



Hosting Services Agreement
March 2, 2015

1600 Lee Road
Winter Park, FL 32789

Originals

Hosting Services Agreement: This Hosting Services Agreement is effective May 1, 2015 between Performance Matters, LLC ("PMI") a Florida Limited Liability Company located at 1600 Lee Road, Winter Park, FL 32789 and the School Board of Clay County, FL ("CUSTOMER") located at 814 Walnut Street, Green Cove Springs, FL. The purpose of this Agreement is to facilitate access by CUSTOMER employees ("named users") to the Performance Matters' Assessment & Data Management System ("SERVICE") described in Attachment A.

Services: PMI shall establish and maintain the SERVICE for use by the CUSTOMER named users. CUSTOMER 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 periods of 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. CUSTOMER and PMI will mutually agree to no more than four CUSTOMER 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 CUSTOMER data housed on the PMI System is the property of CUSTOMER 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 CUSTOMER 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, CUSTOMER shall pay the fees indicated on Attachment A. All such fees shall be payable in accordance with Local Government Prompt Payment Act, FL Statutes 218.7-218.8 following the invoice date thereof, unless noted otherwise. CUSTOMER acknowledges, understands and agrees that should CUSTOMER 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. CUSTOMER 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 May 1, 2015 through July 31, 2018. Subsequent to the initial term, CUSTOMER shall receive a renewal notice from SERVICE at least 120 days prior to annual renewal. The CUSTOMER will have the option of canceling the service with a 90-day notice prior to the annual renewal date.

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Customer CUSTOMER PMI PMI

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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 taxable court costs. Any litigation arising out of this Agreement shall be in the State of Florida and venue shall be in the state courts located in Clay County, FL.

Limitation of Liability: PMI shall not be liable for special or consequential damages or any business losses to CUSTOMER 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 CUSTOMER under this Agreement during the twelve-month period preceding the breach that caused the loss.

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.

Student Information: Pursuant to this Agreement, Performance Matters will maintain student records on behalf of Customer which will include demographic information and a variety of academic records such as test scores, instructional and behavioral interventions, provided by Customer. Such information is referred to collectively herein as "Student Information." With respect to such Student Information, Performance Matters agrees as follows:

A. Performance Matters shall at all times use commercially reasonable and appropriate measures designed to ensure the confidentiality and security of Customer's Student Information, to protect against any anticipated hazards or threats to the integrity or security of Student Information, and to protect against unauthorized access or disclosure of such Student Information. Performance Matters will comply with all applicable state and federal laws and regulations with respect to Student Information, including the federal Family Educational Records Protection Act (FERPA) and the Florida Information Protection Act of 2014 (FL Statute 501.71).

B. Performance Matters will use commercially reasonable and appropriate measures designed to ensure that Student Information shall not be distributed, shared with, or disclosed to any third party or individual, other than Performance Matters' employees, subcontractors, agents, consultants and auditors who reasonably need to have access to Student Information for purposes of performing services for Customer. Provided, however, that Performance Matters may disclose any Student Information to the extent required by law, regulation, or court order. If Performance Matters becomes so required to disclose any Student Information, then Performance Matters will provide Customer with prompt written notice so that Customer may seek an appropriate protective order or other remedy, at Customer's direction and expense.



C. Performance Matters will take commercially reasonable measures to prevent any hard copy of Student Information from being removed from its business premises, and will require similar measures from any subcontractor performing services for Customer. Performance Matters will store Student Information only on its servers located in secure business premises reasonably under the control of Performance Matters.

D. All Student Information provided to Performance Matters by Customer shall remain the property of Customer. Performance Matters will not use such Student Information for any purpose other than providing services and support to Customer and will not use any Student Information to the detriment of Customer. Performance Matters will not sell, assign, lease, disclose to third parties (other than as allowed by section B, above), or commercially exploit any portion of the Student Information. Upon termination of this Agreement, Performance Matters shall return to Customer all Student Information provided by Customer, in a useable electronic form, and will erase, destroy, and render unreadable all such Student Information formerly stored on Performance Matters servers.

