

CONTRACT BETWEEN
THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY BY AND THROUGH THE
METROPOLITAN BOARD OF PUBLIC EDUCATION
AND
FLORIDA VIRTUAL SCHOOL
FOR
PURCHASE OF SERVICES

This contract ("Contract") is entered into by and between **Metropolitan Government of Nashville and Davidson County by and through the Metropolitan Board of Public Education** ("MBPE" or "MNPS") and **Florida Virtual School**, 2145 Metrocenter Blvd., Suite 100, Orlando, FL 32835 ("Contractor"). This Contract consists of the following:

- a) This document,
- b) Exhibit A – Data Use Agreement

In the event of conflicting provisions, all documents shall be construed according to the following priorities:

- a) Any properly executed amendment or change order to this Contract, (most recent with first priority),
- b) This Contract.

Duties and Responsibilities of Contractor.

Support:

As part of RFP 13-17 (Supplemental Digital Tech Materials for the Implementation of Common Core State Standards Instruction and On-line Assessment Readiness), MNPS purchased a variety of virtual learning products offered by Florida Virtual School (FLVS).

This contract is for on-going help desk support and updates to the virtual learning products offered by FLVS. This is an on-going subscription for the products currently procured through contract 2-693531-00 and related amendments.

1. **Contractor Qualifications.** Contractor represents that it has in effect all licenses, permissions, certifications, and otherwise all legal qualifications to perform under this Contract.
2. **Term.**
 - a) The term of this Contract will begin March 31, 2020 and end March 22, 2021.
 - b) This Contract may be extended by written Amendment executed by all parties and their signatories hereto.
 - c) In no event shall the term of this Contract exceed one (1) year.
3. **Delivery.** All delivery of services shall be made pursuant to a written purchase order issued by MNPS, which assumes no liability for any services delivered without such purchase order.
4. **Compensation.**

- a) Contractor shall be paid \$22,500 per year.
- b) Contractor shall submit a written report with invoice to MNPS each month setting forth the services provided in the billing period. Such report shall include, but not be limited to, a description of the type(s) of service(s) provided during the month, date, time, names of Contractor's personnel performing the service and duration of service, agendas, sign-in sheets, and attendance rosters. Invoices and monthly reports are to be submitted to Technology Services for review and approval. Payment of invoices may be withheld if documentation is not sufficient. Payment will be authorized only for the approved portion of each invoice. MNPS may request additional documentation or explanation regarding services at any time and Contractor shall respond to such requests promptly with such additional information as MNPS may require.
- c) MNPS will make reasonable efforts to make payments within 30 days of receipt of invoice but in any event shall make payments within 60 days. MNPS will make reasonable efforts to make payments to small businesses within 15 days of receipt of invoice but in any event shall make payment within 60 days.
- d) Total compensation for this Contract shall not exceed \$22,500.

5. Contractor Performance Evaluation.

- a) The Information Technology Department will be responsible for performing and documenting Contractor's performance evaluation during the term of this Contract.
- b) Contractor performance will be evaluated based on:
 - i) Quality of services provided.

6. Piggyback Clause. MBPE reserves the right to extend the terms, conditions, and prices of this contract to other Institutions (such as State, Local and/or Public Agencies) who express an interest in piggybacking on this contract. Each of the piggyback institutions will issue their own purchasing documents for the goods/services. Contractor agrees that MBPE shall bear no responsibility or liability for any agreements between Contractor and the other Institution(s) who desire to exercise this option.

7. MNPS Right to Inspect. MNPS shall have the right to inspect any facility or project site, upon reasonable notice to Contractor, where the products/services provided under this Contract are to be produced/performed.

8. Taxes. MNPS shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to MNPS.

9. License. Contractor warrants and represents that it is the owner of or otherwise has the right to and does hereby grant MNPS a license to use any software provided for the purposes for which the software was obtained.

