



District School Board of Pasco County

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

Heather Fiorentino, Superintendent

www.pasco.k12.fl.us

Department of Purchasing

Michael J. Woodall, CPPO, Purchasing Agent

813/794-2221 Fax: 813/794-2111

727/774-2221 TDD: 813/794-2484

352/524-2221 e-mail: kgoodman@pasco.k12.fl.us

June 18, 2013

MEMORANDUM

TO: Honorable School Board Members

FROM: Michael J. Woodall, CPPO, Purchasing Agent *MJW*

SUBJECT: Contract with Canvas by Instructure

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.

Ms. JoAnne Glenn, Assistant Principal for Pasco eSchool, is requesting approval of the attached contract with Canvas by Instructure. The contract was reviewed and approved by Ms. Nancy Alfonso, Board Attorney via email on June 9, 2013. The fees charged by Canvas for the services provided for in the contract will be \$1,120,400; the term of this contract will be for the 2013-2014 school-year and will be funded through Virtual Education Contribution budget allocation. Please see the attached memo from Ms. Glenn for additional information.

The District and Canvas by Instructure have negotiated the attached agreement to include services that will assist the District in providing Learning Management System services. The District is permitted to negotiate for services of this nature under Florida Administrative Code 6A-1.012(11)(a). Please feel free to contact JoAnne Glenn or me at your earliest convenience if you have any questions or concerns.

Date/Time: June 12, 2013 08:58:00



DISTRICT SCHOOL BOARD OF PASCO COUNTY

Kurt S. Browning, Superintendent of Schools

7227 Land O' Lakes Boulevard • Land O' Lakes, Florida 34638

Pasco eSchool
JoAnne Glenn, Principal
813/ 346-1901 FAX: 813/ 346-1991
E-MAIL: jglenn@pasco.k12.fl.us

June 10, 2013

To: Michael Woodall, Purchasing Agent

From: JoAnne Glenn, Principal for Pasco eSchool

Subject: Request for Contract Approval (Canvas by Instructure)

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 on a full time or part time basis. The virtual instruction program makes instruction available to students using online and distance learning technology in the nontraditional classroom.

To provide the students enrolled in Pasco County with a variety of learning opportunities, and to support the integration of technology and information literacy skills required for the implementation of the Common Core State Standards, Pasco eSchool requests approval to begin negotiation of a contract with the following Learning Management System (LMS) provider:

- Canvas by Instructure

A decision to partner with Canvas by Instructure offers the District an opportunity to support a blended instructional model for professional development and for classroom instruction for all staff, students, and parents. Such a model will allow for closer monitoring of student progress, increased integration of online professional development modules and virtual coursework with existing district systems, and build the capacity of our students and staff to collaborate by removing barriers of time and physical location. Additionally, this Learning Management System will include features to increase the capacity of parents to view information about student performance.

It is the request of this committee that we enter into a contract with Instructure in order to provide Learning Management System services. The costs associated with any resulting contract will be funded through Virtual Education Contribution budget allocation, earned by students enrolled in the district's virtual instruction program.



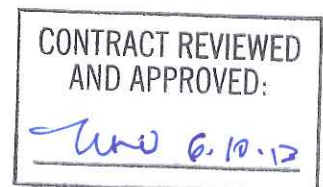
Master Subscription Services Agreement

This agreement is between Instructure, Inc., a Delaware corporation (**Instructure**), and the entity or individual agreeing to these terms (**Customer**). It is effective as of the date of the last signature.

LEARNING MANAGEMENT SYSTEM SOFTWARE SERVICE. With a signed order, Instructure will provide its learning management system software as a service through a URL within a hosted server environment under the terms below (**Service**). This agreement contemplates one or more orders for the Service, which are governed by the terms of this agreement. **User** means a student, teacher, or administrator of Customer's educational institution, who is authorized by Customer to use the Service with an assigned login credential.

(1) USE OF SERVICE.

