

FIRST AMENDMENT TO DATA SHARING/USE AGREEMENT

THIS FIRST AMENDMENT TO DATA SHARING/USE AGREEMENT (hereinafter "Amendment") is entered by and between the Jefferson County Board of Education, a political subdivision of the Commonwealth of Kentucky doing business as the Jefferson County Public Schools (hereinafter "JCPS") with its principal place of business located at 3332 Newburg Road, Louisville, Kentucky 40218, and Florida Virtual School, a corporate body and political subdivision of the State of Florida, with its principal place of business located at 2145 Metrocenter Blvd, Suite 100, Orlando, FL 32835 (hereinafter "Services Provider").

WHEREAS, the Parties have entered into a Data Sharing/Use Agreement between JCPS and Services Provider dated August 12, 2021 related to Service Provider's provision of virtual school services to JCPS elementary students (the "Agreement"); and

WHEREAS, Service Provider's services require additional data not reflected in the original Agreement; and

THEREFORE, the Parties wish to amend the Agreement to alter the data fields shared.

This Amendment hereby amends Attachment A to the Agreement to add the following data fields:

- JCPS Student ID number
- ESL/ELL status
- ESL/ELL support plan
- NWEA MAP assessment results
- Gifted Student service plan

All other provisions of the Agreement shall remain unchanged. This Amendment is the entire agreement of the parties regarding modifications of the Agreement provided herein, supersedes all prior agreements and understandings regarding such subject matter, may be modified only by a writing executed by the party against whom the modification is sought to be enforced, and shall bind and benefit the parties and their respective successors, legal representatives and assigns. The Agreement is ratified and confirmed in full force and effect in accordance with its terms, as amended hereby. In the event of any conflict between the Agreement and this Amendment, the provisions of this Amendment shall control.

This Amendment may be executed via electronic signature and in one or more counterparts, each of which will be deemed an original, but all such electronic signatures and counterparts will together constitute but one and the same instrument.

[Signatures to follow on next page]

[Signatures to First Amendment to Data Sharing/Use Agreement between JCPS and Florida Virtual School hereby effective September 1, 2021]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to be effective as of September 1, 2021.

Jefferson County Public Schools:

By: _____
Dr. Martin A. Pollio
Superintendent

Date: _____

Florida Virtual School:

By: _____
Louis Algaze, Ph.D.
President and CEO

Digitally signed by Louis
Algaze
Date: 2021.08.27
20:32:23 -04'00'

Date: _____

Approve as to legal form: _____
Karen M. Chastain
FLVS Office of General Counsel

Digitally signed by Karen
M. Chastain
Date: 2021.08.27
20:04:44 -04'00'

Data Sharing/Use Agreement

Between

Jefferson County Board of Education

And

Florida Virtual School

This Data Sharing/Use Agreement ("Agreement") between the Jefferson County Board of Education, a political subdivision of the Commonwealth of Kentucky doing business as the Jefferson County Public Schools ("JCPS"), and Florida Virtual School, a corporate body and political subdivision of the State of Florida ("Services Provider") describes the services to be provided to JCPS by Services Provider, and the means to be used by Services Provider to ensure the confidentiality and security of information and data exchanged between JCPS and Services Provider in connection with the provision of the services.

A. PERIOD OF THE AGREEMENT

This Agreement shall be effective as of the date of signature execution by both parties and will terminate June 30, 2022 unless terminated earlier by either party pursuant to Section H.

B. SCOPE OF THE AGREEMENT AND INTENDED USE OF THE DATA

1. Services Provider will provide online Global School enrollments, including digital curriculum and instruction to JCPS under the terms of a services contract (including the FLVS Quote and the Terms and Conditions for Use of FLVS Licensed Products) between JCPS and Services Provider effective August 12, 2021.
2. JCPS and Services Provider agree that Services Provider is an organization to which JCPS can disclose, upon written request, personally identifiable information from an education record of a student, as defined in 34 CFR 99.3, under the "school official exception" of the Family Educational Rights and Privacy Act, 20 U.S.C. 1232(g) and 34 C.F.R. 99.31 (a)(1) ("FERPA"), because the disclosure is to a contractor to whom JCPS has outsourced institutional services or functions for which JCPS would otherwise use employees; the contractor is under the direct control of JCPS with respect to the use and maintenance of education records; and the contractor is subject to the requirements of 34 CFR 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

