

Hardee County Public Schools  
School Board Agenda Analysis



5.02

**Author(s):**

Sherri Albritton

**Date:**

Oct 22 2015

**Subject:**

Recommend approval of the Performance Matters agreement between Hardee County School Board and Performance Matters.

**Background Information:** Performance Matters is a web based data tool which allows classroom teachers, school site administrators, and district personnel to access prior years' student FCAT/FSA data as well as Benchmark Assessment data to determine instructional and curriculum decisions. This is the 10th year that this product, which manages required state and federal progress monitoring, will be used in the district.

**Administrative Consideration** (include F.S., Rule, Authority, etc.)

FS 1001.41(1) states that the School Board shall determine policies and programs deemed necessary by it for the efficient operation and general improvement of the district school system.

**Fiscal Impact:** The fifth year's agreement will cost \$36115.00. The cost will be supported by Title VI and district funds.

Director of Finance signature: \_\_\_\_\_

**Superintendent's Recommendation to School Board:**

The Superintendent recommends approval of the Agreement between Performance Matters and Hardee County School Board.

**Action Required:**

Action Agenda

Consent Agenda

*Handwritten initials*

BOARD ACTION

10/22/15

Approved

1 of 1



## Hosting Services Agreement

**Hosting Services Agreement:** This Hosting Services Agreement is effective July 1, 2015 between Performance Matters, LLC ("PMI") a Florida Limited Liability Company located at 1600 Lee Road, Winter Park, FL 32789 and Hardee County School District, Florida ("HCSD"). The purpose of this Agreement is to facilitate access by HCSD employees ("named users") to the Performance Matters' Assessment & Data Management System (SERVICE).

**Services:** PMI shall establish and maintain the SERVICE for use by the HCSD named users. HCSD shall be responsible for providing its own Internet access. The SERVICE shall be capable of operating on a 24 hour a day basis, 365 days per year, other than for interruptions due to service maintenance and upgrades, system failure, system back-up and recovery and for causes beyond PMI's reasonable control. Notwithstanding the foregoing, the parties acknowledge that PMI shall only be responsible for providing personnel to address issues with the SERVICE, Monday through Friday, 8:00 a.m. to 5:00 p.m. (Eastern Time), excluding holidays. HCSD and PMI will mutually agree to no more than two HCSD employees who may log support calls with PMI.

**Security & Confidentiality:** PMI shall adopt, implement and maintain commercially reasonable security measures and procedures (including, firewalls, passwords, encryption, commercially available virus protection, access and use of adequate back-up computer servers, and periodic back-up of data) on a continuing basis. PMI acknowledges that the HCSD data housed on the PMI System is the property of HCSD and PMI agrees not to use such data for any purpose except to the extent necessary to fulfill its obligations under this Agreement. PMI agrees that it shall treat the HCSD data with the same degree of care as it accords its own confidential information of a similar nature.

**Fees:** In consideration for providing the SERVICE, HCSD shall pay the fees indicated on Attachment A. All such fees shall be payable within 30 days following the invoice date thereof, unless noted otherwise. HCSD acknowledges, understands and agrees that should HCSD fail to pay PMI for any fees due and owing hereunder, PMI has the right, on not less than 30 days' prior written notice, to cease providing the SERVICE and to disable access to the Hosting Web Site or to otherwise withhold the performance of any obligation hereunder. HCSD shall pay all applicable taxes now existing or hereafter imposed, levied or assessed in connection with its use of the SERVICE.

**Force Majeure:** Neither party shall be responsible for failures or interruptions of communications, facilities or equipment of third parties, labor strikes or slow-downs, shortages of resources or materials, natural disasters, world events, delay or disruption of shipment or delivery, trespasser interference of third parties or similar events or circumstances beyond its reasonable control.

**Term:** The term of this Agreement shall be from July 1<sup>st</sup>, 2015 – June 30<sup>th</sup>, 2016.

**Enforcement Expenses:** In the event of litigation arising out of this Agreement, the prevailing party shall be entitled to collect from the non-prevailing party all of its reasonable costs of enforcement, including, without limitation, attorney's fees and paralegal fees at the pre-trial, trial and appellate stages.

**Limitation of Liability:** PMI shall not be liable for special or consequential damages or any business losses to HCSD arising out of the services provided hereunder. The remedy for any loss arising out of PMI's performance or non-performance of its obligations under this Agreement shall be limited either to correction of the non-performing condition or damages limited to a maximum of the amount of the fee paid by HCSD under this Agreement.

Warranty and Disclaimer of Warranties: PMI warrants that Service will operate substantially in conformance with documentation for the Service, which consists of help and tutorial systems provided by PMI to CUSTOMER, as well as related printed documentation. There are no warranties extending beyond the description of the Service in such documentation.

Entire Agreement: This Agreement and the documents referenced herein contain the final, complete, and exclusive expression of the understanding of the parties hereto with respect to the transactions contemplated by this Agreement and supersede any prior or contemporaneous agreement or representation, oral or written, by or between the parties related to the subject matter hereof. This contract may be modified only by written instrument executed by both parties.

The parties below have authorized their respective officers to execute this Agreement.

Performance Matters, LLC

Hardee County School District

By: Woody Dillaha  
Authorized Signature

By: David Durastanti  
Authorized Signature

Name: Woody Dillaha

Name: David Durastanti

Title: CEO

Title: Superintendent

Date: 11/7/15

Date: 10/22/15

Attachment A

Price Schedule

July 1, 2015 – June 30, 2016

Service	Payment Due Date	Student Population	Cost per student	Total
PM ADMS	7-31-15	5,329	\$5.00*	\$26,645.00
PM OLA – On-Line Assessment	7-31-15	2,000	\$1.00	\$2,000.00**
Scan Engine License – 1X Fee	7-31-15	N/A	N/A	\$3,500.00
Scan Engine Image Processing	7-31-15	5,329	\$1.00	\$5,329.00
Professional Development – 2 Days @\$2000	7-31-15	N/A	N/A	\$4,000.00
Allowance for Parent Portal	7-31-15	N/A	N/A	-\$5,359.00
<b>TOTAL</b>				<b>\$36,115.00</b>

\*The cost per student will remain at \$5.00 per student so long as all Heartland County School Districts maintain agreements with Performance Matters.

\*\*On-line assessment minimum is \$2,000.00. If actual student count exceeds 2,000, additional students will be billed at \$1.00 each.