

This Amendment to Statewide Contract #1023 (the "Amendment") is made this 26th day of January, 2021, between the State of Oklahoma by and through the Office of Management and Enterprise Services ("State") and Florida Virtual School ("Supplier") and is a Contract Document in connection with Oklahoma Statewide Contract No. 1023 ("SW1023") between the State and Supplier. This Amendment supplements and amends the Agreement entered into between the parties including all supplements and amendments thereto. Unless otherwise indicated herein, capitalized terms used in this Amendment without definition shall have the respective meanings specified in SW1023.

For good and valuable consideration, the parties agree as follows:

1. Supplier has submitted new and updated pricing information to be applied to the current Contract between State and Supplier; and
2. Supplier has submitted an updated Licensing Agreement to be applied to the current Contract between State and Supplier.

This Agreement incorporates herein by reference the following attachments:

Attachment A: Updated Pricing; and  
Attachment B: Updated FLVS Licensing Agreement

**SIGNATURES**

The undersigned represent and warrant that they are authorized, as representatives of the Party on whose behalf they are signing, to sign this Statement of Work and to bind their respective Party thereto.

**STATE OF OKLAHOMA:**



\_\_\_\_\_  
**Authorized Signature**

D. Jerry Moore

**Printed Name**

Chief Information Officer

**Title**

Feb 2, 2021

**Date**

**FLORIDA VIRTUAL SCHOOL:**



\_\_\_\_\_  
**Authorized Signature**

Louis Algaze, Ph.D.

**Printed Name**

President/CEO

**Title**

1/27/2021

**Date**

## ATTACHMENT A – UPDATED PRICING

### Renewal Pricing: January 26, 2021 – January 25, 2022

#### Global School

- Global School courses are delivered in the Educator Learning Management System.
- Includes certified teachers, all systems and courses
- Required materials are included in the price
- No minimum enrollments required and no upfront fees
- Open enrollment is offered so a student may start a course any time
- Grace Period: Upon being activated into a Global School course, students will have a 14-day or 15% of segment completed grace period, whichever occurs first, without a grade being issued. If a student withdraws from a course within the first 14 days or prior to completing 15% or more of the course segment, whichever occurs first, the grade report that they and their school will receive will classify the drop as "Withdrawn – No Grade." A student withdrawn from the course during this grace period may be replaced with a new enrollment without financial penalty. Clients are not billed for enrollments until the enrollment has been active for 14 days or has completed 15% of the course segment, whichever occurs first.

- Premium Courses

Half Credit	\$475
Full Credit	\$950

- Standard Courses

Half Credit	\$400
Full Credit	\$800

- Credit Recovery Courses

Half Credit	\$325
Full Credit	\$650

- Half Credit Extension Fee: \$100/28 day extension

*\*Not all courses available in this model; see catalog or FLVS account manager for details*



## ATTACHMENT A – UPDATED PRICING

### Licensing Models Overview

- FLVS-Hosted content is provided via the Buzz Learning Management System
- The Oklahoma school or district provides the teacher in site license, per seat, per student, and per enrollment models.

#### FLVS-Hosted Site License

- Purchase minimum = Total student population of site for each course.
- A “site” is defined as a school or district.
- eTeacher Guides included, when available
- Course materials *not* included (See materials list)
- Includes product orientation. Additional teacher training is available (at additional cost).
- Course Content *can* be customized / modified by OMES or Oklahoma school district
- Annual license – access to content for 12 months from provision completion date
- No setup/load fees
- Reports, batch upload users, view enrollment usage (LMS admin functions) included in cost
- Client branded login page available: **\$1000**
- Price, per student, access to all FLVS courses available in model: **\$50**
- Vendor courses not available in a site license

*\*Not all courses available in this model; see catalog or FLVS account manager for details*

#### FLVS-Hosted Per Seat

- Annual license, access to content\* for 12 months from provision completion date
- eTeacher Guides included, when available
- Course materials *not* included (See materials list)
- Includes product orientation. Additional teacher training is available (at additional cost).
- Course Content *can* be customized / modified by OMES OR THE OKLAHOMA SCHOOL DISTRICT
- Annual license – access to content for 12 months from provision completion date, 25 seat minimum
- No setup/load fees
- A “seat” is defined as a student who is enrolled in at least one course “Enrolled Student”. An “Enrolled Student” may be enrolled in multiple courses at one time. If an Enrolled Student vacates his/her seat before the renewable term expires then a new Enrolled Student may occupy the seat without being charged for an additional seat. There can be no more “Enrolled Students” at a time than seats licensed by client.
- Price, per seat: **\$239**
- Vendor courses not available in the per seat model; vendor courses only available in per enrollment model: **\$95.95**

*\*Not all courses available in this model; see catalog or FLVS account manager for details*



## ATTACHMENT A – UPDATED PRICING

### FLVS-Hosted Per Student

- Annual license, access to content\* for 12 months from provision completion date
- eTeacher Guides included, when available
- Course materials *not* included (See materials list)
- Includes product orientation. Additional teacher training is available (at additional cost).
- Course Content *can* be customized / modified by OMES OR THE OKLAHOMA SCHOOL DISTRICT
- Annual license – access to content for 12 months from provision completion date, 25 student minimum
- No setup/load fees
- A student is defined as a unique user ID enrolled in an active status in one or more courses for 14 days or who has completed at least 15% of a course, whichever occurs first. If a student is no longer actively enrolled in FLVS courses before the renewable term expires, the license cannot be re-used to provide access to another student.
- Price, per student: **\$192.95**
- Vendor courses not available in the per seat model; vendor courses only available in per enrollment model: **\$95.95**

*\*Not all courses available in this model; see catalog or FLVS account manager for details*

### FLVS-Hosted Per Enrollment

- Annual license, access to content for 12 months from provision completion date
- 25 enrollment minimum shared between any number of courses\*
- At the end of the license year, FLVS will provide a report to OMES OR THE OKLAHOMA SCHOOL DISTRICT containing all student enrollment numbers on a per course basis during the 12 months since the last reporting date.
- An “enrollment” is defined as one student who has been enrolled in one course for more than 14 days or is 15% complete in the course, whichever occurs first.
- Course content and assessments delivered via Buzz LMS
- No setup/load fees
- Course Content *can* be customized / modified by OMES OR THE OKLAHOMA SCHOOL DISTRICT
- eTeacher Guides included, *when available*
- Course materials *not* included. See materials list for details regarding course materials.
- Support included with enrollment fees.
- Includes product orientation. Additional teacher training is available (at additional cost).
- Price, per student course enrollment: **\$95.95**
- Price, per student CREDIT RECOVERY course enrollment: **\$50**

*\*Not all courses available in this model; see catalog for details*



## ATTACHMENT A – UPDATED PRICING

### Professional Development Pricing

#### FLVS Hosted/Non-Facilitated Per Enrollment

Access to the Becoming an Effective Online Teacher online professional development course:

- For organizations that do not have a Learning Management System (LMS)
- Includes LMS (Buzz)
- No setup fees
- Annual license – access to content for 12 months from provision completion date
- Pay per course enrollment
- 10 enrollment minimum
- Course materials are not included
- Customer may supplement or hide lessons but may not edit lesson content.
- Additional teacher training is available (at additional cost).
- Reports, batch upload users, view enrollment usage (LMS admin functions) included in cost

Price: [\\$195/enrollment/6hr. course](#)

#### Ala Carte Options:

- Customized webinars: priced based on topic and length
- Webinars - [\\$250/hour](#)
- Customized face to face trainings: [\\$3,500/day](#).
  - Includes 1 trainer
  - Up to 25 participants

#### Virtual Leadership Training (VLT)

- Two-day session in Orlando designed to teach the key elements to managing a successful virtual program, addressing the following topics:
  - Hiring and staffing
  - Funding and budget
  - Policies
  - Data and performance management
  - Student recruiting and retention
  - Accountability
  - Curriculum
  - Learning and performance management systems
  - Evaluating your program
  - Marketing your program
- Price: [\\$995.00/person](#)
  - 10% discount for 3 or more attendees



## ATTACHMENT A – UPDATED PRICING

- 15% discount for 5 or more attendees
- Live Stream Option [\\$250.00/person](#)

### e. Consultative Services

- Services can be offered in bundles or broken down by customer need (refer to Consultative Services Document)
- Customer will receive weekly reports on billable hours.
- Travel fees and expenses will be in addition to per hour fees.
- Educational consultation - \$100 per hour
- IT consultation - \$199 per hour

*\*\*Other models and products available upon request\*\**





## ATTACHMENT – B LICENSING AGREEMENT



### TERMS AND CONDITIONS FOR USE OF FLVS LICENSED PRODUCT(S)

**IMPORTANT: DO NOT ALLOW LICENSED PRODUCT (AS DEFINED BELOW) TO BE USED WITHOUT READING THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE NOT WILLING TO ACCEPT THESE TERMS AND CONDITIONS, PLEASE DO NOT USE THE LICENSED PRODUCT, AND NOTIFY FLORIDA VIRTUAL SCHOOL WITHIN TEN (10) DAYS OF RECEIPT OF THIS AGREEMENT. BY USING THE LICENSED PRODUCT AS PERMITTED BY THIS AGREEMENT, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT.**

This document contains terms and conditions applicable to the FLVS product line. The FLVS product line consists of a variety of virtual learning product offerings. Article A (Licensed Product Terms and Conditions) contains license terms that are applicable to all product offerings within the FLVS product line. Article B (Supplemental License Terms and Conditions) contains additional terms that are applicable to specific product offerings within this product line. Although Article B contains terms governing multiple offerings within the FLVS product line, Customer/Licensee will receive licenses only to those offerings that Customer/Licensee has actually ordered. Article C (Support and Services Policies) contains additional terms relating to FLVS' provision of support and services associated with the product offerings covered by this Agreement. Article D (Marketing Terms and Conditions) of this document sets forth FLVS' marketing and branding terms and conditions, along with additional terms for the use of the FLVS name and trade dress in connection with Customer/Licensee's use of the Licensed Product. Finally, Article E (Demo Access – Mutual Nondisclosure Agreement) sets forth the terms and conditions for Customer/Licensee's use of any of FLVS' demo products or courses.

FLVS is not subject to certain data privacy laws, including E.U. General Data Protection Regulation ("GDPR") and the California Consumer Privacy Act ("CCPA"). Despite this, FLVS endeavors to provide a reasonably equivalent level of protection for the personal information of users of its products as part of its commitment to protecting the privacy of its users. FLVS may use, collect, and process your personal information through your use of its products. Your use of any and all product offerings within the FLVS product line constitutes consent to our privacy practices regarding your personal information as detailed in FLVS's Privacy Policy which is incorporated herein by reference. Your continued use of the product affirms your agreement to this Privacy Policy and any modifications or amendments thereto. If you do not wish to be bound by these provisions, do not use the product and uninstall any downloads and applications. If there is any conflict between FLVS's Privacy Policy and these Terms and Conditions, these Terms and Conditions shall control unless specified otherwise herein.

ARTICLE	A:	LICENSED	PRODUCT	AGREEMENT
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**1. DEFINITIONS.** This Agreement is between Florida Virtual School ("FLVS" or "Florida Virtual School") and the school, school district or other entity licensing Licensed Product from Florida Virtual School ("Customer/Licensee"). In addition, the following definitions shall apply:

**1.1 "Affiliate"** shall mean, with respect to any person, any other person directly or indirectly controlling, controlled by, or under common control of such person. "Control" as used herein means the legal, beneficial, or equitable ownership, directly or indirectly, of more than fifty percent (50%) of the aggregate of all voting interest in such entity.

