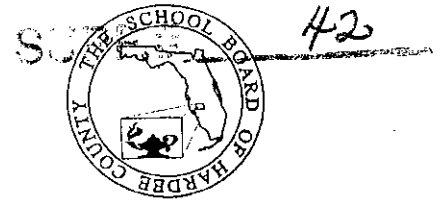


Hardee County Public Schools
School Board Agenda Analysis



Author(s): Woody Caligan

50.01

Date: July 30, 2012

Subject: Contract for Data Management Services from FOCUS School Software

Background Information: Heartland Data Systems, Inc. has provided both DOS and Windows based data software and support to the Hardee County School Board since the inception of data collection. The new requirement for single sign on for all users of student data has predicated a need to change from Heartland Data and change to FOCUS software. The Hardee District will run Heartland Data Systems' student data software for the 2012-2013 school year and then move to FOCUS for year 2013-2014. This will enable MIS to work with sites for appropriate training before going into mass production.

Administrative Consideration (include F.S., Rule, Authority, etc.): Each district must establish local record keeping procedures pursuant to rules 6A-1.04513 and 6A-1.0453, FAC. These rules mandate the information to be kept and submitted to the Department of Education.

Fiscal Impact: The Federal Race to the Top Grant will pay for FOCUS in 2012-13 (\$147,101) and in 2013-14 (\$22,856). Our annual payments of \$51,588 to Heartland Data Systems will end after 2012-13.

Director of Finance signature: _____

A handwritten signature in black ink, appearing to be "W. Caligan", is written over a horizontal line.

Proposed Recommendation to School Board: Recommend that you approve the contract for student data services with FOCUS School Software.

Action Agenda

Consent Agenda

Handwritten initials in black ink, possibly "WC", written below the Consent Agenda checkbox.



**FOCUS SCHOOL SOFTWARE, INC.
MASTER LICENSE AGREEMENT**

July 18, 2012

MLA#: SDHC-001

Page 1 of 6

Between: **Focus School Software, LLC**
Address, St. Petersburg, Florida ("Focus")

And: **School District of Hardee County**
P.O. Box 1678
Wauchula, FL 33873 ("Licensee")

This Master License Agreement ("Agreement") governs the licensing of proprietary computer programs and corresponding documentation (collectively the "Product") as provided by **Focus** to Licensee. The licensing of a given Product is subject to the terms of a separate legal document, which is incorporated into this Agreement by reference defining the corresponding license type, term, fees, and any relevant limitations to such license ("Product Schedule"). This Agreement does not by itself commit Licensee to license any Product. Rather, this Agreement merely sets forth the terms and conditions that will govern the licensing of Products to Licensee as a result of the execution of a Product Schedule by **Focus** and Licensee. The entity that executes a Product Schedule with **Focus** shall be considered the "Licensee" for all purposes of the Product Schedule; and the Product Schedule shall be considered a two-party agreement between **Focus** and such entity. When referring to either **Focus** or Licensee, the term, "Party" may be used; "Parties" when referring to both.

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 - b. **LIMITATIONS ON ASSIGNMENT:** With prior written approval from **Focus**, which shall not be unreasonably withheld, Licensee may assign this Agreement or any of its rights or interests hereunder, or delegate any of its obligations hereunder, to (i) Licensee's successor pursuant to a merger, reorganization, consolidation, or sale; or (ii) an entity that acquires all or substantially all of that portion of Licensee's assets or business for which the **Focus** Product is being used. Except as otherwise provided above, neither Party may assign this Agreement nor any of its rights or interests hereunder, nor delegate any obligation to be performed hereunder, without the prior written consent of the other Party. Any attempted assignment or delegation in contravention of this Section shall be null and void, and of no force or effect. This Agreement shall be binding upon, and shall inure to the benefit of, the legal successors and permitted assigns of the Parties.
 - c. **THIRD PARTY LICENSES:** Licensee acknowledges that a given Product may contain code libraries or controls created by third parties and licensed by **Focus**.
 - d. **FORMAT AND DISTRIBUTION:** No Product will be distributed to Licensee. The Product will be hosted by **Focus** on a **Focus**-owned or managed network.
 - e. **DOCUMENTATION:** **Focus** will provide Licensee with the Product documentation according to the applicable Product Schedule through electronic download, unless otherwise requested by Licensee. Licensee may use the documentation as is reasonably necessary for use(s) permitted by Licensee's license for the Product without additional charge.
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MASTER LICENSE AGREEMENT**

