

Panhandle Area Educational Consortium
Participating District Focus Software License Agreement

THIS AGREEMENT is entered into by and between the School Board of Suwannee County, 1729 Walker Ave, SW, Suite 200, Live Oak, FL 32064, hereinafter referred to as "the District", and PAEC, 753 West Boulevard Chipley Florida 32428, hereinafter referred to as "PAEC".

The Agreement will commence November 1, 2017 and will continue until October 31, 2020. PAEC's Executive Director or his /her designee will direct the activities of the Agreement.

The District agrees to compensate PAEC according to the fee calculation defined below in the terms of service. The payment schedule will be upon receipt of invoices. The invoice should be forwarded to the Finance Office, PAEC, 753 West Boulevard, Chipley, FL 32428.

Terms of service include:

1. Lease of a Student Information System (SIS) software license subject to the terms and conditions of PAEC's master agreement with Focus School Software, LLC entitled "Amended Software License Agreement" (Attachment A) and the SIS Product Schedule (Attachment B). The District acknowledges that maintenance and support from PAEC for the SIS are not included in this Agreement and is provided under a separate agreement between PAEC and the individual schools districts. In the event, a Participating District terminates their contract with PAEC Student Data Services, PAEC is no longer obligated to provide the district services.
2. Invoice the District annually for software license fees for remittance to Focus School Software, LLC. Fee schedule shall be Year 1: \$4.20/FTE for the SIS license; Years 2-3: \$3.75/FTE for the SIS license and \$1/FTE for Hosting services in Years 2-3. Annual FTE calculation will be based on current year FEFP 3rd calculation reports from the Florida Department of Education and unduplicated prior year WDIS Summer and WDIS Fall/Winter.

The District hereby agrees to:

1. Abide by all obligations for "Participating Districts" and/or "Licensees" defined in Attachments A and B of this agreement.
2. Execute a copy of the SIS Product Schedule (Attachment B) and return along with an executed copy of this agreement.
3. Comply with Section 1002.22 and all state and federal laws and regulations governing the confidentiality of student information and records when using any of the Products governed by this agreement.
4. Provide PAEC Executive Director and Focus School Software at least ninety (90) days' written notice of intent to terminate this Agreement for the Focus SIS software license, with a copy of the Notice to be sent to the PAEC Finance Office.

The District acknowledges the following:

This Agreement is subject to 2 CFR 200 Code of Federal Regulations.

No award will be made to parties that have been suspended or debarred from participation in federal assistance programs. A review of the official site for debarred and suspended parties or otherwise ineligible parties will be made prior to approval of this contract. Evidence of parties of this contract being included in such listings will deem PAEC ineligible making this contract null and void, by 2 CFR Appendix II to Part 200, Section (H), "Debarment and Suspension."

PAEC, as the contracting entity, as defined by the Attorney General Opinion No. 062-120, will perform all services and furnish all labor at PAEC's risk assuming full responsibility for completion of services stipulated. PAEC is the party providing the services; the District is the party receiving the services and providing the payment for the services. This Agreement is subject to the Laws of the State of Florida, in particular, the below listed provisions found in Florida Statutes 287.058, 287.0582, 216.347 and 215.422:

287.058 -

- (1) a. A provision that bills for fees or other compensation for services or expenses be submitted in detail sufficient for a proper pre-audit and post-audit thereof.
- c. A provision allowing unilateral cancellation by the agency for refusal by the Contractor to allow public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction with the contract, unless the records are exempt from s. 24(a) of Art. I of the State Constitution and s. 119.07(1).
- (2) The agency head and the Contractor prior to the rendering of any contractual service shall sign the written agreement.

287.0582 -

The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.

216.347 -

The terms of this agreement prohibit the expenditure of funds for the purpose of lobbying the Legislature or a state agency.

215.422 -

Agencies have 5 working days to inspect and approve goods and services, unless bid specifications or the P.O. specifies otherwise. With the exception of payments to health care providers for hospital, medical, or other health care services, if payment is not available within 40 days, measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved, a separate interest penalty set by the Comptroller pursuant to Section 55.03, F.S., will be due and payable in addition to the invoice amount. To obtain the applicable interest rate, please contact the Agency's Fiscal Section at the agency's main office. Payments to health care providers for hospitals, medical or other health care services, shall be made not more than 35 days from the date of eligibility for payment is determined, and the daily interest rate is .03333%. Invoices returned to a vendor due to preparation errors will result in a payment delay. Invoice payment requirements do not start until a properly completed invoice is provided to the agency. A Vendor Ombudsman, whose duties include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a State Agency, may be contacted at the agency's main office.

1012.465-


(1) Non-instructional school district employees or contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students or who have access to or control of school funds must meet Level 2 screening requirements as described in s. 1012.32, F.S. Contractual personnel shall include any vendor, individual, or entity under contract with the school board.

This Agreement is also subject to the Federal Code of Regulations CFR 200.326 provisions for procurement - Contract Administration described in CFR 200.326 Code of Federal Regulations not previously covered in the above references to Florida Statutes. These provisions are:

- a. All records supporting project activities and the expenditure of funds must be maintained for a minimum of three years after the final payments and all other pending matters are closed.
- b. Access will be allowed by the District to any books, documents, papers, and records of PAEC which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- c. PAEC understands that the District will give PAEC thirty (30) days to take corrective action should it be determined that there is a violation of the contract. If corrective action is not taken by PAEC, funding will be withheld or revoked.
- d. For a contract in excess of \$10,000, PAEC understands that modifications and/or revisions to the financial and/or program aspects of this contract may be required as a result of changes in funding. PAEC understands and agrees that if either party desires to change, modify, or terminate this Agreement, the proposed changes shall be negotiated and shall be written documents executed by both parties.