**1.2 "Agreement"** shall mean, collectively, the Order Documentation, this Agreement, and all other Contract Documents identified in the Order Documentation.

**1.3 "Authorized Sites"** shall mean the schools, school districts or other entities named in the Order Documentation as being licensed to provide access to the Licensed Product to their Authorized Users.

**1.4 "Authorized Third Party."** For certain Licensed Products, Customer/Licensee may purchase a license from FLVS for a Licensed Product that will be deployed in a learning management system ("LMS") not hosted by FLVS or FLVS's designee. Rather, the Customer/Licensee may license an LMS from a third party and have such third party host the LMS or have the LMS locally deployed in the Customer/Licensee's own networking environment. In either instance, the third party licensing the LMS to Customer/Licensee is referred to herein as an "Authorized Third Party." The FLVS Approved LMS providers are subject to change and the list can be made available upon request.

**1.5 "Authorized Users"** shall mean (a) students enrolled at the Authorized Sites, and (b) teachers, administrative personnel or other instructional staff employed by the Authorized Sites or by a central administrative office responsible for the Authorized Sites.

**1.6 "Confidential Information"** shall mean any information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects (including, without limitation, documents, prototypes, samples, plans, and equipment), which is designated as "Confidential," "Proprietary," or some similar designation. Information communicated orally shall be considered Confidential Information if such information is confirmed in writing as being Confidential Information within a reasonable time after the initial disclosure. Confidential Information may also include information disclosed to a disclosing party by third parties. Confidential Information shall not, however, include any information which: (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (iii) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure; (iv) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; (v) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession; or (vi) is required by law to be disclosed by the receiving party, provided that the receiving party gives the disclosing party prompt written notice of

## ATTACHMENT – B LICENSING AGREEMENT

such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure.

**1.7 “Documentation”** shall mean all standard written user information, whether in electronic, printed or other format, delivered to Customer/Licensee by FLVS with respect to the Licensed Product, now or in the future, including, but not limited to, instructions, manuals, training materials, and other publications provided by FLVS that contain, describe, explain or otherwise relate to the Licensed Product.

**1.8 “Licensed Product”** shall mean the applicable virtual learning product offering(s) described in the Supplement and licensed to Customer/Licensee pursuant to this Agreement, as specified in the Order Documentation. Licensed Product shall be deemed to include all course content, LMS software (if applicable), hosting services (if applicable), assessments and other materials provided or made available by FLVS to Customer/Licensee in connection with the virtual learning product offerings licensed by Customer/Licensee hereunder, including all Documentation supplied by FLVS in connection with any such offerings.

**1.9 “Order Documentation”** shall mean a price quotation, invoice or other documentation provided by FLVS specifying the Licensed Product and associated support and/or services being offered to Customer/Licensee, which has been accepted by Customer/Licensee as evidenced by Customer/Licensee’s submission to FLVS of a purchase order or other written acknowledgment of Customer/Licensee’s order for Licensed Product or by Customer/Licensee’s payment of applicable fees.

**1.10 “Intellectual Property Rights”** include all worldwide intellectual and industrial property rights including all rights in each country to copyrights, trademarks, service marks, patents, inventions, industrial designs, trade secrets, trade dress, and all other proprietary rights.

### 2. LICENSE GRANT.

**2.1 Basic Terms.** Subject to the terms and conditions of this Agreement, FLVS grants to Customer/Licensee a restricted, non-exclusive, non-transferable license to use the Licensed Product for the applicable license term for which Customer/Licensee has paid FLVS’s applicable license fees. The Supplement contains additional licensing restrictions that are applicable to the various Licensed Products available to Customer/Licensee under this Agreement, and Customer/Licensee agrees to abide by such restrictions. Regardless of the specific Licensed Product being licensed by FLVS to Customer/Licensee, Customer/Licensee acknowledges and agrees that the Licensed Product may only be used by Authorized Users for educational purposes. **Under no circumstances may Customer/Licensee or Authorized Third Party utilize the Licensed Product(s) for or to any school, business, person, or entity other than Customer/Licensee’s delivery of direct instruction to Customer/Licensee’s students by Customer/Licensee’s employees.** In no event will Customer/Licensee use the Licensed Product, including assessments, whether on a non-profit or for-profit basis, in a manner that services students of any schools or school districts that are not operated by Customer/Licensee, or for any schools or school districts that are operated by Customer/Licensee but for which Customer/Licensee has not paid FLVS’s applicable license fees for the applicable Licensed Product, without the prior written consent of FLVS. Customer/Licensee will not permit anyone to use or access the Licensed Product, other than (a) Authorized Users, and (b) if applicable, Authorized Third Parties, solely to the extent necessary to permit the use of the Licensed Product in conjunction with any LMS licensed by such Authorized Third Parties to Customer/Licensee.

**2.2 Software.** To the extent that the Licensed Product provided by FLVS to Customer/Licensee includes access to any LMS or other software hosted by FLVS or FLVS’s designee, such software may be used in executable code form only. Source code to such software is not licensed to Customer/Licensee hereunder and will not be provided.

**2.3 Copies.** Customer/Licensee shall not make copies of or otherwise reproduce any Licensed Product, including assessments and Documentation, without the express written permission of FLVS, except that (a) Customer/Licensee’s Authorized Users may print, for Customer/Licensee’s internal use only, copies of any Documentation that is provided electronically, in order to support Authorized Users’ use of the Licensed Product; (b) Customer/Licensee’s Authorized Users may print copies of any instructional content that is provided electronically, for educational use only and only for the benefit of Customer/Licensee students receiving direct instruction by Customer/Licensee employees utilizing the Licensed Product(s) (e.g., course content may not be printed by teachers for use with students not enrolled in a Licensed Product); and (c) if Customer/Licensee is purchasing a Client Hosted Course (as described in Section 3 of the Supplement), then Customer/Licensee may permit the applicable Authorized Third Party to make a backup copy of the Client Hosted Course solely for use as part of Customer/Licensee’s disaster recovery plan. Customer/Licensee (and, if applicable, any Authorized Third Party) shall retain and include all of FLVS’s and its licensors’ copyright and other proprietary rights notices on any copies of Licensed Product made pursuant to this Section 2.3 or otherwise made with the written permission of FLVS.

**2.4 License Term.** The Order Documentation shall specify the length of Customer/Licensee’s license to the Licensed Product, which could be a specified term or perpetual. In all cases, Customer/Licensee’s license to the Licensed Product is subject to termination in accordance with Section 12.3 of this Agreement.

### 3. RESTRICTIONS ON USE OF LICENSED PRODUCT.

**3.1 Intellectual Property Rights.** Customer/Licensee acknowledges and agrees that all courses, content, software, graphics, pictures, documents, licenses, designs, and materials, and any and all derivatives thereof (collectively, “Works”) made available to Customer/Licensee pursuant to this Agreement are protected by copyrights, trademarks, service marks, patents, trade secrets, or other proprietary rights and laws, and FLVS (or its Affiliates or licensors) owns all right, title, and interest in and to the Works.

Customer/Licensee acknowledges and agrees that it has no intellectual property interest or claims in the Works and has no rights to make any use of such Works except as expressly granted herein. Except as expressly authorized in writing by an officer of FLVS, Customer/Licensee agrees not to sell, license, sublicense, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit, or create derivative works from any of the Works.



## ATTACHMENT – B LICENSING AGREEMENT

Customer/Licensee will not act or permit any action that would impair any of FLVS' (or its Affiliates' or licensors') rights in the Works.

Customer/Licensee agrees not to: (a) disassemble, reverse compile, reverse engineer, or otherwise attempt to discover the source code of or trade secrets embodied in the Works (or any portion thereof); (b) distribute, lend, rent, sell, transfer, or grant sublicenses to, or otherwise make available the Works (or any portion thereof) to third parties, including, but not limited to, making such Works available (i) through resellers, OEMs, or other distributors, or (ii) as an application service provider, service bureau, or rental source, unless expressly permitted in writing; (c) embed or incorporate in any manner the Works (or any element thereof) into other applications of Customer/Licensee or third parties; (d) use or transmit the Works in violation of any applicable law, rule, or regulation, including any export/import laws; (e) in any way access, use, or copy any portion of the Works (including the logic and/or architecture thereof and any trade secrets included therein) to directly or indirectly develop, promote, distribute, sell, or support any product or service that is competitive with the Works; (f) remove, obscure, or alter any copyright notices or any name, logo, tagline, or other designation of FLVS or its Affiliates displayed on any portion of the Works. Customer/Licensee shall not permit any third party to perform any of the foregoing actions and shall be responsible for all damages and liabilities incurred as a result of such actions.

Upon termination of this Agreement, all Intellectual Property Rights shall remain with FLVS.

**3.2 Confidentiality of Licensed Product.** Customer/Licensee shall use reasonable efforts to ensure that (i) Licensed Product is not disclosed to or used by anyone other than Authorized Users and, if applicable, Authorized Third Parties, and (ii) all usage of Licensed Product is consistent with this Agreement and any limitations on the scope of Customer/Licensee's license. Customer/Licensee shall ensure that, to the extent it provides any copies of or access to any Licensed Product to any Authorized Third Party, such Authorized Third Party is made aware and acknowledges in writing that such Licensed Product (a) is proprietary to FLVS and its licensors, (b) may be used by such Authorized Third Party solely in connection with such Authorized Third Party's provision of LMS services to Customer/Licensee in support of Customer/Licensee's use of the Licensed Product, and (c) may not be disclosed to any party other than Customer/Licensee, or used in any manner by the Authorized Third Party for its own benefit or for the benefit of any party other than Customer/Licensee. Customer/Licensee shall not transfer, assign, provide or otherwise make Licensed Product or any component thereof available, in any form or via any medium, to any other party without the prior written consent of FLVS. Any attempted sublicense, assignment or transfer by Customer/Licensee of any rights, duties or obligations hereunder without FLVS's consent shall be void. Upon request, Customer/Licensee shall provide FLVS with access to Customer/Licensee's applicable records and computer systems to enable FLVS to audit Customer/Licensee's compliance with the provisions of this Agreement. Customer/Licensee shall provide notice to FLVS immediately, in writing, of any unauthorized use or distribution of Licensed Product of which Customer/Licensee becomes aware and shall take all steps necessary to ensure that such unauthorized use or distribution is terminated. To the extent that any Licensed Product uses passwords, codes or other user identifications to access such Licensed Product, Customer/Licensee shall advise all users that such passwords, codes or user identifications must be maintained in confidence and not transmitted or shared. FLVS is not responsible for any failure of users to maintain the confidentiality of such information.

**4. SUPPORT AND SERVICES.** FLVS will supply support (whether included with Customer/Licensee's license of Licensed Product or purchased separately by Customer/Licensee) pursuant to the terms of FLVS's Article C Support and Services Policies, a copy of which is attached hereto and incorporated herein by reference.