3. JCPS shall disclose to Services Provider, upon written request, confidential, personally identifiable information from an education record of a student, as defined in 34 C.F.R. 99.3, under the "school official exception" of FERPA, 34 C.F.R. 99.31 (a)(1), when the disclosure is within such exception as stated in Paragraph B.2 above and Services Provider has a legitimate educational interest for access to such education records. The confidential data including student and non-student information to be disclosed is described in a document attached to this agreement as **Attachment A**. Services Provider shall use personally identifiable information from education records and other records in order to perform the services described in Paragraph B.1 above. Services Provider shall notify JCPS and JCPS shall provide written consent, if approved, of any changes to the list of disclosed data necessary for the services or any changes to the scope, purpose or duration of the services themselves. Any agreed upon changes to the data disclosed shall be reduced to writing and included in an update to Attachment A to this Agreement. Any agreed upon changes to the scope, purpose or duration of the services shall be reduced to writing and included in an amendment to the services contract described in Paragraph B.1 above.
4. Services Provider and JCPS shall work cooperatively to determine the proper medium and method for the transfer of confidential data between each other. Services Provider shall confirm the transfer of confidential data and notify JCPS as soon as practicable of any discrepancies between the actual data transferred and the data described in this Agreement. The same protocol shall apply to any transfer of confidential data from Services Provider to JCPS.

C. CONSTRAINTS ON USE OF DATA

1. Services Provider agrees that the services shall be provided in a manner that does not permit personal identification of parents and students by individuals other than representatives of Services Provider that have legitimate interests in the information.
2. Services Provider will not contact the individuals included in the data sets without obtaining advance written authorization from JCPS. Services Provider shall provide instruction to students enrolled in Services Provider courses. Enrollment of the students by JCPS shall constitute its written authorization.
3. Services Provider shall not re-disclose any individual – level data with or without identifying information to any other requesting individuals, agencies, or organizations without prior written authorization by JCPS, except as may be required by law.
4. Services Provider shall use the data only for the purpose described in Paragraph B.1 above. The data shall not be used for personal gain or profit.

D. DATA CONFIDENTIALITY AND DATA SECURITY

Services Provider agrees to the following confidentiality and data security statements:

1. Services Provider acknowledges that the data is confidential data and proprietary to JCPS, and agrees to protect the data from unauthorized disclosures and to comply with all applicable JCPS, Local, State and Federal confidentiality laws and regulations including but not limited to FERPA; the Kentucky Family Educational Rights and Privacy Act, KRS 160.700 et seq.; the Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931 et seq.; and the Kentucky Open Records Act, KRS 61.820 et seq.
2. If the performance of this Agreement involves the transfer by JCPS to Services Provider of any data regarding any JCPS student that is subject to FERPA, Services Provider agrees to:
 - a. In all respects comply with the provisions of FERPA.
 - b. Use any such data for no purpose other than to fulfill the purposes of the services contract described in Paragraph B.1 above, and not share any such data with any person or entity other than Services Provider and its employees, contractors and agents, without the prior written approval of JCPS, except as may be required by law.
 - c. Require all employees, contractors and agents of Services Provider to comply with all applicable provisions of FERPA with respect to any such data.
 - d. Maintain any such data in a secure computer environment, and not copy, reproduce or transmit any such data except as necessary to fulfill the purposes of the services contract described in Paragraph B.1 above.
 - e. Provide the services under the services contract described in Paragraph B.1 above in a manner that does not permit the identification of an individual student by anyone other than employees, contractors or agent of Services Provider having a legitimate interest in knowing such personal identification.
 - f. Destroy or return to JCPS any such data obtained under this Agreement once it is no longer needed and no later than thirty days (30) after the date by which it may be destroyed in accordance with Florida record retention laws. As a political subdivision of the State of Florida, Services Provider is bound by Florida law regarding the retention and destruction of documents. Nothing in this Agreement shall be read to require Services Provider to destroy records which are not eligible for destruction under Florida law.
3. Services Provider shall not release or otherwise reveal, directly or indirectly, the data to any individual, agency, entity, or third party not included in this Agreement, unless such disclosure is required by law or court order. If Services Provider becomes legally compelled to disclose any confidential and otherwise

