



MAGNOLIA PUBLIC SCHOOLS

Board Of Directors

Board Agenda Item #	II A
Date:	June 14, 2017
To:	Magnolia Board of Directors
From:	Caprice Young, Ed.D. CEO & Superintendent
Staff Lead:	David Yilmaz, Chief Accountability Officer
RE:	Approval of Agreement with Meals Plus for 2017-18

Proposed Board Recommendation

I move that the board approve the revised agreement with Meals Plus for fiscal year 2017-18.

Background

MPS has been using a CoolSIS meal program module which will have to be replaced once we move to a new SIS. Whether MPS decides to continue with CoolSIS for a long term or choose a different SIS, successful transition (data, training, etc.) will take about a year. We are asking the board to approve a contract with Meals Plus for the 2017-18 school year so that there is no interruption student meal program tracking and reimbursements.

Budget Implications

Included in proposed 2017-18 budget.

2017-2018 MERF: \$14,274.00

Name of Staff Originator:

David Yilmaz (Chief Accountability Officer)

Attachments

-Meals Plus Agreement for 2017-18 (revised)



Magnolia Public Schools Purchase Agreement

May 3, 2017

Education Management Systems EULA

PLEASE READ THIS SOFTWARE LICENSE AGREEMENT CAREFULLY BEFORE DOWNLOADING OR USING THE SOFTWARE.

BY CLICKING ON THE "ACCEPT" BUTTON, OPENING THE PACKAGE, DOWNLOADING THE PRODUCT, OR USING THE EQUIPMENT THAT CONTAINS THIS PRODUCT, YOU ARE CONSENTING TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CLICK THE "DO NOT ACCEPT" BUTTON AND THE INSTALLATION PROCESS WILL NOT CONTINUE, RETURN THE PRODUCT OR DO NOT DOWNLOAD THE PRODUCT.

Multiple-Users License Grant: Education Management Systems, Inc. ("EMS") grants to Customer ("Customer") a nonexclusive and nontransferable license (this "License") to use the Meals Plus Product Suite software ("Software") in object code form: (i) installed in a single location on a hard disk or other storage device of up to the number of licenses purchased by Customer for which Customer has paid a license fee ("Permitted Number of Licenses"); or (ii) provided the Software is configured for network use, installed on a single file server for use on a single local area network for either of the following purposes: (a) permanent installation onto a hard disk or other storage device of up to the Permitted Number of Licenses; or (b) use of the Software over such network, provided the number of licenses does not exceed the Permitted Number of Licenses. Customer may only use the programs contained in the Software (i) for which Customer has paid a license fee (or in the case of an evaluation copy, those programs Customer is authorized to evaluate) and (ii) for which Customer has received a product authorization key. Customer grants to EMS or its independent accountants the right to examine its books, records and accounts during Customer's normal business hours to verify compliance with the above provisions. In the event such audit discloses that the Permitted Number of Licenses is exceeded, Customer shall promptly pay to EMS the appropriate licensee fee for the additional license(s).

Customer may make one (1) archival copy of the Software provided Customer affixes to such copy all copyright, confidentiality, and proprietary notices that appear on the original.

EXCEPT AS EXPRESSLY AUTHORIZED ABOVE, CUSTOMER SHALL NOT: COPY, IN WHOLE OR IN PART, SOFTWARE OR DOCUMENTATION; MODIFY THE SOFTWARE; REVERSE COMPILE OR REVERSE ASSEMBLE ALL OR ANY PORTION OF THE SOFTWARE; OR RENT, LEASE, DISTRIBUTE, ASSIGN, SELL, OR CREATE DERIVATIVE WORKS OF THE SOFTWARE.

Customer agrees that aspects of the licensed materials, including the specific design and structure of individual programs, constitute trade secrets and/or copyrighted material of EMS. Customer agrees not to disclose, provide, or otherwise make available such trade secrets or copyrighted material in any form to any third party without the prior written consent of EMS. Customer agrees to implement reasonable security measures to protect such trade secrets and copyrighted material and to ensure that no unauthorized person shall have access to the Software. Customer agrees that EMS is the sole and exclusive owner of the Software, and that title to the Software and documentation shall remain solely with EMS.