**5. MATERIALS.** Customer/Licensee's license to the applicable Licensed Product includes access to the virtual course content and such other course materials as are typically provided by FLVS with the applicable Licensed Product, which may vary depending on the Licensed Product selected. Information regarding required materials for each course, including whether they are provided by FLVS or whether they are Customer/Licensee's responsibility to provide, is available upon request. FLVS may provide a storefront through which Customer/Licensee may choose to purchase required materials not provided by FLVS. The purchase of storefront materials is limited to program administrative and support staff. Storefront materials are not available for purchase by Customer/Licensee's teachers, students, or student parents or guardians. Customer/Licensee must designate one administrator and one alternate as approved purchasers and provide the names of those individuals to FLVS. All storefront transactions will be limited to those two individuals.

## **6. CONFIDENTIALITY; NON-DISCLOSURE.**

**6.1 Non-Use and Non-Disclosure.** Each party agrees not to use any Confidential Information of the other party for any purpose except as provided in this Agreement or to carry out its respective duties and obligations hereunder. Each party agrees not to disclose any Confidential Information of the other party to third parties or to such party's employees, except to those employees of the receiving party who are required to have the information in order to perform their obligations under this Agreement. Neither party shall reverse engineer, disassemble, or decompile any prototypes, software, or other tangible objects that embody the other party's Confidential Information and that are provided to the party hereunder.

**6.2 Maintenance of Confidentiality.** Each party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own most highly confidential information and shall ensure that its employees who have access to Confidential Information of the other party have signed a non-use and non-disclosure agreement in content similar to the provisions of this Section, prior to disclosure of Confidential Information to such employees. Neither party shall make any copies of the Confidential Information of the other party unless the same are previously approved in writing by the other party. Each party shall reproduce the other party's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original.

**6.3 Return of Materials.** All documents and other tangible objects containing or representing Confidential Information that have been disclosed by either party to the other party, and all copies thereof which are in the possession of the other party, shall be and remain the property of the disclosing party and shall be promptly returned to the disclosing party (i) immediately upon termination of this Agreement or (ii) at any time upon the disclosing party's written request.

## **7. PROTECTED DATA AND INFORMATION.**

**7.1 Data Protection.** FLVS will ensure all reasonable measures are taken to protect Customer/Licensee's Data while in use at the FLVS site. Reasonable measures include, but are not limited to, the Data being stored on a secure server in a secured building behind an internet firewall with role-based level

## ATTACHMENT – B LICENSING AGREEMENT

password protection for all access to such Data. FLVS shall provide copies of Customer/License Data to Customer/Licensee within seven (7) Business Days of a written request for such Data.

**7.2 Personal Identifying Information.** To the extent that Customer/Licensee provides any personally identifying information (e.g., student or teacher data) to FLVS in the course of FLVS' performance of this Agreement, FLVS shall exercise commercially reasonable care to use such information only for the purposes of providing services to Customer/ Licensee as described herein and not to disclose or permit access to any such information to any third party, other than service providers with whom FLVS may contract to provide support or hosting services in connection with the Licensed Product, in which event FLVS shall require such third parties to maintain such information as confidential in accordance with this provision. Notwithstanding the foregoing, FLVS may disclose personally identifying information to third parties in the following situations: (a) in response to a subpoena, court order, or legal process, to the extent permitted and required by law; (b) to protect user security or the security of other persons, consistent with applicable laws; (c) in connection with a sale, merger, joint venture, or other transfer involving some or all of FLVS or the applicable assets of FLVS; or (d) as required by Federal or Florida Laws. In addition, FLVS may use and disclose aggregated, non-personally identifying information about the use of any Licensed Product for its business purposes (e.g., as part of a statistical analysis or study of the performance of students using the Licensed Product).

## 8. CHARGES AND PAYMENTS.

**8.1 Fees and Taxes.** Customer/Licensee agrees to pay FLVS the applicable fees charged for any Licensed Product and associated support and services ordered by Customer/Licensee, together with all applicable sales, use or other taxes, however designated, except for taxes based on FLVS's net income. If Customer/Licensee claims tax exempt status, Customer/Licensee agrees to provide FLVS with evidence of such tax exemption upon FLVS's request. To the extent that such tax exemption cannot be properly claimed or does not extend to certain taxes or transactions, Customer/Licensee shall be responsible for any and all taxes that arise from this Agreement (except for taxes based upon FLVS's net income). All pricing set forth in any Order Documentation supplied by FLVS is in United States dollars, unless otherwise specified.

**8.2 Overages.** Customer/Licensee is financially responsible for overages. An overage is any unit used in excess of the number of units licensed by Customer/Licensee at the beginning of or during the life of the license. FLVS reserves the right to audit, or request an audit from Customer/Licensee, of Customer/Licensee's usage and invoice Customer/Licensee for any overages that occur at any time during Customer/Licensee's use of the product. Customer/Licensee is financially responsible for all overages regardless of whether the overage is the result of enrollment by Customer/Licensee administrative staff, support staff, teachers, students, student parents or guardians; or any other party without the knowledge or consent of individuals responsible for the Customer/Licensee's program.

**8.3 Payment Terms.** All fees for Licensed Product and associated support and services shall be due and payable Net 45 days upon receipt of a valid invoice. Customer/Licensee shall pay a monthly charge of 1.5% (18% annually) on all amounts not paid when due, or if a lower maximum rate is established by law, then such lower maximum rate.

## 9. FLVS WARRANTY; DISCLAIMER; LIMITATION OF LIABILITY.

**9.1 Limited Warranty.** FLVS cannot assure that the performance of Licensed Product will be uninterrupted or error-free, or that all Licensed Product problems will be corrected, despite FLVS's reasonable efforts to do so. FLVS does, however, warrant for the applicable Warranty Period (as defined in Section 9.2 below) that the Licensed Product will substantially conform to the applicable description and specifications contained in the Documentation delivered with such Licensed Product. The foregoing warranty shall not apply to Licensed Product that has been modified by Customer/Licensee or used in a manner that is inconsistent with this Agreement or that does not conform to the instructions and specifications contained in the Documentation for such Licensed Product. In the event that Licensed Product does not meet the requirements of this warranty, Customer/Licensee shall be responsible to so notify FLVS in writing during the Warranty Period and to provide FLVS with sufficient detail to allow FLVS to identify the problem. After receiving such notification, FLVS will undertake to correct the problem, either itself or through its licensors, by programming or content corrections, reasonable "work-around" solutions and/or Documentation corrections. If FLVS is unable to correct the problem after a reasonable opportunity, FLVS will refund the license fees paid for such Licensed Product during Customer/Licensee's current license term, and Customer/Licensee's license to use such Licensed Product will terminate. Any liability of FLVS under this warranty shall apply only to license fees paid by Customer/Licensee during Customer/Licensee's then-current license term, and not to any previous license terms during which Customer/Licensee used the Licensed Product. **The foregoing states the complete and entire remedies that Customer/Licensee has under this warranty.** FLVS shall have no responsibility for any warranty claims made outside of the applicable Warranty Period.

**9.2 Warranty Period.** For Licensed Product that is licensed to Customer/Licensee for a specified term (i.e., not perpetually licensed), the Warranty Period shall be the first ninety (90) days of each license term (whether an initial license term or a renewal license term). For Licensed Product that is licensed to Customer/Licensee on a perpetual license basis, the Warranty Period shall be the first one hundred twenty (120) days after Customer/Licensee is initially provided access to the applicable Licensed Product by FLVS. The Warranty Period for Licensed Product that is perpetually licensed to Customer/Licensee does not restart when an update to a course or new course version is provided pursuant to any support plan, nor do such updates come with a separate warranty.

**9.3 DISCLAIMER OF OTHER WARRANTIES AND CONDITIONS. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS IN RELATION TO THE LICENSED PRODUCT, SUPPORT OR SERVICES THAT ARE THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER IMPLIED WARRANTIES OR CONDITIONS ARISING BY LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE. THE LIMITED WARRANTIES SET FORTH ABOVE GIVE CUSTOMER/LICENSEE SPECIFIC LEGAL RIGHTS. CUSTOMER/LICENSEE MAY HAVE OTHER RIGHTS, WHICH VARY FROM JURISDICTION TO JURISDICTION.**

**9.4 LIMITATION OF LIABILITY. NEITHER FLVS NOR ITS LICENSORS OR SERVICE PROVIDERS SHALL BE LIABLE TO CUSTOMER/LICENSEE FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES; OR LOST**

## ATTACHMENT – B LICENSING AGREEMENT

**PROFITS, LOST FUNDING, LOST SAVINGS, OR LOST OR DAMAGED DATA; OR FOR CLAIMS OF A THIRD PARTY, ARISING OUT OF THIS AGREEMENT, LICENSED PRODUCT, SUPPORT, SERVICES, OR OTHER ITEMS PROVIDED HEREUNDER, EVEN IF FLVS OR ITS LICENSORS OR SERVICE PROVIDERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORESEEABLE. IN ANY EVENT, IN RESPECT OF ANY CLAIM, DEMAND, OR ACTION ARISING OUT OF THIS AGREEMENT, CUSTOMER/LICENSEE SHALL BE LIMITED TO RECEIVING ACTUAL AND DIRECT DAMAGES IN A MAXIMUM AGGREGATE AMOUNT EQUAL TO THE CHARGES PAID BY CUSTOMER/LICENSEE TO FLVS HEREUNDER FOR THE APPLICABLE LICENSED PRODUCT OR OTHER ITEM OR SERVICE ON WHICH THE CLAIM IS BASED DURING CUSTOMER/LICENSEE'S CURRENT LICENSE TERM FOR THE APPLICABLE LICENSED PRODUCT.**

**9.5 Guarantee Against Infringement.** FLVS guarantees that all components of the Licensed Product shall be free from claims of patent, copyright, and trademark infringement. Notwithstanding any other provision of this Agreement, FLVS shall to the extent permitted by law indemnify, hold harmless, and defend Customer/Licensee, its officers, directors, employees, agents, assigns, and servants from and against any and all liability, including expenses, legal or otherwise, for actual or alleged infringement of any patent, copyright, or trademark resulting from the use of the Licensed Product under this Agreement.

If a component of the Licensed Product becomes or is likely to become the subject of an infringement claim, FLVS may, at its option and expense, either: (a) procure for Customer/Licensee the right to continue using such component; (b) replace or modify the affected component so it becomes non-infringing and remains functionally equivalent; or (c) require the return of the affected component, allow Customer/Licensee to return other components intended to operate with the affected component, and refund to Customer/Licensee the portion of the license fees attributable to the returned product, prorated in accordance with the unused portion of the term.

**10. INDEMNIFICATION.** To the extent permitted by law, Customer agrees to defend, indemnify, and hold harmless FLVS and its Affiliates and all of their employees, contractors, officers, and board members from and against any and all liabilities, claims, damages, injuries, judgments, demands, and expenses (including court costs and attorney's fees), including third party claims, that arise out of or in connection with (i) any breach or default by Customer in the performance of any of its obligations under this Agreement; (ii) any act, omission, or negligence of Customer or any officer, agent, employee, or contractor of Customer; (iii) Customer's failure to comply with laws, rules, and regulations related to or arising from this Agreement; or (iv) any data or security breach (collectively "Claims") except to the extent that such Claims arise out of actions or omissions of FLVS. Upon written request by FLVS, Customer/Licensee shall defend FLVS (if requested by FLVS, in the name of FLVS) by attorneys and other professionals reasonably approved by FLVS. Customer/Licensee understands that this obligation of indemnification and duty to defend survives the expiration or termination of this Agreement and is not limited in any respect by insurance coverage or limitation of liability.