- a). **Customer Owned Content.** All information, data, results, plans, sketches, texts, files, links, images, photos, videos, audio files, notes, or other materials uploaded under Customer's account in the Service remains the sole property of Customer, as between Instructure and Customer (**Customer Content**). Customer grants Instructure the right to use the Customer Content solely for purposes of performing under this agreement. During the term of this agreement and for 3 months after expiration or termination, Customer may export the Customer Content through the API or by using the export feature within the Service. Instructure has no obligation to maintain the Customer Content 3 months after expiration or termination.
- b). **API Access.** Instructure provides access to its application-programming interface (**API**) as part of the Service for no additional fee. Subject to the other terms of this agreement, Instructure grants Customer a non-exclusive, nontransferable, terminable license to operate the API only for purposes of interfacing Customer's technology applications or services with the Service as allowed by the API. The Instructure **API Policy** is located at <http://www.instructure.com/policies/api-policy>
 - i. Customer may not use the API in a manner, as reasonably determined by Instructure, that exceeds reasonable request volume, constitutes excessive or abusive usage, or fails to comply with the API Policy or with any part of the API. If any of these occur, Instructure can suspend or terminate Customer's access to the API on a temporary or permanent basis.
 - ii. Instructure may change or remove existing endpoints or fields in API results upon at least 30 days notice to Customer, but Instructure will use commercially reasonable efforts to support the previous version of the API for at least 6 months. Instructure may add new endpoints or fields in API results without prior notice to Customer.
 - iii. Instructure will maintain and provide access to an API, unless it terminates the API for all customers with notice, as it is not technically feasible or economically viable to continue granting access to the API.
 - iv. The API is provided on an 'AS IS' and 'WHEN AVAILABLE' basis. Instructure has no liability to Customer as a result of any change, temporary unavailability, suspension, or termination of access to the API.
- c). **Customer Responsibilities.** Customer (i) is solely responsible for Customer Content (defined below), and User activity in its account in the Service, (ii) must keep its passwords secure and confidential, and notify Instructure promptly of any known unauthorized access, and (iii) may use the Service only in accordance with applicable law.
- d). **Customer Restrictions.** Customer may not, and will use reasonable means to ensure that each User does not,
 - i. sell, resell, rent or lease the Service or API (defined above);
 - ii. use the Service, for non-Customer educational purposes, to store or transmit infringing, unsolicited marketing emails, libelous, obscene, deceptive, defamatory, pornographic, racist, sexual, hateful, or otherwise objectionable, unlawful or tortious material, or any other material in violation of a third-party right;
 - iii. use the Service to harm or impersonate any person, or for any commercial purpose;
 - iv. interfere with or disrupt the integrity or performance of the Service; or
 - v. attempt to gain unauthorized access to the Service or their related systems or networks.
- e). **Disclosure of User Information.** Instructure may access, preserve, and disclose User's registration and any other information if required to do so by law or based on Instructure's good faith belief that such access preservation or disclosure is necessary to: (i) enforce this agreement; (ii) respond to claims of a violation of the rights of third parties, whether or not the third party is a User, individual, or government agency; (iii) respond to customer service inquiries; or (iv) protect the rights, property, or personal safety of Instructure, other users or the public.
- f). **Customer Support.** Instructure must provide customer support for the Service under the terms of Instructure's Customer Support (**Support**), which are located at <http://www.instructure.com/policies/support-terms>, and are incorporated into this agreement for all purposes.



(2) PAYMENT TERMS.

Customer must pay all fees as specified on the order, but if not specified then within 30 days of receipt of an invoice. Customer is responsible for the payment of all sales, use and other similar taxes. All orders are non-cancelable and the fees are non-refundable (except as expressly provided below).

(3) WARRANTY/SERVICE LEVEL AGREEMENT AND REMEDY.

- a). **Compliance with Laws.** Each party represents and warrants to the other party that it will comply with all applicable provisions of the Family Educational Rights and Privacy Act, as amended (FERPA), and other laws with respect to its activities under this agreement. Instructure will implement reasonable and typical administrative, technical, and physical safeguards to secure its facilities and systems from unauthorized access, and to secure the Customer Confidential Information (defined below) and data. Instructure agrees: to not use or disclose education records created or received from, by, or on behalf of Customer or its students for any purpose other than the purpose than providing the Services to students, except that Instructure may create, use, and disclose de-identified and aggregated data based upon education records; and to not use or disclose such education records except as permitted by this agreement, as required by law, or as authorized by Customer in writing.
- b). **Service Availability Warranty.** Instructure warrants to Customer, (i) that commercially reasonable efforts will be made to maintain the online availability of the Service for a minimum availability in a trailing 365-day period as provided below (excluding scheduled outages, force majeure, and outages that result from any Customer or User technology issue), (ii) the functionality or features of the Service may change but will not materially decrease during a paid term, and (iii) that Support may change but will not materially degrade during any paid term.

