

THE SCHOOL BOARD OF HAMILTON COUNTY, FLORIDA

TECHNOLOGY MASTER SERVICES AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into by and between The School Board of Hamilton County, Florida, a political subdivision of the State of Florida and a body corporate pursuant to §1001.40, Florida Statutes, whose address is 5686 US Hwy 129 S, Suite 1 Jasper, FL 32052, hereinafter referred to as “HCSB” or “School Board” and _____, a Florida Corporation (or ___Learning Ally Inc_____a Corporation registered to do business in the State of Florida) whose principal address is ___20 Roszel Road, Princeton, NJ 08540___, hereinafter referred to as “Contractor;” (collectively the “Parties”).

WHEREAS, HCSB is interested in utilizing the Contractor’s software license, hosting, implementation, and training services for Hamilton County Schools and

WHEREAS, Florida Administrative Code 6A-1.0102(14) authorizes district school boards to acquire information technology as defined in Florida Statute §282.0041(14) by direct negotiation and contract with the Contractor as best fits the needs of the school district as determined by the district school board; and

WHEREAS, Contractor desires to provide their software license, hosting, implementation, and training services for Hamilton County Schools.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

- 1. Incorporation of Recitals.** The forgoing recitals (WHEREAS CLAUSES) are true and correct and are incorporated herein by reference.
- 2. Terms of Agreement.** The term of this Agreement shall commence on ___July 1, 2023_____ and continue until ___June 30, 2024_____. Notwithstanding any other termination referenced herein or attached hereto, the School Board reserves the right to terminate this agreement within 30 days prior to the start of each fiscal year (July 1) during the term of this agreement without cause or subject to any penalties or additional obligations.
- 3. Statement of Work.** The Contractor shall provide software license, hosting, implementation, and training services (“Products” and “Services”) as outlined in Exhibit [X], [Statement of Work or Proposal [#], [Title], which is incorporated in the Agreement by reference. Additional services and products may be offered through separate statements of work or proposals, all of which are subject to the terms and conditions of this Agreement and all Exhibits. In the event of a conflict of interest

between the terms and conditions of this agreement and any exhibits or attachments, the terms and conditions of this agreement shall prevail, and the following order of precedence shall be

observed:

3.1. This Service Agreement.

3.2. Student Data Privacy Agreement.

3.3. Exhibit ____ – _____

4. Payment & Compensation. The Contractor shall provide services in accordance with Exhibit ____, Statement of Work or Proposal, _____ N/A _____ at the rate of _____ per hour/fixed fee/etc. The total compensation under this agreement shall not exceed _____ **N/A** _____ **DOLLARS (\$ _____ .00)**. Payment will be made in accordance with Section 218.70, Florida Statutes, et. seq., the Local Government Prompt Payment Act.

5. HCSB Administrator. The HCSB Administrator assigned to act on behalf of HCSB in all matters pertaining to this Agreement and to authorize services, accept and approve all reports, drafts, products or invoices is the IT Director, or Supervisor.

6. Background Screening: In the event the requirements include the need for Contractor to visit schools with students present, Contractor 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 school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school 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 HCSB in advance of Contractor or its personnel providing any services under the conditions described in the previous sentence. Contractor 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 Contractor and its personnel. The Parties agree that the failure of Contractor to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling HCSB to terminate this Agreement immediately with no further responsibilities or duties to perform under this Agreement. Contractor agrees to indemnify and hold harmless HCSB, its officers and employees resulting from liability or claims made by any person who may suffer physical or mental injury, death or property damage resulting in the Contractor's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

7. Child Neglect. The Contractor and its employees shall be subject to the requirements of §39.201 Florida Statute that requires the reporting of child abuse or child neglect to the State of Florida, Department of Children and Families via the Florida Abuse Hotline 1-800-962-2873.

8. Indemnification. The Contractor agrees to indemnify, hold harmless and defend HCSB, its officers, employees, agents and representatives from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery

costs, court costs and all other sums which HCSB, its officers, employees, agents and representatives may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by the Contractor, its agents, servants or employees; the equipment of the Contractor, its agents, servants or employees while such

equipment is on premises owned or controlled by HCSB; or the negligence of the Contractor or the negligence of the Contractor's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including HCSB's property, and injury or death of any person whether employed by the Contractor, HCSB or otherwise.

9. Insurance. Contractors and vendors will provide a certificate(s) evidencing such insurance coverage to the extent listed in Sections 1-6 below before commencement of work.