IN WITNESS WHEREFORE, the parties have executed this Agreement and signing, thereby validating this Agreement, the parties also certify that each possesses legal authority to contractually bind their respective organizations in their capacity as a signatory official.

Contractee


 Ted L. Roush, Superintendent
 Suwannee County School Board

FEB 27 2018

Date


 Jerry Taylor, Chair
 Suwannee County School Board

FEB 27 2018

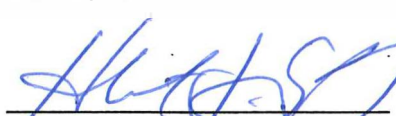
Date

59-6000872 "Approved as to Form and Sufficiency" 59-6000898
 Federal ID#

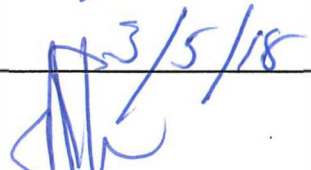
BY 

Leonard J. Dietzen, III
 Rumberger, Kirk & Caldwell, P.A.
 Suwannee School Board Attorney"

Contractor


 Herbert J. Taylor, Superintendent
 Washington County School Board

Date


 John T. Selover
 PAEC

Date

59-6000898
 Federal ID#

WCSB Date: January 8, 2018



"ATTACHMENT A"

AMENDED SOFTWARE LICENSE AGREEMENT

Between: Focus School Software, LLC
("Focus") 475 Central Ave.
St. Petersburg, Florida

And: Panhandle Area Educational Consortium,
("PAEC") 753 West Boulevard, Chipley, Florida 32428

This Focus/SIS Master License Amended Agreement PAEC SIS-001 ("Amended Agreement") governs the licensing of proprietary computer programs and corresponding documentation (collectively the "Product" or "Focus Product") as provided by Focus to individual school districts that are participating districts ("Participating Districts" or "Licensee") of PAEC and supersedes the Software License Agreement entered into between Focus and PAEC on March 1, 2011, and all amendments and addendums entered into prior to the effective date of this Amended Agreement. The licensing of a given Product is subject to the terms of a Product Schedule executed by the parties hereto, which is incorporated into this Amended Agreement by reference and which defines the corresponding license type, term, fees, and any relevant limitations to such license ("Product Schedule"). This Amended Agreement does not by itself commit a Participating District to license any Product. Rather, this Amended Agreement merely sets forth the terms and conditions that will govern the licensing of Products to Participating Districts as a result of the execution of a Product Schedule by Focus and PAEC.

- 1) LICENSE: Focus grants to PAEC and the Participating Districts ("Licensees"), a non-exclusive, non-transferable, non-sublicense-able, worldwide license to use a given Product in accordance with this Amended Agreement and any additional terms contained in a Product Schedule as follows:
 - a) LIMITATIONS ON USE: The Product shall be used only as specified in the Product Schedule and, except as set forth in such Product Schedule, only for Participating Districts' operations for the processing of their own data.
 - b) LIMITATIONS ON ASSIGNMENT: Neither PAEC or Participating Districts may assign this Amended Agreement or any of its rights or interests hereunder to any other party, except as expressly provided herein. With prior written approval from Focus, which shall not be unreasonably withheld, PAEC may assign this Amended Agreement or any of its rights or interests hereunder, or delegate any of its obligations hereunder, to: (i) PAEC's successor pursuant to a merger, reorganization, consolidation, or sale; or (ii) an entity that acquires all or substantially all of that portion of PAEC's assets or business for which the Focus Product is being used. Focus may assign this Amended Agreement to an affiliated entity arising through creation of a subsidiary, change in corporate form, merger with another entity, or acquisition by a third party of the stock or



substantially all of the assets of Focus, provided that such successor in interest shall be bound by all of the rights, terms, conditions and obligations hereunder. Any attempted assignment or delegation in contravention of this Section shall be null and void, and of no force or effect. This Amended Agreement shall be binding upon, and shall inure to the benefit of, the legal successors and permitted assigns of Focus and PAEC.