Annual Availability Warranty: 99.9% availability percentage

- If Customer has been using the Service for less than 365 days, the preceding 365 days will be used but any days prior to Customer's use of the Service will be deemed to have had 100% availability.
- Any unavailability occurring prior to a successful credit claim cannot be used for any future claims.

A Customer is eligible for a service credit if the annual availability percentage drops below 99.9% for the preceding 365 days from the date of a service credit claim. The maximum amount of the credit is 1/12 of the annual subscription fee for a twelve (12) month period. This service credit is calculated by taking the number of hours that the Service was unavailable below the warranty, and multiplying it by 3% of 1/12 the annual subscription fee. Customer's exclusive remedy and Instructure's sole obligation for breach of the warranty in b(i) will be for Instructure to provide a credit as provided above; provided that Customer notifies Instructure in writing of such claim within the applicable month Customer becomes eligible or 30 days after.

- c). **Third Party Links/Service Disclaimer.** The Service may contain links to third party web sites (including without limitation, links provided by instructors) or access third-party services (including without limitation, turnitin.com and Google docs). Such sites and services are not under the control of Instructure, and Instructure is not responsible for the content or any link on such sites or for the temporary or permanent unavailability of such third party sites or services.
- d). **Warranty Disclaimer.** INSTRUMENT DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. THE SERVICE MAY BE INTERRUPTED OR CONTAIN AN ERROR. WHILE INSTRUMENT TAKES REASONABLE MEASURES TO SECURE THE SERVICE, INSTRUMENT DOES NOT GUARANTY THAT THE SERVICE CANNOT BE COMPROMISED.

(4) MUTUAL CONFIDENTIALITY.

- a). **Definition of Confidential Information.** Confidential Information means all confidential information disclosed by a party (Discloser) to the other party (Recipient), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (Confidential Information).
- b). **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own Confidential Information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.
- c). **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

(5) PROPRIETARY RIGHTS.

- a). **Reservation of Rights by Instructure.** The software, workflow processes, user interface, designs, know-how, API information, third party technology and other technologies provided by Instructure as part of the Service are the proprietary property of Instructure and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Instructure. Instructure reserves all rights unless expressly granted in this agreement.
- b). **Customer Restrictions.** Customer *may not*:
 - i. reverse engineer the Service or the API;
 - ii. remove or modify any proprietary marking or restrictive legends in the Service; or
 - iii. access the Service to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.
- c). **Feedback.** Instructure may contact each User (no more than once each year) for the *sole purpose* of seeking aggregate anonymous feedback regarding performance of the Service and suggestions for improvements. Customer, and each User (to the extent Customer has such right), hereby grants Instructure an irrevocable, royalty-free perpetual license to all feedback and suggestions regarding the Service.

(6) EXCLUSION OF DAMAGES AND LIMITATION OF LIABILITY.

- a). **EXCLUSION OF CERTAIN DAMAGES.** INSTRUCTURE IS NOT LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY, LOSS OF DATA, RECORDS OR INFORMATION, AND ANY FAILURE OF DELIVERY OF THE SERVICE).
- b). **LIMITATION OF LIABILITY.** EXCEPT FOR INSTRUCTURE'S INDEMNITY OBLIGATIONS, INSTRUCTURE'S LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) DOES NOT EXCEED THE AMOUNT PAID BY CUSTOMER WITHIN THE PRECEDING 12 MONTHS UNDER THIS AGREEMENT.

(7) TERM, TERMINATION, AND SUSPENSION OF SERVICE.

