

Between: **Focus School Software, LLC**  
475 Central Avenue  
St. Petersburg, Florida 33701 ("**Focus**")

And The School Board of Sarasota County, Florida  
1960 Landings Boulevard  
Sarasota, FL 34231

("Licensee")

**This Focus Post Secondary SIS Master License Agreement ACS-AESIS001**

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

1. **LICENSE:** **Focus** grants Licensee a non-exclusive, non-transferable, non-sublicense-able, worldwide license to use a given Product in accordance with this 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 Licensee's operations for the processing of its own data.
  - b. **LIMITATIONS ON ASSIGNMENT:** Licensee may not assign this Agreement or any of its rights or interests hereunder to any party, except as expressly provided herein. With prior written approval from **Focus**, which shall not be unreasonably withheld, Licensee may assign this Agreement or any of its rights or interests hereunder, or delegate any of its obligations hereunder, to (i) Licensee's successor pursuant to a merger, reorganization, consolidation, or sale; or (ii) an entity that acquires all or substantially all of that portion of Licensee's assets or business for which the **Focus** Product is being used. **Focus** may assign this 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 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 Agreement shall be binding upon, and shall inure to the benefit of, the legal successors and permitted assigns of the Parties.
  - c. **RENDING PROHIBITED:** Unless otherwise specified in the corresponding Product Schedule, Licensee may not re-brand or otherwise remove **Focus** logos, copyright notices, or other identifying materials from a given Product.
  - d. **THIRD PARTY LICENSES:** Licensee acknowledges 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 and hosted by **Focus**.
  - f. **DOCUMENTATION:** **Focus** will provide Licensee with the Product documentation according to the applicable Product Schedule through electronic download, unless otherwise requested

by Licensee. Licensee may use the documentation as is reasonably necessary for use(s) permitted by Licensee's license for the Product without additional charge.

- g. **INSTALLATION TRANSFERS.** If a License is subject to restrictions on the number or locations of the computer on which the Product may be installed, Licensee is entitled at no additional charge and with prior approval from **Focus** to transfer the Product (subject to such use restrictions): (i) from one computer to another or (ii) from one installation site to another.
2. **TITLE AND PROPRIETARY RIGHTS:** Licensee acknowledges 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 to the Product. Licensee shall take no action that infringes upon the ownership, copyright, trademark, and patent rights of **Focus**.
3. **CONFIDENTIALITY:** Licensee agrees that a given Product received shall be treated as the confidential property of **Focus**, and Licensee shall not disclose or otherwise distribute such Product to anyone other than Licensee's authorized employees. Licensee shall not permit anyone except its authorized employees to have access to such Product. Except for archival purposes, Licensee shall not make or allow others to make copies or reproduce any part of such Product in any form without the prior written consent of **Focus**. Licensee shall not remove or destroy any proprietary markings of **Focus**. Under no circumstance shall Licensee 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.
4. **ACCEPTANCE:** Unless otherwise specified in the corresponding Product Schedule, a given Product shall be deemed accepted by Licensee upon delivery of the Product.
5. **PAYMENT AND TAXES:** **Focus** will invoice Licensee for the amount due on acceptance of the Product. Subsequent charges will be invoiced at the beginning of the period to which they apply. All payments shall be due within thirty (30) days of Licensee's receipt of an invoice from **Focus**. Any amounts due under this Agreement or the Produce Schedule which remain unpaid ten (10) days after the date due shall be subject to a late fee of 1.5% of the amount of the original invoice per month. Licensee shall pay all taxes not based on **Focus** net income or net worth, now or hereafter imposed under the authority of any federal, state, provincial or other taxing jurisdiction.
6. **MAINTENANCE AND SUPPORT:** During the time that the Product is under license according to an applicable Product Schedule and Licensee is 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 Licensee at no additional charge. If a malfunction corrected by **Focus** was due to anyone other than **Focus**'s or its agents' modification of such Product, negligence or willful misconduct or misuse of such Product by Licensee, use of such Product in an operating environment other than that specified by **Focus**, or any failure by Licensee 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, and if **Focus** does so, Licensee agrees to pay **Focus**'s standard time and materials rates plus expenses for the services **Focus** provided in making the change or correction.
7. **OLDER PRODUCT VERSIONS:** Licensee understands that **Focus** reserves the right to discontinue support for older versions of a Product with thirty (30) days written notice to Licensee.
8. **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 an **Focus** 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 Licensee's 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 Licensee's 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:** Licensee will (a) pay **Focus** for services on a time and materials basis at the rates set forth in a Product Schedule for services and (b) reimburse **Focus** for all reasonable out-of-pocket costs (such as transportation, lodging, meal per diem, and other expenses) incurred by **Focus** in providing installation, training, maintenance and other Licensee services. Costs shall be limited to the State of Florida per diem rates and require prior school board approval.
- c. **ANTI-SOLICITATION OF EMPLOYEES:** For a period of eighteen (18) months after performance of this Agreement, Licensee shall not hire (as employee, consultant, independent contractor, or otherwise) any employee of **Focus** that Licensee learned about through the performance of this Agreement, nor shall Licensee directly or indirectly solicit, or induce or assist any third party in soliciting or inducing any employee of **Focus** that Licensee learned about through the performance of this Agreement, to leave his or her employment with **Focus**. In the event Licensee breaches its obligations pursuant to this Section, Licensee shall pay **Focus**, 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 Licensee or third party (including bonuses, contract fees, and deferred income of any kind) within thirty (30) days of each such breach.