personally identifiable data (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), then Services Provider shall use all reasonable efforts to provide JCPS with prior notice before disclosure so that JCPS may seek a protective order or other appropriate remedy to prevent the disclosure or to ensure JCPS's compliance with the confidentiality requirements of federal or state law; provided, however, that Services Provider will use all reasonable efforts to maintain the confidentiality of confidential and otherwise personally identifiable data. If a protective order or other remedy is not obtained prior to the deadline by which any legally compelled disclosure is required, Services Provider will only disclose that portion of confidential and otherwise personally identifiable data that Services Provider is legally required to disclose.

4. Services Provider shall not distribute, reprint, alter, sell, assign, edit, modify or create derivative works or any ancillary materials from or with the data.
5. Services Provider shall not use data shared under this Agreement for any purpose other than the services contract described in Paragraph B.1 above. Nothing in this Agreement shall be construed to authorize Services Provider to have access to additional data from JCPS that is not included in the scope of this Agreement (or addenda). Services Provider understands that this Agreement does not convey ownership of the data to Services Provider.
6. Services Provider shall take reasonable security precautions and protections to ensure that persons not authorized to view the data do not gain access to the data. Reasonable security precautions and protections include, but are not limited to:
 - a. Creating, distributing, and implementing data governance policies and procedures which protect data through appropriate administrative, technical and physical security safeguards, and outline staff responsibilities for maintaining data security;
 - b. Encrypting all data carried on mobile computers/devices;
 - c. Encrypting data before it is transmitted electronically;
 - d. Requiring that users be uniquely identified and authenticated before accessing data;
 - e. Establishing and enforcing well-defined data privilege rights which restrict users' access to the data necessary for this to perform their job functions;
 - f. Ensuring that all staff accessing data be provided training on FERPA and maintaining the confidentiality of personal information as outlined in **Attachment B**;
 - g. Securing access to any physical areas/electronic devices where sensitive data are stored;

- [illegible]

- d. Services Provider agrees to cooperate with JCPS in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.
 - e. Services Provider agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.
8. If Services Provider is a cloud computing service provider (as defined in KRS 365.734(1)(b) as "any person or entity other than an educational institution that operates a cloud computing service"), Services Provider agrees that:
- a. Services Provider shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the provider receives express permission from the student's parent. Services Provider shall work with the student's school and district to determine the best method of collecting parental permission. KRS 365.734 defines "process" and "student data."
 - b. With a written agreement for educational research, Services Provider may assist an educational institution to conduct educational research as permitted by FERPA.
 - c. Pursuant to KRS 365.734, Services Provider shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
 - d. Pursuant to KRS 365.734, Services Provider shall not sell, disclose, or otherwise process student data for any commercial purpose.
 - e. Pursuant to KRS 365.734, Services Provider shall certify in writing to the agency that it will comply with KRS 365.734(2).
9. Services Provider shall report all known breaches of the JCPS data, in any format, to Dr. Dena Dossett, Chief, Data Management, Planning and Program Evaluation Division. The report shall include (1) the name, job title, and contact information of the person reporting the incident; (2) the name, job title, and contact information of the person who discover the incident; (3) the date and time the incident was discovered; (4) the nature of the incident (e.g. system level electronic breach, an electronic breach of one computer or device, or a breach of hard copies of records; (5) a description of the information lost or compromised; (6) the name of the electronic system and possible interconnectivity with other systems; (7) the storage medium from which information was lost or compromised; (8) the controls in place to prevent unauthorized use of the lost or compromised information; (9) the number of JCPS individuals potentially affected; and (10) whether law enforcement was contacted.
10. Services Provider shall securely and permanently destroy the data, and any and all hard and soft (electronic) copies thereof, in accordance with Florida law. Services Provider agrees to require all employees, contactors, or agents of any

kind using JCPS data to comply with this provision. Services Provider agrees to document the methods used to destroy the data, and upon request, provide certification to JCPS that the data has been destroyed.