Entire Agreement: This Agreement, the CUSTOMERS purchase order (Attachment B) 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. In the event of any conflict between or among the provision contained in this Agreement and the documents referenced here and Attachment B, the following order of precedence shall govern: (a) Attachment B, (b) the Agreement and documents referenced herein. 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

By: Woody Dillaha
Authorized Signature

Name: Woody Dillaha

Title: CEO

Date: March 2, 2015

The School Board of Clay County, FL

By: Johnna McKinnon
Authorized Signature

Name: Johnna McKinnon

Title: Board Chair

Date: March 24, 2015



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March 2, 2015

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Attachment A: Performance Matters Price Schedule

Year 1: May 1, 2015 – July 31, 2015 (3 Months)

| PM Service | Count | Unit | Unit Price | 3-Month Total | Due |
|--|--------|-------------|------------|--------------------|-----|
| ADMS Assessment & Data Management System | 35,830 | Per student | \$5.00 | \$44,788.00 | |
| OLA Online Assessment | 20,300 | Per student | \$1.00 | \$5,075.00 | |
| 3-Month Total | | | | \$49,863.00 | |

Year 1: August 1, 2015 – July 31, 2016

| PM Service | Count | Unit | Unit Price | Total | Due |
|----------------------------------|--------|-------------|------------|---------------------|------------------|
| ADMS | 35,830 | Per student | \$5.00 | \$179,150.00 | |
| OLA | 20,300 | Per student | \$1.00 | \$20,300.00 | |
| Scan Engine Image Processing Fee | 60,000 | Per scan | \$.06 | \$3,600.00 | Billed Quarterly |
| Total | | | | \$203,050.00 | |

Year 2: August 1, 2016 – July 31, 2017

| PM Service | Count | Unit | Unit Price | Total | Due |
|----------------------------------|--------|-------------|------------|---------------------|------------------|
| ADMS | 35,830 | Per student | \$5.00 | \$179,150.00 | |
| OLA | 20,300 | Per student | \$1.00 | \$20,300.00 | |
| Scan Engine Image Processing Fee | 60,000 | Per scan | \$.06 | \$3,600.00 | Billed Quarterly |
| Total | | | | \$203,050.00 | |

Year 3: August 1, 2017 – July 31, 2018

| PM Service | Count | Unit | Unit Price | Total | Due |
|----------------------------------|--------|-------------|------------|---------------------|------------------|
| ADMS | 35,830 | Per student | \$5.00 | \$179,150.00 | |
| OLA | 20,300 | Per student | \$1.00 | \$20,300.00 | |
| Scan Engine Image Processing Fee | 60,000 | Per scan | \$.06 | \$3,600.00 | Billed Quarterly |
| Total | | | | \$203,050.00 | |

Total charges for May 1, 2015 through July 31, 2018 are payable in accordance with Local Governmental Prompt Payment Act.

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Attachment A – Fees and Service Description
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Other Services Included: In addition to the SERVICE description provided herein, this SERVICE includes:

- On-going enhancements and updates to the Performance Matters' Enterprise Edition (SERVICE)
- Performance Matters consortium item banks for Math (grades 1-8, Algebra I, grade 10). Access to this item bank requires active participation in the Florida item bank consortium group.
- Participation as a member of the Florida Assessment Development Consortium
- User group which includes other Florida school districts
- For non-copyrighted items owned by CUSTOMER that Performance Matters can share with other school districts, Performance Matters will load the item content to the Assessment System at no charge. Copyrighted items are subject to a charge of \$2 per item.
- Exports of local assessment results in the current format aligned with the FL DOE Differentiated Accountability reporting mandates
- On-Line Professional Development: Performance Matters will provide on-line learning tools for the exclusive use of the CUSTOMER.