Insurance listed in Section 1 below is required of all contractors and vendors: HCSB and its board members, officers, and employees shall be named as an additional insured to the Commercial General Liability insurance policy on a form no more restrictive than ISO form CG 20 10 (Additional Insured – Owners, Lessees, or Contractor). If HCSB and its board members, officers, and employees are not named as additional insureds then HCSB reserves the right to terminate this agreement.

Insurance listed in Section 2 below: All contractors engaging in construction-related activities, as defined by 440.02(8) Florida Statutes, on behalf of HCSB are required to carry this insurance to the limit listed below. All non-construction contractors whose work for HCSB includes products or services, and the value of these products or services in excess of \$25,000 are required to carry this insurance to the limit listed below.

Insurance listed in Section 3 below: Any contractor or vendor transporting district employees, delivering or transporting district owned equipment or property, or providing services or equipment where a reasonable person would believe HCSB is responsible for the work of the contractor from portal to portal is required to carry this insurance to the limit listed below.

Insurance listed in Section 4 below: All non-construction contractors and vendors that have one or more employees or subcontracts any portion of their work to another individual or company are required to have workers' compensation insurance. For contracts of \$25,000 or more, no State of Florida, Division of Workers' Compensation, Exemption forms will be accepted. All contractors engaging in construction-related activities, as defined by 440.02(8) Florida Statutes, on behalf of HCSB are required to have workers' compensation insurance. All entities and individuals required to have workers compensation insurance must purchase a commercial workers' compensation insurance policy to the limits listed below. The Workers' Compensation policy must be endorsed to waive the insurer's right to subrogate against HCSB, and its board members, officers and employees in the manner which would result from the attachment of the

NCCI Waiver Of Our Right To Recover From Others Endorsement (Advisory Form WC 00 03 13).

Insurance as listed in Section 5 below: All contractors providing professional services including but not limited to architects, engineers, attorneys, auditors, accountants, etc. are required to have this insurance to the limits listed below.

Insurance as listed in Section 6 below: All contractors or vendors providing software shall cover, at a minimum, the following:

- Data Loss and System Damage Liability

- Security Liability
- Privacy Liability
- Privacy/Security Breach Response Coverage, including Notification Expenses

Such Cyber Liability coverage must be provided on an Occurrence Form or, if on a Claims Made Form, the retroactive date must be no later than the first date of the Agreement and such claims made coverage must respond to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

All Contractors will carry and maintain policies as described in Sections 1 to 6 above and as checked off in the box to the left of Section 1 to 6 below. All required insurance must be from insurance carriers that have a rating of “A” or better and a financial size category of “VII” or higher according to the A. M. Best Company. All required insurance policies must be endorsed to provide for notification to HCSB thirty (30) days in advance of any material change in coverage or cancellation. This is applicable to the procurement and delivery of products, goods, or services furnished to the School Board of Hamilton County, Florida.

The Contractor shall, within thirty (30) days after receipt of a written request from HCSB, provide HCSB with a certified copy or certified copies of the policy or policies providing the coverage required by this provision. The Contractor may redact or omit, or cause to be redacted or omitted, those provisions of the policy or policies which are not relevant to insurance required by provision 2.4.

<input type="checkbox"/>	1.	Commercial General Liability Insurance:	
		Bodily Injury and Property Damage Per Occurrence	\$1,000,000
		General Aggregate	\$2,000,000
<input type="checkbox"/>	2.	Product Liability and/or Completed Operations Insurance:	
		Bodily Injury and Property Damage Per Occurrence	\$1,000,000
		General Aggregate	\$2,000,000

<input type="checkbox"/>	3.	Automotive Liability:	
		Bodily Injury and Property Damage: Combined Single Limit (each accident)	\$1,000,000
<input type="checkbox"/>	4.	Workers’ Compensation/Employer’s Liability:	

<input type="checkbox"/>	3.	Automotive Liability:	
		W.C. Limit Required*	Statutory Limits
		E.L. Each Accident	\$500,000
		E.L. Disease – Each Employee	\$500,000
		E.L. Disease – Policy Limit	\$500,000
<input checked="" type="checkbox"/>	5.	Professional Liability Insurance (Errors and Omissions): For services, goods or projects that will exceed \$1,000,000 in values over a year.	
		Each Claim	\$1,000,000
		Annual Aggregate	\$2,000,000
<input checked="" type="checkbox"/>	6.	Cyber Liability and Data Storage:	
		Each Claim	\$1,000,000
		Annual Aggregate	\$1,000,000

Except as otherwise specifically authorized in this Agreement, no deductible or self-insured retention for any required insurance provided by the Contractor pursuant to this Agreement will be allowed. To the extent any required insurance is subject to any deductible or self insured retention (whether with or without approval of HCSB), the Contractor shall be responsible for paying on behalf of HCSB (and any other person or organization that the Contractor has, in this Agreement, agreed to include as an insured for the required insurance) any such deductible or self-insured retention.