**11. AUDIT; REVIEW. Audit Rights.** FLVS may audit course enrollment and Customer/Licensee's use of the Licensed Product at any time during the term of this Agreement.

### **12. TERM AND TERMINATION.**

**12.1 Term.** The term of Customer/Licensee's access to a given Licensed Product may be perpetual, or for a specified term, depending on the Licensed Product and the deployment model. For Licensed Products for which the license term is perpetual, the license shall begin when FLVS has provided access to the Licensed Product and shall continue in effect unless terminated pursuant to Section 12.3. For Licensed Products for which the license term is a specified period, the license term shall begin on the date that FLVS has made the Licensed Product available for Customer/Licensee's use and shall continue for a period consistent with the Order Documentation.

**12.2 Renewals.** For Licensed Products for which the term is a specified period (i.e., not perpetual), the license terminates at the end of the then-current license term. If, however, the parties agree to renew the license for an additional term (whether for the same or different quantities of students, courses, or other applicable licensing parameters), then the terms and conditions of this Agreement shall remain in effect for any such renewal term, unless FLVS provides updated terms and conditions to Customer/Licensee in connection with such renewal term, in which case such updated terms and conditions shall apply. Any renewal of a license to a Licensed Product shall be at FLVS's then-current rates as specified in the renewal Order Documentation.

**12.3 Suspension or Termination for Breach.** FLVS shall have the right to suspend performance and access to the Licensed Product under this Agreement in the event that Customer/Licensee is in breach of any of its obligations under this Agreement. In addition, either party shall have the right to terminate this Agreement in whole or in part upon thirty (30) days written notice to the other party, in the event the other party materially breaches this Agreement and fails to correct such breach within thirty (30) day period, provided that FLVS shall have the right to terminate this Agreement immediately upon written notice in the event that Customer/Licensee breaches any of its obligations under Sections 2 or 3 hereof. If this Agreement is terminated due to non-payment by Customer/Licensee, and then FLVS subsequently reinstates Customer/Licensee's access to the applicable Licensed Product upon later receiving payment, any such reinstated access shall remain subject to the terms and conditions of this Agreement (unless FLVS provides new terms and conditions to Customer/Licensee at the time of such reinstated access, in which case such new terms and conditions shall apply).

**12.4 Effects of Termination.** In the event of termination of all or any portion of this Agreement, Customer/Licensee shall remain responsible to pay any fees or charges that have accrued prior to the date of termination. In addition, the provisions of Sections 3, 9.3, 9.4, 12.4, 12.5, and 14 of this Agreement, and Sections 3.3(b) and 3.3(c) of the Supplement, shall survive termination of this Agreement. If partially terminated with respect to a particular product or service, this Agreement will remain in effect for all other products and services that have been provided hereunder to Customer/Licensee.

**12.5 Use of Licensed Product.** Immediately upon termination of a license of any Licensed Product, Customer/Licensee shall cease using, and shall promptly destroy any paper or other hard copies, and delete from its computer systems any electronic copies, of any components of any Licensed Product, which includes any and all assessments and derivative works of Licensed Product in Customer/Licensee's possession or control. In addition, Customer/Licensee shall require any Authorized Third Parties to cease using and to delete and destroy any such copies of any Licensed Product. Customer/Licensee access and use of Licensed Product after termination shall be limited to downloading gradebook and any student produced materials. If state law or other requirement exists that require Customer/Licensee to access assessments beyond gradebook, an additional license must be purchased to continue access. Upon request, Customer/Licensee shall (a) forward written certification to FLVS that it has complied with the requirements of this Section 12.5, and (b) provide FLVS with access to Customer/Licensee's applicable records and computer systems including any Authorized Third Party(s) to enable FLVS to audit Customer/Licensee's compliance with the provisions of this Section 12.5.

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**13. FLVS HOSTED PRODUCTS AND SERVICES.** For certain Licensed Products, FLVS provides hosting services and/or access to an LMS through which Customer/Licensee manages the use of the Licensed Product. To the extent that Customer/Licensee licenses a Licensed Product pursuant to which FLVS provides such hosting services and/or LMS access, the following terms shall apply.

**13.1 Availability.** FLVS will attempt to schedule any planned maintenance or upgrades within its hosting environment at times when usage is typically low (e.g., nights and weekends), and will attempt to communicate any outages associated with planned maintenance or upgrades to Customer/Licensee in advance. Customer/Licensee acknowledges that as the FLVS hosted deployment models are dependent on the Internet, information is transmitted over local exchange and Internet carrier lines, as well as through routers, switches and other devices owned, maintained and serviced by third parties, all of which are beyond the control of FLVS and which can be impaired or disrupted through no fault of FLVS. Customer/Licensee further acknowledges and agrees that the FLVS hosted Licensed Products or services may be inaccessible or inoperable from time to time due to unscheduled maintenance or causes beyond the control of FLVS or not reasonably foreseeable by FLVS, including, but not limited to: the interruption or failure of telecommunication or digital transmission links; hostile network attacks; network congestion; or other failures (collectively, "Downtime"). FLVS will use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability of the FLVS hosted Licensed Products or services, but FLVS shall have no liability should Downtime occur despite such commercially reasonable efforts, nor shall it be a breach of the terms and conditions, purchase order, or Order Documentation.

**13.2 Service Providers.** For Licensed Products where FLVS agrees to provide Customer/Licensee with LMS access and/or hosting services, FLVS may use in-house services or a third-party service provider to provide such services.

**13.3 Compatibility.** Customer/Licensee shall be responsible to provide, or to ensure that Authorized Users have, a computing environment compatible with FLVS's standard specifications for the Licensed Product being licensed by Customer/Licensee. Copies of such specifications are available upon request. Such specifications are subject to change over time based on changes in technology or Licensed Product delivery methods. FLVS does not supply computers or Internet access as part of any Licensed Product.

## 14. COMPLIANCE WITH LAWS

**14.1 In General.** Each party agrees to fully comply with the requirements of all applicable federal, state, and local laws, codes, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

**14.2 Children's Online Privacy Protection Act ("COPPA").** Customer/Licensee shall be responsible for ensuring full compliance with COPPA and all rules promulgated thereunder.

**14.3 Confidential Student Information.** For the purposes of this Agreement, FLVS is hereby designated a school official for the purposes of receiving confidential student information. FLVS acknowledges and agrees that it will not disclose the confidential student information to any other person or entity and will only use the confidential student information for the purposes of this Agreement and for no other purpose. Upon the termination or expiration of this Agreement, FLVS shall maintain the confidential student information for the time period required by Florida law, and shall thereafter delete and/or destroy all originals and any copies of confidential student information and shall not retain any confidential student information. As FLVS may receive student information that is otherwise confidential, FLVS shall fully comply with the requirements of § 1002.22 and § 1002.221, Florida Statutes, the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, and the federal regulations issued pursuant thereto (34 CFR Part 99); and any other law or regulation, either federal or State of Florida, regarding confidentiality of student information and records. Further, to the extent permitted by law, FLVS for itself, and its officers, employees, agents, representatives, contractors, and subcontractors, shall fully indemnify and hold the Customer/Licensee and its officers and employees harmless for any violation of this provision, including, but not limited to defending the Customer/Licensee and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon the Customer/Licensee, or payment of any and all costs, damages, judgments, or losses incurred by or imposed upon the Customer/Licensee arising out of the breach of this provision by FLVS, or its officers, employees, agents, representatives, contractors, and subcontractors, to the extent that FLVS shall either intentionally or negligently violate this provision, or § 1002.22 or § 1002.221, Florida Statutes. This provision shall survive the termination of or completion of all obligations under this Agreement and shall be fully binding upon FLVS until such time as any proceeding which may be brought on account of this provision is barred by any applicable statute of limitations.

**14.4 Accommodations.** Customer/Licensee acknowledges that virtual learning programs are not appropriate for all students, and it is Customer/Licensee's responsibility to ensure that a given Licensed Product is an appropriate placement for a particular student. For Licensed Products with FLVS-provided teacher instruction, if Customer/Licensee provides access to such Licensed Products to students requiring accommodations, Customer/Licensee will allow the FLVS-supplied teacher (or other individuals designated by FLVS as appropriate) to participate in planning meetings to ensure that the particular Licensed Product is an appropriate placement for such students. Notwithstanding the foregoing, FLVS will not be responsible for making any modifications to a Licensed Product's technology or content, or any other accommodations in connection with a Licensed Product or any associated instructional services, or third-party sites or materials associated with a course, if the standard Licensed Product is not appropriate for, or is not readily usable by, a given student.

- a) **Students with Disabilities.** To the extent required by law, Customer/Licensee is responsible for complying with all applicable federal IDEA requirements and any other federal, state, or local laws or regulations in connection with the use and implementation of any Licensed Product.
- b) **English Language Learner Students.** To the extent required by law, Customer/Licensee is responsible for providing appropriate equal access and ensuring compliance with the Florida META Consent Decree and any other federal, state, or local laws or regulations in connection with the use and implementation of any Licensed Product.
- c) **Individual Education Plans.** To the extent required by law, Customer/Licensee is responsible for providing any required services to support a student's consistent with the legal requirements for serving students with special needs in a virtual school.

**14.5 Data/Security Breach.** The parties acknowledge and agree to comply with the requirements of § 501.171, Florida Statutes. A breached party shall notify the other party immediately, but in no event later than thirty (30) calendar days following a determination of a breach of data security involving the other party's data. Additionally, each shall fully cooperate with the other regarding the statutory notification requirements.

**14.6 Background Screening.** As a public school, FLVS complies with all statutes regarding background screening of employees, in accordance with Florida



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law, specifically including, but not limited to, the requirements of § 1012.465, Florida Statutes (the Jessica Lunsford Act) and § 1012.32, Florida Statutes.

### 15. GENERAL

**15.1 Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY, AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF FLORIDA. VENUE FOR ANY CAUSE OF ACTION HEREUNDER SHALL BE IN A STATE OR FEDERAL COURT IN ORLANDO, FLORIDA.

**15.2 Dispute Resolution.** The parties agree that they will use their best efforts to settle any and all disputes arising out of, under or in connection with this Agreement, including without limitation the validity, interpretation, performance, and breach hereof, prior to initiating any legal proceeding, whether judicial or administrative in nature. The efforts shall be primarily between the President of FLVS and the Superintendent, Principal, President, or similar chief executive of the Customer/Licensee, or their respective designees.

**15.3 Force Majeure.** Any delay or failure of either party in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God; fire; flood; windstorm; explosion; riot; war; sabotage; strikes or labor disputes; extraordinary breakdown of or damage to FLVS' servers or computer systems; court injunction or order; federal and/or state law or regulation; order by any regulatory agency; inability to procure or obtain delivery of parts, supplies, power, equipment, or software; or cause or causes beyond the reasonable control of the party affected; provided that prompt notice of such delay is given by such party to the other and each of the parties hereunto shall be diligent in attempting to remove such cause or causes. If any circumstance of Force Majeure remains in effect for sixty (60) days, either party may terminate this Agreement.