10. Copyright, Trademark, Service Mark, or Patent Infringement.

- a) Contractor shall, to the extent permitted by Florida Law at its own expense, be entitled to and shall have the duty to defend any suit which may be brought against MNPS to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor shall to the extent permitted by Florida law further indemnify and hold harmless MNPS against any award of damages and costs made against MNPS by a final judgment of a court

of last resort in any such suit. MNPS shall provide Contractor immediate notice in writing of the existence of such claim, and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable Contractor to do so. No costs or expenses shall be incurred for the account of Contractor without its written consent. MNPS reserves the right to participate in the defense of any such action. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon MNPS unless approved by the Metropolitan Department of Law Settlement Committee and, where required, the Board of Education.

- b) If the products or services furnished under this Contract are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:
 - i) Procure for MNPS the right to continue using the products or services, or
 - ii) Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to MNPS, so that they become non-infringing, or
 - iii) Remove the products or discontinue the services and cancel any future charges pertaining thereto, provided, however, that Contractor will not exercise option b.iii. until Contractor and MNPS have determined that options b) i) and b) ii) are impractical.
- c) Contractor shall have no liability to MNPS, however, if any such infringement or claim thereof is based upon or arises out of:
 - i) The use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor, or
 - ii) The use of the products or services in a manner for which the products or services were neither designated nor contemplated, or
 - iii) The claimed infringement in which MNPS has any direct or indirect interest by license or otherwise, separate from that granted herein.

11. Termination for Breach. Should either party fail to fulfill in a timely and proper manner its obligations under this Contract or if it should violate any of the terms of this Contract, the other party shall have the right to immediately terminate this Contract if the breaching party has not corrected the cause of the breach to the satisfaction of the other party within thirty (30) days of written notification of the breach by the other party. It shall also be considered a breach of Contract if a party becomes insolvent, makes an assignment for the benefit of its creditors, a receiver is appointed or a petition in bankruptcy is filed with respect to that party and is not dismissed within thirty (30) days.

12. Termination for Funding. In the event MNPS, in its sole discretion, does not or cannot obtain or continue the funding for this Contract from any source or sources at an aggregate level sufficient to allow for payment for the Work, MNPS may exercise one of the following alternatives: (1) terminate this Contract effective upon a date specified in a Termination Notice; or (2) continue this Contract by reducing, through written notice to Contractor, the amount of this Contract and the scope of work, consistent with the nature, amount, and circumstances of the loss of funding. Any termination or reduction of this Contract pursuant to this subsection shall not affect any obligations or liabilities of either Party accruing prior to such termination or reduction. MNPS shall not face any liability or penalty as a result of such termination or reduction of this Contract.

- 13. Termination for Convenience.** MNPS may terminate this Contract at any time upon thirty (30) days written notice to Contractor. Contractor shall be paid in full for all authorized expenditures and services satisfactorily provided to date, but in no case shall MNPS be liable to Contractor for compensation for any service which has not been rendered. A termination for convenience shall not be a breach of this Contract by MNPS. The final decision as to the amount, for which MNPS shall be liable, shall be determined by MNPS. Contractor shall not have any right to any actual general, special, consequential, incidental, or any other damages whatsoever of any description or amount for MNPS' exercise of its right to terminate for convenience.
- 14. Compliance with Laws.** Both Parties agree to comply with any applicable federal, state and local laws and regulations.
- 15. Assignment - Consent Required.** The provisions of this Contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this Contract, neither this Contract nor any of the rights and obligations of Contractor hereunder shall be assigned or transferred in whole or in part without the prior written consent of MNPS. Any such assignment or transfer shall not release Contractor from its obligations hereunder.
- 16. Notices and Designation of Agent for Service of Process.** Notice of assignment of any rights to money due to Contractor under this Contract MUST be mailed or hand delivered to the attention of the DIRECTOR OF FINANCIAL OPERATIONS, FINANCIAL OPERATIONS, METROPOLITAN BOARD OF PUBLIC EDUCATION, 2601 BRANSFORD AVENUE, NASHVILLE, TN 37204, with a copy to the recipient for MNPS notices listed below.
- a) All other notices to MNPS shall be mailed or hand delivered to:
- | | |
|-----------------|--|
| Department: | Procurement |
| Attention: | Director of Procurement |
| Address: | 2601 Bransford Avenue
Nashville, TN 37204 |
| Phone: | (615) 259-8400 |
| E-mail address: | purchasing@mnps.org |
- b) Notices to Contractor shall be sent to:
- | | |
|-----------------|--|
| Contractor: | Procurement |
| Attention: | Director of Procurement |
| Address: | 2145 Metrocenter Blvd. Suite 100
Orlando, FL 32835 |
| Phone: | () |
| E-mail Address: | procurement@flvs.net |
- c) Contractor designates the following as the Contractor's agent for service of process and will waive any objection to service of process if process is served upon this agent:
- | | |
|-------------------|--|
| Designated Agent: | Courtney Calfee |
| Attention: | Senior Director of Partner Services, Global |
| Address: | 2145 Metrocenter Blvd. Suite 100 |
| Phone: | () |
| Email Address: | ccalfee@flvs.net |
- d) Contractor's Federal Tax ID # 59-3721320