The Contractor shall continue to maintain products/completed operations coverage in the amounts stated above for a period of three (3) years after the final completion of the Work.

Professional Liability coverage must be maintained in the amounts stated above for a two year period following completion of the contract.

Compliance with these insurance requirements shall not limit the liability of the Contractor, its subcontractors, sub-subcontractors, employees or agents. Any remedy provided to HCSB or HCSB's board members, officers or employees by the insurance provided by the Contractor shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of the Contractor) available to HCSB under this Agreement or otherwise.

Neither approval nor failure to disapprove insurance furnished by the Contractor shall relieve the Contractor from the responsibility to provide insurance as required by this Agreement.

10.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.

11.No Third-Party Beneficiaries. The parties expressly acknowledge that it is not their intent to create or confer any rights to or obligations upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties for any matter arising out of this or any other contract.

12.Access to and Retention of Documentation. The HCSB, the United States Department of Education, the Comptroller General of the United States, the Florida Department of Education or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to work and services to be performed under this agreement for the purpose of audit, examination, excerpting and transcribing. The parties will retain all such required records, and records required under any state or federal rules, regulations or laws respecting audit, for a period of four years after the HCSB has made final payment and all services have been performed under this agreement.

13.Contractor's Public Records. Public Records Act/Chapter 119 Requirements. Contractor agrees to comply with the Florida Public Records Act (Chapter 119, Florida Statutes) to the fullest extent applicable, and shall, if this engagement is one for which services are provided, by doing the following:

- 13.1. Contractor and its subcontractors shall keep and maintain public records required by the HCSB to perform the service.
- 13.2. Contractor and its subcontractors shall upon request from the HCSB's custodian of public records, provide the HCSB with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed that provided in chapter 119, Florida Statutes or as otherwise provided by law;
- 13.3. Contractor and its subcontractors shall ensure that public records that are exempt or that are confidential and exempt from the public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the HCSB;
- 13.4. Contractor and its subcontractors upon completion of the contract shall transfer to the HCSB, at no cost, all public records in possession of the Contractor and its subcontractors or keep and maintain the public records required by the HCSB to perform the service. If the Contractor and

its subcontractors transfer all public records to the HCSB upon completion of the contract, the Contractor and its subcontractors shall destroy any duplicate public records that are exempt or that are confidential and exempt from the public records disclosure requirements. If the

Contractor and its subcontractors keep and maintain public records, upon completion of the contract, the Contractor and its subcontractors shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the HCSB, upon request from the HCSB's custodian of public records, in a format that is compatible with the information technology systems of the HCSB.

13.5. The parties agree that if the Contractor and its subcontractors fail to comply with a public records request, then the HCSB must enforce the Agreement provisions in accordance with the Agreement and as required by Section 119.0701, Florida Statutes.

13.6. The failure of the Contractor to comply with the provisions set forth herein shall constitute a default and material breach of this Agreement, which may result in immediate termination, with no penalty to HCSB.

13.7. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, Sherry Bush, Secretary to the Superintendent, EMAIL ADDRESS: sherry.bush@hamiltonfl.com; TELEPHONE NUMBER: 386-792-7800, 5686 US Highway 129 S, Suite 1, Jasper, FL 32052.**

14.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.

15.Termination. This Agreement may be canceled with or without cause by HCSB during the term hereof upon thirty (30) days written notice to the other party of its desire to terminate this Agreement.

16.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.

17.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.

18.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.

19.Preparation of Agreement. The parties acknowledge that they have sought and obtained competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

20.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 herein. 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.

21.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.

22.Governing Law & Venue. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of Hamilton County, Florida.

23.Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

24.Assignment. Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from HCSB. This contract may not be assigned by the Contractor in any fashion, whether by operation of law, or by conveyance of any type, including without limitation, transfer of stock in Contractor, without the prior written consent of the HCSB which consent the HCSB may withhold in its sole discretion.