**15.4 Sovereign Immunity.** FLVS intends to avail itself of the benefits of § 768.28, Florida Statutes and any other statutes and common law governing sovereign immunity to the fullest extent possible. Neither this provision nor any other provision of this Agreement shall be construed as a waiver of FLVS' right to sovereign immunity under § 768.28, Florida Statutes, or other limitations imposed on FLVS' potential liability under state or federal law. Customer/Licensee agrees that FLVS shall not be liable under this Agreement for punitive damages or interest for the period before judgment. Further, FLVS shall not be liable for any claim or judgment, or portion thereof, to any one person for over two hundred thousand dollars (\$200,000.00), or any claim or judgment, or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds three hundred thousand dollars (\$300,000.00). Nothing in this Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. This paragraph shall survive termination of this Agreement.

**15.5 Non-Discrimination.** The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities, and obligations under this Agreement because of race, age, political or religious beliefs, color, gender, gender identity or expression, national origin, marital status, disability, or sexual orientation.

**15.6 Public Records.** FLVS is a public agency subject to Chapter 119, Florida Statutes. Customer/Licensee shall comply with Florida's Public Records Law including: (a) keeping and maintaining public records that ordinarily and necessarily would be required by the FLVS Board of Trustees in order to perform the service; (b) providing the public with access to public records on the same terms and conditions that the FLVS Board of Trustees would provide the records and at a cost that does not exceed the cost provided in Chapter 119 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 FLVS Board of Trustees, all public records in possession of the Customer/Licensee 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 FLVS Board of Trustees in a format that is compatible with the information technology systems of the FLVS Board of Trustees. The parties agree that if Customer/Licensee fails to comply with a public records request, then FLVS must enforce the contract provisions in accordance with the contract and as required by § 119.0701, Florida Statutes.

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

**15.7 Severability.** In the event any portion or part of this Agreement is deemed invalid, against public policy, void, or otherwise unenforceable by a court of law, the parties shall negotiate an equitable adjustment in the affected provision of this Agreement. The validity and enforceability of the remaining parts of this Agreement shall otherwise remain fully intact.

**15.8 Assignment.** Customer/Licensee may not assign this Agreement, in whole or in part, to any other party without the prior written consent of FLVS.

**15.9 Right to Equitable Relief.** Customer/Licensee acknowledges that in the event it breaches any of the provisions of Sections 2, 3, or 6, FLVS' interests will be irreparably injured, the full extent of FLVS' damages may be impossible to ascertain, and monetary damages will not be an adequate remedy. Customer/Licensee agrees that FLVS will be entitled to enforce this Agreement by an injunction or other legal or equitable relief in any court of its choice without the necessity of posting bond or security, in addition to its right to seek monetary damages or any other remedy.

**15.10 Notices.** Notices to FLVS shall be sent to: Florida Virtual School, Attn: President, 2145 Metrocenter Boulevard, Suite 100, Orlando FL 32835. Notices to



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Customer/Licensee shall be sent to Customer/Licensee's address of record as set forth in the Order Documentation. Either party may change its notice address by notifying the other in like manner. Any notice given as provided herein shall be deemed received as follows: if delivered by personal service, on the date so delivered; if delivered by overnight courier service, on the Business Day immediately following delivery to such service; and if mailed, on the third Business Day after mailing.

**15.11 Third Party Rights.** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than FLVS and Customer/Licensee.

**15.12 Headings.** Article, section, and paragraph headings are for the convenience of the parties only and are not to be construed as part of this Agreement.

**15.13 Waiver.** Waiver by either party of any terms, conditions, or provisions of this Agreement shall not be considered a waiver of that term, condition, or provision in the future. No waiver, consent, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party hereto.

**15.14 Third Party Requirements.** To the extent that Customer/Licensee uses any Licensed Product, Customer/Licensee is responsible for ensuring that the courses meet the requirements of any third-party organization that Customer/Licensee or its students desire to satisfy. For example, the National Collegiate Athletic Association ("NCAA") has specific guidelines regarding the acceptance of distance learning or credit recovery courses for student athletes. Customer/Licensee accepts responsibility for these criteria to the extent that Customer/Licensee uses any Licensed Product for students who desire to meet NCAA eligibility criteria. Similarly, Customer/Licensee is responsible for completing any College Board audit procedures required with respect to any Advanced Placement ("AP") courses if Customer/Licensee intends to offer any Licensed Product courses as AP courses.

**15.15 Relationship of the Parties.** At all times during the term of this Agreement, the parties shall be considered independent contractors and not employees of each other, and nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties. Neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate anything other than an independent contractor relationship with the other.

**15.16 Entire Agreement.** This Agreement, including the Supplement and the Policies attached hereto and the Order Documentation, constitutes only a portion of the entire agreement between the parties with respect to Oklahoma SW1023.. The terms and conditions of Oklahoma SW1023 shall prevail notwithstanding any variance with the terms and conditions of any purchase order or other documentation submitted by Customer/Licensee. Notwithstanding the foregoing, to the extent of any conflict between SW1023 and the Order Documentation signed by both parties, SW1023 shall prevail. Except as otherwise expressly provided herein, this Agreement shall not be modified or amended in whole or in part without the written agreement of both parties.

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### ARTICLE B: SUPPLEMENTAL LICENSE TERMS AND CONDITIONS

These Supplemental License Terms and Conditions ("Supplement") supplement the terms of the Licensed Product Agreement between FLVS and Customer/Licensee to which they are attached. Capitalized terms not defined in this Supplement shall have the same meanings ascribed to them elsewhere in this Agreement. Note that in addition to the terms set forth below for particular Licensed Products, minimum quantities may apply to purchase a license to certain Licensed Products.

To the extent that Customer/Licensee is granted a license under the Agreement to any of the Licensed Products named or described below, the following provisions set forth additional terms and conditions specific to such Licensed Products

**1. GLOBAL SCHOOL COURSES AND GLOBAL SCHOOL- CREDIT RECOVERY COURSES (FLVS HOSTED COURSES WITH TEACHER INSTRUCTION).** FLVS offers a license to certain Licensed Products in which Customer/Licensee is granted access to course content in a FLVS hosted LMS environment accompanied with teacher instruction provided by Florida Virtual School ("FLVS"), the provider of the course content used in the FLVS product line. Licensed Products licensed in this fashion are referred to herein as

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“Global School Courses” or “Global School-Credit Recovery Courses.” The following terms apply to the licensure by Customer/Licensee of Global School Courses and Global School-Credit Recovery Courses (in addition to the terms of the Agreement to which this Supplement is attached):

**1.1 Pricing.** A license to a Global School Course or Global School- Credit Recovery Course is priced on a per-student, per-course basis.

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Customer/Licensee will pay FLVS's applicable fees for each student enrolled in a Global School Course or Global School-Credit Recovery Course. The license fee may vary based on whether the Course is a full- credit or half-credit course, as well as whether the student resides within or outside the continental United States of America.

**1.2 Authority to Piggyback:** If mutually agreed between Florida Virtual School and the Customer, agreement to these Terms and Conditions constitutes a proposal made under the same conditions, for the same price, and for the same effective period as this contract, to any other governmental entities.

**1.3 License/Payment Terms.** Unless otherwise stated in the Order Documentation, for each Global School Course or Global School-Credit Recovery Course License Customer/Licensee agrees to: (a) pay the then current list price according to the quotation or Order Documentation; and (b) be invoiced after a student has been enrolled in a Global School Course or Global School-Credit Recovery Course for fourteen (14) consecutive days after the date the student was initially enrolled or upon completion of fifteen (15) percent of the half credit course segment, whichever occurs first. Once enrolled in a Global School Course, the student will have 27 weeks to complete each half credit. Once enrolled in a Global School-Credit Recovery Course, the student will have 10 weeks to complete each half credit. Unless otherwise stated in the Order Documentation, payment is due as of the due date noted on the invoice, and payment is considered late fifteen (15) days after the invoice due date. FLVS retains the right to suspend Customer/Licensee service and student access to a Global School Course or Global School-Credit Recovery Course without notice if payment is overdue. FLVS retains the right to decline a Customer/Licensee request for an Official Transcript relating to a student account for which payment is overdue. If Customer/Licensee pays for Global School Licenses in advance of enrollment, then Customer/Licensee will have (1) year from the date the order is placed to enroll students in licensed Global School Courses or Global School- Credit Recovery Courses. If not activated within 1 year, the Global School Course or Global School-Credit Recovery license will be deemed expired. If a Global School Course or Global School- Credit Recovery Course is offered as part of a specific term offering with specified dates, for example Summer School, then Customer/Licensee must fully utilize the licenses, meaning students must have completed the course(s) in which they were enrolled, by the last day of the specified term, otherwise the licenses will be deemed expired and Customer/Licensee will not be eligible for a refund. In order for Customer/Licensee to enroll a student in a Global School-Credit Recovery Course, the student must have previously taken the equivalent course prior to enrolling.

**1.4 Withdrawals.** Unless otherwise stated in the Order Documentation, during the first fourteen (14) consecutive days after enrolling a student or prior to a student's completion of fifteen (15) percent, whichever occurs first, in a Global School Course or Global School-Credit Recovery Course, Customer/Licensee may withdraw the student at no charge. A withdrawal request must be received from Customer/Licensee in writing to FLVS by email before the end of the fourteen (14) consecutive day period or prior to the student's completion of fifteen (15) percent, whichever occurs first, for a Global School Course or Global School- Credit Recovery Course. After the fourteen (14) consecutive day period or upon the student's completion of fifteen (15) percent of the half credit course segment, whichever occurs first, Customer/Licensee will be invoiced as per the terms outlined in section "1.3 License/Payment Terms." If payment is made in advance, Customer may withdraw the student and enroll another student at no additional charge during the first fourteen (14) consecutive day period or prior to the student's completion of fifteen (15) percent of the half credit course segment, whichever occurs first, for a Global School Course or Global School- Credit Recovery Course. After the fourteen (14) day period or upon student's completion of fifteen (15) percent or more of the half credit course segment, whichever occurs first, there is no credit or refund for not completing a course.

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**1.5 Training.** FLVS may provide, at its discretion, online training via asynchronous videos for Customer/Licensee personnel (e.g., Facilitators, as defined in Section 1.5 below, guidance counselors, or others) who will be supporting Customer/Licensee's students taking a Global School Course or Global School-Credit Recovery Course.

**1.6 Course Maintenance; Administrative and Teacher Support.** Upon enrollment in a Global School Course or Global School-Credit Recovery Course, students will have access to the most current version of that course. A FLVS administrator will be designated as Customer/Licensee's point of contact for administrative and support issues, and the FLVS teachers assigned to Customer/Licensee's students will assess and evaluate student progress and provide monthly progress reports that will be made available to Customer/Licensee.

**1.7 Facilitator.** Customer/Licensee must designate one or more Customer/Licensee personnel to act as a "Facilitator." The Facilitator will be the primary contact between Customer/Licensee and FLVS with respect to the students taking Global School Courses or Global School-Credit Recovery Courses. The Facilitator will generally perform the following functions: (a) reviewing progress reports for each student at least once a month; (b) overseeing students to ensure participation in coursework and completion of assignments; (c) acting as a liaison between students or parents and FLVS teachers as needed; (d) assisting students in registering for AP exam reviews and exams, if applicable; (e) proctoring exams as necessary; (f) providing data and responses to surveys and other inquiries about students taking the Global School Courses or Global School-Credit Recovery Courses as may be reasonably requested by FLVS; and (g) communicating with the designated FLVS school administrator if questions or problems arise.

