



DISTRICT SCHOOL BOARD OF PASCO COUNTY

Kurt S. Browning, Superintendent of Schools

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

Purchasing Services

Nicole Westmoreland, MBA Purchasing Agent

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

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

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

July 22, 2014

MEMORANDUM

To: Honorable School Board Members

From: Nicole Westmoreland, MBA, Purchasing Agent *NW*

Subject: Baker & Taylor
Request to Place Purchase Orders

The Office of Teaching and Learning (OTL) is requesting Board approval to place purchase orders not to exceed \$296,000 to Baker & Taylor utilizing the State Contract – Library Materials 715-001-07-1 for the purchase of eBooks for schools throughout the district.

Additionally, they are requesting Board approval to purchase AXIS360 – eBook Access Platforms in the amount of \$4,000 from Baker & Taylor, as they are the producer of AXIS360. Per DOE Rule 6A-1.012(11) (b), the requesting of bids from three (3) or more sources is waived for the purchase of educational tests, textbooks, printed instructional materials where such materials are purchased directly from the producer or publisher, the owner of the copyright, and exclusive agent within the state, a governmental agency or a recognized educational institution. Baker & Taylor is the sole producer for AXIS360 (see attached).

The approximate total expenditure for the above purchases will be \$300,000 utilizing categorical allocations and school based funding.

Please feel free to contact Wendy Spriggs, Program Coordinator, Office for Teaching & Learning, at your earliest convenience if you have questions or concerns.

NW/dr

Attachment(s)

Date/Time: July 15, 2014 10:31:00

To: Nicole Westmoreland, Purchasing Agent
From: Wendy Spriggs, Program Coordinator, Office for Teaching & Learning
Date: June 18, 2014
Re: Purchase of AXIS360 eBook Platform

As we move to a more digital environment, we also want to provide our students with eBooks that they can check out and read on a computer, tablets, or other electronic devices, both school owned and their personal devices. We conducted a trial at Gulf High School of AXIS360, which is a platform that provides that access.

We are now asking approval to purchase AXIS360, including collections of eBooks, for the entire district, which will allow us to have both a central district library of eBooks for each level, and for each school to have a collection for their own students.

The funds to purchase these materials will come from the categorical allocation for Library Materials from 2014-14 and 2014-15, as well as school based funding sources. We anticipate total expenditures of approximately \$300,000 to build both district and school level collections during the 2014-15 school year.

A Torrey
Approved
6/23/2014

Dani
6/24/14



June 23, 2014

Ms. Wendy Spriggs
Office for Teaching and Learning
District School Board of Pasco County
7227 Land O'Lakes Boulevard
Land O'Lakes, FL 34638

Re: Baker & Taylor Axis 360 Digital Platform

Dear Ms. Spriggs,

Axis 360 is Baker & Taylor's digital content hosting and delivery platform which provides managed access to electronic materials for authenticated users of library resources. Baker & Taylor owns the intellectual property rights, including copyright, associated with the Axis 360 base platform. Baker & Taylor is the sole source supplier of the Axis 360 base platform as licenses thereof emanate from Baker & Taylor.

Thank you for your interest in Baker & Taylor. Please let me know if you have any questions or if I can provide any other information.

Sincerely,

A handwritten signature in cursive script that reads "Lee Ann Queen".

Lee Ann Queen
Director – Pricing Services

Baker & Taylor, Inc.
Pricing Services
2550 West Tyvola Road, Suite 300
Charlotte, NC 28217

Telephone: 800-775-7930, ext. 3245
Fax: 704-998-3260
E-Mail: queenl@baker-taylor.com

**SCHEDULE 1
FEE SCHEDULE***

Annual hosting, access, and service fee:

Required opening order:

Elementary School Magic Wall: District-Wide Access for 45 Pasco Elementary Schools

Platform & Annual Service Fee = \$11,250 (List Price)

Platform & Annual Service Fee = \$2,000 (Pasco Price)

