

**Kentucky Community and Technical College System
Department of Purchasing**

Memorandum

Date: December 16, 2013

To: File

From: Brenda Nolan

Re: Exception to Sealed Bidding – Civitas Learning

There are unique opportunities KCTCS could have with Civitas if we joined their consortium of schools in higher education. The business model is pretty simple, bring a bunch of leading-edge Colleges and Universities together and give them a tool set to run predictive analytics in a hosted environment of not only their own data, but also allow them to easily compare it with peer institutions. They have branded this as the Civitas Learning Network (CLN). The focus of their consortium of schools is to bring cross-institutional predictive analytics to higher education. This cross-institutional dataset will provide KCTCS the opportunity to see in real-time how they stack up to peer institutions. Civitas will provide us with a predictive analysis layer (toolset) for processing aggregated data that provides continuously updated student success forecasts.

In addition to collecting information from our Student and Learning Management Systems, CLN can gather data from our CRM, tutoring systems, social networks, orientation systems, etc. and cleanse the data to be shared cross-institutionally, again the value in this venture is in the consortium. As of today we would enter the CLN with DeVry, University of Maryland, Strayer University, Valencia College, and Austin Community College. Valencia college was the Aspen Award winner in 2011 and access to a cross-institutional dataset can help us analyze their best practices. They are also actively working on contracts with other Colleges and Universities across the country.

FAP 111-10-00

COMPETITIVE BIDDING EXCEPTIONS: SOLE SOURCE

Procurement shall be exempt from competitive bidding if there is only one (1) known capable supplier of a commodity or service, occasioned by the unique nature of the requirement, supplier, or market condition. The following items have been specifically determined to be exempt from bidding provided the using agency supports the purchase by written justification clearly substantiating the fact that the sole source item is the only item that will meet the needs of the agency. Prior approval of the electronically sent justification by the executive director of the Office of Material and Procurement Services is required for all purchases over \$5,000 or the agency's single quote small purchase authority, whichever is less, for the items listed below:

1. Instructional materials, equipment, supplies, or services. An electronic statement describing the need in relation to a particular program is required. Items commonly covered by this policy include classroom and training aids such as films, special books, maps, tests and testing services.
 2. Patented equipment. An electronic statement describing the need in relation to a particular service or equipment that justifies the procurement on a noncompetitive basis is required.
 3. **Proprietary equipment and supplies. Items that must be compatible with existing equipment or systems and which are available from one source only.** An electronic statement describing the need in relation to a particular existing system or piece of equipment that justifies the procurement on a noncompetitive basis is required. The Office of Material and Procurement Services shall make the final determination as to whether:
 - a. the equipment or supplies are proprietary; and
 - b. the amount exceeds the lesser of \$5,000 or the agency's designated single-quote small purchase limit.
 4. Equipment lease or rental, excluding passenger vehicles.
 5. Proprietary service and maintenance agreements. Preventative, scheduled, and unscheduled maintenance or service agreements with either manufacturer or authorized service agent. Justification shall identify provider as manufacturer or authorized service agent.
 6. Dues and organizational fees. Fees payable to a professional society or national organization engaged in established activities related to the agency's authorized function in state government. Payment of an individual employee's dues to local organizations is not authorized under this policy.
 7. **Computer software that is copyrighted and available from only one source. Copyrighted software, if only that software will meet the need of the application. See FAP 111-15-00 for other approval requirements.**
 8. Other commodities, equipment and services available from only one source. All purchases in excess of agency small purchase authority shall receive prior approval of the executive director of the Office of Material and Procurement Services.
- (KRS 45A.095 (1) (200))

**CIVITAS LEARNING, INC.
MASTER SERVICES AGREEMENT**

This Master Services Agreement ("Agreement") between Civitas Learning, Inc., a Delaware corporation ("Company"), and Kentucky Community and Technical College System ("Customer"), is entered into and effective as of the date of execution by both parties.

1. Provision of Services. Subject to the terms and conditions of this Agreement, including without limitation Customer's payment of all of the fees due hereunder, Company will provide Customer with web-based access to the Civitas databases and applications containing unique and/or personally identifiable information about Customer's faculty, administrators, advisors and students (the "Platform") and the cross-institutional database of anonymized information used to provide benchmarking data and other insights (the "Civitas Learning Network" or "CLN"), together with certain ancillary services provided by Company as may be described in one or more schedules that describe the services (collectively the "Services") together with the pricing and other terms and conditions (each a "Schedule"). The Services will be provided for the applicable term set forth in the respective Schedule. Customer may use the Services solely for their intended purpose in accordance with this Agreement.