25.Force Majeure. Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars,

sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

26.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.

27. 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 HCSB:	Superintendent of Schools The School Board of Hamilton County, Florida 5686 US Highway 129 S, Suite 1 Jasper, FI 32052
With a Copy to:	Director of Technology The School Board of Hamilton County, Florida 5686 US Highway 129 S, Suite 1 Jasper, FI 32052
To:	Director of Teaching & Learning Services The School Board of Hamilton County, Florida 5686 US Highway 129 S, Suite 1 Jasper, FI 32052

28. Captions. The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

29. Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal authority 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.

30. Excess Funds. Any party receiving funds paid by HCSB under this Agreement agrees to promptly notify HCSB of any funds erroneously received from HCSB upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to HCSB with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the

interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by HCSB.

31.Independent Contractor. The Contractor certifies that it is an independent Contractor and shall not employ, contract with, or otherwise use the services of any officer or employee of HCSB. The Contractor certifies that its owner(s), officers, directors or agents, or members of their immediate family, do not have an employee relationship or other material interest with the HCSB.

32.Conduct While on School Property. The Contractor acknowledges that its employees and agents will behave in an appropriate manner while on the premises of any school facility and shall at all times conduct themselves in a manner consistent with HCSB policies and within the discretion of the premises administrator (or designee). It is a breach of this agreement for any agent or employee of the Contractor to behave in a manner which is inconsistent with good conduct or decorum or to behave in any manner that will disrupt the educational program or constitute any level of threat to the safety, health, and well being of any student or employee of the HCSB. The Contractor agrees to immediately remove any agent or employee if directed to do so by the premises administrator or designee.

33.Copyrights. The Contractor is hereby notified that the federal awarding agency reserves a royalty free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes: the copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and, any rights of copyright to which a grantee, subgrantee or a Contractor purchases ownership with grant support. Furthermore, the parties agree that the HCSB has the right to make copies of any materials, whether in tangible or electronic means or media, that are delivered under the provisions of this agreement for use within the School District for purposes related to HCSB business, operations, the delivery of the educational program or to comply with the requirements of law, rule, policy or regulation. Any material not designated as reproducible by Contractor may not be copied by the HCSB provided that such material was copyrighted by Contractor before performance under this agreement and was not developed specifically for HCSB under this Agreement.

34.Debarment. By signing this Agreement, Contractor certifies, to the best of its knowledge and belief, that it and its principals:

34.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency.

- 34.2. Have not, within the preceding five-year period, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- 34.3. Are not presently indicted or otherwise criminally charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in the preceding paragraph (b).
- 34.4. Have not within the preceding five-year period had one or more public transactions (federal, state or local) terminated for cause or default.

Contractor agrees to notify HCSB within 30 days after the occurrence of any of the events, actions, debarments, proposals, declarations, exclusions, convictions, judgments, indictments, informations, or terminations as described in paragraphs (a) – (d) above, with respect to Contractor or its principals.

35. Confidential Student Information. Notwithstanding any provision to the contrary contained in this agreement between the Contractor and HCSB; Contractor and its officers, employees, agents, representatives, contractors, and sub-contractors shall fully comply with the requirements of Section 1002.22 and Section 1002.221, Florida Statutes, or any other law or regulation, either federal or State of Florida, regarding confidentiality of student information and records, Further, Contractor for itself and its officers, employees, agents, representatives, contractors, or sub-contractors, shall fully indemnify and hold the HCSB and its officers and employees harmless for any violation of this covenant, including but not limited to defending the HCSB and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon the HCSB or payment of any and all costs(s), damages (s), judgment(s), or loss(es) incurred by or imposed upon the HCSB arising out of the breach of this covenant by the Contractor, or an officer, employee, agent, representative, contractor, or sub-contractor of the Contractor to the extent and only to the extent that the Contractor or an officer, employee, agent, representative, contractor, or sub-contractors of the Contractor shall either intentionally or negligently violate the provisions of this covenant, or Sections 1002.22 or 1002.221, Florida Statutes. This provision shall survive the termination of or completion of all performance or obligations under this agreement and shall be fully binding upon Contractor until such time as any proceeding brought on account of this covenant is barred by any applicable statute of limitations.