17. **Maintenance of Records.** Both parties shall maintain documentation for all charges against MNPS. The books, records, and documents of both parties, insofar as they relate to work performed or money received under the Contract, shall be maintained for a period of five (5) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by MNPS or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.
18. **MNPS Property.** Any MNPS property, including but not limited to books, records, and equipment, that are in Contractor's possession, shall be maintained by Contractor in good condition and repair, and shall be returned to MNPS by Contractor upon termination of the Contract. All goods, documents, records, and other work product and property produced during the performance of this Contract are deemed to be MNPS property.
19. **Partnership/Joint Venture.** Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.
20. **Criminal Background Checks.** Contractor shall comply, and shall assure that any of its subcontractors performing work under this Contract comply, with Public Chapter 587 of 2007, as codified in Tennessee Code Annotated Section 49-5-413, which requires all contractors to facilitate a criminal history records check conducted by the Tennessee Bureau of Investigation and the Federal Bureau of Investigation for each employee prior to permitting the employee to have contact with students or enter school grounds when students are present.

When applying for the background check defined above, Contractor's employees and subcontractors must specify the MNPS ORI code (TN930050Z) for results reporting.

The requirement stated in the preceding paragraph does not apply to a person whose contract is for the performance of a service at a school-sponsored activity, assembly or event at which school officials or employees are present when the service is performed and where the activity, assembly or event is conducted under the supervision of school officials or employees.

21. **Insurance.** During the term of this Contract, Contractor shall maintain comprehensive general liability insurance, automobile liability insurance, and if necessary, commercial umbrella insurance, each with limits not less than one million dollars (\$1,000,000.00), each occurrence. The METROPOLITAN BOARD OF PUBLIC EDUCATION, 2601 BRANSFORD AVENUE, NASHVILLE, TN 37204 shall be included as an additional insured on the comprehensive general liability policy. Commercial general liability shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to MNPS. There shall be no endorsement or modification to make insurance excess over other available insurance. Contractor shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee or other applicable laws and employers' liability insurance with limits of not less than one hundred thousand dollars (\$100,000). A certificate of insurance, in a form satisfactory to MNPS, evidencing said coverage shall be provided to MNPS prior to commencement of performance of this Contract. **Throughout the term of this Contract, Contractor shall provide an updated certificate of insurance upon expiration of the current certificate.**

Contractor shall also assure that any subcontractors of Contractor who perform work under this Contract maintain the insurance coverages and limits as are required of Contractor.

MNPS is part of a metropolitan form of government as set out under the Governmental Tort Liability Act in T.C.A. § 29-20-101, et seq., and as such has its liability limits defined by law. MNPS carries no insurance and is self-insured in an adequately funded Self-Insurance Program, up to the limits as set out by the statute.