- c) **REBRANDING PROHIBITED:** Unless otherwise agreed to by Focus in writing, Licensees shall not remove the Focus logo from the product or attempt to re-brand the Focus-SIS product in any fashion. Upon approval by a Participating District, which approval shall not be unreasonably withheld, Focus will include a Participating District's logo on Focus products licensed to the Participating District pursuant to this Agreement and the Product Schedule.
 - d) **THIRD PARTY LICENSES:** PAEC and the Participating Districts acknowledge that a given Product may contain code libraries or controls created by third parties and licensed by Focus.
 - e) **FORMAT AND DISTRIBUTION:** Unless otherwise specified in the corresponding Product Schedule, a given Product will only be supplied in machine-readable object code.
 - f) **DOCUMENTATION:** Focus will provide Participating Districts with the Product documentation according to the applicable Product Schedule through electronic download, unless otherwise requested by a Participating District. Participating Districts may use the documentation as is reasonably necessary for use(s) permitted by this Agreement without additional charge.
 - g) **INSTALLATION TRANSFERS.** If a Participating District is subject to restrictions on the number or locations of the computer on which the Product may be installed, that Participating District is entitled at no additional charge and with prior approval from Focus, which approval will not unreasonably be withheld, to transfer the Product (subject to such use restrictions): (i) from one computer to another or (ii) from one installation site to another.
- 2) **AGREEMENT:** Both Focus and Licensees agree upon mutually executing this agreement along with The Panhandle Area Educational Consortium SIS PRODUCT SCHEDULE (Appendix A) that the following agreements shall become dissolved:
- o Software License Agreement between PAEC and Focus effective March 1, 2011 and all addendums including:
 - o Late Payment and Custom Software Addendum effective May 28, 2013
 - o Revised Custom Software Milestones Addendum, Annual Maintenance and Support Fee Addendum, and Overall Fee Calculation Addendum -effective September 18, 2013
 - o Second Amendment to Addendum D Custom Software effective June 16, 2016

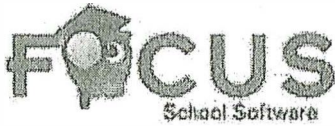


- a. Focus will allow PAEC to extend current \$2.75 / FTE finance annual support fees on an annual basis with no contract term if usage of the system extends past August, 2017 and Focus will bill PAEC by individual Participating District for any Participating District that elects this option.
 - b. Focus will agree to allow PAEC to terminate support for implemented Finance modules on the August anniversary of their Finance support agreement without incurring additional support costs for fiscal year 2017-18. Focus will enter into separate agreements with those Participating Districts still using Focus Finance software after the anniversary of the support agreement, under which agreements Focus will charge a monthly prorated annual maintenance fee and will directly invoice such Participating Districts.
 - c. PAEC shall be charged Focus' standard non-bundled rate of \$4.20 per FTE for SIS which includes hosting for year 1, Years 2-3 the rate will be reduced to \$3.75 per student plus \$1.00 per student for hosting which includes a hosting discount to Annual Maintenance of \$0.45 per student for those Participating Districts that discontinue use of the Focus finance modules, starting at the month they discontinue annual maintenance payments for finance modules. Focus will pro-rate bundled and non-bundled pricing for any Participating District that discontinues finance annual maintenance in the middle of the support year.
 - d. PAEC will not prohibit or discourage any Participating District from using FSS for Finance/ERP if it so chooses.
 - e. PAEC will provide FSS with a list of Board of Directors and SIS advisory board meeting dates and shall maintain open lines of communication with FSS as related to product concerns.
 - f. PAEC will, in good faith, afford Focus the same opportunities as Focus' competitors for sales demonstrations of products or services.
 - g. PAEC will be responsible for payments through the last date of use for any Participating District that chooses to cease using Focus SIS.
- 3) TITLE AND PROPRIETARY RIGHTS: PAEC, on its own behalf and on behalf of Participating Districts, acknowledge that a given Product constitutes the trade secret and proprietary information of Focus and title to such Product shall at all times remain with Focus. Focus or its successor shall retain the title and full ownership rights and obligations to the Product. Neither PAEC nor Participating Districts shall take any action that knowingly infringes upon the ownership, copyright, trademark, and patent rights of Focus.
- 4) CONFIDENTIALITY: PAEC, on its own behalf and on behalf of Participating Districts,



agrees that a given Product received shall be treated as the confidential property of Focus, and neither PAEC nor its Participating Districts shall disclose or otherwise distribute such Product to anyone other than PAEC's and Participating Districts' authorized employees, users or assignees. Neither PAEC nor Participating Districts shall permit anyone except its authorized employees, users or assignees to have access to such Product. Except for archival purposes, neither PAEC nor Participating Districts shall make or knowingly allow others to make copies or reproduce any part of such Product in any form without the prior written consent of Focus. Neither PAEC nor Participating Districts shall remove or destroy any proprietary markings of Focus. Under no circumstance shall PAEC or Participating Districts reverse compile, reverse assemble or otherwise reverse engineer such Product. The obligations of this Section shall survive the termination of this Agreement or any provision thereof.

- 5) ACCEPTANCE: A given Product shall be deemed accepted by a Participating District upon execution of the Product Schedule.
- 6) PAYMENT AND TAXES: All accounting and invoicing correspondence must reference a purchase order number. PAEC will comply with the Local Government Prompt Payment Act (ss. 218.70-218.80, Fla. Stat.). Invoices will be sent to PAEC twice a year, half due on October 1 of each year, and the remaining half on January 1 of each year. All payments due and not made within the time specified by this section bear interest from 30 days after the due date at the rate of one (1.0%) percent per month on the unpaid balance.
- 7) MAINTENANCE AND SUPPORT: During the time that the Product is under license according to an applicable Product Schedule and PAEC and Participating Districts are current on all license and maintenance fees, Focus will provide email and telephonic support for such Product. Focus will also make generally incorporated improvements and enhancements that are not designated as options, available to Participating Districts at no additional charge. If a malfunction corrected by Focus was due to anyone other than Focus's or its agents' actions, omissions or modification of such Product, then in the event of the negligence or willful misconduct or misuse of such Product by a Participating District, use of such Product in an operating environment other than that specified by Focus, or any failure by a Participating District to implement any improvements or updates to such Product as supplied by Focus at no additional charge, Focus is not obligated to fix the malfunction. If Focus does so, PAEC agrees to pay Focus' standard time and materials rates plus expenses for the services Focus provided in making the change or correction. Prior to imposing a charge for a malfunction or misuse of a product, or for not implementing improvements or updates to Product supplied by Focus, Focus shall give PAEC and the Participating District in question at least ten (10) working days' notice and an opportunity to make any corrections or issue approvals, before such charges will be levied. Maintenance and support from PAEC for the SIS is provided under a separate agreement between PAEC and individual school districts. In the event a Participating District terminates their contract with PAEC Student Data Services, PAEC is no longer obligated to provide the district services. PAEC will provide notice to FSS