9. **INTELLECTUAL PROPERTY INFRINGEMENT:** **Focus** warrants that that it has all rights necessary to grant the licenses and perform the services provided hereunder and that no Program will infringe the copyright, patent, trademark or other intellectual property rights of any third party. This warranty shall run indefinitely. **Focus** agrees to defend or, at its exclusive option, settle, any action at law against Licensee alleging that Licensee'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). Licensee 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 Licensee 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 Licensee under any settlement made by or on behalf of Licensee without **Focus**'s written consent. 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 Licensee return such Product and in such cases, **Focus** will give Licensee 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 anyone other than **Focus**, (b) negligence or willful misconduct of Licensee or its agent, (c) misuse of the Product by Licensee or its agent, (d) use of the Product other than in the specified operating environment, (e) failure by the Licensee 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 Licensee's sole remedy, and **Focus**'s entire liability, for any claims of infringement.

## **10. PRODUCT WARRANTY:**

- a. **PRODUCT WARRANTY:** **Focus** warrants that any given Product, as delivered by **Focus** and properly installed, is capable of operating in conformance with the Product's current published specifications. This warranty will apply for ninety (90) days after delivery of such Product to Licensee. During this warranty period, **Focus** will correct or replace a given Product and/or will, at no charge to the Licensee, provide services necessary to remedy any programming error attributable to **Focus**. This Section describes Licensee's sole remedy, and **Focus**'s entire liability, for any warranty claims.
- b. **EXCLUSIONS:** This warranty will not apply if the programming error is caused by (i) modification of the Product by anyone other than **Focus**, (ii) negligence or willful misconduct of Licensee or its agent, (iii) misuse of the Product by Licensee or its agent, (iv) use of the Product other than in the specified operating environment, (v) failure by the Licensee to implement any improvements or updates to the Product as supplied by **Focus**, or (vi) the combination of the Product with any materials, equipment, software, or hardware not provided by **Focus** or its agent contrary to specifications in the Documentation or Product Schedule. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, **FOCUS** MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE CONDITION OF SUCH PRODUCT, ITS MERCHANTABILITY, OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.

## **11. LIMITATION OF LIABILITY:**

- a. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT WILL **FOCUS** OR ITS AFFILIATES BE LIABLE TO LICENSEE OR ITS AFFILIATES FOR ANY CLAIM BASED UPON A THIRD PARTY CLAIM (EXCEPT AS SET FORTH ABOVE IN SECTION 9) 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:** Licensee agrees that **Focus**'s liability for damages, if any, shall not exceed the charges under the applicable Product Schedule to **Focus** by Licensee during the six (6) months immediately proceeding the date when the alleged damages began. Such limitation does not apply to the Parties' obligations under Section 9.