2. Customer Responsibilities. Customer is responsible for all user activities that occur under the Customer's user accounts. Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (ii) comply with all applicable local, state, federal, and foreign laws in using the Services; and (iii) if and to the extent required in order for Company to perform the Services, Customer will provide Company with access to certain proprietary and third party systems or software.

3. Fees and Payment. Customer shall pay Company the fees in U.S. Dollars and as of the date set forth in each Schedule. Customer shall submit such payments as required in accordance with the payment instructions provided in each invoice. All fees charged for Services are exclusive of all taxes and similar fees now in force, enacted or imposed in the future on the transaction and/or the delivery of Services, all of which Customer will be responsible for and will pay in full, except for taxes based solely on Company's net income. If payment is not made within 30 days after the Company's invoice due date, Company may charge Customer a late fee on the unpaid balance at the lesser of 1% per month or the maximum lawful rate permitted by applicable law, rounded to the next highest whole month and compounded monthly.

4. Ownership. Customer shall own all right, title, and interest in and to any data that is collected by Company from Customer or third parties in connection with Customer's use of the Services ("Data"). Customer grants and agrees to grant to Company a perpetual, non-exclusive, royalty-free license to use such Data (a) in order to provide the Services to Customer; (b) for statistical, analytical and other aggregate use (provided that such Data is not personally identifiable or attributed to Customer and provided that such Data are aggregated with the data from other Company customers or users in a manner that does not allow Customer's Data to be separated from the aggregate data and identified as relating to Customer); and (c) as necessary to monitor and improve the Services. Upon request by Customer, Company will provide Customer with an electronic copy of all Data under Company's control.

All right, title, and interest in and to the Services and associated technology and documentation, including any improvements, modifications, and enhancements made thereto, are and shall remain in Company. Except for those rights expressly granted herein, no other rights are granted, either express or implied, to Customer hereby.

5. Feedback. Customer shall provide feedback to Company concerning the functionality and performance of the Services ("Feedback") from time to time as reasonably requested by Company. Customer hereby assigns and agrees to assign all of its right, title, and interest in and to such Feedback to Company. To the extent that the foregoing assignment is ineffective for whatever reason, Customer hereby grants and agrees to grant to Company a non-exclusive, perpetual, irrevocable, royalty free, worldwide right and license to use, reproduce, disclose, sublicense, distribute, modify and otherwise exploit such Feedback without restriction.

6. Warranties. Company represents and warrants that:

- A. Company is the owner or authorized user of the Platform and CLN and all of its components, and to the best of its knowledge the Platform and CLN does not violate any patent, trademark, trade secret, copyright or any other right of ownership of any third party;
- B. The Services will perform materially in accordance with the terms of this Agreement and each Schedule; and
- C. The Platform and CLN and its components are equipped and/or designed with systems intended to prevent industry known system attacks (e.g., hacker and virus attacks) and unauthorized access to confidential information;
- D. Company will (i) establish and maintain commercially reasonable technical and organizational measures to help to protect against accidental damage to, or destruction, loss, or alteration of Customer's Data; (ii) establish and maintain commercially reasonable technical and organizational measures to help to protect against unauthorized access to the Platform and CLN; (iii) establish and maintain network and internet security procedures, protocols, security gateways and firewalls with respect to the Platform and CLN and (iv) establish and maintain commercially reasonable disaster recovery plans.

Customer represents and warrants that:

- A. it has full right, power, and authority to enter into and perform its obligations under this Agreement; and
- B. neither the Data nor any other materials provided to Company in connection with the Agreement will infringe, misappropriate or violate any intellectual property, privacy or other right of any person or entity.

EXCEPT AS SET FORTH HEREIN, THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. DATA MAY BE DAMAGED OR LOST IN CONNECTION WITH USE OF THE SERVICES. COMPANY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY, NON-INTERFERENCE, ACCURACY OF DATA, AND FITNESS FOR A PARTICULAR PURPOSE.