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Attachment A – Fees and Service Description
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Service Description
Performance Matters Florida Enterprise Edition

| Report/Module | Description and Use |
|--|---|
| LAGGING INDICATORS - STATE TEST PERFORMANCE | |
| AYP Accelerator | Predict and monitor AYP throughout the school year |
| Ranking Report | Student listing of previous year's state test scores & demographics for quick sorting and analysis |
| Cohort Comparison | Graphical depiction of cohort student performance on the FL state tests over time for any two student populations |
| Subject Strand Report | Student listing of longitudinal high stakes results for subject and strands. |

| Report/Module | Description and Use |
|--|---|
| LEADING INDICATORS - LOCAL ASSESSMENT RESULTS | |
| Item Analysis | Comprehensive, detailed test analysis for every question and answer |
| Ranking by Benchmark | Illustrates the performance among tested standards over time and the ability to conduct sorting and advanced filtering. |
| Student Item Analysis | Compare all individual students answers and results for a classroom on one screen |
| Scores by Test | Longitudinal assessment results by student that includes advanced filtering and sorting |
| Benchmark Scores by Test | Analyze how students performed by state standard for each assessment test |
| Scores by Benchmark | Analyze student performance by strand and standard for assessment test(s) |
| Class Scores by Benchmark | Hierarchical drill down analysis of student assessment performance for all curriculum |
| Comparative Results | Compare classroom performance by standard to the school and to the district |
| Item Statistics | In depth "Rasch model" statistical analysis for local assessments |
| Strand Comparison | Compare school performance for assessments among subgroups |

| | |
|--|--|
| LAGGING AND LEADING INDICATORS - COMBINES LAGGING & LEADING RESULTS | |
| Student Detail | A complete student profile that includes academic and demographic details |
| Student Portfolio | Export selected student demographic data and provide printable student report for a given benchmark assessment |
| Lagging vs. Leading | Analyze student longitudinal state test scores and current assessment results on one screen |
| Classroom Summary | Review detailed results for state tests and assessment results by classroom |
| Baseball Card | Analyze a broad portfolio of student academic and demographic measures for any teacher and/or on one screen |

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| Report/Module | Description and Use |
|---|--|
| OTHER INDICATORS - OTHER PERTINENT ACADEMIC MEASURES | |
| College Prep | Student performance for the ACT and SAT college prep tests; available in standalone report and Baseball Card reports |
| DIBELS | Separate report of student performance for all the fluency measures administered via DIBELS color coded for risk level |
| IDEL | Spanish version of DIBELS assessments provided in the same format as DIBELS |
| Lexile | Student Lexile scores color coded for grade equivalent; available as separate report and in Baseball Card reports |
| Stanford 10 | Separate report of student performance among the academic results scored on the Stanford 10 |
| NWEA | Separate report of student performance among the academic results scored on the NWEA |
| FAIR | Florida Assessment in Reading |
| Grades | Grades by course by student; available in Student Detail and Baseball Card v3 |
| Attendance | Attendance events and attendance rate by student; available in Student Detail Report |
| Discipline | Discipline events by student; available in Student Detail Report |

| | |
|---|---|
| DASHBOARDS AND STATE COMPARISONS - MULTIPLE CHARTS ON ONE SCREEN | |
| District Ranking | Comparative FCAT proficiency rankings among Florida school districts |
| School Proficiency Growth | Interactive tabular report and scatter plot that illustrates growth in FCAT proficiency for all FL districts and schools |
| AYP Subgroup Proficiency Growth | Interactive scatter plot that illustrates the yr over yr proficiency among all FL districts, schools and subgroups |
| Opportunity Gap Analysis | Compare any school to all others in the state of Florida based upon the eight measures that make up the school grade |
| State Test Performance by Teacher | Compare student state test proficiency among responsible teachers with similar student subgroups via tables, charts and scatter plots |
| A+ Analysis | Provides predicted and actual school grades as well as student analysis among the eight measures used to calculate it |
| Executive Director's Report | Compare student assessment results among teachers with similar student subgroups |
| Management Matrix | A dashboard that combines historical results with current results with built in analysis for proficiency, progress and productivity |
| Proficiency Predictor | Combines previous year high stakes proficiency w/ current proficiency for local assessments by school, school type, grade level and/or subgroup |
| Assessment Summary | Interactive graphical, district level view of assessment results by test(s), school, school type, grade level and/or subgroup |