July 18, 2012

MLA#: SDHC-001

Page 2 of 6

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5. **PAYMENT AND TAXES:** **Focus** will invoice Licensee for the amount due on acceptance of the Product. Subsequent charges will be invoiced at the beginning of the period to which they apply. All payments shall be due within thirty (30) days of Licensee's receipt of an invoice from **Focus**.
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8. **PRODUCT ENHANCEMENTS AND TRAINING:**
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 - b. **RATES AND OUT OF POCKET EXPENSES:** Licensee will (a) pay **Focus** for services on a time and materials basis at the rates set forth in a Product Schedule for services and (b) reimburse **Focus** for all reasonable, pre-approved, out-of-pocket costs (such as



transportation, lodging, meal per diem, and other expenses) incurred by **Focus** in providing installation, training, maintenance and other Licensee services.

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10. **PRODUCT WARRANTY:**
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- b. **EXCLUSIONS:** This warranty will not apply if the programming error is caused by (i) modification of the Product by anyone other than **Focus**, (ii) negligence or willful misconduct of Licensee or its agent, (iii) misuse of the Product by Licensee or its agent, (iv) use of the Product other than in the specified operating environment, (v) failure by the Licensee to implement any improvements or updates to the Product as supplied by **Focus**, or (vi) the combination of the Product with any materials, equipment, software, or hardware not provided by **Focus** or its agent contrary to specifications in the Documentation or Product Schedule. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, **FOCUS** MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE CONDITION OF SUCH PRODUCT, ITS MERCHANTABILITY, OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.
11. **OUTSOURCING.** **Focus** may outsource the hosting of a Product to a third party service provider ("Outsource Provider"). While **Focus** will establish industry standard service level agreements with such an Outsource Provider, Licensee understands that **Focus** has no control over such an



Outsource Provider and **Focus** liability for downtime or unavailability of a Product is limited to this Agreement.

12. LIMITATION OF LIABILITY:

- a. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT WILL **FOCUS** OR ITS AFFILIATES BE LIABLE TO LICENSEE OR ITS AFFILIATES FOR ANY CLAIM BASED UPON A THIRD PARTY CLAIM; ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING IN TORT, CONTRACT, OR OTHERWISE; OR FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF **FOCUS** OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- b. LIABILITY CAP: Licensee agrees that **Focus's** liability for damages, if any, shall not exceed the charges under the applicable Product Schedule to **Focus** by Licensee. Such limitation applies to Licensee's obligations under Section 9.

13. DISPUTE RESOLUTION:

- a. MEDIATION: In case of any dispute arising from or related to this Agreement or Product Schedule(s), **Focus** and Licensee shall attempt to resolve such dispute informally through mediation prior to filing any legal action. Mediation shall be conducted by a Florida certified mediator, selected by mutual agreement of the parties.
- b. CHOICE OF LAW/FORUM: This contract is governed by the laws of the state of Florida. The parties agree that any action arising out of or relating to this Agreement shall be brought, if in state court, in the Circuit Court for the Sixth Judicial Circuit, in and for Pinellas County, Florida, and if in federal court, in the United States District Court for the Middle District of Florida, Tampa Division.
- c. ATTORNEY'S FEES: In any action arising out of or relating to this Agreement, including appellate proceedings, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

14. TERMINATION: Either party may terminate this Agreement if the other party commits a material breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice from the non-breaching party. Licensee's failure to pay any amount (except amounts disputed in good faith) within thirty (30) days after receiving notice that the amount is delinquent shall be considered a material breach of this Agreement.