11. For purposes of this agreement and ensuring Services Provider's compliance with the terms of this Agreement and all application of the state and Federal laws, Services Provider designates **Tennille Dain** (or an alternative designee specified in writing) as the temporary custodian ("Temporary Custodian") of the data that JCPS shares with Services Provider. JCPS will release all data and information under this Agreement to Temporary Custodian. Temporary Custodian shall be responsible for transmitting all data requests and maintain a log or other record of all data requested and received pursuant to this Agreement, including confirmation of the return or destruction of the data as described below. JCPS or its agents may, upon request, review the records Services Provider is required to keep under this Agreement.
12. Services Provider acknowledges that any violation of this Agreement and/or the provisions of FERPA or accompanying regulations related to the nondisclosure of protected student information constitutes just cause for JCPS to immediately terminate this Agreement.
13. Services Provider shall maintain, during the term of this Agreement, a cyber-insurance liability policy, in the amount of \$5M. Upon request, Services Provider shall furnish the certificate of insurance evidencing this coverage. The certificate of insurance shall name the Board of Education of Jefferson County as additional insured in the Description of Operations section of the Certificate of Insurance which shall read:

Board of Education of Jefferson County
Attn: Insurance/Real Estate Dept.
3332 Newburg Road
Louisville, Kentucky 40218
14. Services provider shall maintain, during the term of this Agreement, ISO27001 or SOC2 certification. If Services Provider is unable to provide ISO27001 or SOC2 certification, minimum requirements on a JCPS-provided standardized questionnaire must be met. Upon request, Services Provider shall furnish a current ISO27001, SOC2 certification, or updated questionnaire.

E. FINANCIAL COSTS OF DATA-SHARING

Each party shall be responsible for their portion of costs that may result from data sharing. Examples of potential costs to JCPS are costs associated with the compiling of student data requested under this agreement and costs associated with the electronic delivery of the student data to Services Provider.

No payments will be made under this Agreement by either party. Any payments to Services Provider will be made under services contract described in Paragraph B.1 above.

F. OBLIGATIONS OF JCPS

During the term of this Agreement, JCPS shall:

1. Prepare and deliver student demographic and academic data as defined in **Attachment A – Data File Description**.
2. JCPS will reasonably cooperate with the Services Provider to provide applicable student education records for enrolled students after the initial data is provided for the requested student population.
3. Provide Data Stewardship training for Services Provider data custodian at a mutually agreeable time.

G. LIABILITY

Services Provider agrees to be responsible for and assumes all liability for any claims, costs, damages or expenses (including reasonable attorneys' fees) that may arise from or relate to Services Provider's intentional or negligent release of student education records ("Claims"). Subject to the requirements of FERPA, if any, Services Provider agrees to hold harmless JCPS and pay any costs incurred by JCPS in connection with any Claim. The provisions of this Section shall survive the termination or expiration of this Agreement. Nothing in this Agreement is intended to waive Services Provider's sovereign immunity or waive or broaden the limits of Services Provider's liability under section 768.28, Florida Statutes. Services Provider expressly reserves all such protections and privileges related to its sovereign immunity. In no event will Services Provider's liability under any other provision of this Agreement exceed the sum of \$200,000.00 per person or \$300,000.00 per occurrence. Furthermore, 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.

H. TERMINATION

1. This Agreement may be terminated as follows, after notification via the United States Postal Service (certified mail or registered mail) or recognized overnight delivery service (e.g., UPS, DHL, or FedEx):
 - a. By either party immediately in the event of a material breach of this Agreement by another party.
 - b. By either party after thirty (30) days advance written notice to the other party, for any reason or no reason.

2. The confidentiality provisions of this Agreement shall survive the termination of this Agreement.
3. Destruction of the confidential information shall be accomplished by utilizing an approved method of confidential destruction, including shredding, burning or certified/witnessed destruction for physical materials and verified erasure of magnetic media using approved methods of electronic file destruction. As a political subdivision of the State of Florida, Services Provider is bound by Florida Law regarding the retention and destruction of documents. In the event this Agreement is terminated, confidential information shall be destroyed no later than thirty (30) days after the date when it becomes eligible for destruction under Florida records retention laws. Destruction methods used shall comply with any applicable provision of Florida law related to the method of destruction of confidential data.

I. PUBLICATIONS AND COPYRIGHTS

Intentionally omitted.