within five business days of PAEC's receipt of a Participating District's written notice of intent to terminate the contract for support from PAEC Student Data Services.

- 8) OLDER PRODUCT VERSIONS: PAEC, on its own behalf and on behalf of its Participating Districts, acknowledges that Focus reserves the right to discontinue support for older versions of a Product with one hundred twenty (120) days written notice to Licensees.
- 9) PRODUCT ENHANCEMENTS AND TRAINING:
 - a) NATURE OF SERVICES: Unless otherwise agreed to within a Product Schedule, the Parties hereto agree that the services performed by Focus's employee(s) or its agents or contractors pursuant to any Product Schedule for services shall NOT be considered "work made for hire" as defined in 17 USC Section 101 (the Copyright Act) of the United States Code (including subsequent renumbering and successor statutes) and all intellectual property rights in all materials provided by Focus and in any work product resulting from the Focus's services, including, but not limited to, ideas and/or software products and/or modifications to software products shall, automatically and without charge, be assigned to Focus, and/or be and remain exclusively vested in Focus. However, any work product resulting from the Focus services and other materials provided by Focus as part of Focus services shall, for purposes of establishing Participating Districts' right to use such work product and materials, be considered part of the Product(s) licensed from Focus that is associated with such work product and materials and Participating Districts' use of such work product and materials shall be subject to its license for such associated Focus Product(s).
 - b) RATES AND OUT OF POCKET EXPENSES: PAEC will pay Focus for services on a time and materials basis at the rates set forth in a Product Schedule for services.
 - c) ANTI-SOLICITATION OF EMPLOYEES : For a period of eighteen (18) months after termination of this Agreement, Focus shall not hire (as employee, consultant, independent contractor, or otherwise) any employee of PAEC or Participating Districts who worked with Focus on the performance of this Agreement, nor shall Focus directly or indirectly solicit, or induce or assist any third party in soliciting or inducing any such employee of PAEC or its Participating Districts to leave his or her employment. For a period of eighteen (18) months after termination of this Agreement, neither PAEC nor any Participating District shall hire (as employee, consultant, independent contractor, or otherwise) any employee of Focus who worked with PAEC or Participating Districts on the performance of this Agreement, nor shall either PAEC or a Participating District directly or indirectly solicit, or induce or assist any third party in soliciting or inducing any such employee of Focus to leave his or her employment. In the event PAEC, a Participating District, or Focus



breaches its obligations pursuant to this Section, the breaching party agrees to pay, as liquidated damages and not as a penalty, an amount equal to one hundred percent of such employee's first year salary/wages/other compensation with the party or third party (including bonuses, contract fees, and deferred income of any kind) within thirty (30) days' notice from the non-breaching party of each such breach.

- 10) INTELLECTUAL PROPERTY INFRINGEMENT: Focus warrants that it has all rights necessary to grant the licenses and perform the services provided hereunder and that no Product or service will infringe the copyright, patent, trademark or other intellectual property rights of any third party. This warranty shall run indefinitely. Focus agrees to defend and pay any judgment or, at its exclusive option, settle, any action at law against PAEC or its employees alleging that PAEC's use of a given Product under this Agreement infringes any copyright, patent, trademark or other intellectual property rights of any third party ("Action"). Focus shall control the defense and any related settlement negotiation of any Action(s). PAEC shall promptly give notice of any such Action(s) and fully cooperate with Focus, at Focus's expense, in the investigation, preparation, defense and settlement of each such Action. Focus agrees to hold PAEC harmless in the event of a copyright, patent, trademark or other intellectual property right dispute regarding its use of such Product. Focus will not be obligated to indemnify PAEC under any settlement made by or on behalf of PAEC without Focus's written consent. Further, Focus will not be obligated to indemnify PAEC in the event PAEC fails to provide reasonable notice of a claim as required herein, or fails to reasonably cooperate with Focus in the defense of any such claim. If, in Focus's opinion, any Product is infringing or may be held to be infringing, Focus may, at Focus's option (a) modify the Product to make it non-infringing, (b) replace the Product with a non-infringing equivalent, or (c) require that PAEC and Participating Districts return such Product and in such cases, Focus will give PAEC a pro-rated refund of all license fees paid for such Product on a five-year, straight-line depreciation basis. The obligations of this Section will not apply if the infringement is caused by (a) modification of the Product by PAEC or a Participating District (b) knowing or willful misconduct of PAEC or a Participating District that creates the infringement, (c) misuse of the Product by PAEC or a Participating District that creates the infringement, (d) use of the Product other than in the specified operating environment, (e) failure by Participating Districts to implement any improvements or updates to the Product as supplied by Focus, or (f) 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. This Section describes PAEC and Participating District's sole remedy, and Focus's entire liability, for any claims of infringement.