Initial eBook order of at least \$20,000

Middle School Magic Wall: District-Wide Access for 15 Pasco Middle Schools

Platform & Annual Service Fee = \$3,750 (List Price)

Platform & Annual Service Fee = \$1,000 (Pasco Price)

Initial eBook order of at least \$15,000

High School Magic Wall: District-Wide Access for 13 Pasco High Schools

Platform & Annual Service Fee = \$3,250 (List Price)

Platform & Annual Service Fee = \$1,000 (Pasco Price)

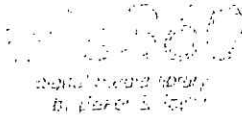
Initial eBook order of at least \$13,000

Additional, Individual School Magic Wall: This pricing is for any school included in the Elementary, Middle, or High School Magic Walls above.

Platform & Annual Service Fee = \$0 (Pasco Price)

Initial eBook order of at least \$500

CONTRACT REVIEWED
AND APPROVED:
NW 7-3-14



This Axis360 Agreement (this "Agreement") is made and entered into as of the 27th day of June, 2014 by and between BAKER & TAYLOR, INC., a Delaware corporation ("B&T") and the below-identified Customer ("Customer").

CUSTOMER: District School Board of Pasco County

CUSTOMER CONTACT INFORMATION:

PRIMARY CONTACT Wendy Springs
TITLE Media Supervisor
E-MAIL ADDRESS wsprings@pasco.k12.fl.us
TELEPHONE 813-794-2456
FAX _____
STREET ADDRESS 7227 Land O' Lakes Boulevard
CITY Land O' Lakes
STATE, ZIP FL 34638

CUSTOMER BILLING INFORMATION (if different):

PRIMARY CONTACT _____
TITLE _____
E-MAIL ADDRESS _____
TELEPHONE _____
FAX _____
STREET ADDRESS _____
CITY _____
STATE, ZIP _____

PURCHASE OF AXIS360 SERVICES AND ECONTENT:

SEE SCHEDULE 1 FEE SCHEDULE AND SCHEDULE 2 TERMS AND CONDITIONS ATTACHED HERETO

RETURN THIS AGREEMENT TO:

BAKER & TAYLOR, INC.
3584 Old Maysville Road
Commerce, GA 30529
Attention: Axis360 Administration

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES SIGNING BELOW HEREBY CONFIRM THAT THEY EACH AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AXIS360 AGREEMENT, INCLUDING SCHEDULES 1 AND 2, WHICH ARE ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

Customer: _____
By: _____
Name: _____
Title: _____
Date: _____

BAKER & TAYLOR, INC.
By: Kristi Steele
Name: Kristi Steele
Title: Product Support Manager
Date: 6/24/14

Nicole Westmoreland 7-3-14
Signature Date

Nicole Westmoreland, MBA, Purchasing Agent
District School Board of Pasco County

****THIS FEE SCHEDULE MAY BE UPDATED BY BAKER & TAYLOR UPON 60 DAYS NOTICE TO CUSTOMER.***

CONTRACT REVIEWED
AND APPROVED:
NW 7-3-14

SCHEDULE 2
TERMS AND CONDITIONS

1.00 DEFINITIONS

As used herein, the following definitions shall apply:

1.01 "Agreement" means this Axis360 Agreement, including the signature page, the schedules referenced on the signature page (including Schedule 1 Fee Schedule and Schedule 2 Terms and Conditions), and the orders for licensed eContent issued by Customer pursuant to this Agreement. No other terms and conditions contained in any purchase order issued by or for Customer, or otherwise communicated by or through any other ordering or transactional process utilized by or for Customer, shall apply to this Agreement.

1.02 "Authorized Users" means those individuals that are employees or users of the Customer (including patrons, students and faculty) and authenticated by the Customer's automated management system. This Agreement specifically excludes all users other than Authorized Users.

1.03 "Axis360" refers to the Axis360 System and Axis360 Services.