22. Confidentiality, Student Records.

- a) Contractor shall keep in strict confidence as required and to the fullest extent required by any Applicable Law, including but not limited to the Family Educational Rights and Privacy Act ("FERPA") 20 U.S.C. § 1232g and the Children's Online Privacy Protection Act of 1998 ("COPPA") 15 U.S.C. § 6501-6506, any and all records and information, in whatever form or format received, pertaining to MNPS' individual students and children, including but not limited to any academic or grade information, attendance, truancy, discipline, receipt of special education services or supplemental educational services, social security or public benefits, or information as to race, ethnicity, or disability.
- b) With regard to any reports, studies, or other works developed in the course of this Contract, or as a result thereof, Contractor shall not publish Confidential Information or any other information which identifies students, employees, or officers of MNPS by full name without first obtaining written consent from such individuals, or in the case of a student, his or her parent or legal guardian. Contractor shall provide to MNPS for its review any proposed publication, brochure, or advertisement in which MNPS is named not less than thirty (30) calendar days prior to submission for publication and Contractor shall remove MNPS' name or information identifying MNPS from the publication if MNPS requests removal. Contractor shall not issue, publish, or divulge any Materials developed or used in the performance of this Contract or make any statement to the media relating to this Contract without the prior consent of MNPS.

23. Indemnification and Hold Harmless. Both Parties shall indemnify and hold harmless the other Party, its officers, agents and employees to the extent permitted by law from:

- a) Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of either Party, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of the Contract.
- b) Any claims, damages, penalties, costs, and attorney fees arising from any failure of either Party, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.

24. School District Statutory Immunity. Any other term, covenant, or condition of this Contract to the contrary notwithstanding, the School District, its officers, employees and agents, and the members of the Board of Education, retain their statutory governmental, official, and any other immunity provided pursuant to the laws of the State of Tennessee, including under T.C.A. 29-20-101 et seq., and do not waive the defenses of governmental and official immunity derived from such laws. The School District does not waive for itself or its officers, employees, agents, or for members of the Board of Education, any other defenses or immunities available to it or any of them.

25. Force Majeure. Neither party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout,

labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

- 26. Contingent Fees.** Contractor hereby represents that Contractor has not been retained, or retained any persons, to solicit or secure a MNPS contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this paragraph is, in addition to a breach of this Contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under MNPS contracts.
- 27. Gratuities and Kickbacks.** It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim, or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore. It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor, higher tier subcontractor, or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under MNPS contracts.
- 28. Non-Discrimination.** It is the policy of MNPS not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring, promotion, demotion, dismissal or laying off, and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this Contract, Contractor certifies and warrants that it will comply with this policy. No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in MNPS' contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with MNPS or in the employment practices of MNPS' Contractors. Accordingly, all Contractors entering into contracts with MNPS shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.
- 29. Compliance with the Americans with Disabilities Act.** Contractor will provide assurances that it does not discriminate on the basis of disability in admission to, access to, or operations of its program, services, or activities, including hiring or employment practices. The Contractor will insure that qualified applicants and participants with disabilities in its services, programs, or activities have communication access that is equally effective as that provided to people without disabilities. Information shall be made available in accessible formats and auxiliary aids and services shall be provided upon the reasonable request of a qualified person with a disability.
- 30. Iran Divestment Act.** In accordance with the Iran Divestment Act, Tennessee Code Annotated § 12-12-101 et seq., Contractor certifies that to the best of its knowledge and belief, neither Contractor

nor any of its subcontractors are on the list created pursuant to Tennessee Code Annotated § 12-12-106. Misrepresentation may result in civil and criminal sanctions, including contract termination, debarment, or suspension from being a contractor or subcontractor under MNPS contracts.

31. **Governing Law/Venue.** The validity, construction and effect of this Contract and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that the Contractor may provide. Any action between the parties arising from this Contract shall be maintained in the courts of Davidson County, Tennessee.
32. **Waiver.** No waiver of any provision of this Contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
33. **Severability.** Should any provision of this Contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Contract.
34. **Entire Contract.** This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.
35. **Modification of Contract.** This Contract may be modified only by written amendment executed by all parties and their signatories hereto.
36. **Debarment and Suspension.** Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
 - a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b) have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c) are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d) has not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.
 - e) Contractor shall provide immediate written notice to MNPS if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.
37. **Effective Date.** This Contract shall not be binding upon the parties until it has been signed first by the Contractor and then by the authorized representatives of MNPS and the Metropolitan Government and has been filed in the office of the Metropolitan Clerk. When it has been so signed and filed, this Contract shall be effective as of the date first written above.
38. **Public Records.** Florida Virtual School is a public agency subject to Chapter 119, Florida Statutes. MNPS shall comply with Florida's Public Records Law including: (a) keeping and maintaining public