7. Intentionally Omitted.

8. Limitation of Liability. TO THE EXTENT PERMITTED BY KENTUCKY LAW IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY OR DUE FROM CUSTOMER FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

9. Exclusion of Consequential and Related Damages. TO THE EXTENT PERMITTED BY KENTUCKY LAW IN NO EVENT SHALL COMPANY HAVE ANY LIABILITY FOR ANY LOST PROFITS, LOSS OF DATA, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.**10. Term and Termination.** This Agreement shall remain in effect for two years. This agreement may be renewed for additional periods as may be negotiated by mutual agreement of both parties. In addition to any other remedies it may have, if either party breaches any of the terms or conditions of this Agreement or any Schedule and fails to cure such breach within 30 days after written notice from the non-breaching party, the non-breaching party may terminate this Agreement or a specific Schedule upon 10 days' written notice.

In the event that any material change in any Applicable Law, or in the interpretation of such Applicable Law, makes continued performance by any party under the then-current terms and conditions of any Schedule illegal and the parties, using their reasonable best efforts, are unable to agree upon modifications to the Schedule to avoid such illegality, then any party may terminate such Schedule, without penalty, by written notice to the other party, which notice will be effective upon the earlier to occur of (i) the 90th day following delivery of the notice to the other party or (ii) the effective date of such change in Applicable Law. To be effective, any written notice terminating a Schedule pursuant to this Section must include a detailed explanation and evidence of the illegality created as a result of such

change in Applicable Law. For purposes of this Section, "Applicable Law" means all federal, state and local laws, statutes, regulations, rules, executive orders, supervisory requirements, permitting or licensing requirements, export requirements, directives, circulars, opinions, decrees, interpretive letters, guidance or other official releases of or by any government, any authority, department or agency thereof, or any regulatory or self-regulatory organization.

11. Confidential Information. Customer acknowledges that the Services, the Platform, the CLN, the terms of this Agreement, and any other proprietary or confidential information provided to Customer by Company ("Company Confidential Information") constitutes valuable proprietary information and trade secrets of Company. Company acknowledges that any proprietary or confidential information provided to Company by Customer ("Customer Confidential Information") constitutes valuable proprietary information and trade secrets of Customer. Each party agrees to preserve the confidential nature of the other party's Confidential Information by retaining and using the Confidential Information in trust and confidence, solely for its internal use, and by using the same degree of protection that such party uses to protect similar proprietary and confidential information, but in no event less than reasonable care. Each party shall have the right to obtain an injunction (without having to post a bond) to prevent any breach or continued breach of this section. Each receiving party agrees to promptly report any breaches of this section to the disclosing party.

Company shall not, in any manner whatsoever, disclose, permit access to, or allow use of Customer Confidential Information to any person or entity except as specifically permitted or required under this Agreement. Company acknowledges and understands that Customer is required to protect certain Confidential Information from disclosure under applicable law, including but not limited to, the Family Educational Rights and Privacy Act ("FERPA") and the Gramm Leach Bliley Act, including regulations promulgated thereunder, as the laws and regulations may be amended from time to time. To the extent that Company, in the ordinary course of providing the Services under this Agreement, has access to "Education Records", it shall be deemed a "school official", as each of those terms are defined under FERPA and the regulations adopted by the U.S. Department of Education implementing FERPA. Company hereby acknowledges its obligations under FERPA and the regulations, and agrees to comply with its obligations thereunder.

Notwithstanding the foregoing, Confidential Information shall not include any information which (i) is now, or hereafter becomes, through no act or failure to act on the part of the receiving party, generally known or available to the public without breach of this Agreement by the receiving party; (ii) was acquired by the receiving party without restriction as to use or disclosure before receiving such information from the disclosing party, as shown by the receiving party's files and records immediately prior to the time of disclosure; (iii) is obtained by the receiving party without restriction as to use or disclosure by a third party authorized to make such disclosure; or (iv) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession. The Kentucky Community and Technical College System is a public entity and is subject to the Kentucky Open Records Act. The requirements of this paragraph are only binding to the extent permitted by Kentucky law.

12. Force Majeure. Except for Customer's obligation to make payments to Company, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, terrorism, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act, or failure of the Internet (not resulting from the actions or omissions of Company), provided that the delayed party: (i) gives the other party prompt notice of such cause, and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If Company is unable to provide Services for a period of 30 consecutive calendar days as a result of a continuing force majeure event, Customer may cancel the Services upon written notice to Company.