LIMITED WARRANTY. EMS warrants only that (i) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (ii) the Software substantially conforms to its published specifications. Except for the foregoing, the Software is provided AS IS. This limited warranty extends only to Customer as the original licensee. Customer's exclusive remedy and the entire liability of EMS and its suppliers under this limited warranty will be, at the option of EMS, for EMS to revise or replace the Software or to provide a refund of the license fee paid by Customer. In no event does EMS warrant that the Software is error free or that Customer will be able to operate the Software without problems or interruptions.

This limited warranty does not apply if the Software (a) has been altered, except by EMS, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by EMS, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident, or (d) is used in ultrahazardous activities.

DISCLAIMER. EXCEPT AS SPECIFIED IN THIS LIMITED WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY SPECIFICALLY DISCLAIMED BY EMS AND EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW.

CUSTOMER ASSUMES ALL RISK AND SOLE RESPONSIBILITY FOR THE SELECTION, PERFORMANCE AND USE OF THE SOFTWARE. IN NO EVENT WILL EMS OR ITS SUPPLIERS BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE EVEN IF EMS OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER AGREES NOT TO USE THE SOFTWARE IN ANY SITUATION WHERE SIGNIFICANT DAMAGE OR INJURY TO PERSON, PROPERTY OR BUSINESS COULD OCCUR FROM A SOFTWARE ERROR. In no event shall EMS's or its suppliers' liability to Customer, whether in contract, tort (including negligence), or otherwise, exceed the license fee paid by Customer. The foregoing limitations shall apply even if the above-stated limited warranty fails of its essential purpose. SOME STATES DO NOT ALLOW LIMITATION OR EXCLUSION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES.

The above limited warranty DOES NOT apply to any beta software, any software made available for testing or demonstration purposes, any temporary software modules or any software for which EMS does not receive a license fee. All such software products are provided AS IS without any warranty whatsoever.

Product revisions and updates ("Releases") will be made available from time to time, at the sole discretion of EMS. Customers whose annual license fees and/or support fees are current will be provided these Releases at no additional charge. Except as otherwise agreed in writing by EMS, EMS shall have no obligation to provide support, to maintain or to fix problems, errors or bugs with respect to the Software.

This License is effective until terminated. Customer may terminate this License at any time by destroying all copies of Software including any documentation. This License will terminate immediately without notice from EMS if Customer fails to comply with any provision of this License, including, without limitation, if the Customer fails to make payment on license fees and/or annual support fees. Upon termination, Customer must destroy all copies of Software.

Customer agrees to comply with all local, state and federal laws applicable to the use of the Software. Software, including technical data, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Software.

Customer agrees to indemnify and hold harmless EMS, and its shareholders, directors, officers, employees, agents, successors and assigns, of and from all claims, suits, actions, liabilities, damages, costs and expenses (including legal fees) which may be asserted against EMS or incurred by EMS due to Customer's use of the Software or Customer's breach of any term, condition or provision in this License. This License shall not constitute and shall not be construed as constituting any agency, partnership or joint venture relationship between EMS and Customer.

This License is not assignable or transferable in any manner, in whole or in part, by Customer. This License shall be governed by and construed in accordance with the laws of the State of North Carolina, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law. EMS and Customer consent to the jurisdiction of the state and federal courts located in the State of North Carolina for any action arising out of or related to this License or the Software. Customer agrees that any suit brought by Customer arising out of or related to this License or the Software must be filed within one (1) year of the date of Customer's entrance into this License (evidenced by the first to occur of Customer's clicking on the "accept" button, Customer's downloading of the Software, Customer's use of the Software, Customer's payment of the license fee or otherwise). If any portion hereof is found to be void or unenforceable, the remaining provisions of this License shall remain in full force and effect. This License constitutes the entire agreement between the parties with respect to the use of the Software and may be modified only in a writing signed by EMS and Customer. Customer acknowledges that EMS has not made any representations, inducements, promises or agreements, orally or in writing, which are not expressly set forth in this License.