**1.8 Grading; Credit.** Upon completion of a Global School Course or Global School-Credit Recovery Course, the teacher will issue a grade to the student. Although FLVS has obtained accreditation as a provider of virtual courses, by one or more recognized accreditation organizations, certain Global School Courses may not fall under FLVS' accreditation. Regardless of whether a Global School Course or Global School-Credit Recovery Course falls under FLVS' accreditation, however, FLVS may not grant credit to Customer/Licensee's students. It is ultimately Customer/Licensee's decision whether to issue credit for successful completion of a Global School Course or Global School-Credit Recovery Course as part of Customer/Licensee's official records for such student. Additional information regarding FLVS's accreditation is available upon request.

**1.9 NCAA Restrictions.** The National Collegiate Athletic Association (NCAA) has specific guidelines regarding the acceptance of distance learning or credit recovery courses for student athletes. **Global School- Credit Recovery Courses do not meet the current NCAA eligibility criteria.** Pursuant to section 15.14 of the FLVS Licensed Product Agreement, Customer/Licensee is responsible for ensuring any Global School Course satisfies the National Collegiate Athletic Association's (NCAA) eligibility criteria.

**1.10 Disciplinary History.** With regard to any student it desires to enroll in a Global School Course or Global School-Credit Recovery Course, Customer/Licensee will, upon request, disclose the students' disciplinary background to FLVS. Customer/Licensee shall notify FLVS of any student that Customer/Licensee is seeking to enroll who has been expelled or is being considered for expulsion from one of Customer/Licensee's schools. FLVS shall have the sole authority and discretion to accept or deny a student's participation therein. Further, any student enrolled in a Global School Course or Global School-Credit Recovery Course shall have the obligation while so enrolled to self- report any arrest and/or convictions for criminal activity.

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**2. FLVS HOSTED COURSEWARE PACKAGES (FLVS HOSTED COURSES WITHOUT TEACHER INSTRUCTION).** FLVS offers a license to certain Licensed Products in which Customer/Licensee is granted access to a specific bundle of courses hosted by FLVS or its designee, but for which Customer/Licensee is responsible to provide its own teachers. Licensed Products licensed in this fashion are referred to herein as “FLVS Hosted Courseware Packages,” and each course within a FLVS Hosted Courseware Package is referred to as a “FLVS Hosted Course.” A FLVS Hosted Courseware Package may be limited to a particular set of courses (e.g., middle school courses; electives; or AP courses) or may include the entire catalog of available courses. For FLVS Hosted Courseware Packages, the following terms shall apply (in addition to the terms of the Agreement to which this Supplement is attached):

**2.1 Access.** FLVS will provide Customer/Licensee with access for the loading of students and teachers into the applicable LMS that is used to host the FLVS Hosted Courseware Package via the use of student and teacher codes, unless otherwise provided with additional administrative access that may be made available at an additional cost. Customer/Licensee’s Authorized Users will be provided a unique identity for access to FLVS hosted systems, for which Customer/Licensee must implement reasonable security measures to protect access to the FLVS hosted system.

**2.2 License Model and Term.** FLVS Hosted Courseware Packages are available in a variety of licensing models. The Order Documentation will include specific information on the type of license Customer/Licensee is purchasing for the FLVS Hosted Courseware Package, any license use restrictions, as well as the length of the license term.

**2.3 Content Modifications.** For each FLVS Hosted Courseware Package, the LMS functionality permits Customer/Licensee personnel to add new pages of content to the FLVS Hosted Courses or hide content that Customer/Licensee chooses to skip. However, other than adding new content or hiding content in this manner, modification or editing of a FLVS Hosted Course is prohibited. Customer/Licensee is prohibited from adding course content that is derived from FLVS or its Licensors course content in appearance, wording, style, or framework.

Data associated with any Customer/Licensee content additions may not exceed fifty (50) percent of the original master course size.

**2.4 Training.** Upon initial license, for each FLVS Hosted Courseware Package, FLVS will provide a product orientation session which includes basic training on the use of the third party LMS platform that is used by FLVS to facilitate the hosting of the applicable FLVS Hosted Courseware Package. Additional teacher training options are available at an additional cost.

**2.5 Support.** Customer/Licensee’s license to a FLVS Hosted Courseware Package includes access to FLVS’s Support Plan (as described in the Support and Services Policies) for the duration of Customer/Licensee’s license.

**2.6 Record Retention.** As each state has specific guidelines regarding the retention of student educational records, the Customer/Licensee is responsible for retaining its own student records for permanent retrieval in accordance with their State and District requirements. The FLVS Hosted Courseware Package permanently retains all student data; however, the FLVS Hosted Courseware Package should not be considered the system of record for Customer/Licensee student data. FLVS is not responsible for records deleted by clients that prove to be irretrievable through reasonable efforts.

**3. CLIENT HOSTED COURSES (CUSTOMER/LICENSEE HOSTED COURSES WITHOUT TEACHER INSTRUCTION).** FLVS offers a license to certain Licensed Products in which Customer/Licensee is provided the Licensed Product for use within an LMS that Customer/Licensee has licensed separately from a third party.



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Licensed Products licensed in this fashion are referred to herein as “Non- Hosted Courses.” For a Client Hosted Course, FLVS provides no LMS services. For Client Hosted Courses, FLVS’s default deployment method includes delivery of LTI links to FLVS-Hosted lesson content as well as delivery of assessments, assignments, and discussion prompts to a Customer/Licensee’s FLVS-approved LMS. If Customer/Licensee wishes to have the Client Hosted Courses deployed via any other method, then additional fees may apply. Except for the lesson content components for which FLVS may provide hosting, managing the Client Hosted Course within Customer/Licensee’s LMS is Customer/Licensee’s responsibility. In addition, FLVS does not provide teacher instruction with Client Hosted Courses. For Client Hosted Courses, the following terms shall apply (in addition to the terms of the Agreement to which this Supplement is attached):

**3.1 Approved LMS Providers.** For quality assurance purposes, FLVS requires that Customer/Licensee procure and maintain a licensing relationship with a FLVS-approved LMS provider as well as utilize a specified LMS version where applicable in order to license a Client Hosted Course, unless FLVS has agreed in writing to the use of an unapproved LMS provider in a particular instance. Use of an approved LMS provider and version will allow FLVS to deploy Client Hosted Courses into Customer/Licensee’s LMS. The FLVS approved LMS providers are subject to change and can be made available upon request. Ultimately, however, Customer/Licensee (and not FLVS) is responsible for any issues related to the functionality or use of Customer/Licensee’s chosen LMS. If FLVS agrees to permit Customer/Licensee to license a Client Hosted Course for use with an unapproved LMS provider, then FLVS will not be responsible for importing the Client Hosted Course into Customer/Licensee’s LMS, unless FLVS agrees to do so, nor shall it be responsible for the performance of Licensed Product as it relates to issues caused or created by any unapproved LMS. FLVS prohibits Customer/Licensee from migrating FLVS courses, course content, and/or assessments to a new LMS. If Customer/Licensee desires to change Customer/Licensee’s LMS or LMS version, Customer/Licensee shall be responsible for notifying FLVS in writing (120) days prior to the change so as to provide FLVS with sufficient time to determine if Licensed Product can be supported in the new LMS or LMS version and provide Customer/Licensee with a price quotation to move Licensed Product to the new LMS. If FLVS determines additional work is required beyond what is included in the support plan to make Licensed Product operational in the Customer/Licensee systems, this work will be priced and quoted by FLVS at its then applicable rates. In addition, FLVS reserves the right to remove an LMS or LMS version from its approved list at its sole discretion, in which case FLVS will provide notice to Customer/Licensee of such removal. FLVS will provide support of the now unapproved LMS or LMS Version to Customer/Licensee for 90 days following notification.

**3.2 Security.** Customer/Licensee must implement reasonable security measures to protect courses within Customer/Licensee’s LMS environment. Such measures include, but are not limited to, the LMS environment being hosted on a Secure Sockets Layer (SSL) secure server with forced HTTPS (server converts any <http://> to <https://>) in a secure facility, behind an Internet firewall, with role-based password protection (student, teacher, administrator) for access to the Client Hosted Course.

**3.3 Content Modifications.** Customer/Licensee is permitted to make revisions to the course content included in a Client Hosted Course and also may be allowed to combine other content with a FLVS Hosted or Client Hosted Course (collectively, “Revisions”). Customer/Licensee may develop Revisions itself or may request that FLVS assist Customer/Licensee in developing Revisions, in which case, if FLVS agrees to develop such Revisions, additional fees will apply.

(a) Customer/Licensee is prohibited from making Revisions to any master FLVS Course copy. Customer/Licensee may make Revisions to any copy other than Customer/Licensee master FLVS Course copy. If Customer/Licensee makes Revisions to Customer/Licensee master FLVS Course copy, Support for the modified course shall be void. Florida Virtual School will have no obligation to Support, alter, or retrofit any such modifications.

(b) If Customer/Licensee creates Revisions, then any such Revisions are Customer/Licensee’s sole responsibility. Neither FLVS nor its licensors will have any responsibility or liability for any reason with respect to Customer/Licensee Revisions. Customer/Licensee represents and warrants that any Revisions will not infringe any patent, copyright, trade secret, or other proprietary right of any other party, and that such Customer/Licensee shall, to the extent permitted by law, indemnify and defend FLVS and its licensors, their parents, affiliates and subsidiaries, and their respective officers, directors, employees, contractors, and agents and their successors and assigns from any and all claims, actions, damages, expenses, obligations, losses, liabilities, and liens imposed on, incurred from, or asserted regarding the Revisions. Customer/Licensee shall be prohibited from distributing any course or any Revisions based on or derived from a licensed course, to any third parties, and shall use such materials strictly for internal purposes within the authorized sites during the license term. Customer/Licensee will not provide any such Revisions to a third party (other than an Authorized Third Party, solely in connection with such Authorized Third Party’s support of Customer/Licensee’s use of the Client Hosted Course). If FLVS makes subsequent modifications to any course that are incompatible with Customer/Licensee-created Revisions, FLVS will have no obligation to alter or retrofit any such modifications to make them compatible with such Customer/Licensee-created Revisions.

In an effort to minimize the infrastructure impact of custom course development changes, data associated with any Customer/Licensee content additions or Revisions may not exceed fifty (50) percent of the original master course size or exceed twenty-five (25) percent of files in the course. Failure to adhere to this limit may result in additional fees being assessed. Customer/Licensee is responsible for ensuring that Customer/Licensee staff responsible for making revisions to the FLVS- hosted content has reviewed the FLVS training for such revisions.

In addition to the terms of this section, any course designated as an “eDynamic Learning Course (EDL),” which is defined as a course developed by a FLVS licensor, whereby FLVS is authorized to distribute such courses to its customers, the following additional terms apply; (i) All course content included, or incorporated into any Revisions by Customer/Licensee into any eDynamic Learning Course (EDL) and all rights, rights of authorship, copyrights, trademarks and all other intellectual property rights arising therefrom or otherwise associated therewith shall remain exclusively with eDynamic Learning Inc. (ii) Upon termination of the Customer/Licensee license, Customer/Licensee shall cease using the courses, including any courses containing Revisions, and any Revisions based on or derived from any eDynamic Learning (EDL) Course content.