- 11) LIMITATION OF LIABILITY:

- a) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT WILL FOCUS OR ITS AFFILIATES BE LIABLE TO PAEC AND PARTICIPATING DISTRICTS FOR ANY



CLAIM BASED UPON A THIRD PARTY CLAIM (EXCEPT AS SET FORTH ABOVE IN SECTION 10) OR 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: PAEC and Focus agree that PAEC and Participating Districts' liability for copyright infringement and Focus' liability for damages, if any, shall not exceed three times the charges under the applicable Product Schedule to Focus by Licensees during the twelve (12) months immediately preceding the date when the alleged damages began. Such limitation does not apply to the obligations under Section 10.
 - c) Focus agrees to indemnify, hold harmless and defend PAEC and Participating Districts from and against any and all claims, suits, actions, damages, or causes of action arising out of the negligent acts of Focus arising out of or in connection with the provisions of this Agreement, subject to the Liability Cap set forth herein.
- 12) DISPUTE RESOLUTION: In case of any dispute arising or related to this Agreement or Product Schedule(s), Focus, PAEC, and Participating Districts, by mutual agreement, shall attempt to resolve any dispute informally and through mediation, prior to either party filing a lawsuit.
- a) MEDIATION: In the event of a dispute, Focus, PAEC, and Participating Districts shall first attempt to resolve the matter through discussion and exchange of information. In the event such informal settlement discussions are unsuccessful, Focus, PAEC, and Participating Districts shall submit the dispute to mediation prior to commencing any legal action against each other. Focus and PAEC, both on its own behalf and on behalf of Participating Districts, agree that, in the event of a dispute, either Party may send a notice demanding mediation, after which the Parties shall mutually agree within ten (10) days to the selection of a mediator, and mediation shall be conducted as soon as reasonably practicable, but in no event later than sixty (60) days from the date of the notice. Mediation shall be conducted before a Florida-certified mediator in the State of Florida located in Washington County, unless otherwise mutually agreed by the Parties. All proposals and information exchanged as well as discussions during the informal settlement discussions and during the mediation process will be considered settlement discussions and proposals, are confidential and will be inadmissible in any subsequent proceedings, and shall



be maintained by the PAEC and Participating Districts in a manner that ensures such information remains exempt from disclosure under the Florida Public Records Act (Ch. 120, Fla. Stat.) to the greatest extent allowed by law.

- b) **LEGAL ACTION:** In the event the Parties are unable to resolve any dispute through mediation, the Parties may pursue all claims based on such dispute as provided by law. The Parties consent to the exclusive personal jurisdiction of the Circuit Court in Washington County, Florida, which court shall provide the exclusive venue for any action arising hereunder, unless another forum is mutually agreed to by the Parties.
- c) **ATTORNEY'S FEES:** In any action arising from or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs, including on any appeal.
- d) **WAIVER OF JURY TRIAL: THE PARTIES HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING OR OTHER LITIGATION RESULTING FROM OR RELATING TO THIS AGREEMENT.**

13) **TERMINATION:** Focus or PAEC may terminate this Amended Agreement if the other Party or a Participating District 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. PAEC's failure to pay any amount after receiving notice that the amount is delinquent shall be considered a material breach of this Amended Agreement.

- a) **NON-APPROPRIATION:** In the event of non-appropriation or nonexistence of the funds necessary for Participating Districts to meet their obligations under this Amended Agreement for any particular school year, PAEC may terminate the Product Schedule and its obligations under this Amended Agreement by providing a minimum of thirty (30) days' notice prior to the commencement of the affected school year. In the event a Participating District chooses to no longer participate with Focus, PAEC shall provide Focus with at least sixty (60) days' notice. All restrictions and obligations stated in this Agreement shall apply to the Participating district that chooses to no longer participate.
- b) **OBLIGATIONS:** Unless otherwise provided in a separate agreement between Focus and a Participating District, upon the expiration or termination of this Amended Agreement, PAEC, on its own behalf and on behalf of Participating Districts, 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 all Participating Districts' computer libraries or storage devices and are no longer in use by any Participating District. Termination of this Amended Agreement under this section does not excuse PAEC from payment for all Products and services that had already been



delivered as of the date of Termination.

- c) **SURVIVAL:** Any terms of this Amended Agreement that by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.
 - d) **NO WAIVER:** The waiver by Focus or PAEC of a breach of any provision of the Amended 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 the Parties may be entitled.
 - e) Participating Districts may choose to terminate their participation in this Amended Agreement upon ninety (90) days' notice to both PAEC and Focus, without penalty, as long as all applicable fees have been paid. All restrictions and obligations stated in this Agreement shall apply to the Participating district that chooses to no longer participate.
- 14) **OUTSOURCED HOSTING:** Participating Districts may outsource the hosting of the Products to a third party service provider ("Outsource Provider"), provided that such Outsource Provider executes a written agreement with Focus, acceptable to Focus, to protect the rights of Focus in the Products, prior to a Participating District allowing the Outsource Provider any access to the Products.
- 15) **DISASTER RECOVERY:** Subject to any limitations in an applicable Product Schedule, Participating Districts may install and use the Products for testing, backup and temporary production purposes and for disaster recovery testing and operations at a location wholly owned and operated by a Participating District or by an authorized Outsource Provider.
- 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, PAEC 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 the PAEC 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 PAEC's and Participating District's agreement to keep the material strictly confidential and not to disclose it to any third party. PAEC, Participating Districts, and their employees, agents or representatives shall not, in any manner, use or dispose of the source code in violation of this Agreement.