Restricted Rights - EMS's Software is provided to non-DOD agencies with RESTRICTED RIGHTS and its supporting documentation is provided with LIMITED RIGHTS. Use, duplication, or disclosure by the Government is subject to the restrictions as set forth in subparagraph "C" of the Commercial Computer Software - Restricted Rights clause at FAR 52.227-19. In the event the sale is to a DOD agency, the government's rights in software, supporting documentation, and technical data are governed by the restrictions in the Technical Data Commercial Items clause at DFARS 252.227-7015 and DFARS 227.7202. Manufacturer is Education Management Systems, Inc, 4110 Shipyard Blvd, Wilmington, NC 28403.

Education Management MOU

Purpose This Memorandum of Understanding (MOU) is to establish an agreement with respect to the responsibilities of each party, Education Management Systems, Inc. (EMS) and Magnolia Public Schools (MPS).

Scope: This MOU encompasses those products, commonly referred to as the Meals Plus Product Suite (Products), and related services provided by EMS, such as hardware, training and phone support.

1. EMS Responsibilities – unless specifically addressed elsewhere.
 - A. Provide the products and services purchased by MPS on a timely basis.
 - B. Deliver the products with the features and functions as sold.
 - C. Correct and update products, as needed, on a timely fashion.
 - D. Provide products that comply with USDA and/or State requirements.
 - E. Provide unlimited toll free help desk support, to central office staff members and emergency toll free help desk support to school site personnel.
 - F. Provide for enhanced products, on a periodic basis.
 - G. Provide an implementation manager to coordinate the MPS and EMS staff.
 - H. Provide specifications for the appropriate equipment
 - I. Provide specifications and assist with the configuration of the SQL database

2. MPS Responsibilities – unless specifically addressed elsewhere.
 - A. Read and accept the Meals Plus software license agreement.
 - B. Provide equipment that meets the specifications of EMS and needs of the products.
 - C. Manage the District's server.
 - D. Insure that the Meals Plus SQL database is configured to meet or exceed EMS specifications.
 - E. Insure that contingency plans are in place, for utilization on an as needed basis.
 - F. Establish a District implementation coordinator or product manager.
 - G. Insure that implementation tasks are accomplished, as agreed upon
 - H. Provide District users with an appropriate level of training.
 - I. Recognize EMS is only accountable for those things it can control, and not student systems, USDA regulations, State regulations or SIF standards.
 - J. Where applicable; provide and monitor SIF/ZIF server in compliance with SIF standards.

3. Refunds and Cancellations
 - A. Hardware is returnable only when in the original “unopened” container.
 - B. Hardware is subject to each manufacturer's return policy.
 - C. Software is not refundable beyond the trial period or after installation.
 - D. Training services requested and cancelled, 48 hours in advance will be billed at 50% of quoted prices, less than 24 hours in advance 100% of quoted prices.
 - E. Pre-paid Annual Support will be refunded in entirety if cancellation of service is made prior to July 1 of the corresponding service year(s). Any portion of the service year will incur a complete year of annual support fee. Annual support is from July 1 through June 30 of each year.

4. Payment

A. In consideration of EMS's performance of its duties under this Agreement, MPS agrees to pay EMS in the amount as stated in the Pricing Proposal (see Appendix) made payable within 30 days of receipt of an authorized and approved invoice from EMS. This payment shall be sent to EMS's address stated herein.

5. Use of the Magnolia Public Schools Brand

A. EMS shall not use the name, insignia, or any facsimile of MPS material for any purpose, including, but not limited to, advertising, client list, or references, without the express prior authorization of MPS.