(c) If Customer/Licensee requests, and FLVS agrees to, assist in creating Revisions to a Client Hosted Course, then other than content specifically provided by Customer/Licensee to FLVS for inclusion in any Revisions, FLVS retains all copyrights and other intellectual property rights in and to all content and materials included in any Revisions, and all ideas, processes, procedures and know-how embodied or used in any Revisions. Accordingly, FLVS shall have the right to use any Revisions it develops at Customer/Licensee’s request for any purpose whatsoever, including, but not limited to, providing all or any portion of such Revisions to other Customer/Licensees and/or reusing all or any portion of such Revisions in other products. Notwithstanding the foregoing, FLVS

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shall not, without Customer/Licensee's written permission, use any Confidential Information provided by Customer/Licensee in any materials that it licenses to other Customer/Licensees or includes in other products; provided, however, that Customer/Licensee's permission shall not be required in the case of FLVS's reuse of such Customer/Licensee- provided content if such content is freely available for FLVS to use (e.g., public domain content), or if FLVS has obtained the right to use such content independently from a source other than Customer/Licensee. If FLVS develops Revisions for Customer/Licensee as described herein, then after those Revisions have been developed and made available to Customer/Licensee for use within the Client Hosted Course, FLVS shall have no obligation to update or modify such Revisions. If FLVS makes subsequent modifications to any course for its user base generally that are incompatible with Revisions previously developed by FLVS for Customer/Licensee, FLVS will have no obligation to alter or retrofit any such modifications to make them compatible with such Revisions previously created for Customer/Licensee.

(d) For any content that Customer/Licensee includes in any Customer/Licensee-created Revisions, or provides to FLVS for inclusion in any Revisions that Customer/Licensee engages FLVS to create, Customer/Licensee represents and warrants that it has sufficient right, title and interest in and to such content to allow FLVS, its licensors and service providers, to reproduce such content within the Revisions. Customer/Licensee further represents and warrants that the inclusion of such content in the Revisions will not infringe any patent, copyright, trade secret or other proprietary right of any other party. Customer/Licensee shall defend, indemnify, and hold harmless FLVS, its directors, officers, employees and agents from and against any and all damages, losses, expenses, costs (including, without limitation, attorneys' fees), claims, suits, actions, judgments, or other liabilities arising out of or in any way related to any breach or alleged breach of the foregoing warranty, or any claim that any such content infringes any proprietary right of any third party. FLVS may suspend access in any FLVS or Customer/Licensee system to any Revisions and/or remove any such Customer/Licensee-provided content from any Revisions upon FLVS's determination, in its sole discretion, that such content is or may be infringing upon or misappropriating the intellectual property rights of a third party. Customer/Licensee will provide FLVS access to any Authorized Third-Party system in order to execute the terms of this section.

**3.4 Course Access and Other Fees.** Customer/Licensee may be required to pay a course access fee for each Client Hosted Course being deployed into Customer/Licensee's LMS in addition to the applicable license fees for the Client Hosted Course. The Order Documentation will contain specific information on the type of license the Customer/Licensee is purchasing to include course access fees if applicable. Upon initial license, FLVS will provide a product orientation session at no charge; additional teacher training options are available at an additional cost.

**3.5 License Model and Term.** Client Hosted Courses are available in a variety of licensing models. The Order Documentation will include specific information on the type of license Customer/Licensee is purchasing for the Client Hosted Courses, any license use restrictions, as well as the length of the license term. For any model whereby pricing is determined based on the population of the Authorized Sites, as described in the Order Documentation, pricing of the license fee is based on the population at the time of the license, or its renewal. The scope of the license is limited to the Authorized Sites that were in place at the time of the license purchase. Therefore, if the population of the Authorized Sites grows or additional sites are annexed, the Customer/Licensee may be required to pay additional license fees. For example, if Customer/Licensee purchased a license for its school district, and the district annexes a neighboring school district, the license will not encompass the schools and population added by the annexation; additional license fees must be paid to expand the license to cover this additional population. Customer/Licensee may be audited by FLVS at any time and may be required to report population or enrollment/seat numbers either quarterly, semi- annually, or annually at FLVS's discretion.

**3.6 Support.** For Client Hosted Courses, access to a Support Plan (as described in the Support and Services Policies) may be included with the license fees or may be available at an additional cost as stated in the Order Documentation.

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### ARTICLE C: SUPPORT AND SERVICE POLICIES

These Support and Services Policies (“Policies”) supplement the terms of the Licensed Product Agreement between Florida Virtual School and Customer/Licensee to which they are attached. Capitalized terms not defined in these Policies shall have the same meanings ascribed to them elsewhere in the Agreement.

1. **DEFINITIONS.** For purposes of these Policies, the following additional definitions shall apply:

1.1 **“Error”** shall mean a reproducible failure of Licensed Product to operate in accordance with its standard Documentation, despite the proper installation and use of Licensed Product in a proper operating environment and on hardware and system software sufficient to meet FLVS’s minimum requirements, which are subject to change from time to time as Updates are released. User mistakes are not Errors as defined herein. Errors may be due to problems with the Licensed Product, the Documentation, or both.

1.2 **“Update”** shall mean a modification to a Licensed Product that FLVS, at its discretion, deems ready for distribution and makes generally available to Customer/Licensees who are currently maintaining a subscription to a Support Plan described below. Updates may include product fixes to any software hosted by FLVS to remedy Errors in the software, and updates to course content to fix Errors or to provide additional or enhanced material. Updates do not include New Courses or New Versions of an existing course.

2. **SUPPORT PLAN.** For FLVS Hosted Courseware Packages, as described in Section 2 of the Supplement, access to FLVS’s Support Plan is included in the price of the Licensed Product. For Client Hosted Courses, as described in Section 3 of the Supplement, FLVS offers two kinds of product models with regard to support: those models for which support is included with the annual licensing fee and those models that require a support plan at an additional cost. The Order Documentation will include specific information on the license model and whether support is included with the license fee or is available at an additional cost. The Support Plan may be renewed annually at FLVS’s then- current rates for as long as FLVS continues to offer the plan. Plan prices and terms may vary depending on the Customer/Licensee’s chosen deployment method. Support Plan includes call center support and Updates, as described below. The plan is also subject to the exclusions and Customer/Licensee responsibilities described below.

2.1 **Call Center Support.** Call center support services are limited to Monday through Friday, during FLVS’s normal business hours, exclusive of FLVS holidays. Call center support services include a variety of methods of contact, including telephone, and online help ticket submission. Call center support services for Licensed Product are limited to program administrative and technical staff. Call center support is not available to Customer/Licensee’s teachers, students, or student parents or guardians except for Global School Courses. Call center support is limited to support for technical issues that Customer/Licensee experiences in use of a Licensed Product. Call center support is not a substitute for training, nor is it intended to provide curriculum or other instructional support (e.g., suggestions for how best to teach a topic in a virtual environment). Customer/Licensee personnel with such questions should contact FLVS regarding potential professional development options.

2.2 **Updates.** For as long as Customer/Licensee maintains an active subscription to a Support Plan, whether it is included as part of the Customer/Licensee annual license fees, or is licensed at an additional cost, Customer/Licensee will be entitled to receive notifications of all Updates to the Licensed Products licensed by Customer/Licensee. If required by Customer/Licensee’s chosen method of course deployment

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and as specified in the Order Documentation, Customer/Licensee will provide FLVS access to Customer/Licensee Master Course Copies in order to make said updates. Updates will not be made to Customer/Licensee teacher copies or any other copy other than Customer/Licensee master FLVS Course copy. Updates do not include New Courses or New Versions of an existing course (as described in the next sentence). If FLVS or its licensors have built a new version of an existing course, or have significantly redesigned an existing course by adding significant new features and content, FLVS reserves the right at its discretion to designate such course as a “New Course” or “New Course Version” rather than an “Update,” in which case, depending on the Customer/Licensee’s designated support plan, additional license fees may apply if Customer/Licensee desires to license such New Course or New Course Version. FLVS will only provide a support plan to Customer/Licensees using the most current course version and one version prior. Customer/Licensees using one course version prior to the most current course version and who have a current support plan will only receive support for a period of 12 months from the most current course version release date, unless FLVS at its discretion deems there are circumstances beyond its control or unless FLVS deems that the prior course version no longer meets industry education standards (i.e. Advanced Placement) or is no longer in the best interest of Customer/Licensee students, which would require FLVS to discontinue support for a course before the 12 month period. In this circumstance, FLVS will notify Customer/Licensee of the support end date and provide Customer/Licensee options.

**2.3 Course Retirement.** During its normal course of business or as New Courses or New Course Versions are released, and at its sole discretion, FLVS may find it necessary to retire course versions or entire courses titles and may cease to make the courses, updates, and support for these courses available to Customer/Licensee. Upon retiring of a course, and if Customer/Licensee has a current support plan, FLVS may provide Customer/Licensee with support for the retired course for a maximum of 12 months from the retire date, unless FLVS at its discretion deems there are circumstances beyond its control or unless FLVS deems that the retired course no longer meets industry education standards (i.e. Advanced Placement) or is no longer in the best interest of Customer/Licensee students, which would require FLVS to discontinue support for a course before the 12 month period. In this circumstance, FLVS will notify Customer/Licensee of the support end date and provide Customer/Licensee options.

**2.4 Exclusions.** FLVS shall not be required to provide any support in connection with (i) any Revisions made to any Licensed Product by Customer/Licensee pursuant to Section 3.3 of the Supplement; (ii) any failure of any Revisions created by Customer/Licensee, or by FLVS or its designee for Customer/Licensee, pursuant to Section 3.3 of the Supplement to be compatible with future releases of the applicable Licensed Product; or (iii) any problems or issues that Customer/Licensee encounters with any LMS or other system not licensed to Customer/Licensee by FLVS as part of the applicable Licensed Product.

**2.5 Customer/Licensee Responsibilities.** In order to receive support services under a Support Plan, Customer/Licensee shall:

- (a) supply FLVS with sufficient information and data to reproduce any Error or problem that is the subject of a support request;

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- (b) procure, install, operate and maintain computer systems and operating systems that are compatible with and meet the minimum requirements for the version of Licensed Product to be supported;
- (c) maintain an operating environment free of any programming that might interfere with the functioning of Licensed Product as supplied by FLVS; and
- (d) notify FLVS in writing (120) days prior to migrating to a new LMS or LMS version so as to provide FLVS with sufficient time to determine if Licensed Product can be supported in the new LMS or LMS version. If FLVS determines additional work is required beyond what is included in the support plan to make Licensed Product operational in the Customer/Licensee systems, this work will be priced and quoted by FLVS at its then applicable rates.

**3. RENEWALS OF THE SUPPORT PLAN.** For Client Hosted Courses, access to a Support Plan may be available at an additional charge depending on the license model and must be renewed annually for continued access to the plan. With respect to such renewals, the following terms shall apply:

**3.1 Terms and Conditions.** If FLVS offers to renew the Support Plan for subsequent periods, then the components of the plan will continue to be as described in these Policies, unless FLVS provides new terms and conditions to Customer/Licensee at the time of renewal, in which case such new terms and conditions shall apply.