13. Publicity. Company may, upon providing written notice to Customer, reproduce and display Customer's logos, trademarks, trade names and similar identifying material in Company's marketing materials (such as in press releases and on Company's website) for the purpose of referring to Customer as a customer of Company. In addition, Customer shall issue a joint press release with Company, participate in a Company case study, and participate in analyst calls requested by Company. The content of any press release and case study shall be subject to Customer's prior written approval, which shall not be unreasonably withheld, conditioned or delayed.

**CIVITAS LEARNING, INC.
SCHEDULE**

Civitas Learning, Inc.

1145 West 5th Street

Austin, Texas 78703

Attention:

Kentucky Community and Technical College
System

300 North Main Street

Versailles, KY 40383

Attention:

Effective Date:

12/31/13
2014

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This Schedule incorporates and is subject to the Master Services Agreement (the "MSA") between Civitas Learning, Inc. ("Company") and the Customer identified above dated 12/31/2014. This Schedule describes, among other things, the services to be provided to Customer by Company. To the extent of a conflict between this Schedule and the MSA, this Schedule shall control. Unless otherwise provided herein, capitalized terms shall have the meanings provided in the MSA.

A. Definitions:

1. "Application" means a tool that uses a Predictive Model for users to display information necessary to diagnose, prevent, or disrupt behaviors within an institution.
2. "Interface" means a tool to share data with Customer, either in a uni-directional or bi-directional format.
3. "Predictive Model" means a model that predicts the probability of an outcome using data input in raw format or via transformations. The output of a model is a score and answers a question. A new model will be required if one needs to predict the probability of a new outcome (i.e. answers a new question) and/or when new data elements have substantially changed (>50% from an existing or prior model). There can be many Applications/Interfaces to a Predictive Model.

B. Company Responsibilities: Company will:

1. establish and maintain a private, secure, restricted-access instance of the Civitas Platform for Customer, granting access only to members of Customer and Company's staff as jointly and unanimously designated by Customer's authorized administrators;
2. integrate SIS, LMS, and CRM systems with the Platform (new or replacement integrations subject to additional fees);
3. provide Customer insights and benchmarking data on predictive data sources and elements;
4. provide Customer insights and benchmarking data on the predictive strength of its models;
5. host and manage up to two (2) Applications and/or Interfaces (as defined below) as mutually agreed upon by the parties;
6. provide Customer with access to the CLN; and
7. submit to audits and reviews for security and FERPA compliance as reasonably required by Customer.

Upon implementation, the Platform will be made available in accordance with the service level agreement attached to this Schedule as Exhibit A.

C. Customer Responsibilities: Customer shall:

14. Assignment. Either party may assign this Agreement in connection with a merger, acquisition or sale of all or substantially all of its assets related hereto. Except as expressly stated in this Section 14, neither party may assign its rights or obligations under this Agreement without obtaining the other party's prior written consent. Any assignment in contravention of this Section shall be void

15. Independent Contractor. In performing under this Agreement, each party is acting as independent contractor, and in no way are the parties to be construed as partners, joint venturers, or agents of one another in any respect.

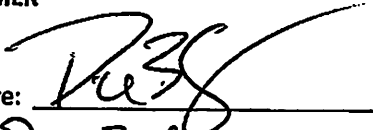
16. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Kentucky.

17. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and delivered: (i) personally; (ii) by first class mail, postage prepaid, certified and return receipt requested; (iii) via a nationally recognized overnight courier; (iv) via email; (e) via facsimile, to the applicable Party at the addresses set forth below, unless, by notice, a Party changes or supplements the addressee and addresses for giving notice. All notices shall be deemed given on the date personally delivered or 5 days after deposit in the mail as specified.

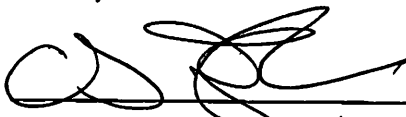
If to Customer: Email: _____ Address: _____ _____ _____ _____ _____ Telephone: _____ Fax: _____	If to Company: Email: <u>Charles@civitaslearning.com</u> Address: Civitas Learning, Inc. Attention: CEO 1145 W 5th Street, Suite 300 Austin, TX 78703 Telephone: (512) 215-9628 Fax: (512) 777-2990
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18. Miscellaneous. This Agreement, including the exhibits attached hereto, constitutes the entire agreement between the parties regarding the subject matter stated herein, and supersedes all previous communications, representations, understandings, and agreements, either oral, electronic, or written. Any amendments to this Agreement shall only be valid if in writing and signed by an executive of both parties. Nothing contained in any purchase order or other document shall in any way modify this Agreement or add any additional terms or conditions. This Agreement may be executed in two counterparts and facsimile signatures shall be binding.