6. Merger

A. This Agreement memorializes the full terms and conditions of the Agreement between the undersigned parties. All previous Agreements between the parties, if any, whether written or oral, are merged herein and superseded hereby.

7. Governing Law, Good Faith, & Attorneys' Fees

A. This Agreement shall be performed and construed under the laws of the State of North Carolina without regard to its conflicts of laws provisions. The Parties agree that any dispute arising out of or connected with the interpretation or enforcement of this Agreement, or any of its terms, must be filed in a state or federal court in Wilmington, North Carolina. B. The undersigned parties jointly and severally agree to execute the terms and conditions of this Agreement in good faith and to the best of their ability.

C. Each party shall pay its own attorneys' fees associated with any potential mediation, arbitration, and/or litigation.

8. Confidential Information

A. EMS agrees that all students and MPS lists, e-mail addresses used by MPS employees or students, services, products, student records, plans, reports, marketing, expansion, technology, and processes of MPS are valuable, special, and unique assets of MPS (collectively "Confidential Information"). EMS acknowledges it will have access to, and knowledge of, Confidential Information, and that access to, and knowledge of, Confidential Information is essential to the performance of its duties under this Agreement. In consideration of EMS's access to this Confidential Information, EMS agrees that, except as specifically authorized, in writing, by MPS, EMS shall not, directly or indirectly, (i) disclose any Confidential Information to any person or entity, (ii) make use of any Confidential Information for its own purposes or for the benefit of any other person or entity, other than MPS.

Education Management Systems, Inc.

Magnolia Public Schools

Jeff Flynn, Vice President

Date _____

Date _____

APPENDIX – OVERALL PRICING 2017-2018

(NOTE: SOFTWARE/SERVICES TO BE DELIVERED BETWEEN APRIL 2017 - JUNE 2017 - 30 DAY TERMS)

DESCRIPTION	QUANTITY	UNIT PRICE		COST
Meals Plus Point of Sale Software: Software license provides unlimited terminal/workstations per site. Sites Include: MSA-1, MSA-2, MSA-3, MSA-4, MSA-6, MSA-7, MSA-Santa Ana, MSA-SD	8	\$ 1,995.00	20%	\$ 12,768.00
Meals Plus Point of Sale Software: Software license provides unlimited workstations per site: MPS Central Office	1	\$ 0.00		\$ 0.00
Meals Plus Online Applications: Software license extends to all 8 school sites, central office, and up to 7 additional future growth sites	1	\$ 595.00	100%	\$ 0.00
Meals Plus Accountability & CNIPS Claim Software: Software license extends to all 8 school sites, central office, and up to 7 additional future growth sites	1	\$ 1,995.00	20%	\$ 1,506.00
Meals Plus Online Payments	1	\$ 0.00		\$ 0.00
SOFTWARE SUBTOTAL				\$ 14,274.00
SALES TAX				N/A
TOTAL				\$14,274.00

APPENDIX – OVERALL PRICING 2018-2019

(NOTE: SOFTWARE/SERVICES TO BE DELIVERED BETWEEN APRIL 2017 - JUNE 2017 AND INVOICED JULY 1, 2017 - 10 DAY TERMS)