records that ordinarily and necessarily would be required by the BOARD in order to perform the service; (b) providing the public with access to public records on the same terms and conditions that the BOARD would provide the records and at a cost that does not exceed the cost provided in chapter or as otherwise provided by law; (c) ensuring that public records that are exempt or that are confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meeting all requirements for retaining public records and transfer at no cost to the BOARD, all public records in possession of the contractor upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the BOARD in a format that is compatible with the information technology systems of the BOARD. The parties agree that if the contractor fails to comply with a public records request, then Florida Virtual School must enforce the contract provisions in accordance with the contract and as required by Section 119.0701, Florida Statutes.

IF MNPS HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE MNPS'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT, CustodianofRecords@flvs.net , OR BY PHONE 407-513-3325, OR BY MAIL TO: 2145 METROCENTER BLVD., SUITE 100, ORLANDO, FL 32835.

As MNPS agrees to abide by the Florida's Public Records Law, Florida Virtual School shall abide by the Tennessee Open Records Act.

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**THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY BY AND
THROUGH THE METROPOLITAN BOARD OF PUBLIC EDUCATION:**

APPROVED:

MBPE Board Chair

RECOMMENDED:

Director of Procurement

Department Head

Executive Staff Member

APPROVED AS TO AVAILABILITY OF FUNDS:

Account #: _____

Chief Operating Officer

Metropolitan Director of Finance

APPROVED AS TO INSURANCE:

Metropolitan Director of Insurance

APPROVED AS TO FORM AND LEGALITY:

Metropolitan Attorney

CONTRACTOR:

Florida Virtual School
Firm/Organization

Signature

Louis J. Algaze, Ph.D
Name

Executive Director and CEO
Title

Date

**FILED IN THE OFFICE OF THE
METROPOLITAN CLERK:**

Metropolitan Clerk

Date Filed

EXHIBIT A

STUDENT DATA USE AND SECURITY

This Agreement is entered into by and between **The Metropolitan Government of Nashville and Davidson County by and through the Metropolitan Board of Public Education ("MNPS")** and **Florida Virtual School ("Recipient")**.

By agreeing to these Terms, MNPS authorizes Recipient to access, or receive from MNPS, Student Data and Information (SDI), consisting of Personal Identifiable Information (PII) and/or Data for the limited purpose of providing virtual learning products offered by Florida Virtual School.

In the course of providing Services to MNPS, Recipient agrees to protect all data including newly created data as outlined in this Agreement:

SDI includes but is not limited to:

- All Personally Identifiable Information ("PII") as defined by the Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. §1232g and 34 CFR Part 99), the Children's Online Privacy Protection Act ("COPPA") (15 U.S.C. §§6501-6506 and 16 CFR Part 312), Protection of Pupil Rights Amendment (PPRA) (20 U.S.C. §1232g and 34 CFR Part 98) and Student Online Personal Protection Act (SOPPA) (TN Code 49-1-708)
- All data that are descriptive of or could be used in combination with other data to identify a student or family member/guardian, including, but not limited to, information in the student's educational record, first and last name, home address, telephone/cell numbers, email address or other information that allows physical or online contact, social security number, student ID number and other identifiers, disciplinary records, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, health records, behavioral records, disabilities, socioeconomic information, food purchases, political affiliations, religious information, email, text messages and other network/internet or cellular communications, documents, drawings artwork, biometric records, photos, video, voice recordings, handwriting, web search activity, computer/device identifiers and geolocation data.
- All data that are derived from, calculated with or linked to SDI by Recipient, and;
- All data related to students or their families / guardians that may be provided to Recipient by MNPS or an agent of MNPS, and;

De-identified SDI will have all direct and indirect personal identifiers removed, including any data that could be analyzed and linked to other data to identify the student or family member / guardian. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location data, and school ID. Furthermore, Recipient agrees not to attempt to re-identify de-identified SDI and not to transfer de-identified SDI to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) Recipient gives prior notice to MNPS and MNPS provides prior written consent. Recipient may use de-identified SDI for internal product development and improvement, and research.

