

## Florida Virtual School Franchise Agreement (USA ss)

### FLVS Franchise Agreement TERMS AND CONDITIONS

#### ARTICLE 1- INTERPRETATION

##### 1.1 DEFINITIONS

In this Agreement and in Appendix A, B, C and D, the following terms shall have the respective meanings ascribed to them as follows:

- (a) "Affiliate" means with respect to any person, and other person directly or indirectly controlling, controlled by, or under common control of such person. "Control" as used here means the legal, beneficial or equitable ownership, directly or indirectly, of more than 50% of the aggregate of all voting interests in such entity.
- (b) "Business Days" means Monday through Friday excluding any day, which is a nationally observed holiday in both the United States of America and Canada.
- (c) "Business Hours" means 8:00 a.m. - 8:00 p.m. Eastern Time on Business Days.
- (d) "Components" mean the components of the FLVS Software referred to in Appendix A.
- (e) "Confidential Information" means (i) all information of either party or its Affiliates or of third persons to whom the party owes a duty of confidence that is marked confidential, restricted or proprietary or that may reasonably be considered as confidential from its nature or from the circumstances surrounding its disclosure; and (ii) the Licensed Materials.
- (f) "Content Licenses" means the utilization licenses and associated restrictions with respect to the Licensed Course Content granted to Customer hereunder which are set forth in Appendix A.
- (g) "Customization" means a client customizable area is provided which includes: 1) a communication policy, 2) drop policy, 3) netiquette recommendations, 4) pace charts, 5) student resource page, 6) optional contact and help pages, 7) state and national standards.
- (h) "Data" means customer information entered into the licensed products to include but not limited to student, staff, school, and parent information.
- (i) "Billable Enrollment" any student on active status in VSA for a minimum of 28 days. If a student is active in VSA for 28 days, FLVS will bill the Customer for the student, regardless of the student's status upon Customer's receipt of invoice.
- (j) "FLVS proprietary products" includes but is not limited to FLVS course content and the FLVS Virtual School Administrator product.
- (k) "Intellectual Property Rights" includes 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.
- (l) "Learning Management System or LMS" means the software based system ("Platform") that must be utilized to access the Licensed Course Content.
- (m) "License" means Customer's license to use the Licensed Materials described in Appendix A.
- (n) "License Fees" means the license fees to be paid by the Customer to FLVS, which are described in Section 4.1.
- (o) "Licensed Course Content" means the Components of the FLVS Course Content in object code format licensed to Customer hereunder and described in Appendix A and such additional 3<sup>rd</sup> party Components required as part of the FLVS Course Content.

(p) "Licensed Materials" means the Licensed Course Content, LMS, Virtual School Administrator, Documentation and included Renewal Releases and updates, which FLVS and (LMS Software) may from time to time provide to Customer.

(q) "Platform Provider" means learning management system provider.

"Virtual School Administrator (VSA) License" means the licenses and associated restrictions with respect to the Licensed Virtual School Administrator.

## ARTICLE 2-LICENSE

### 2.1 LICENSED MATERIALS

#### 2.1. - Course Content and Materials

(a) Subject to the provisions of this Agreement including the provisions of Article 8, FLVS hereby grants to Customer and Customer hereby accepts from FLVS the personal, non-transferable and non-exclusive Franchise License to use the Licensed Materials for Customer's internal business purposes in accordance with FLVS Licenses.

(b) FLVS Virtual School Administrator will be used as the registration and student information management system.

(c) Florida Virtual School courses will only be delivered on FLVS approved learning management systems.

#### 2.2 Third Party Users

For the purpose of operating Customer's business, the parties intend that certain unrelated third parties with whom the Customer has a business relationship such as a supplier or customer and the employees of such third person (hereunder "Business Third Parties"), will have limited right to use certain Components of the Licensed Course Content solely for the purpose of providing services to Customer. All such services will be solely for the benefit of Customer's internal business operations. The Business Third Parties may not utilize the Licensed Course Content for other than the direct benefit of Customer's internal benefit, in accordance with the terms of this agreement and the customer shall assure third party compliance with this provision and the terms of this agreement.