CUSTOMER

Signature: 
Name: Paul B Czarnik
Title: VP/CIO
Date: 12/16/2013

CIVITAS LEARNING, INC.

Signature: 
Name: Charles Thornburgh
Title: CEO
Date: 12/17/2013

1. identify a day-to-day point of contact;
2. follow an agreed upon schedule and project plan for integration efforts;
3. deliver comprehensive exports on a mutually agreed schedule for current and historical data from Customer's following Core Systems: SIS, LMS, and CRM;
4. foster an unrestricted integration relationship if needed between Customer's third-party system providers and Company within a mutually agreed upon time frame;
5. provide Company with full access to the relevant functional, technical and business resources with adequate skills and knowledge to support the performance of Services;
6. obtain any consents required for Company to perform Services;
7. provide end-user training and maintain training documentation;
8. provide information regarding Customer's business policy, processes and its organization sufficient to support Company's delivery of Services and applications described in this Schedule;
9. acquire and set-up, install and provide maintenance of the required hardware and network environments to facilitate delivery of Services; and
10. extract data from Customer's third party systems for all interface needs in the format and structure as directed by Company.

D. Term: This Schedule is effective as of the Effective Date and will remain in effect for 2-years, unless terminated earlier pursuant to the MSA. Notwithstanding the foregoing, Customer may terminate this Schedule as of the first year anniversary of the Effective Date by providing at least 90 days prior written notice of termination.

E. Fees: Customer shall pay Company the annual subscription fee set forth below, the first of which will be payable a upon the earlier of i) March 1, 2014 or ii) substantial completion of the initial implementation-expected-to-be-complete February 28, 2014, the second of which is payable annually in advance throughout the Term of this Schedule. Company may invoice Customer the integration upon Customer's request for integration.

Annual Subscription Fee	Year 1	\$245,500
	Year 2	\$245,500
Additional Fees (if applicable)		
New or Replacement System Integrations		\$25,000 per integration

ACCEPTED AND AGREED:

Company

Civitas Learning, Inc.

By: 

Name: Charles Thornburgh

Title: CEO

Dated: 12-17-13

Customer

By: 

Name: Paul Czarapata

Title: VP

Dated: 12-16-13

EXHIBIT A
Service Level Agreement

1. **Definitions**
 - 1.1. "Failure Event" means a period of Unavailability in excess of 5 minutes.
 - 1.2. "Maintenance Window" means a period scheduled by Company during minimal traffic times, not to exceed 2 hours per week, wherein Company can perform maintenance tasks.
 - 1.3. "Unavailability" means the Civitas Platform is unavailable outside the Maintenance Window.
 - 1.4. "Uptime" means the general availability of the production instance of the Civitas Platform. Uptime will be measured by a calendar month period and calculated as follows: (total minutes in any calendar month – total minutes of Unavailability) divided by (the total minutes in same calendar month).
2. **Uptime Commitment.** Company will deliver 99% Uptime for the Civitas Platform.
 - 2.1. **Exceptions.** Company is not responsible for a failure to meet any service level to the extent that failure is attributable to any of the following, in which case the services downtime or Failure Event does not count against the Uptime commitment:
 - 2.1.1. Customer's failure to perform any of its responsibilities set forth in the Agreement to the extent such failure adversely affects Company's ability to meet the Uptime commitment.
 - 2.1.2. Factors outside Company's reasonable control; provided that Company would have been able to perform but for such factor, Company has not materially contributed in the cause of such factor, and Company could not have reasonably foreseen and prevented the effect of such factor with a commercially reasonable effort.
3. **Communication.** In the case of a Failure Event, Company shall use commercially reasonable efforts to (i) notify Customer's designated contact, (ii) identify the source, and (iii) resolve.
4. **Termination Option.** Failure for Company to meet the Uptime commitment during 2 consecutive calendar months or during three (3) calendar months within any 12-month period shall constitute a material breach of this Schedule and Customer may terminate this Schedule with 30 days written notice without opportunity to cure. The provisions of this Exhibit A state Customer's sole and exclusive remedy for any service level deficiencies of any kind.