DESCRIPTION	QUANTITY	UNIT PRICE		COST
Meals Plus Free & Reduced Management Software: Software license extends to all 8 school sites, central office, and up to 7 additional future growth sites	1	\$ 3,995.00	20%	\$ 3,196.00
SOFTWARE SUBTOTAL				\$ 3,196.00
Meals Plus Remote Installation / Configuration: Includes (2) Certified Trainers conducting onsite training and Go-Live Support for 3 days	1	\$ 5,995.00		\$ 5,995.00
Meals Plus Web Training / Configuration Hourly Labor	4	\$ 125.00		\$ 500.00
Meals Plus Travel: Includes Airfare from NC-LAX / Hotel / Rental Car	1	\$ 2,000.00		\$ 2,000.00
SERVICES SUBTOTAL				\$ 8,495.00
Meals Plus Point of Sale Annual Support: Includes Central Office Software Support	8	\$ 350.00		\$ 2,800.00
Meals Plus Student Eligibility Annual Support: Includes Central Office Support	1	\$ 925.00		\$ 925.00
Meals Plus Online Application Annual Support: Includes Central Office Support	1	\$ 1,295.00		\$ 1,295.00
Meals Plus Accountability Annual Support: Includes Central Office Support	1	\$ 465.00		\$ 465.00
Meals Plus Online Payment Annual Support	1	\$ 0.00		\$ 0.00
Meals Plus Annual Support Initial Use Year Discount	1			\$ (4,190.00)
SUPPORT SUBTOTAL				\$ 1,295.00
SALES TAX				N/A
TOTAL				\$ 12,986.00

APPENDIX – INDIVIDUAL SITE PRICING 2017-2018

(NOTE: PRICING PROVIDED AS REFERENCE ONLY. MPS WILL RECEIVE A SINGLE INVOICE FOR ALL SITES)

DESCRIPTION	QUANTITY	UNIT PRICE		COST
Meals Plus Point of Sale Software: Software license provides unlimited terminal/workstations per site. Sites Include: MSA-1, MSA-2, MSA-3, MSA-4, MSA-6, MSA-7, MSA-Santa Ana, MSA-SD	1	\$ 1,995.00	20%	\$ 1,596.00
Meals Plus Point of Sale Software: Software license provides unlimited workstations per site: MPS Central Office	1	\$ 0.00		\$ 0.00
Meals Plus Online Applications: Software license extends to all 8 school sites, central office, and up to 7 additional future growth sites	1	\$ 595.00	100%	\$ 0.00
Meals Plus Accountability & CNIPS Claim Software: Software license extends to all 8 school sites, central office, and up to 7 additional future growth sites	1/8	\$ 1,995.00	20%	\$ 188.25
Meals Plus Online Payments	1	\$ 0.00		\$ 0.00
SOFTWARE SUBTOTAL				\$ 1,784.25
SALES TAX				N/A
TOTAL				\$ 1,784.25

APPENDIX – INDIVIDUAL SITE PRICING 2018-2019

(NOTE: PRICING PROVIDED AS REFERENCE ONLY. MPS WILL RECEIVE A SINGLE INVOICE FOR ALL SITES)

DESCRIPTION	QUANTITY	UNIT PRICE		COST
Meals Plus Free & Reduced Management Software: Software license extends to all 8 school sites, central office, and up to 7 additional future growth sites	1/8	\$ 3,995.00	20%	\$ 399.50
SOFTWARE SUBTOTAL				\$ 399.50
Meals Plus Remote Installation / Configuration: Includes (2) Certified Trainers conducting onsite training and Go-Live Support for 3 days	1/8	\$ 5,995.00		\$ 749.38
Meals Plus Web Training / Configuration	1/8	\$ 500.00		\$ 62.50
Meals Plus Travel: Includes Airfare from NC-LAX / Hotel / Rental Car	1/8	\$ 2,000.00		\$ 250.00
SERVICES SUBTOTAL				\$ 1,061.88
Meals Plus Point of Sale Annual Support: Includes Central Office Software Support	1	\$ 350.00		\$ 350.00
Meals Plus Student Eligibility Annual Support: Includes Central Office Support	1/8	\$ 925.00		\$ 115.62
Meals Plus Online Application Annual Support: Includes Central Office Support	1/8	\$ 1,295.00		\$ 161.88
Meals Plus Accountability Annual Support: Includes Central Office Support	1/8	\$ 465.00		\$ 58.13
Meals Plus Online Payment Annual Support	1/8	\$ 0.00		\$ 0.00
Meals Plus Annual Support Initial Use Year Discount	1			\$ (465.63)
SUPPORT SUBTOTAL				\$ 161.87
SALES TAX				N/A
TOTAL				\$ 1,623.25