1.04 "Axis360 System" means the digital content management system established by B&T for Customer under this Agreement for the purpose of supplying and hosting eContent.

1.05 "Axis360 Services" means all services involved in supplying and hosting of eContent via the Axis360 System under the terms of this Agreement.

1.06 "Axis360 Hosting Fee" means the fees in effect from time to time that are payable by Customer to B&T for hosting the Axis360 System, including the creation, operation and use thereof.

1.07 "B&T" means Baker & Taylor, Inc., its successors, assigns and subsidiaries, including but not limited to YBP Library Services.

1.08 "Blio" means that certain e-reader software application licensed to Customer and/or Authorized Users for the display of certain eContent converted by or for B&T for such use.

1.09 "Customer" means such public, academic, school, special or private library identified in this Agreement.

1.10 "DRM" means such digital rights management requirements as may be placed on eContent by the publishers and/or licensors supplying eContent to B&T.

1.11 "eContent" means such copyrighted books, audiobooks, video and other proprietary works in digital format that are licensed to Customer by B&T for inclusion in the Axis360 System.

1.12 "eContent License Fees" means the fees in effect from time to time that are payable by Customer to B&T for the licensing of eContent under this Agreement.

1.13 "EULA" means the license agreement posted on Axis360, as amended by B&T from time to time, that Authorized Users will accept in order to download and display eContent and/or Blio.

1.14 "Fees" means, collectively, Axis360 Hosting Fee, the eContent License Fees, and any other fee referenced herein.

1.15 "Launch Date" means the date that Axis360 is launched for Customer, as determined by B&T.

1.16 "Library Lending Period" means the period of time that Authorized Users are allowed to borrow eContent under the lending policy of Customer.

1.17 "Other Content" means materials that may be added to the Axis360 System by Customer or Authorized Users, such as User Reviews

displayed in association with eContent, and/or by mutual agreement of Customer and B&T.

1.18 "Privacy Policy" the privacy policy posted on Axis360, as amended by B&T from time to time, that Authorized Users will accept in order to download and display eContent and/or Blio.

1.19 "User Review(s)" means star ratings and comments contributed by Authorized Users relating to eContent hosted on the Axis360 System.

2.00 ECONTENT LICENSE

2.01 Subject to the terms and conditions of this Agreement and payment of the Axis360 Hosting Fee and eContent License Fees by Customer, B&T hereby grants to Customer a nonexclusive, nontransferable and revocable license to access and use Axis360 and such eContent as Customer may order pursuant to this Agreement. Additional e-Content titles/collections can be added to Axis360 at any time during the term of this Agreement upon the payment of applicable eContent License Fees by Customer. Except as otherwise expressly provided herein, all purchases of eContent shall be non-returnable and all Fees paid by Customer shall be non-refundable.

2.02 Customer and Customer's Authorized Users shall access Axis360 and eContent via computers and Internet connections to be supplied by, and at the expense of, Customer and/or Customer's Authorized Users. All such access shall be controlled by valid IP address, referring URL, identification codes and passwords or other commercially reasonable methods as determined by B&T.

2.03 Use of Axis360 and eContent is limited to Customer and Authorized Users. Customer shall be responsible for determining which Authorized Users shall have access to Axis360 and eContent. Customer shall not allow any access to Axis360 or eContent by other libraries through consortia or similar arrangement without B&T's prior written consent. Inter-library loan for the access and use of Axis360 or eContent is expressly prohibited.

2.04 All access to Axis360 and eContent by Customer and Authorized Users shall be subject to and governed by this Agreement, the EULA and the Privacy Policy. B&T reserves the right to suspend or terminate access to Axis360 by Customer in the event of any violation thereof by Customer. Repeated violations of the EULA by Authorized Users may be cause for suspension or termination of this Agreement, as determined by B&T.