- a. OBLIGATIONS: Upon the expiration or termination of this Agreement or any Product Schedule for any reason, Licensee shall certify in writing that the Product and all copies and/or partial copies of the Product have either been returned to **Focus** or otherwise destroyed and deleted from Licensee's computer libraries or storage devices and are no longer in use by Licensee.
- b. SURVIVAL: Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.
- c. NO WAIVER: The waiver by either party of a breach of any provision of the Agreement shall not operate or be construed as a waiver of any subsequent breach. This paragraph shall not be regarded as a waiver of any other rights or remedies to which **Focus** may be entitled.



**FOCUS SCHOOL SOFTWARE, INC.
MASTER LICENSE AGREEMENT**

July 18, 2012

MLA#: SDHC-001

Page 5 of 6

15. DIVESTITURE OF CLIENT BUSINESS: In the event of a divestiture of a subsidiary, affiliate, business segment or other operating unit of Licensee ("Divested Unit") which is then utilizing Products licensed under this Agreement, the Licensee may, in addition to its continuing use for its ongoing businesses, continue to use such Products on behalf of the Divested Unit for a transitional period not to exceed six (6) months from the date of such divestiture ("Divestiture Use Period"). Any further use by the Divested Unit past the Divestiture Use Period shall require either a) Licensee to obtain a written extension of the Divestiture Use Period from **Focus**; or b) the Divested Unit to obtain its own separate license for use of the Products effective upon the expiration of the Divestiture Use Period.

16. ESCROW: **Focus** has deposited a copy of the source code for the Products with Iron Mountain, Inc., 235 DeKalb Industrial Way, Decatur, Georgia 30030-2203. With each new release of the Product, **Focus** will deposit an updated copy of the source code with the escrow agent. The source code will be held in escrow and in the event **Focus** is liquidated, dissolved or ceases to carry on business on a regular basis in a manner which allows it to fulfill its maintenance and support obligations and said software and support obligations are not assumed by a successor or assignee, Licensee will, upon payment of the applicable duplication cost and other handling charges of the escrow agent, be entitled to a copy of such source code from the escrow agent, provided Licensee is then current in the payment of all fees for maintenance, support, products and services due to **Focus**. Any such source code shall be used for the sole purpose of performing maintenance of the Product and keeping it operable for use pursuant to a valid license, and subject to Licensee's agreement to keep the material strictly confidential and not to disclose it to any third party. Licensee and its employees, agents or representatives shall not, in any manner, use or dispose of the source code in violation of this Agreement.

17. GENERAL:
 - a. MODIFICATION: No alteration or modification of this Agreement or any Product Schedules shall be valid unless made in writing and signed by the Parties.
 - b. SEPARABILITY: If any provision of this Agreement or any Product Schedule is held to be invalid or unenforceable, the remaining provisions shall continue in full force and effect in such jurisdiction to the fullest extent permitted by law and the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.
 - c. NOTICES: Any notice or other communication required or permitted hereunder shall be given in writing to the other party at the address in a Product Schedule, or at such other address as shall be given by either party to the other in writing.
 - d. GOVERNING LAW: The laws of the State of Florida, excluding choice of law, govern this Agreement.
 - e. CONSENT: In case of litigation arising out of or relating to this Agreement, **Focus** and Licensee hereby expressly consent to the exclusive personal jurisdiction of the state and/or federal courts of Florida.
 - f. AUTHORITY TO SIGN: Licensee warrants that the person signing this Agreement and each Product Schedule for Licensee is authorized to do so, and that Licensee has obtained all internal and external approvals and resolutions necessary to enter into this Agreement and make it binding on Licensee.
 - g. NO THIRD PARTY RIGHTS: This Agreement does not create, confer, or otherwise grant rights for the benefit of any third party, creditor, or supplier or incidental beneficiary of Licensee.