J. MODIFICATION

No waiver, alteration or modification of the provisions of this Agreement shall be binding unless in writing and mutually agreed upon. Any modifications or additions to this Agreement must be negotiated and approved by both parties.

K. QUALITY OF SERVICES

Intentionally omitted.

L. BREACH OF DATA CONFIDENTIALITY

Services Provider acknowledges that the breach of this agreement or its part may result in irreparable and continuing damage to JCPS for which money damages may not provide adequate relief. In the event of a breach of this agreement by Services Provider, JCPS, in addition to any other rights and remedies available to JCPS at law or in equity, may be entitled to preliminary and permanent injunctions to enjoin and restrain the breach. If the United States Department of Education's Family Policy Compliance Office determines that Services Provider has violated paragraph 34 C.F.R. 99.31(a)(6)(iii)(B), the USDoE may determine that JCPS may not allow Services Provider access to personally identifiable information from education records for at least five (5) years.

M. CHOICE OF LAW AND FORUM

Intentionally omitted.

N. WAIVER

No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Agreement.

O. SEVERABILITY

If any part of this Agreement is held to be void, against public policy or illegal, the balance of this Agreement shall continue to be valid and binding.

P. NOTICES

Any notices or reports by one party to the other party under this Agreement shall be made in writing, to the address shown in the signature portions of this Agreement, or to such other address as may be designated in writing by one party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.

Q. RELATIONSHIP OF PARTIES

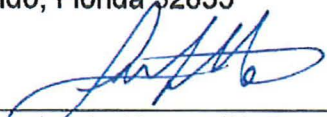
JCPS is not an employee, agent, partner or co-venturer of or with Services Provider. Neither Services Provider nor JCPS shall represent or imply to any party that it has the power or authority to enter into a contract or commitment in the name of or on behalf of the other, or to otherwise bind the other.

R. ENTIRE AGREEMENT; ASSIGNMENT

This Agreement, together with any attachments hereto and any amendment or modifications that may hereafter be agreed to, constitute the entire understanding between the parties with respect to the subject-matter hereof and supersede any and all prior understandings and agreements, oral and written, relating hereto. Services Provider shall not assign this Agreement or any portion thereof to a subcontractor or other third party without the prior written consent of JCPS, and any attempted assignment without such prior written consent in violation of this Section R shall automatically terminate this Agreement.

AGREED:

Florida Virtual School
2145 Metrocenter Blvd, Suite 100
Orlando, Florida 32835

BY: 
Name: Louis Algaze, Ph.D.
Title: President & CEO
Date: 8/12/2021

Approved as to form: Karen M. Chastain
FLVS Office of General Counsel

Digitally signed by Karen
M. Chastain
Date: 2021.08.12
15:07:04 -04'00'

AGREED:

Jefferson County Board of Education
3332 Newburg Road
Louisville KY 40218

BY: 

Name: DR. MARTY POLLIO
Title: SUPERINTENDENT
Date: 8/13/2021

Attachment A

INFORMATION TO BE DISCLOSED

First Name

Last Name

Physical School (Note: FLVS will list all as Jefferson County.)

Current Grade Level

Date of Birth

Gender

Student Email Address

Phone Number

Address (We will use the school/district address instead)

City

State

Zip

Parent/Guardian First Name

Parent/Guardian Last Name

Parent Relation - Guardian

Parent/Guardian Email

Parent/Guardian Phone Number

Course

Semester Desired 1, 2, both

Enrollment Type - Regular/Honors/AP

IEP yes/no

If yes:

IEP information page:

IEP/504 plans are emailed to an FLVS email address, and then processed by the ESE team which include the following fields:

IEP received

IEP comments

IEP Type (multi-select)

504 yes/no

Document received data

Document Type (504, Other, IEP)

Comments

Date Updated

Status

Contact Log:

Subject

Shared comments

Contact Topic

Contact date

Contact message

Contact with whom

Contact method

Attachment B

**SERVICES PROVIDER'S EMPLOYEE STATEMENT REGARDING FERPA AND
CONFIDENTIAL INFORMATION**

The Board of Trustees of FLVS, the Services Provider, adopts rules governing FLVS operations. The Board has adopted Policy 8330, which codifies compliance with FERPA requirements. FLVS provides new hire and annual FERPA training.