2.05 Customer agrees to comply with all copyright, patent and other intellectual property laws and all DRM applicable to Axis360 and/or eContent. Notwithstanding any provision herein to the contrary, in the event that the DRM applicable to any given eContent imposes license requirements other than, or different from, those expressed herein, such DRM shall control with respect thereto and the license granted hereby shall be deemed automatically amended by such DRM.

2.06 Customer will enforce the proper and intended access to Axis360 by Authorized Users. The number of simultaneous users of eContent at any given time shall be limited to a single user per licensed copy. Access to eContent by Authorized Users, including but not limited to any ability to view, print and download, will terminate upon expiration of the applicable Library Lending Period.

2.07 All rights not expressly granted or licensed to Customer with respect to Axis360 and/or eContent are reserved by B&T.

3.00 TERM AND TERMINATION

3.01 Except where earlier termination is required under the provisions hereof or by any DRM applicable to Axis360 and/or eContent, this Agreement will be effective for a period beginning on the Launch Date and ending at 11:59:59 P.M. (Eastern U.S. Time) on the day preceding the third (3rd) anniversary of the Launch Date and shall automatically renew for successive terms of one year each. Either party shall have the right to prevent renewal by giving written notice of termination to the other party at

CONFIRMED AND APPROVED:
NW 7-314

least 60 days' prior to expiration of the then current term. In addition, in the event that (i) necessary funds will not be available to Customer in the year following any anniversary of the Launch Date or (ii) Customer elects to decline changes made by B&T to the Fee Schedule on sixty (60) days prior notice to Customer, Customer may terminate this Agreement as of any anniversary of the Launch Date by providing a 30 day written notice to B&T.

3.02 Subject to Section 3.03 hereof, upon termination of this Agreement and/or termination of any eContent license hereunder by operation of applicable DRM for any reason whatsoever, all rights and licenses granted pursuant to this Agreement will automatically terminate and Customer will not attempt to access to, or permit any access or use of, all or any portion of Axis360 or eContent.

3.03 Upon termination of this Agreement, the provisions of Section 3.02 hereof will apply to 1) eContent that has been converted for use with Blio and 2) all other eContent supplied to Customer on Axis360. B&T's sole responsibility to Customer will be to (i) confirm the eContent titles under license by Customer on Axis360 as of the date immediately preceding such termination date (other than eContent that has been converted for use with Blio) and (ii) submit on Customer's behalf to B&T's suppliers of such eContent titles a request for a license to allow Customer to receive access to such eContent titles, at no additional charge, on the digital content management system of the third party vendor then selected by Customer to provide such services. **B&T MAKES NO REPRESENTATIONS OR WARRANTIES AS TO WHETHER B&T'S SUPPLIERS WOULD ALLOW ANY SUCH LICENSE FOLLOWING TERMINATION OF THIS AGREEMENT. FOR THE AVOIDANCE OF DOUBT, NO LICENSE FOR ECONTENT CONVERTED FOR USE WITH BLIO WILL BE AVAILABLE AFTER TERMINATION OF THIS AGREEMENT IN CONNECTION WITH THE DIGITAL CONTENT MANAGEMENT SYSTEM OF SUCH THIRD PARTY VENDOR.**

4.00 DEFAULT AND REMEDIES

Either party's failure to perform any of its obligations hereunder in any material respect, which failure is not cured within 60 days after notice from the non-defaulting party (provided that a 10 day notice and cure period shall apply to any failure to pay any amounts due) shall be an "Event of Default" hereunder. The non-defaulting party will have all rights and remedies available to it under applicable law if an Event of Default occurs, except as otherwise expressly provided herein. Without limiting the generality of the foregoing, B&T's rights and remedies will include, without limitation, the right to disable the Axis360 System to prevent access during the applicable cure period if reasonably needed to prevent further nonconformance.