- 17) INSURANCE: Focus shall, prior to performance, provide PAEC with a Certificate of Insurance showing evidence of insurance in place with the following minimum limits: Liability -- \$1,000,000 minimum and Property -- \$1,000,000 minimum. In lieu of the previous: Combined Single Limit (CSL) -- \$1,000,000. The Certificate of Insurance shall name PAEC as "Certificate Holder" and "Additional Insured".
- 18) WORKERS' COMPENSATION: As required by Florida Statute 440, Focus shall take out and maintain during the life of this Amended Agreement, Workers' Compensation Insurance. Coverage shall be for all of its employees connected with the provision of goods and services of this Amended Agreement. Focus shall require all its subcontractors to provide Workers' Compensation Insurance for its employees unless Focus chooses to cover such employees. Focus also agrees to supply evidence of such coverage to PAEC with the execution of this Amended Agreement. Focus agrees to indemnify and to hold harmless PAEC from and against all liability that may arise out of the performance of this Amended Agreement unless such liability shall be a direct or proximate result of the negligence of PAEC, Participating Districts, or their agents or employees.
- 19) STUDENT RECORDS: Notwithstanding any provision to the contrary within this Agreement, Focus shall fully comply with the requirements of Section 1002.22, Florida Statutes, or any other state or federal law or regulation regarding the confidentiality of student information and records. Focus agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless PAEC and its officers and employees for any violation of this section, including, without limitation, defending PAEC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon PAEC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon PAEC arising out of a breach of this covenant by Focus, or an officer, employee, agent, representative, contractor, or sub-contractor of Focus to the extent that Focus or an officer, employee, agent, representative, contractor, or sub-contractor of Focus shall either intentionally or negligently violate the provisions of this section or of Section 1002.22, Florida Statutes. Likewise, PAEC shall comply (and require that the Participating Districts comply) with Section 1002.22 and all state and federal laws and regulations governing the confidentiality of student information and records when using any of the Products governed by this Agreement, and shall indemnify and hold harmless Focus from any violation of such law and regulations by PAEC or any of its Participating Districts. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.
- 20) COMPLIANCE WITH LAWS: Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.
- 21) SUPPORT: Focus will provide help desk support from 7am-6pm Monday-Friday. Focus



will provide on-call support Monday-Friday 6pm-10pm. Focus will provide on-call support during scheduled holidays as well as Saturday – Sunday at two hour intervals from 7am – 10pm. Only defined (no more than six) PAEC support team will contact Focus help desk. Participating Districts will be copied on tickets specific to their districts and may reply to tickets as needed. On a priority 1 urgent issue, Focus should resolve or provide a work around within 24 hours of clock time after receiving the call or ticket from PAEC. A priority 1 urgent issue is defined as a system failure that blocks completion of a system transaction or corrupts system data and has no workaround. A penalty of \$2,500 per day will be levied until the issue is resolved after 48 hours of the reported issue.

22) HOSTING ENVIRONMENT:

- a) All data center(s) utilized in the performance of this Agreement must be SSAE16 certified. Proof of SSAE16 compliance will be provided in writing to LICENSEE point of contact within sixty (60) days of Amendment execution. Such proof of certification for each data center that is utilized in the performance of this Agreement will then be provided upon request.
- b) Server Uptime
Focus commits to provide 99.7% uptime for all servers, Focus has disaster recovery plan to put back the application online within maximum twenty-four (24) hours with no data loss.
- c) Response Time standards
The Response Time Standards expectation is defined as the percentage of time the Service respond to inquiries by District's end users. Focus will maintain the Service such that District's users will have a Response Time within three (3) seconds between requests being received at the point of entry into Focus's System and the point of exit from Focus's System. The Minimum Threshold shall be a monthly response performance average of not less than 98%. Response Time excludes any user requests for reports, data aggregation (such as needs for Scheduling or any data intensive needs, other than day to day data entry) or District Wide search processes.
- d) Disaster Recovery
Focus will keep nightly backups for one (1) month, monthly backups for a year, every year of the Agreement, and yearly backups infinitely, so long as the license is active. These backups are copied to an out-of-state data center in case of a disaster. Focus will also enable functionality for LICENSEE to securely download a full backup of all data, including database files and source code, at will. Focus will real-time replicate to a separate data center accessible by the LICENSEE for Disaster Recovery, integration, and reporting purposes. In addition to a production environment, Focus will maintain development and test environments and historical data environments as required by the Florida Department of Education, Auditor General and LICENSEE including migration



of all existing environments currently maintained in LICENSEE's data center.