## ARTICLE 3-DELIVERY AND INSTALLATION

### 3.1 Delivery of Licensed Materials

FLVS agrees to deliver to Customer one (1) copy of the most current release available by request of the Licensed Materials. The Documentation will be provided solely in the English Language except in cases where FLVS has specifically provided for foreign language documentation.

#### 3.2 Software Security

(a) The customer will ensure all reasonable measures are taken to protect the Licensed Materials from any unauthorized use.

(b) FLVS will ensure all reasonable measures are taken to protect the Customer Data while in use at the FLVS site. Reasonable measures include, but are not limited to, the Customer Data being stored on a secure server in a secured building behind an internet firewall with role-based level password protection for any and all access to such data.

### 3.3 Background Screening

As a public school, FLVS complies with all statutes regarding background screening of employees, in accordance with Florida law.

## ARTICLE 4-PRICE AND PAYMENT TERMS

### 4.1 License Fees

(a) Customer shall pay to FLVS the franchise fees described in Appendix A (the "License Fees"). The License Fees shall be due and paid as provided for in Appendix A. Failure to pay the license fees when due shall be grounds for the immediate termination or suspension of all services due by FLVS hereunder.

(b) All overdue (90+ days) accounts will be subjected to a 10% late fee and may be denied access to FLVS Content. The licensing agreement will be suspended until payment is received by FLVS.

## ARTICLE 5-PROPRIETARY RIGHTS AND CONFIDENTIAL INFORMATION

### 5.1 Title to Licensed Materials

Customer acknowledges and agrees that FLVS, licensors of FLVS, and the Platform Provider shall retain all right, title and interest in and to the Licensed Materials and all copies thereof, including, without limitation, the Intellectual Property Rights therein, and that nothing herein transfers or conveys to Customer any ownership right, title or interest in or to the Licensed Materials or to any copy thereof or any right with respect to the Intellectual Property Rights therein. Nothing in this agreement shall be construed as conferring upon the licensee any right or interest in Florida Virtual School's or the Platform Provider's intellectual property or in their registration or in any designs, copyrights, patents, trade names, signs, emblems, insignia, symbols and slogans or other marks used in connection with the software other than as provided in this agreement.

### 5.2 Confidential Information

To the extent permitted by law, each party agrees to maintain the Confidential Information of the other party.

### 5.3 Protection and Proprietary Rights

(a) Customer shall not remove any proprietary copyright, patent, trademark; design right, trade secret, or any other proprietary rights legends from the Licensed Materials.

(b) Customer agrees not to disassemble, decompile, translate into human readable form or into another computer language, reconstruct or decrypt, or reverse engineer, all or any part of the Licensed Materials in accordance with the law. Further, Customer shall not write or develop any derivative works or computer programs based upon any part of the Licensed Materials.

(c) The Customer hereby agrees that FLVS is the owner of any and all rights intellectual and otherwise for the course content and Virtual School Administrator product that will be provided and has the legal right to franchise and charge a fee for the use of that material and the legal right for an injunction. The discretion of Florida Virtual School on all matters concerning the intellectual property shall be final, conclusive and binding on the Customer.

#### 5.4 Audit Rights

FLVS may audit the use of their proprietary products and enrollments at any time while providing service hereunder. FLVS will conduct continuous audits for instructional quality. The results of this audit will be provided to the customer and the Florida Department of Education.

#### 5.5 Email Access

District is responsible for providing FLVS, upon request, all email correspondence between teacher and student.