- a). **Term.** This agreement continues for the duration specified on the order Additional orders for new terms shall be signed by both parties.
- b). **Mutual Termination for Material Breach.** If either party is in material breach of this agreement (including without limitation non-payment of any amounts owed Instructure), the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.
- c). **Termination for Lack of Funding.** Performance by Customer under this agreement may be dependent upon appropriation and allotment of funds by the state legislature and/or allocation of funds by local government (together know as "Appropriation Body"). Customer warrants that this appropriation and allotment of funds is beyond the control of Customer. If Appropriation Body fails to appropriate or allot the necessary funds, then Customer will issue prompt written notice to Instructure and Customer may terminate this agreement. No refunds shall be made for any pre-paid fees.
- d). **Return or Destroy Upon Termination.** Upon termination or expiration of this agreement for any reason, Customer must pay Instructure all amounts owed, and destroy or return all property of Instructure. Customer will confirm this destruction or return requirement in writing upon request of Instructure.
- e). **Suspension of Service and Removal of Customer Content for Violations of Law or Policy.** Instructure may immediately suspend the Service and remove applicable Customer Content if it in good faith believes that, as part of using the Service, Customer may have violated a law or a restriction in this agreement. Instructure may try to contact Customer in advance, but it is not required to do so.

(8) GOVERNING LAW AND FORUM.

This agreement is governed by the laws of the State of Florida, without regard to conflict of law principles. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

(9) INDEMNITY.

- a). **By Instructure for Infringement.** If a third-party claims that the Service (other than related to any Customer Content) infringes that party's patent, copyright or other proprietary right, Instructure will defend Customer against that claim at Instructure's expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by Instructure, provided that Customer:
 - i. promptly notifies Instructure in writing of the claim; and
 - ii. allows Instructure to control, and cooperates with Instructure in, the defense and any related settlement.

CONTRACT REVIEWED
AND APPROVED:
aw 6-10-13

If such a claim is made, Instructure could continue to enable Customer to use the Service or to modify it. If Instructure determines that these alternatives are not reasonably available, Instructure may terminate the Service without any liability to Customer upon notice to Customer and with the return of any prepaid and unused fees. This indemnity does not apply to the extent of any technology not provided by Instructure, if the Service is used other than in accordance with this agreement, or with third party technology it is not designed to operate with.

- b). **By Customer.** If a third-party claims against Instructure that any part of the Customer Content infringes or violates a patent, copyright or other right, Customer will defend Instructure against that claim at Customer's expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by Customer, provided that Instructure:
 - i. promptly notifies Customer in writing of the claim; and
 - ii. allows Customer to control, and cooperates with Customer in, the defense and any related settlement.

(10) MISCELLANEOUS OTHER TERMS.

- a). **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- b). **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties, and supersede all prior or contemporaneous negotiations, agreements and representations, whether oral or written, related to this subject matter. No modification or waiver of any term of this agreement is effective unless both parties sign it.
- c). **Publicity.** During the term of this agreement, (1) Customer agrees to act as a reference account that will, upon Instructure's reasonable request, provide Service-related comments to the press, potential investors, and current or prospective customers and participate in Service-related case studies; (2) Customer agrees to issue joint press releases with Instructure regarding the Service, *as approved by Instructure*; and (3) Customer agrees to allow Instructure to use its name, logo and non-competitive use details in both text and pictures in its various marketing communications and materials, in accordance with Customer's trademark guidelines and policies.
- d). **No Assignment.** Neither party may assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned as part of a merger, or sale of all or substantially all of the business or assets, of a party.
- e). **Independent Contractors.** The parties are independent contractors with respect to each other.
- f). **Enforceability.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect.
- g). **No Additional Terms.** Instructure rejects additional or conflicting terms of any Customer form-purchasing document.
- h). **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.
- i). **Survival of Terms.** Any terms that by their nature survive termination or expiration of this agreement, will survive.
- j). **Notices.** For purposes of service messages and notices about the Service, Instructure may place a banner notice or send an email to an email address associated with an account.
- k). **CISG.** The Convention on Contracts for the International Sale of Goods does not apply.
- l). **Force Majeure.** Neither party is liable for force majeure events.

(Customer)

Instructure, Inc.