## **12. DISPUTE RESOLUTION:** In case of any dispute arising or related to this Agreement or Product Schedule(s), **Focus** and Licensee, by mutual agreement, shall attempt to resolve any dispute informally through mediation.

- a. **MEDIATION:** In the event of a dispute, the Parties shall first attempt to resolve the matter through discussion and exchange of information. In the event such informal settlement discussions are unsuccessful, **Focus** and Licensee shall submit the dispute to Mediation prior to commencing any legal action against each other. The Parties agree that, in the event of a dispute, either party may send a notice demanding mediation, after which the parties shall mutually agree to 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 certified mediator in Pinellas/Hillsborough County Florida, 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 and will be inadmissible in any subsequent proceedings.

- 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 Sarasota County, Florida, or the United States District Court for the Middle District of Florida, which courts 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 in any manner to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs, including on any appeal.
13. **TERMINATION:** Either party may terminate this Agreement if the other party commits a material breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice from the non-breaching party. Licensee's failure to pay any amount (except amounts disputed in good faith) within thirty (30) days after receiving notice that the amount is delinquent shall be considered a material breach of this Agreement.
- a. **OBLIGATIONS:** Upon the expiration or termination of this Agreement or any Product Schedule for any reason, Licensee shall certify in writing that the Product and all copies and/or partial copies of the Product have either been returned to **Focus** or otherwise destroyed and deleted from Licensee's computer libraries or storage devices and are no longer in use by Licensee.
  - b. **SURVIVAL:** Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.
  - c. **NO WAIVER:** The waiver by either party of a breach of any provision of the Agreement shall not operate or be construed as a waiver of any subsequent breach. This paragraph shall not be regarded as a waiver of any other rights or remedies to which **either party** may be entitled.
  - d. **PILOT PERIOD:** Licensee shall pay the initial License Fee and use the product for one (1) year from the effective date of this agreement. If Licensee elects to terminate the agreement after the end of the first year, they may do so and not be liable for any further fees and the Agreement will be terminated at the end of year one. Other obligations by both parties remain as specified in this Agreement. If the licensee does not elect to terminate the agreement at the end of the first year pilot period, Licensee will promptly pay all support fees as detailed in this agreement and the opportunity for an early termination at the end of the Pilot Period will be waived. In either case, Licensee must notify FOCUS in writing no later than thirty days (30) in advance of the first year anniversary of this Agreement or the opportunity for early termination will be deemed null and void.
  - e. **NONAPPROPRIATION:** Notwithstanding anything contained in this Agreement to the contrary, in the event sufficient funds are not appropriated and budgeted by the Licensee's governing body or are not otherwise available from other legally available sources in any fiscal period for the payment of amounts due under this Agreement, the Agreement shall terminate on the last day of the fiscal period for which appropriations were made to pay amounts due under the Agreement without penalty or expense to Licensee whatsoever. Licensee will immediately notify Focus of such occurrence and upon termination take the actions required in paragraph 13(a) of this Agreement.
14. **DIVESTITURE OF CLIENT BUSINESS:** In the event of a divestiture of a subsidiary, affiliate, business segment or other operating unit of Licensee ("Divested Unit") which is then utilizing Products licensed under this Agreement, the Licensee may, in addition to its continuing use for its ongoing businesses, continue to use such Products on behalf of the Divested Unit for a transitional period not to exceed six (6) months from the date of such divestiture ("Divestiture Use Period"). Any further use by the Divested Unit past the Divestiture Use Period shall require either a) Licensee to obtain a written extension of the Divestiture Use Period from **Focus**; or b) the Divested Unit to

obtain its own separate license for use of the Products effective upon the expiration of the Divestiture Use Period.

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

18. GENERAL:

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

subject matter hereof and supersedes all agreements, proposals, representations and other understandings, oral or written, of the Parties and any current or subsequent purchase order(s) provided by Licensee.

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

ACCEPTED BY LICENSEE:	ACCEPTED BY <b>FOCUS</b> :
Signature	Signature
Name	Name
Title	Title
Date	Date

Approved for Legal Content  
March 4, 2015, by Matthews Eastmoore,  
Attorneys for The School Board of  
Sarasota County, Florida  
Signed: ASH