### ARTICLE 6-WARRANTIES OF FLVS

#### 6.1 Limit of Liability

(a) For any breach or default by FLVS of any of the provisions of this agreement, or respect to any claim arising here from or related hereto. FLVS's entire liability, regardless of the form of action, whether based on contract or tort, including negligence, shall in no event exceed (I) the amount paid by customer hereunder for the licensed materials, (II) the amount paid by customer for the renewal service that is the subject of the claim if the claim relates to a breach or default by FLVS of the provisions of article 7, (III) the amount paid by customer for the installation service that is the subject of the claim if the claim relates to a breach or default by FLVS of the provisions of this agreement pertaining to installation service, or (IV) in the aggregate with respect to all claims under or related to this agreement, the amount paid by customer under this agreement.

(b) In no event will FLVS be liable for special, incidental, indirect, or consequential loss or damage, lost business revenue, loss of profits, loss of data, failure to realize expected profits or savings or any claim against customer by another person (even if FLVS has been advised of the possibility of any such damage).

(c) FLVS shall be liable to customer as expressly provided in this agreement but shall have no other obligation, duty, or liability whatsoever in contract, tort or otherwise to customer including any liability for negligence. The limitations, exclusions and disclaimers in this agreement shall apply irrespective of the nature of the cause of action, demand, or action, by customer, including but not limited to breach of contract, negligence, tort, or any other legal theory and shall survive a fundamental breach or breaches or the failure of the essential purpose of this agreement or of any remedy contained herein.

### ARTICLE 7- TERM AND TERMINATION

#### 7.1 Term

This Agreement shall be effective on the Effective Date for a period of one (1) year and shall be terminable in accordance with this Article.

#### 7.2 Termination

Either party may by notice in writing terminate this Agreement if (i) the other party breaches or fails to observe or perform any of its obligations set out in this Agreement, including failure to pay franchise and/or training fees, and fails to cure such breach or failure within thirty (30) days after written notice; or (ii) either party becomes insolvent, or makes an assignment for the general benefit of creditors, or any proceedings are commenced by or against either party under any bankruptcy or insolvency laws or if proceedings for the appointment of a trustee, custodian, receiver, or receiver manager for either party are commenced, or if either part ceases or threatens to cease to carry on business; or (iii) upon

ninety (90) days written notice by FLVS or customer to the other party of its termination of the agreement.

### 7.3 Services not Included

(a) Renewal and Warranty Support does not include or apply to any of the following: (i) making modifications to the Licensed Materials for Customer, (ii) user training (may include teacher/instructor training), (iii) consultation for new programs or equipment, (iv) hardware problems including any malfunction of hardware, or to any external causes affecting the Licensed Materials including the media upon which the Licensed Materials are provided such as accident disaster, electrostatic discharge, fire, flood, lighting, water or wind, or (v) corrections of errors attributable to software other than the Licensed Software. FLVS may charge Customer at its then applicable list price for providing such services. FLVS may also charge Customer at its then list price for analysis or removal of errors which are caused by improper operation or handling of the Licensed Materials or caused by circumstances unrelated to FLVS. Payment for these services shall be made by Customer within 30 days of invoicing by FLVS.

(b) The obligation to provide Renewal Services is subject to the following: (i) Renewal Services are only provided for the Licensed Course Content provided under this Agreement, (ii) if Customer ceases to pay for and receive Renewal Services and later requests Renewal Services, Customer will be required to pay to FLVS the Renewal Fees not paid during the period in which the service was discontinued, and (iii) FLVS has no obligation to provide Customer with any Renewal Services unless Customer has paid for the Renewal Services in advance as required hereunder, and (iv) FLVS has no obligation to provide renewal services if customer is unable to follow FLVS franchise policies and procedures as documented through an annual audit.

## ARTICLE 8- GENERAL

### 8.1 Force Majeure

If the performance of this Agreement, or any obligation thereunder except the making of payments hereunder is prevented, restricted, or interfered with by reason of: fire, flood, earthquake, explosion or other casualty or accident or act of God; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, power, equipment or software from suppliers, war or other violence; any law, order, regulation, ordinance, demand or requirement of any governmental authority; or any other act or condition whatsoever beyond the reasonable control of the affected party. The party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference; provided, however, that the party so affected shall take all reasonable steps to avoid or remove such cause of nonperformance and shall resume performance hereunder with dispatch whenever such causes are removed.