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| Report/Module | Description and Use |
|---|---|
| ADVANCED FILTERING - SIMPLE AD HOC AND SAVED FILTERING | |
| Gender | Male / Female |
| Students w/ Disabilities (SWD) | Yes / No |
| SWD Primary Exceptionality | SWD primary exceptionalities as available |
| LEP | Yes / No |
| LEP Category | LEP exceptionalities as available |
| Economically Disadvantaged (ED) | Free and Reduce Lunch |
| ED Category | Free and reduced lunch categories as available |
| Migrant | Yes / No |
| Ethnicity | Ethnic groups as provided |
| Current Grade | PK - 12 |
| School of Enrollment | Filter for school(s) of enrollment |
| Gifted | Yes / No |
| Title 1 | Yes / No |
| School Type | ES / MS / HS, etc |
| School of Instruction | Filter for school(s) of instruction (for students taking classes in multiple schools) |
| School Cluster | Grouping of schools configurable for the school district's needs |
| Teacher | Filter for teacher(s) |
| Course Subject/Course/Class | Filter by Overall subject, Course Name and/or Class |
| Student | Filter for student(s) |
| Custom Filters | 10 custom filters available for FL customers to supplement those listed above |

| | |
|-------------------------------------|---|
| ASSESSMENT MANAGEMENT SYSTEM | |
| Tests | Admin tool to manage all assessment tests; advanced sorting and filtering |
| Test Events | Tools for creating and administering assessment tests on-line, plain paper or clickers |
| Answer Sheets | Admin tool for creating answer forms; produce dynamic custom forms or utilize Lexmark portfolio |
| Online Scoring | Teacher tool for on-line scoring; complimentary scoring mechanism for constructed response or selected response |
| Questions | Tool for searching and creating items; advanced search among multiple item banks |
| Passages | Tool for searching and creating passages; advance search of passages |
| Rubric Admin | Tool for editing/adding rubrics; flexibility to use a wide selection of rubrics or add new rubrics |
| Curriculum Explorer | Tool for navigating state/local standards; incorporates state standards and can be customized for local needs |
| Capacity Reporting | Report of assessment content by standard; an ideal reporting tool to assess depth and breadth of item content |

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ATTACHMENT B - PURCHASING CONDITIONS

1. The School Board of Clay County (SBCC) purchase order number shall appear on each invoice, delivery papers, bills of lading, packages and/or correspondence.
2. Original invoices shall serve as the SBCC basis for payment.
3. All deliveries are to be F.O.B. destination unless otherwise specified.
4. Do not back order without prior approval.
5. C.O.D. orders shall not be accepted – including freight charges.
6. Equipment, materials, supplies and/or services delivered on this order shall be subject to inspection and test upon receipt and if rejected, shall remain the property of the vendor.
7. The SBCC issues payments in accordance with the "Florida Prompt Payment Act", Florida Statutes, Chapter 218.
8. **BACKGROUND INVESTIGATION:** Any employee, principle, or agent of the contractor, vendor, entity or service provider which is a party to this agreement shall, prior to being permitted access to school grounds when students are present or being allowed direct contact with students or being granted access to or control of school funds, submit to and pass a Level II background screening requirements or otherwise meet the requirements of and be bound by the terms of Florida Statutes 1012.465, 1012.467 or 1012.468. The cost of screening shall be the responsibility of the vendor, contractor, service provider and not the SBCC
9. All transactions contemplated by this purchase order shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without regard to principles of conflicts of laws. Venue for any action arising in regards to this purchase order shall be in the state courts located in Clay County, Florida.

NOTICE: REQUIREMENTS WHEN USING FEDERAL FUNDING:

This purchase order constitutes a contract. Upon acceptance of a purchase order, the vendor certifies that their firm meets and agrees to the following provisions which shall become a part of the contract:

PARTIES RECEIVING PAYMENT VIA PURCHASE ORDER ISSUED BY THE SBCC FOR GOODS AND/OR SERVICES SHALL BE SUBJECT TO ALL REMEDIES ALLOWED BY LAW FOR ANY DEFAULTS, BREACHES, VIOLATIONS OR OTHER FAILURES TO PERFORM AS AGREED WHETHER OR NOT AN EXPRESS WRITTEN AGREEMENT EXISTS FOR THE PROVISION OF SUCH GOODS AND/OR SERVICES.