In the provision of the service to MNPS, Recipient is subject to and will comply with applicable laws and regulations, including but not limited to:

- **FERPA:** Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99)

- **COPPA:** Children's Online Privacy Protection Act, (15 U.S.C. §§ 6501–6506, 16 CFR Part 312)
- **PPRA:** Protection of Pupil Rights Amendment, (20 U.S. Code § 1232h, 34 CFR Part 98)
- **SOPPA:** Student Online Personal Protection Act (TN Code 49-1-708)

Recipient agrees to treat all SDI consistently, as covered by and in compliance with all of these laws and regulations as well as any new laws and regulations related to SDI.

1. **OBLIGATIONS AND ACTIVITIES OF RECIPIENT**

- A. Permitted Uses of MNPS Student Data and Information (“SDI”).** Recipient shall only use or disclose SDI as required to execute the services.
- B. No Marketing or Advertising.** Recipient is prohibited from using SDI to (a) market or advertise to students or families / guardians; (b) inform, influence or enable marketing, advertising or other commercial efforts by a third party; or (c) develop a profile of a student, family member / guardian or group, for any commercial purpose other than providing the Service to MNPS.
- C. Data Analysis and Mining.** Recipient is prohibited from analyzing or mining SDI for any purpose other than delivering the Services to MNPS under this Agreement, or improving the Service for MNPS. Analysis and mining of SDI to support marketing, advertising or other commercial ventures are prohibited.
- D. Data Sharing and Re-Disclosure.**
- i. Sub-Contractors: MNPS understands that Recipient may rely on one or more sub-contractors to provide the Services under this Agreement. The Recipient may only provide SDI to the sub-contractor(s) if necessary, for the furtherance of the services. Recipient is required to hold the sub-contractor(s) to the terms of this Agreement and is responsible for the activities of their sub-contractors.
 - ii. Recipient will promptly notify MNPS if Recipient discloses SDI for any of the following reasons
 - Required to ensure legal and regulatory compliance.
 - In response to a judicial process in a court in the USA.
 - To protect the privacy of SDI, the safety of users or others, or the security of the Service.
- E. Safeguards.**
- i. Recipient shall provide MNPS with the name and contact information for a primary and alternate employee of Recipient who shall serve as the MNPS primary security contact. In the event of any unauthorized access to or disclosure of SDI, the designated contact shall immediately respond to any MNPS inquiries. Please provide contact information below:

Primary Contact

Name: Rob Cryan

Phone#: (508) 735-8844

Email: rcryan@flvs.net

Alternate Contact

Name: Procurement Department

Phone#:

Email: procurement@flvs.net

- ii. The identity of all person(s) having access to the SDI will be documented and access will be logged.
- iii. Without limiting Recipient's obligations under this Agreement to keep SDI safe and confidential, Recipient shall implement reasonable administrative, physical, and technical infrastructure and procedural safeguards to protect and maintain the integrity, confidentiality and availability of SDI (including backups) that Recipient creates, receives, maintains, transports, or transmits on behalf of MNPS. Such safeguards shall be no less rigorous than current generally accepted industry best practices designed to secure and protect the integrity, confidentiality and availability of PII.
- iv. MNPS's SDI shall be stored, backed up and served only on hardware located physically within the United States.
- v. Recipient will assure that all data that is transmitted between MNPS's access points and the ultimate server, by Recipient or its disclosees, will use generally accepted industry best practices for secure data transmission.
- vi. Recipient agrees to mitigate any actual or potential harmful effects by following best practices such as but not limited to the following:
 - a. Have the capability to provide audit trails and or reports of MNPS user activity.
 - b. Any audit trails, MNPS user activity and system generated logs should be securely stored using industry best practices.
 - c. Conduct or undergo system level testing whenever new functionalities are added to the system to reconfirm system security measures are retained and functional, and that interaction with MNPS systems is not degraded or compromised.
 - d. Maintain a documented Business Continuity Disaster Recovery Plan following industry best practices.
 - e. Maintain physical access controls to on-premises data centers that store SDI.
 - f. Security criminal history screening of employees with access to SDI. Screening is to be conducted by a commercial background screening company, the name of which will be provided to MNPS upon request. If the criminal history records check indicates that any Recipient employee has been convicted in any jurisdiction of a sexual offense, a weapon-related offense, an offense against a child, an assaultive or violent offense, a burglary, a felony offense involving a controlled substance, an identity theft, fraud, or an attempt, conspiracy, or solicitation to commit any of these offenses, such employee shall not be assigned to work under this Agreement.