### 8.2 Non-Solicitation Agreement

FLVS and the Customer agree that during the term of this agreement, except as provided elsewhere in this agreement or through mutual consent of both organizations - they shall not directly or indirectly engage, hire, employ, or solicit any employee of the other, or any subsidiary or affiliate of the other or otherwise induce or attempt to induce any employee of the other to leave employment of the other or alter the employment relationship of any employee with the other;

### 8.3 NCAA

NCAA continues to evolve its policy regarding evaluation of virtual school course work for student athletes. FLVS enjoys a strong working relationship with NCAA, and, as our franchise partner, the Customer will join FLVS's umbrella by signing this agreement and agreeing to abide by all FLVS policies regarding course delivery, instructional practices, and student management found in Appendices B and C. As part of the agreement, the Customer will undergo intermittent quality assurance audits performed by FLVS personnel. The Customer will have access to all audit reports. FLVS reserves the right to report audit results to NCAA.

#### 8.4 Background Screening

FLVS agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to Customer's school grounds when students are present, (2) will have direct contact with Customer's students, or (3) have access or control of Customer's funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by Customer in advance of FLVS or its personnel providing any services under the conditions described in the previous sentence. FLVS shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to FLVS and its personnel. The parties agree that the failure of FLVS to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling Customer to terminate immediately with no further responsibilities or duties to perform under this Agreement. To the extent permitted by law, FLVS agrees to indemnify and hold harmless Customer, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in FLVS's failure to comply with the requirements of this section or with Sections 1012.32 and 1012.465, Florida Statutes. Nothing herein shall be construed as a waiver by Customer or FLVS of sovereign immunity or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

#### 8.5 No Waiver of Sovereign Immunity

Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes.

#### 8.6 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, religion, color, gender, national origin, marital status, disability or sexual orientation.

#### 8.7 Records

Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law.

#### 8.8 Entire Agreement

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

#### 8.9 Amendments

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

#### 8.10 Waiver

The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

#### 8.11 Compliance with Laws

Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

#### 8.12 Severability

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not affect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

#### 8.13 Notice

When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To FLVS: Florida Virtual School  
2145 Metrocenter Blvd.  
Orlando, Florida 32835

With a Copy to: Julie Young  
2145 Metrocenter Blvd.  
Orlando, Florida 32835

To Customer: Superintendent of Schools

#### 8.14 Authority

Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

## APPENDIX A

The Components, which are the subject of the FLVS Franchise Agreement, including FLVS course content, 3<sup>rd</sup> party components, FLVS Virtual School Administrator Registration, Student Information System, and the Learning Management System granted to Customer and the fees payable to FLVS hereunder are as follows:

### 1. Courses Available August 2012 Adaptive

Physical Education IEP or 504 Plan

Advanced Algebra with Financial Applications

Algebra I / Algebra I Honors

Algebra II / Algebra II Honors

American Government / American Govt. Honors

American History / American History Honors

Anthropology

AP Art History

AP Biology

AP Calculus AB

AP Calculus BC

AP Computer Science A

AP English Language and Composition

AP English Literature and Composition

AP Environmental Science

AP Human Geography

AP Macroeconomics

AP Microeconomics

AP Spanish

AP Statistics

AP U.S. Government and Politics

AP U.S. History

Beginning Spanish

Biology I / Biology I Honors

Calculus

Chemistry I / Chemistry I Honors

Chinese I

Chinese II

Chinese III

Civics

Comprehensive PE 6/7

Comprehensive PE 7/8

Comprehensive Science 1 / C.S. 1 Advanced (6th)

Comprehensive Science 2 / C.S. 2 Advanced (7th)

Comprehensive Science 3 / C.S. 3 Advanced (8th)

Computer Programming - Basic I