36. Confidentiality of Data/Information Provided. HCSB will allow the Contractor access to limited data/information as identified in the Statement of Work as necessary to perform the Services and pursuant to the terms of this Agreement in compliance with FERPA, COPPA, PPRA, 34 CFR 99.31(b) and Florida Statutes sections 1001.41 and 1002.22 all other privacy statutes as it relates

to data privacy and security. The Contractor shall only use the data and information provided by HCSB for the purpose specified in the Statement of Work, and shall not disclose, copy, reproduce or transmit such data/information obtained under this Agreement and/or any portion thereof, except as necessary to fulfill the Agreement or as may be required by law.

37. Protection and Handling of Data.

37.1. Data Confidentiality and Security - Contractor shall implement appropriate measures designed to ensure the confidentiality and security of Protected Information [as required in the Data Sharing and Privacy Agreement attached hereto as Exhibit [A].

37.2. Compliance - Contractor will not knowingly permit any Contractor's personnel to have access to any HCSB facility or any records or data of HCSB if the person has been convicted of a crime in connection with (i) a dishonest act, breach of trust, or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, as described in Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. §1829(a); or (ii) a felony. Contractor shall assure that all contracts with subcontractors impose these obligations on the subcontractors and shall monitor the subcontractors' compliance with such obligations. No subcontractors may be used without prior written consent of HCSB.

37.3. FERPA - To the extent Services provided hereunder pertain to the access to student information, Contractor shall adhere to all standards included in the Family Educational Rights and Privacy Act (FERPA) and Sections 1001.41 and 1002.22, Florida Statutes (the Protection of Pupil Privacy Acts), and other applicable laws and regulations as they relate to the release of student information. Notwithstanding the above, it is understood and agreed that HCSB shall obtain any necessary consents from parents or students prior to providing student information to Contractor, and HCSB is wholly responsible for providing annual notice to students and parents of their rights with respect to Florida Statutes.

37.4. HIPAA, CIPA, and GLBA - Contractor also agrees to comply with all applicable state and federal laws and regulations, including Health Information Privacy and Accountability Act (HIPAA), Children Internet Protection Act (CIPA), and the Gramm-Leach Bliley Act (GLBA).

37.5. DATA DE-IDENTIFICATION - Contractor may use aggregate data only for product development, research, or other purposes. Contractor must have approval of the HCSB to publish or market HCSB data.

37.6. Data Security – Contractor agrees to protect and maintain the security of data with protection security measures that include maintaining secure environments that are patched with all appropriate security updates as designated by a relevant authority (e.g. Microsoft notifications, etc.) Likewise, HCSB agrees to conform to the following measures to protect and secure data:

37.6.1. Data Transmission. Contractor agrees that any and all transmission or exchange of system application data with HCSB and/or any other parties shall take place via secure means, e.g. HTTPS, FTPS, SFTP, or equivalent.

37.6.2. Data Storage and Backup. Contractor agrees that any and all HCSB data will be stored, processed, and maintained solely on designated servers and that no HCSB data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that storage medium is in use as part of Contractor's designated backup and recovery processes. All servers, storage, backups, and network paths utilized in the delivery of the service shall be contained within the states, districts, and territories of the United States unless specifically agreed to in writing by an HCSB officer with designated data, security, or signature authority. An appropriate officer with the necessary authority can be identified by the HCSB Director of Technology, or Supervisor for any general or specific case.

Contractor agrees to store all HCSB backup data stored as part of its backup and recovery processes in encrypted form, using no less than 128 bit key.

37.6.3. Data Re-Use. Contractor agrees that any and all data exchanged shall be used expressly and solely for the purposes enumerated in this Agreement. Data shall not be distributed, repurposed, or shared across other applications, environments, or business units of Contractor. As required by Federal law, Contractor further agrees that no HCSB data of any kind shall be revealed, transmitted, exchanged, or otherwise passed to other contractors or interested parties except as necessary in order to perform the Services. Any other transmission or exchange of HCSB data is only permitted on a case-by-case basis as specifically agreed to in writing by an HCSB officer with designated data, security, or signature authority.

37.6.4. End of Agreement Data Handling Contractor will ensure that District Data is encrypted and that all device/medium will be scanned at the completion of any contract or service agreement and/or research study or project to ensure that no District Data, PII, personal information and/or student record information is stored on such electronic devices/medium. Furthermore, Contractor will have in place a service that will allow Contractor to wipe the hard drive on any stolen laptop or mobile electronic device remotely and have a protocol in place to ensure compliant use by employees.