- 23) MINIMUM REQUIRED SECURITY CONTROLS: Focus must maintain internal security controls which protect the confidentiality, integrity and availability of data and IT resources. These controls at a minimum must include:
- a) All Focus and PAEC user access privileges should be appropriate and necessary for their business functions and process requirements as they related to supporting and troubleshooting the software.
 - b) All changes to Focus and PAEC employee access rights (creation, modifications and deletions) are to take effect at appropriate times, and based only on approved and documented transactions through the change control access authorization process and approved by designated management individuals in Participating Districts.
 - c) All Focus and PAEC user accounts must be separate and unique, not shared.
 - d) Focus and PAEC must perform minimum annual review of their staff user accounts and related privileges in the participating districts system.
 - e) Only PAEC and Participating Districts should be able to Approve Focus staff to originate transactions or corrections to database records in the production system.
 - f) Focus and PAEC user accounts must meet all of the same password control requirements as Participating District user accounts as they relate to password length, change interval, minimum age, reuse, complexity, maximum sign-on attempts, and time-out as defined below:
 - 8-character minimum character length
 - Complex composition requirements (combinations of letters, numbers, special characters)
 - 60-day change interval
 - Password reuse restrictions- restricting a user from using the previous 6 passwords
 - Masking - a masked password would show ***** on the screen
 - Deactivating an account after an incorrect password has been entered a set number of times - 5 invalid access attempts
 - Disabling features that all passwords be stored in clear text or using reversible encryption
 - g) Any database actions performed by privileged PAEC or Focus personnel should if possible should be performed through run query or through built in Focus tools that provide logging. Actions performed by non-district employees should always be authorized by a district employee
- 24) OWNERSHIP OF PARTICIPATING DISTRICT DATA AND PUBLIC RECORDS:
Data stored in the student information system is wholly owned by the Participating District.

Pursuant to Section 119.0701, Florida Statutes, Focus shall (a) keep and maintain public



records relating to performance under this Agreement; (b) upon request of PAEC or a Participating District, provide PAEC or the Participating District with a copy of public records within Focus' custody; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement; and (d) upon expiration or termination of the Agreement, transfer to PAEC, at no cost, or to Licensees, all public records in Focus' possession and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All public records stored by Focus electronically must be provided to PAEC in a format that is compatible with PAEC's information technology systems. In compliance with section 119.0701, Focus shall refer any public records request it receives to PAEC for a response.

Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

IF FOCUS HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, IT SHALL CONTACT:

PAEC Public Records Custodian
753 West Boulevard
Chipley, FL 32428
877.USE.PAEC

25) GENERAL:

- a. MODIFICATION: No alteration or modification of this Amended Agreement or any Product Schedule shall be valid unless made in writing and signed by Focus and PAEC.
- b. SEPARABILITY: If any provision of this Amended 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 govern this Amended Agreement.
- e. AUTHORITY TO SIGN: PAEC warrants that the person signing this Amended Agreement and the person signing each Product Schedule for PAEC is




authorized to do so, and that PAEC has obtained all internal and external approvals and resolutions necessary to enter into each Product Schedule and make it binding on PAEC and Participating Districts.

- f. NO THIRD PARTY RIGHTS: With the exception of the Participating Districts, this Amended Agreement does not create, confer, or otherwise grant rights for the benefit of any third party, creditor, or supplier or incidental beneficiary of PAEC.
 - g. HEADINGS: The Parties acknowledge that the headings used in this Amended Agreement are for convenience purposes only and shall not be construed to define or limit the Parties' rights and remedies hereunder.
 - h. ENTIRE AGREEMENT: This Amended Agreement, together with Product Schedule(s) and any other supplement attached thereto, constitutes the entire agreement between Focus and PAEC 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 PAEC.
- 26) This Amended Agreement shall become effective on the date fully executed by Focus and PAEC.



By affixing their signatures below, the Parties agree to be so bound as to the terms of this Agreement.

ACCEPTED BY PAEC:	ACCEPTED BY FOCUS:
Signature	
Print Name Herbert J. Taylor	
Title Superintendent of Washington County Schools	
Date	
Signature	Signature 
Print Name John T. Selover	Print Name Steven Harnois
Title Executive Director	Title Director of Operations
Date	Date 12/4/17



"ATTACHMENT B"

Panhandle Area Educational Consortium SIS PRODUCT SCHEDULE "Appendix A"

This Product Schedule is hereby incorporated into AMENDED SOFTWARE LICENSE Number PAEC SIS-002 ("Amended Agreement") as executed by Focus School Software, Inc., ("Focus") and Panhandle Area Educational Consortium ("PAEC") as listed below. In accordance with the provisions of this Product Schedule and the Amended Agreement and subject to compliance by the individual school districts that are participating districts ("Participating Districts") of PAEC identified herein with both this Product Agreement and the Amended Agreement, Focus grants PAEC and its Participating Districts 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 Amended Agreement, the provisions of this Product Schedule shall control with respect to the license granted herein.

Focus School Software Student Information System

Product(s) & Designated Hardware License Scope & Capacity	Base Program: Grading Transcript and Report Cards, Discipline, Scheduling, Registration, Online Enrollment, Student Demographic, Assessment, Florida State Reporting, Student Billing, User Management Teacher Programs: Attendance, Gradebook, Discipline. Parent and Student Portals. All modules are inclusive but not limited to the associated reports, ad-hoc reports, and built in functions necessary for the successful operation of the Student Information System and must meet all requirements set forth by FLDOE for the Student Data System.
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In addition: Assessment Analysis, Ad Hoc Reporting, Parent /Student Portal, FL State Reporting, First Year Support & Maintenance

License Site

Address Site

License Type

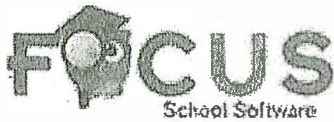
Focus/SIS - Any computer(s), at the License Site listed below.
General Scope - Limited strictly to the processing of Licensee's data by Licensee's employees, contractors, and affiliates.

