligation of confidentiality with respect to such information.
- 9.05 The provisions of this Section 9 shall survive termination or expiration of this Agreement for any reason.
- 9.06 The Organization and its End-Users agree not to reverse engineer or design a comparable system that will be in competition with the proprietary iObservation system during the duration and following termination of this Agreement

10. TERM AND TERMINATION.

- 10.01 This Agreement will be effective on the Effective Date, and will remain in effect for a period of one (1) year. At the conclusion of the initial term, the Agreement may renew for additional one (1) year terms upon Organization's acceptance of renewal quotation.
- 10.02 Either Party may terminate this Agreement at any time for reasons of breach of contract upon sixty (60) days written notice to the other Party.
- 10.03 Notwithstanding anything herein to the contrary, LSI will have the absolute right to immediately suspend the Organization's right of access to the System at any time in the event that the Organization materially or repeatedly defaults in the performance of any of its duties or obligations under this Agreement, as determined by LSI.
- 10.04 Upon any termination of this Agreement for any reason, LSI shall deactivate all End-User identifications and passwords associated with the Organization.



11. NON-SOLICITATION. During the term of this Agreement, and for a period of one (1) year thereafter, neither party shall solicit an employee of the other party for employment with the soliciting party or cause any employee of the other party to leave his or her employment with the other party.
12. MISCELLANEOUS.
  - 12.01 This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and there are no representations, understandings or agreements which are not fully expressed in this Agreement.
  - 12.02 The parties acknowledge and agree that successful operation of the System pursuant to this Agreement will require the full and mutual good faith cooperation of each of the parties.
  - 12.03 This Agreement shall not be construed to create a joint venture or partnership between the parties. The parties shall at all times be independent of one another in performance of their rights and responsibilities under this Agreement.
  - 12.04 No amendment, change, waiver or discharge of this Agreement shall be valid unless it is made in writing and signed by the both parties.
  - 12.05 The Organization shall not assign its rights, duties or obligations under this Agreement to any person or entity, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise, and any attempt to do so shall be deemed a material breach of this Agreement.
  - 12.06 The waiver or failure of either party to exercise any right in any respect provided for herein shall not be deemed a waiver of any further right hereunder. This Agreement shall be governed in all respects by the laws of the State of Florida without regard to its conflict of laws provision, and the parties agree that the sole venue and jurisdiction for disputes arising from this Agreement shall be the appropriate courts with jurisdiction over Pasco County Florida, and the parties hereby submit to the jurisdiction of such courts.
  - 12.07 The provisions of Sections 2, 8, 9 and 11 shall survive the termination or expiration of this Agreement.
  - 12.08 Each party shall be excused from performance hereunder for any period and to the extent that it is prevented from performing any services hereunder, in whole or in part, as result of delays caused by an act of God, war, civil disturbance, court order, or any third party (including telephone or internet service providers), or other cause beyond its reasonable control, excluding, specifically, labor disputes, and which it could not have prevented by reasonable precautions and such nonperformance shall not be a default hereunder or a ground for termination hereof.
  - 12.09 The Organization represents and warrants to LSI that the person executing this Agreement on behalf of the Organization is duly authorized to execute this Agreement on behalf of the Organization.

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed by their duly authorized representatives, the date and year first above written.

**LEARNING SCIENCES INTERNATIONAL, LLC**

  
\_\_\_\_\_

Bryan Toth  
Chief Operations Officer

Date: 11-9-11

**DISTRICT SCHOOL BOARD OF PASCO COUNTY:**

\_\_\_\_\_  
Heather Fiorentino, Superintendent

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

\_\_\_\_\_  
Joanne Hurley, Board Chairman

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