FISCAL NON-APPROPRIATIONS CLAUSE: In the event sufficient budgeted funds are not available for a new fiscal period, the purchasing department shall notify the vendor of such an occurrence and this contract shall terminate on the last day of the current fiscal period without penalty or expense to the SBCC.

ACCESS TO RECORDS: (34 CFR 80.36 (i)(10): All vendors, contractors and subcontractors shall give access to the SBCC, the appropriate Federal agency, the Comptroller General of the United States, or any of their duly authorized representative to any books, documents, papers, and records of the vendor which is directly pertinent to this specific contract for the purpose of making audit, examination, excerpts and transcriptions.

RECORDS RETENTION: (34 CFR 80.36(i)(11)): All vendors, contractors and subcontractors must retain all records pertaining to this contract for three (3) years after the SBCC makes final payments and all other pending matters are closed.

CLEAR AIR ACT (34 CFR 80.36(i)(12)): All vendors, contractors and subcontractors must comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 11857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Applies to contracts, subcontracts and sub-grants of amounts in excess of \$100,000).

ENERGY EFFICIENCY (34 CFR 80.36(i)(13): All vendors, contractors and subcontractors must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (pub. L. 94-163, 89 Stat.871).

SUSPENSION AND DEBARMENT: In accordance with the United States Office of Management and Budget (OMB) Circular A-133 regarding procurements contracts equal to or exceeding \$25,000 vendors, contractors and subcontractors certify they are not listed on the Excluded Parties Listing System (EPLS) issued by the General Services Administration (GSA).

EQUAL EMPLOYMENT OPPORTUNITY (34 CFR 80.36(i)(3)): All vendors, contractors and subcontractors must comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (Applied to all construction contracts awarded in excess of \$10,000 by the district and their contractors or sub-grantees).

COPELAND "ANTI-KICKBACK" ACT (34 CFR 80.36(i)(4)): All vendors, contractors and subcontractors must comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (Applies to all contracts and sub-grants for construction or repair).

DAVIS-BACON ACT (34 CFR 80.36(i)(5)): All vendors, contractors and subcontractors must comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and sub-grantees when required by Federal grant program legislation). (Applies to construction contracts in excess of \$2000 awarded by the district and sub-grantees when required by Federal grant program legislation).

CONTRACT WORK HOURS & SAFETY STANDARDS ACT (34 CFR 80.36(i)(6)): All vendors, contractors and subcontractors must comply with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). Applies to all construction contracts awarded by the district and sub-grantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers).

CANCELLATION/TERMINATION (34 CFR 80.36(i) For all purchases involving Federal funds in excess of \$10,000, the SBCC reserves the right to terminate this contract for cause, as well as for convenience, by issuing a certified notice to the vendor. If terminated, the SBCC shall be responsible only for goods and services already delivered to it on the date of such termination and shall not be responsible for any consequential damage, future damages or damages caused by lost profits, inconvenience or overhead expense to the vendor.



School District of Clay County e-agenda



**School District of Clay County
Green Cove Springs, Florida**

**Teacher Inservice Center - Fleming Island High School 2233 Village
Square Parkway Hearings for Special Student Actions - 4:00 p.m. Regular
Meeting - 7:00 p.m.**

**March 24, 2015 - Regular Meeting
Agenda Item #14**

C-13

Item Title

C-13 Performance Matters (Assessment and Data Systems) Contract

Issue/Rationale

Contract requires Board approval

Recommended Action

Approve contract as presented

Financial Impact

\$203,050.00 (August 1, 2015 - July 31, 2016)

Submitted By

Emily Weiskopf - Director of School Improvement, Professional Development & Assessment

Attachment: Performance Matters Contract 2015-16.pdf