F. Notice of Disclosure, Security Incident or Breach.

- i. Immediately upon becoming aware of any unauthorized disclosure, access or use of SDI, Recipient will take action to close and remediate the breach, determine the scope of the SDI that may have been disclosed, and notify MNPS with the reasons for or cause of the breach (if known), actions taken to close and mitigate the breach, and identification of the SDI that may have been compromised.
- ii. Immediately following Recipient's notification to MNPS of a security incident, breach, or loss of SDI, the parties shall coordinate with each other to investigate the matter. Recipient shall reasonably cooperate with MNPS in investigating the matter and assist MNPS with MNPS's notification obligations under any applicable notification laws. Recipient agrees to reasonably cooperate with MNPS in handling the incident, including, but not limited to:
 - a) Assisting with any investigation;
 - b) Facilitating interviews with Recipient's employees and others involved in the matter;
 - c) Making available all relevant records, logs, files, data reporting and other materials requested by MNPS;
 - d) Providing the tools and procedures designed to recapture stored SDI.
 - e) The date of the discovery of the security incident, breach, or loss of SDI.
- iii. Recipient shall provide the following information to MNPS as soon as possible but not later than five (5) business days of becoming aware of any unauthorized disclosure, access, use or loss of SDI:
 - a) The date of the discovery of the security incident, breach, or loss of SDI;
 - b) A description of the types of SDI that were involved;
 - c) Identification of each individual whose SDI has been, or is reasonably believed to have been compromised and any other details necessary to complete an assessment of the risk of harm to said individual(s).
- iv. Recipient shall provide MNPS prior review of all press releases and any communications to be sent to affected parties per T.C.A. 47-18-2107 which relates to the release of personal information.
- v. Recipient agrees to establish procedures to investigate the security incident, breach, or loss of SDI, to mitigate losses, and to install/implement such safeguards as are needed to protect against any future security incident, breach, or loss of SDI. Recipient agrees to provide a description of these procedures and the specific findings of the investigation to MNPS.

2. COMPLIANCE OF AGENTS

- A. Recipient agrees to ensure that any agent, to whom it provides SDI created, received, maintained, transported or transmitted by Recipient on behalf of MNPS, agrees to the same terms of this Agreement.
- B. For all employees or subcontractors who have access to SDI, during the term of each subcontractor or employee's employment by Recipient, Recipient shall at all times cause such subcontractor or employee to abide strictly by Recipient's obligations under this Agreement.

3. AUDIT. Recipient shall make its internal practices, books, and records available, solely to

the extent necessary to confirm Recipients compliance with the terms of the Agreement. Such audits shall only occur upon reasonable prior written notice to Recipient, during the hours of the normal workday of Recipient and not more than once annually.

4. **INSURANCE**. Recipient shall maintain, throughout the term of this Agreement, a Cyber/Privacy insurance policy providing the coverage for each occurrence as shown in the table below, based on the number of MNPS schools in which the Recipient will be providing service.