**FOCUS SCHOOL SOFTWARE, INC.
MASTER LICENSE AGREEMENT**

July 18, 2012

MLA#: SDHC-001

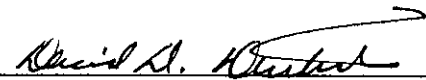
Page 6 of 6

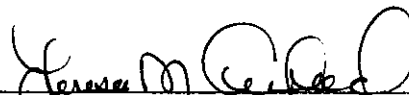
- h. HEADINGS: The Parties acknowledge that the headings used in this Agreement are for convenience purposes only and shall not be construed to define or limit the Parties' rights and remedies hereunder.
- i. ENTIRE AGREEMENT: This Agreement, Product Schedule(s) and any other supplement attached thereto, constitutes the entire agreement between the Parties in connection with the subject matter hereof and supersedes all agreements, proposals, representations and other understandings, oral or written, of the Parties and any current or subsequent purchase order(s) provided by Licensee.

IN WITNESS WHEREOF, the parties have set their hands and seals this day and year first written above.

ATTEST:

**THE SCHOOL BOARD OF HARDEE
COUNTY, FLORIDA**

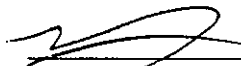
By: 
David D. Durastanti, Superintendent

By: 
Teresa Crawford, Chairman

ECAP
7/30/12

Date: _____

APPROVED AS TO FORM:


Michael R. McKinley
School Board Attorney

ACCEPTED BY FOCUS:

By: _____
Andrew Schmadeke

Its: President

Date: _____

FOCUS SCHOOL SOFTWARE, INC.

July 13, 2012

License Agreement: SDHC-001

PRODUCT SCHEDULE NUMBER-001

This Product Schedule is hereby incorporated into Master License Agreement Number SDHC-001 ("Master Agreement") as executed by **Focus School Software, Inc.**, ("**Focus**") and The School District of Hardee County (Licensee) as listed below. In accordance with the provisions of this Product Schedule and the Master Agreement and subject to Licensee's compliance with both, **Focus** grants Licensee a license for the Product(s) as listed below. Unless otherwise specified, this Product Schedule supersedes any prior Product Schedules for the Product(s) as listed below and to the extent that any provision of this Product Schedule conflicts with the Master Agreement, the provisions of this Product Schedule shall control with respect to the license granted herein. Licensee may not terminate this Product Schedule except in the case of a breach of the Master Agreement by **Focus** that remains uncured for thirty (30) days after **Focus** has received written notice of the breach.

Licensee	School District of Hardee County
Product(s) & Designated Hardware	Focus School System Enterprise Solutions Suite Focus/SIS - Implementation is hosted at Focus and is accessible by any users of the Licensee.
License Scope & Capacity	General Scope - Limited strictly to the processing of Licensee's data by Licensee's employees, students, contractors, and affiliates. Other restrictions apply as listed in this Product Schedule.
License Site	P.O. Box 1678, Wauchula, FL 33873
Ship to Site	Same as Licensee Site.
License Type	Non-Enterprise Term License
License Term	The five (5) years beginning on July 1, 2012 and ending on June 30, 2017, subject to the termination provisions of the Master Agreement.
License Fee (includes First Year Maintenance)	\$91,422 (\$18 per student based on FTE of 5,079)

FOCUS SCHOOL SOFTWARE, INC.