**3.2 Rates.** All renewals of the Support Plan shall be at FLVS's then- current rates.

### **4. PROVISION OF PROFESSIONAL SERVICES.**

**4.1 Professional Services.** In addition to those services that comprise a Support Plan, FLVS will provide such other training, consulting or other professional services that are specified in the Order Documentation, or subsequently requested by Customer/Licensee and agreed to be performed by FLVS, provided that FLVS may, at its option, arrange for any such services to be performed by another entity on behalf of FLVS. Customer/Licensee agrees to pay for such services at the rates and charges specified in the Order Documentation. FLVS reserves the right to require a purchase order or equivalent documentation from Customer/Licensee prior to performing any services, or to require prepayment of certain services. Unless otherwise specified, all rates quoted are for services to be performed during FLVS's normal business hours; additional charges may apply for evenings, weekends or holidays. The rates and charges specified in the Order Documentation shall apply to those services originally ordered; however, FLVS reserves the right to change service rates or other terms as a condition of entering into any subsequent service engagement. FLVS reserves the right to limit the number of participants in any service engagement, whether delivered on-site or remotely, as FLVS deems appropriate in order to deliver the service effectively. All services ordered must be scheduled and delivered within twelve (12) months of purchase; any portion of amounts prepaid for such services that have not actually been rendered within this twelve (12) month period shall be forfeited.

**4.2 On-Site Services.** For any professional services to be delivered at Customer/Licensee's location (or in person at such other Customer/Licensee-selected location as the parties may agree), Customer/Licensee agrees to the following:

- (a) Customer/Licensee agrees to provide, at Customer/Licensee's expense, utilities, workspace and other on-site



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accommodations reasonably necessary to enable FLVS to perform such services, and shall provide unencumbered access to all servers, workstations and other equipment with respect to which any work is to be performed.

(b) If specified in writing by FLVS in the Order Documentation, Customer/Licensee shall, in addition to the fees charged for performance of services hereunder, pay FLVS for travel expenses, lodging, meals and other related expenses incurred in the performance of such services. All such additional charges will be due and payable concurrently with payment for services.

**4.3 Remotely Delivered Services.** FLVS may deliver certain services remotely (e.g., via webinar), in which case Customer/Licensee is responsible for providing its participants with appropriate access to the necessary technology to participate.

**4.4 Service Packages.** FLVS offers a variety of service packages in connection with the Licensed Products. Specific descriptions for the available services packages are available upon request. Additional terms and/or restrictions may apply to certain packages. For example, with certain training packages, Customer/Licensee may be required to schedule consecutive training days; for other packages, Customer/Licensee may be allowed to schedule training days consecutively or separately, subject to a cap on the total number of trips by FLVS to deliver the total number of days of training.

**4.5 Cancellation.** Once scheduled, any on-site service days may be cancelled only with the written consent of FLVS, and only upon payment of reasonable cancellation charges that take into account expenses already incurred and commitments made by FLVS.

**5. CONFIDENTIALITY.** To the extent that, in performing any support or services pursuant to these Policies, FLVS has access to any Customer/Licensee confidential information, FLVS agrees to use commercially reasonable efforts to maintain the confidentiality of such Customer/Licensee confidential information, and to use such information solely for purposes of performing services hereunder. FLVS shall require its employees, agents and subcontractors performing work hereunder to do likewise. For purposes of this Section, "Customer/Licensee confidential information" shall mean any of Customer/Licensee's student or personnel data or records, and any other Customer/Licensee information or data labeled or identified as confidential at the time of disclosure; provided, however, that this definition and the obligations of this Section shall not extend to any information that: (a) is or becomes publicly known through no fault or negligence of FLVS, its employees, agents or subcontractors; (b) is or becomes lawfully available from a third party without restriction; (c) is independently developed by FLVS, its employees, agents or subcontractors at any time; or (d) is disclosed without restriction by Customer/Licensee to any third party at any time; (e) or is required to be disclosed by law.

**6. Public Records.** FLVS is a public agency subject to Chapter 119, Florida Statutes. The Customer/Licensee shall comply with Florida's Public Records Law including: (a) keeping and maintaining public records that ordinarily and necessarily would be required by the FLVS Board of Trustees in order to perform the service; (b) providing the public with access to public records on the same terms and conditions that the FLVS Board of Trustees 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 FLVS Board of Trustees, all public records in possession of the Customer/Licensee 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 FLVS Board of Trustees in a format that is compatible with the information technology

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systems of the FLVS Board of Trustees. The parties agree that if the Customer/Licensee fails to comply with a public records request, then FLVS must enforce the contract provisions in accordance with the contract and as required by Section 119.0701, Florida Statutes.

**IF THE CUSTOMER/LICENSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CUSTOMER/LICENSEE'S DUTY TO**

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**PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT [CustodianofRecords@flvs.net](mailto:CustodianofRecords@flvs.net) OR BY PHONE 407-513-3325, OR BY MAIL TO: 2145 METROCENTER BLVD., SUITE 100, ORLANDO, FL 32835.**

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### ARTICLE D: MARKETING TERMS AND CONDITIONS

**1. MANAGEMENT RESPONSIBILITY.** FLVS will provide to Customer/Licensee certain tools, methods and resources that are intended to help Customer/Licensee grow and build its business. However, Customer/Licensee is fully and exclusively responsible for its own business performance and Customer/Licensee satisfaction. In addition, Customer/Licensee has full and exclusive responsibility for understanding and ensuring compliance with any regulatory, legal or contractual obligations related to Customer/Licensee's business, including without limitation, data held by Customer/Licensee and its clients, information provided by Customer/Licensee to its clients and/or other third parties and any safeguarding and security measures that may be required. Customer/Licensee is solely responsible for the final outcomes, actions taken, and results produced by use of the products delivered by FLVS.

**2. INTELLECTUAL PROPERTY.** All content produced by FLVS within the scope of Services rendered, including software and web code, contents, graphics and design, or material developed or licensed by FLVS for Customer/Licensee as part of the Services is copyrighted by FLVS and remains the exclusive property of FLVS. Upon termination of this Agreement, all copyrights and other intellectual property rights shall remain with FLVS. This use will be restricted to the Customer/Licensee use only, and Customer/Licensee does not have any rights to resell, license or otherwise allow third party use of the content.

All Content included on the FLVS Website is the property of FLVS, our affiliates, or other relevant third parties. By continuing to use the Website, Users acknowledge that such Content is protected by copyright, trademarks, database rights and other intellectual property rights. Nothing on the site shall be construed as granting, expressly or by implication, estoppel, or otherwise, any license or right to use any trademark, logo or service mark displayed on the site without the owner's prior written permission.

Customer/Licensees are expressly forbidden to download, store, reproduce, transmit, display (including without limitation via an intranet or extranet site), copy, sell, publish, distribute or provide access to Content for any purposes other than as set out herein or to sub-license, rent, lease, transfer or assign any rights in Content, to any other person or to commercially exploit Content or to use Content for any unlawful purpose.

The Customer/Licensee shall include the registered trademark ® symbol after the first mention of Florida Virtual School or FLVS on all marketing pieces and include the following trademark statement: "Florida Virtual School and FLVS are registered trademarks of Florida Virtual School, a public school district of the State of Florida." The Customer/Licensee should also link to the FLVS website ([www.flvs.net](http://www.flvs.net)) in digital marketing and promotional activities.

Any specific use of FLVS trademarks or trade names in any advertising copy, Web copy, marketing materials, literature, and promotional material or on Customer/Licensee letterhead shall be submitted in advance to the Customer/Licensee's FLVS Account Manager for written approval.

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### ARTICLE E: DEMO ACCESS – MUTUAL NONDISCLOSURE AGREEMENT

Florida Virtual School ("FLVS") and the Company agree as follows:

1. **Purpose.** The parties wish to explore a business opportunity of mutual interest and in connection with this opportunity, each party may disclose to the other certain confidential technical and business information that the disclosing party desires the receiving party to treat as confidential.
2. **"Confidential Information"** means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects (including without limitation documents, prototypes, samples, plant and equipment), which is designated as "Confidential," "Proprietary" or some similar designation. Information communicated orally shall be considered Confidential Information if such information is confirmed in writing as being Confidential Information within a reasonable time after the initial disclosure. Confidential Information may also include information disclosed to a disclosing party by third parties. Confidential Information shall not, however, include any information which: (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (iii) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure; (iv) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; (v) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession; or (vi) is required by law to be disclosed by the receiving party, provided that the receiving party gives the disclosing party prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure. For the avoidance of doubt, the term 'Confidential Information' specifically includes, but is not limited to, any and all demo products and/or courses to which Customer/Licensee is granted access at any time during the term of this Agreement, including all components, course content, software, and other materials.
3. **Non-use and Non-disclosure.** Each party agrees not to use any Confidential Information of the other party for any purpose except to evaluate and engage in discussions concerning a potential business relationship between the parties. Each party agrees not to disclose any Confidential Information of the other party to third parties or to such party's employees, except to those employees of the receiving party who are required to have the information in order to evaluate or engage in discussions concerning the contemplated business relationship. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information, and which are provided to the party hereunder.
4. **Maintenance of Confidentiality.** Each party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own most highly confidential information and shall ensure that its employees who have access to Confidential Information of the other party have signed a non-use and non-disclosure agreement in content similar to the provisions hereof, prior to any disclosure of Confidential Information to such employees. Neither party shall make any copies of the Confidential Information of the other party unless the same are previously approved in writing by the other party. Each party shall reproduce the other party's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original.
5. **No Obligation.** Nothing herein shall obligate either party to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the business opportunity.
6. **No Warranty.** ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". EACH PARTY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS OR PERFORMANCE.
7. **Return of Materials.** All documents and other tangible objects containing or representing Confidential Information which have been disclosed by either party to the other party, and all copies thereof which are in the possession of the other party, shall be and remain the property of the disclosing party and shall be promptly returned to the disclosing party upon the disclosing party's written request.
8. **No License.** Nothing in this Agreement is intended to grant any rights to either party under any patent, mask work right or copyright of the other party, nor shall this Agreement grant any party any rights in or to the Confidential Information of the other party except as expressly set forth herein.
9. **Term.** The obligations of each receiving party hereunder shall survive until such time as all Confidential Information of the other party disclosed hereunder becomes publicly known and made generally available through no action or inaction of the receiving party.
10. **Remedies.** Each party agrees that any violation or threatened violation of this Agreement may cause irreparable injury to the other party, entitling the other party to seek injunctive relief in addition to all legal remedies.
11. **Miscellaneous.** This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one instrument. This Agreement shall bind and inure to the benefit of the parties hereto and their successors and assigns. This Agreement shall be governed by the laws of the State of Florida, without reference to conflict of laws principles. In any action arising out of or related to this Agreement, the parties hereto consent to the exclusive jurisdiction and venue in the courts located in the Orange County of Florida. This document contains the entire agreement between the parties with respect to the subject matter hereof, and neither party shall have any obligation, express or implied by law, with respect to trade secret or proprietary information of the other party except as set forth herein. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both parties hereto.

**ATTACHMENT – B LICENSING AGREEMENT**

**ACKNOWLEDGED AND AGREED BY:**

<b>Customer:</b>			
By (Authorized Signature)		Date Signed:	
Print Name of Person Signing:			
Title of Person Signing:			
 <b>FLORIDA VIRTUAL SCHOOL</b>			
By (Authorized Signature)		Date Signed:	
		1/27/2021	
Print Name: Louis Algaze, Ph.D.			
Title: President/CEO			







# Request for Signature - Pricing Amendment - SW1023 - FLVS

Final Audit Report

2021-02-02

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## "Request for Signature - Pricing Amendment - SW1023 - FLVS" History

-  Document created by Sean Tolbert (Sean.Tolbert@omes.ok.gov)  
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