5.00 WARRANTY; LIMITATION OF LIABILITY

5.01 B&T warrants that publishers and/or licensors of eContent in the Axis360 System have authorized the licenses granted hereunder. **EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5.01, ALL ECONTENT AND ANY PORTIONS THEREOF ARE PROVIDED "AS IS" WITHOUT WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXPRESSLY EXCLUDED HEREBY ARE ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY B&T, ITS AGENTS OR EMPLOYEES, WILL CREATE A WARRANTY, AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.**

5.02 Neither B&T nor any other party that has been involved in the creation, production or delivery of all or any portion of the eContent through Axis 360 or otherwise will be liable for indirect, special, incidental, punitive, exemplary or consequential damages (including, without limitation, damages for claims by third parties, or loss of profits) arising out of the access to or use or inability to use all or any portion of Axis360 or the eContent, even if B&T or such other party shall have been advised or otherwise have known of the possibility of such damages. In no case will any liability of B&T or any such other party hereunder exceed the amount of the Axis360 Hosting Fees actually paid by Customer in the 12 month period preceding the claim giving rise to such liability.

6.00 INFRINGEMENT

6.01 All unauthorized use, copying, modification and/or distribution of all or any portion of Axis360 or the eContent is expressly forbidden. Customer will be liable for any infringement that is caused, facilitated or encouraged by its failure to abide by the terms of this Agreement and/or any applicable DRM.

6.02 Customer will promptly notify B&T in writing if any infringement claim relating to all or any portion of Axis360 or the eContent is made against Customer. If Customer provides B&T with sufficient notice of any such infringement claim, B&T at its option will make commercially reasonable effort to eliminate, or request that applicable publishers or licensors eliminate, the circumstances giving rise to such infringement. Alternatively, B&T may issue a refund to Customer on a prorated basis and terminate access. The foregoing is the only remedy available to Customer, and the only liability of B&T, in the event of a claim of infringement.

7.00 FORCE MAJEURE

Customer acknowledges that the Internet is an unregulated, unorganized, unreliable, unstable, insecure and ever-changing environment. The ability of each party to comply with this Agreement may be dependent on the Internet and equipment, software, systems, data, content and services provided by third parties, among other things. Neither party shall have any liability for any failure of performance due to events beyond its reasonable control. Lack of funds shall not be excused under this section.

8.00 MISCELLANEOUS

8.01 Except as otherwise required by law, B&T and Customer agree to maintain the confidentiality of any data relating to the usage of the eContent by specific Authorized Users.

8.02 Customer will be responsible for payment of any and all applicable sales, use, value-added, excise or similar taxes, if any, incurred in connection with any transactions under this Agreement.

8.03 Any failure by either party to exercise any right hereunder will not be deemed a continuing waiver of such right. If any of the terms or provisions of this Agreement are ruled to be invalid or unenforceable by a court or administrative tribunal of competent jurisdiction, the remainder of the Agreement will not be affected thereby.

8.04 Customer will not assign this Agreement, by operation of law or otherwise, without B&T's prior written consent. This Agreement will be binding upon, and will inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

8.05 All notices required or permitted to be given by one party to the other under this Agreement will be sufficient if hand-delivered, sent by recognized overnight courier, receipt acknowledged, or sent by certified mail, return receipt requested, to the other party at the applicable address set forth in this Agreement or to such other applicable address as may be designated by notice from one party to the other pursuant to this paragraph.

8.06 If the use of a digital signature is needed, each party shall adopt as its authorized signature a confidential digital identification consisting of symbols(s) or code(s) which are to be affixed to or contained in each digital transmission.

8.07 This Agreement and the Schedules, EULA and Privacy Policy referenced herein constitute the complete and exclusive statement of the terms and conditions between the parties regarding the subject matter hereof and supersede all prior proposals, understandings and agreements, oral and written, between the parties relating hereto, notwithstanding any order form submitted either before or after the date hereof. This Agreement may not be modified or altered except by written instrument duly executed by both parties. This Agreement may be executed in counterparts, all of which, when taken together, will constitute a single instrument.