July 13, 2012

License Agreement: SDHC-001

<p>Professional Services</p>	<p>Total Professional and Hosting Services - \$55,679</p> <p>Professional and Hosting Services are comprised of the following:</p> <p>Training-On Site- \$1,200 per day (\$18,000 total).</p> <ul style="list-style-type: none"> • Includes fifteen(15) days of on-site training <p>Technical Implementation Services - \$1,800 per day (\$9,000 total).</p> <ul style="list-style-type: none"> • Includes System Implementation – 2 day • Includes Data Conversion and Migration – 3 days <p>Project Management Services - \$1,800 per day (\$9,000 total).</p> <ul style="list-style-type: none"> • Includes Project Management and Gap Analysis – 5 days <p>Professional Services - Integrations - \$1,800 per integration (\$9,000 total).</p> <ul style="list-style-type: none"> • Includes the following applications: NutriKids, Destiny, Edulink, Macaleer • Moodle <p>Optional Services</p> <ul style="list-style-type: none"> • Focus Certification-\$1,000 per person (\$2,000) • On Site Support-\$1,200 per day (\$3,600) <p>Annual Hosting Fee - \$1 per student annually, annually - \$5,079</p> <p>Total Professional Services and Hosting Fees</p> <ul style="list-style-type: none"> • Total Training - \$18,000 • Total Implementation Services - \$9,000 • Total Project Management - \$9,000 • Total Integrations - \$9,000 • Annual Hosting Fee - \$5,079 • Optional Services - \$5,600 <p>Focus will provide all Professional Services in subsequent Statement(s) of Work ("SOW" or "SOWs") to be mutually agreed upon. All services provided by Focus to Licensee shall be rendered pursuant to, and shall be governed by, the Master Agreement executed by the parties. In the event of a conflict between the terms of the Master Agreement and any SOW, the SOW shall govern with respect to any services provided within such SOW. The parties will work together in good faith to negotiate and execute any SOWs hereunder in a timely fashion.</p>
<p>Annual Support Fees Beginning Year 2</p>	<p>\$3.50 per student annually, based on FTE of 5,079 - \$17,777 to be invoiced annually beginning 3rd contract year until termination, due thirty (30) days from date of invoice.</p>
<p>Annual Hosting Fees Beginning Year 2</p>	<p>\$1.00 per student annually, based on FTE of 5,079 - \$5,079 to be invoiced annually beginning 3rd contract year until termination, due thirty (30) days from date of invoice.</p>
<p>Total First Year Fees, plus 2nd year hosting, support & maintenance</p>	<p>Total First and Second Year Payment - \$169,957</p>

FOCUS SCHOOL SOFTWARE, INC.

July 13, 2012

License Agreement: SDHC-001

Payment Terms	<p>License Fee</p> <p>Licensee shall pay Focus the License Fees listed above:</p> <ul style="list-style-type: none">• \$91,422 due upon Licensee's execution of this Product Schedule. <p>Licensee acknowledges that the License Fee in this Product Schedule is discounted, based on Licensee's commitment to pay the License Fee for the specified License Term. Licensee agrees to pay any applicable taxes associated with the License Fee. For the 3rd installment and beyond, Focus will invoice Licensee at least thirty (30) days prior to the listed due date.</p> <p>Professional Services and Hosting Fees</p> <p>Licensee understands that the rates quoted are strictly for the term of the Product Schedule and may increase thereafter. All Professional Services will be subject to Statement(s) of Work, which define the scope of such Professional Services and which will be mutually agreed upon by the parties, prior to Focus rendering Professional Services. Licensee will pay Focus for reasonable pre-approved expenses associated with Focus providing the Professional Services. Licensee shall pay Focus the Professional Services Fees listed above in one (1) installment as follows:</p> <ul style="list-style-type: none">• \$58,679 due upon Licensee's execution of this Product Schedule. <p>Total First Year Fees</p> <p>Licensee shall pay Focus the Total First Year Fees listed above in one (1) installment as follows:</p> <ul style="list-style-type: none">• Total First Year Fee - \$147,101 due upon Licensee's execution of this Product Schedule.• Total Second Year Fee (hosting, support & maintenance) - \$22,857 due upon Licensee's execution of this Product Schedule.
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This Product Schedule is subject to the following Terms and Conditions:

- 1) **Use Review:** Upon reasonable notice, Licensee shall grant **Focus** access to its pertinent files, libraries and records, as produced from the Product(s), to perform a review of the Product ("Use Review"). All information obtained during a Use Review shall be treated as confidential.
- 2) **Authorization Codes:** Notwithstanding anything to the contrary in the Master Agreement or this Product Schedule, Licensee acknowledges that **Focus** uses software product authorization codes embedded in the Product(s) and any applicable modules that Licensee must obtain in order for the Product and such modules to function. During the License Term or any Renewal License Term (as defined below) of the license granted pursuant to this Product Schedule, provided Licensee is in compliance with the terms of such license, **Focus** will give Licensee a one-year authorization code for the computer(s) on which Licensee executes the Product(s) pursuant to the license granted herein. **Focus** shall renew such authorization code very year during the term of the license granted pursuant to this Product Schedule, provided Licensee is in compliance with the terms of such license ("Annual Authorization Code"). Other than for non-payment of Licensee Fees as due under this Product Schedule, **Focus** will not allow Product(s) to stop functioning pursuant to this section if the alleged noncompliance is the subject of dispute resolution under the Master Agreement or is within an applicable cure period.
- 3) **Third Party Code:** Notwithstanding anything to the contrary in this Product Schedule or the Master Agreement, Product(s) and applicable modules licensed herein may contain code licensed by **Focus** from a third party for license with Product(s) to end users ("Third Party Code"). Licensee agrees that

FOCUS SCHOOL SOFTWARE, INC.

July 13, 2012

License Agreement: SDHC-001

if Product(s) contain Third Party Code, such Third Party Code is the Confidential Information of Focus's licensor and that Licensee's obligations with respect to the Title, Proprietary Rights and Confidentiality section of the Master Agreement shall apply with respect to such Third Party Code as if such Third Party Code was owned by Focus and was a part of Product(s) licensed from Focus pursuant to this Product Schedule; that title to such Third Party Code shall at all times remain with the owner of such Third Party Code; that Licensee may not use the Third Party Code separate from Product(s) or applicable module containing such code; that Licensee agrees not to translate, reverse compile, reverse assemble or otherwise reverse engineer the Third Party Code or permit others to do or attempt to do the same; that the section(s) pertaining to limitation /exclusion of damages/liabilities shall apply to such Third Party Code and Licensee agrees that Focus's licensor shall be excluded from any liability and/or indemnification obligations and to look exclusively to Focus (as set forth and limited in the Master License Agreement) for remedy of and indemnification for damages caused by such Third Party Code. Focus makes no representations or warranties on behalf of Focus's third party vendors, but Focus's indemnities, warranties, and maintenance obligations for Product(s) licensed under this Product Schedule will apply to such Third Party Code as between Focus and Licensee.

- 4) Headings: Headings or titles to Sections herein are for convenience and/or reference only and shall not affect the meaning or interpretation of this Product Schedule or any part of it.
- 5) Acceptance: All Products shall be deemed accepted by Licensee upon execution of the Product Schedule.

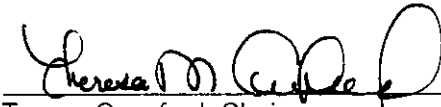
The parties agree that the prices, terms and special conditions contained in this Product Schedule constitute Confidential Information under the Master Agreement.

IN WITNESS WHEREOF, the parties have set their hands and seals this day and year first written above.

ATTEST:

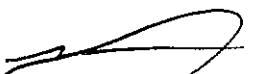
THE SCHOOL BOARD OF HARDEE COUNTY, FLORIDA

By: 
David D. Durastanti, Superintendent

By: 
Teresa Crawford, Chairman

ECAD 1001
Date: 7/30/12

APPROVED AS TO FORM:


Michael R. McKinley
School Board Attorney

FOCUS SCHOOL SOFTWARE, INC.

July 13, 2012

License Agreement: SDHC-001

ACCEPTED BY FOCUS:

By: _____
Andrew Schmadeke

Its: President

Date: _____