Coverage Type	Less than 25 Schools	25 or More Schools
Cyber/Privacy Insurance	\$1,000,000	\$2,000,000

Recipient must provide a certificate of insurance, in a form satisfactory to MNPS (e.g. standard ACORD), evidencing such coverages, and provide annual renewal certificates to MNPS throughout the term of this Agreement.

5. **INDEMNITY**. Both parties, to the extent permitted by law, shall indemnify and hold harmless the other party, its officers, agents and employees from and against any claim, cause of action, liability, damage, cost or expense, arising out of or in connection with any non-permitted use or disclosure of SDI or other breach of this Agreement by either party or any subcontractor or agent of the Recipient. To the fullest extent permitted by law, both parties shall indemnify and hold harmless the other party and its employees ("Indemnitees") from and against all claims, liabilities, damages, losses, and costs including, but not limited to, reasonable costs, arising out of, resulting from, or incidental to the other parties performance under this Agreement or to the extent caused by negligence, recklessness, or intentional wrongful conduct of either party, approved discloses or other persons employed or utilized by either party in the performance of this Agreement. The remedy provided to the Indemnitees by this indemnification shall be in addition to and not in lieu of any other remedy available under the Agreement or otherwise. The remedy provided to the Indemnitees by this indemnification shall survive this Agreement. The provisions of this Section shall specifically survive the termination of this Agreement.

6. **TERM, TERMINATION, AND RETURN OF SDI**

A. Term. The Term of this Agreement shall be effective as of April 1, 2020 and end March 30, 2021. In no event shall the term of this Contract exceed one (1) years.

B. Termination for Convenience. MNPS may terminate this Agreement at any time upon thirty (30) days written notice to Recipient. A termination for convenience shall not be a breach of this Agreement by MNPS.

C. Termination for Breach. Should Recipient fail to fulfill in a timely and proper manner its obligations under this Agreement or if it should violate any of the terms of this Agreement, MNPS shall have the right to immediately terminate this Agreement if the Recipient has not corrected the cause of the breach to the satisfaction of MNPS within thirty (30) days of written notification of the breach. It shall also be considered a breach of Agreement if a party becomes insolvent, makes an assignment for the benefit of its creditors, a receiver is appointed or a petition in bankruptcy is filed with respect to that party and is not dismissed within thirty (30) days.

D. Obligations on Termination.

- i. Except as provided in subsection 6.D.ii., upon termination of this Agreement, for any reason, Recipient shall return or destroy, as determined by MNPS, all SDI received from MNPS, or created or received by Recipient on behalf of MNPS. This provision shall also apply to SDI that is in the possession of subcontractors, or agents of the Recipient. Recipient shall complete such return or destruction as promptly as possible. Notwithstanding the foregoing, it is acknowledged and agreed that Recipient's computer systems may automatically back up MNPS'S SDI and to the extent such backup procedures create copies of the SDI, the Recipient may retain such copies in its archival or backup computer system no later than one year from the date of termination. Recipient shall retain no copies of the SDI.
 - ii. In the event that Recipient determines that returning or destroying the SDI is infeasible, Recipient shall provide to MNPS notification of the conditions that make return or destruction infeasible. Upon mutual Agreement of the Parties that return or destruction of SDI is infeasible, Recipient shall cease and desist use of SDI. If MNPS determines that return or destruction of SDI is feasible, subparagraph 6.D.i. shall apply.
7. **Amendment.** This Agreement may be modified only by written amendment executed by all parties and their signatories hereto.
8. **Obligations of MNPS:** MNPS shall notify Recipient of any changes in, or revocation of, permission by MNPS to use or disclose SDI, to the extent that such changes may affect Recipient's use or disclosure of SDI.
9. **Changes to Policies or Terms of Service:** Recipient shall provide prompt notice in the event it makes material changes to its privacy policy.
10. **Survival.** The respective rights and obligations of Recipient and MNPS shall survive the termination of this Agreement.
11. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits MNPS and Recipient to comply with FERPA and any other applicable laws and regulations.
12. **Not a Purchase Agreement:** Execution of this Agreement does not in any way obligate MNPS to purchase anything, nor does it imply that MNPS is authorized to purchase goods or services from Recipient.