Licenses Served

Special Limitations - If any.

Other restrictions apply as listed in this Product Schedule.
Site URL designated by Participating Districts.
753 West Boulevard, Chipley, Florida 32428
Term License

As of the execution of this Product Schedule and the Amended Agreement, the following are Participating Districts: Calhoun, Franklin, Gulf, Holmes, Jefferson, Liberty, Suwannee, Taylor, Wakulla, Walton, Washington/OYDC,



FAU, and FAMU.

Other Participating District may be added by mutual agreement of Focus and PAEC through written amendment of this Product Schedule

Maintenance and support from PAEC for the SIS is provided under a separate agreement between PAEC and individual school districts. In the event a Participating District terminates their contract with PAEC Student Data Services, PAEC is no longer obligated to provide the district services. PAEC will provide notice to FSS within five business days of PAEC's receipt of a Participating District's written notice of intent to terminate the contract for support from PAEC Student Data Services.

License Term

The term of this Amended Agreement is for three (3) years, beginning on November 1, 2017 and ending October 31, 2020, and is subject to the termination provisions of the Amended Agreement. Licensees shall have the option of renewing this agreement for additional one (1) year renewals, if written notice is provided to Focus at least thirty (30) days prior to the expiration of the Amended Agreement or any renewal thereof.



License Fee **Waived**
 (Transferred from original Agreement entered into on March 1, 2011) **Rates for Services**

	Service	Rate
	License Fee to add Non Focus Districts (Per FTE)	\$18.00 \$1,800.0
	Project Management	. . 0
Services	Training	\$1,200.00
	Data Migration & Cleansing	\$1,800.00
	Post Go-Live On-Site Support	\$1,200.00
	Focus Certification Training On-Site At PAEC	\$3,600.00

YEAR 1-3 SUPPORT AND MAINTENANCE FEE (Invoiced annually on November 1, 2017 - 2019):

Year 1: \$4.20 per student which includes hosting, invoiced November 1, 2017

Year 2: \$3.75* per student, plus \$1.00 per student for hosting invoiced November 1, 2018

Year 3 \$3.75* per student, plus \$1.00 per student for hosting invoiced November 1, 2019

*Years 2-3 includes a hosting discount to Annual Maintenance of \$0.45 per student per year which will be removed if the optional Focus hosting service is not purchased.

Annual FTE calculation will be based on current year FEFP 3rd calculation reports from the Florida Department of Education and unduplicated prior year WDIS Summer and WDIS Fall/Winter.

This price is guaranteed for the initial 3-year term.

Annual Fees

Participating Districts that also enter into an agreement with Focus to participate in ERP shall be charged the following bundled price for years 1-3:

SIS - \$3.25 Per Student, Finance - \$2.25 Per Student + Hosting

HR Payroll - \$2.25 Per Student + Hosting

This bundled price is guaranteed only for the initial 3-year term.

PAEC, on its own behalf on and behalf of its Participating Districts, acknowledges that the License Fee in this Product Schedule is discounted, based on PAEC's and the Participating Districts' commitment to pay the License Fee for the specified License Term. PAEC agrees to pay any applicable taxes associated with the License Fee. For the 2nd installment and beyond, Focus will invoice PAEC at least thirty (30) days prior to the listed due date. Payment and invoicing will comply with the Local Government Prompt Payment Act (ss. 218.70-218.80, Fla. Stat.).

This Product Schedule is subject to the following Terms and Conditions:

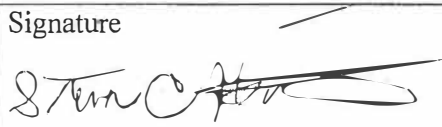
- Use Review: Upon reasonable notice, Participating Districts shall grant Focus access to their pertinent files, libraries and records, as produced from the Product(s), to perform a review of the Product ("Use Review"). All information obtained during a Use Review shall be treated as confidential.

Third Party Code: Notwithstanding anything to the contrary in this Product Schedule or the Amended 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"). PAEC, on its own behalf and on behalf of the Participating Districts, agrees that if Product(s) contain Third Party Code, such Third Party Code is the Confidential Information of Focus's licensor and that PAEC's and the Participating Districts' obligations with respect to the Title, Proprietary Rights and Confidentiality section of the Amended 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 PAEC and its Participating Districts may not use the Third Party Code separate from Product(s) or applicable module containing such code; that PAEC, on its own behalf and on behalf of its Participating Districts, 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 PAEC, on its own behalf and on behalf of its Participating Districts 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 Amended 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, PAEC, and Participating Districts.

- 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.
- Acceptance: All Products shall be deemed accepted by a Participating District upon execution of the Product to a Participating District.



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

ACCEPTED BY PAEC:	ACCEPTED BY FOCUS:
Signature	
Print Name Herbert J. Taylor	
Title Superintendent of Washington County Schools	
Date	
Signature	Signature 
Print Name John T. Selover	Print Name Steven Harnois
Title Executive Director	Title Director of operations
Date	Date 12/4/17