Signature

Signature

Name

Name

Title

Title

Date

Date



Address _____

6330 South 3000 East, Suite 700
Salt Lake City, UT 84121

CONTRACT REVIEWED
AND APPROVED:
lw 6-10-13



Services Order Form

6330 South 3000 East, Suite 700, Salt Lake City, UT 84121

Customer Contact Information

Customer	District School Board of Pasco County	Contact	_____
Address	_____	Phone	_____
City	_____	email	_____
State/Province	_____		
Zip/postal code	_____		

Product & Fees						
Description	Term		Metric	Quantity	Price	Total
Canvas Cloud Subscription	7/1/13	6/30/14	User	75,000	\$3.22	\$241,500 *
Canvas Cloud Subscription	7/1/14	6/30/15	User	75,000	\$4.02	\$301,500
Canvas Cloud Subscription	7/1/15	6/30/16	User	75,000	\$4.02	\$301,500
Support Package						
Premium Support	7/1/13	6/30/14	20% of subscription (Min 5K)	N/A	\$60,300	\$60,300 *
Premium Support	7/1/14	6/30/15	20% of subscription (Min 5K)	N/A	\$60,300	\$60,300
Premium Support	7/1/15	6/30/16	20% of subscription (Min 5K)	N/A	\$60,300	\$60,300
Additional Zendesk License						
Additional Zendesk License	7/1/13	6/30/14	Per Year	6	\$500	\$3,000 *
Additional Zendesk License	7/1/14	6/30/15	Per Year	6	\$500	\$3,000
Additional Zendesk License	7/1/15	6/30/16	Per Year	6	\$500	\$3,000
Other						
Implementation & Training	N/A	N/A	One Time	1	\$18,000	\$18,000
Zendesk Ticket Routing Custom Work	N/A	N/A	One Time	1	\$15,000.00	\$15,000
Parent Phone Number LTI Tool Custom Work	N/A	N/A	One Time	1	\$30,000.00	\$30,000
Parent Self Co-Enrollment Custom Work	N/A	N/A	One Time	1	\$5,000.00	\$5,000
Parent Phone Number LTI Tool Yearly Hosting	7/1/13	6/30/14	Per Year	1	\$6,000.00	\$6,000
Parent Phone Number LTI Tool Yearly Hosting	7/1/14	6/30/15	Per Year	1	\$6,000.00	\$6,000
Parent Phone Number LTI Tool Yearly Hosting	7/1/15	6/30/16	Per Year	1	\$6,000.00	\$6,000
Total						1,120,400.00

Implementation & Training Services includes:

- Production account setup.
- Authentication integration assistance (for supported identity providers only. (i.e., LDAP, CAS or SAML 2.0).
- Starter training to be delivered online. Administrator Training, Support Training, User Training.
- Site Branding (school color header w/ logo.)
- Basic SIS endpoint (We enable the Instructure bulk enrollment API which accepts updates provided in the Canvas SIS Import Format.)
- Production Support Configuration for support ticketing system.
- Test Instance (Test Instance that refreshes weekly)

User Definition
 User means a part-time or full-time student, teacher, or administrator of Customer's educational institution, which is authorized by Customer to use the Service with a login credential.

Payment Terms: Customer agrees to pay to Instructure the applicable fees set forth on this order form.

For the initial term Customer must pay such amount to Instructure on the date of this order.
 For each subsequent term, Instructure will invoice Customer 30 days prior to the beginning of such term and Customer must pay such invoice within 30 days of receipt.

Duration: This order begins on the initial date listed above under Term, and continues until the last date listed above, unless sooner terminated under the Agreement.

Terms: This order is governed by the terms of Master Subscription Services Agreement between the parties (Agreement), which terms are incorporated into this order for all purposes. If there is a conflict between the terms of this order and the Agreement, this order governs. This order and the Agreement are the entire agreement between the parties, and they supersede and replace all prior and contemporaneous negotiations, agreements, representations and discussions regarding this subject matter. Only a signed writing of the parties may amend this order. Any terms used in this order but not defined, will use the definitions in the Agreement.

* 20 % Discount Applied to First Contract Year - Cloud Subscription Only, Not Support

Customer: District School Board of Pasco County

Instructure, Inc.

Signature: _____
 Name: _____
 Title: _____
 Date: _____

Signature: _____
 Name: _____
 Title: _____
 Date: _____

**CONTRACT REVIEWED
 AND APPROVED:**
AW 6-10-13