37.6.5. Contractor agrees that upon termination of this Agreement and requested by HCSB in writing it shall erase, destroy, and render unreadable all HCSB data, and certify in writing that these actions have been completed within thirty (30) days of the termination of this Agreement or within seven (7) days of the request of an agent of HCSB, whichever shall come first.

37.6.6. If HCSB receives a subpoena, warrant, or other legal order, demand (including an application for public information filed pursuant to Florida public records laws, or request seeking Data maintained by Contractor, the HCSB will promptly provide a copy of the application to Contractor. Contractor will promptly supply HCSB with copies of records or information required in order for the HCSB to respond, and will cooperate with the HCSB's reasonable requests in connection with its response.

37.6.7. Upon receipt of a litigation hold request, Contractor will preserve all documents and HCSBS data as identified in such request, and suspend any operations that involve overwriting, or potential destruction of documentation arising from such litigation hold.

37.7.Data Breach - Contractor agrees to comply with the State of Florida Database Breach Notification process and all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification. In the event of a breach of any of Contractor's security obligations or other event requiring notification under applicable law ("Notification Event"), Contractor agrees to notify HCSB immediately and assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless, and defend HCSB and its trustees, officers, and employees from and against any claims, damages, or other harm related to such Notification Event.

37.7.1.Mandatory Disclosure of Protected Information - If Contractor becomes compelled by law or regulation (including securities laws) to disclose any Protected Information, Contractor will provide HCSB with written notice within 72 hours, so that HCSB may seek an appropriate protective order or other remedy. If a remedy acceptable to HCSB is not obtained by the date that Contractor must comply with the request, Contractor will furnish only that portion of the Protected Information that it is legally required to furnish, and Contractor shall require any recipient of the Protected Information to exercise commercially reasonable efforts to keep the Protected Information confidential. As soon as practicable, upon HCSB request, provide HCSB with a copy of its response.

37.7.2.Remedies for Disclosure of Confidential Information – Contractor and HCSB acknowledge that unauthorized disclosure or use of the Protected Information may irreparably damage HCSB in such a way that adequate compensation could not be obtained from damages in an action at law. Accordingly, the actual or threatened unauthorized disclosure or use of any Protected Information shall give HCSB the right to seek injunctive relief restraining such unauthorized disclosure or use, in addition to any other remedy otherwise available (including reasonable attorneys' fees). Contractor hereby waives the posting of a bond with respect to any action for injunctive relief. Contractor further grants HCSB the right, but not the obligation, to enforce these provisions in Contractor's name against any of Contractor's employees, officers, board

members, owners, representatives, agents, contractors, and subcontractors violating the above provisions.

37.7.3.Safekeeping and Security - As part of the Services, Contractor will be responsible for safekeeping all keys, access codes, combinations, access cards, personal identification numbers, and similar security codes and identifiers issued to Contractor's employees, agents, or subcontractors. Contractor agrees to require its employees to promptly report a lost or stolen access device or information.

37.7.4.Non-Disclosure – Contractor is permitted to disclose Confidential Information to its employees, authorized subcontractors, agents, consultants, and auditors on a need to know basis only, provided that all such subcontractors, agents, consultants, and auditors have written confidentiality obligations to Contractor and HCSB.

37.7.5.Request for Additional Protection - From time to time, HCSB may reasonably request that Contractor protect the confidentiality of certain Protected Information in particular ways to ensure that confidentiality is maintained. Contractor has the right to reasonably decline HCSB’s request.

37.7.6.Data Ownership- Unless expressly agreed to the contrary in writing, all HCSB Data or PII prepared by Contractor (or its subcontractors) for the HCSB will not be disclosed to any other person or entity.

37.7.7.Contractor warrants to the HCSB that the HCSB will own all rights, title and interest in any and all intellectual property created in the performance of this Agreement and will have full ownership and beneficial use thereof, free and clear of claims of any nature by any third party including, without limitation, copyright or patent infringement claims. Contractor agrees to assign and hereby assigns all rights, title, and interest in any and all HCSB created intellectual property created in the performance of the Agreement to the HCSB, and will execute any future assignments or other documents needed for the HCSB to document, register, or otherwise perfect such rights. Notwithstanding the foregoing, Contractor retains all right, title and interest in and to its software, documentation, training and implementation materials and other materials provided in connection with Contractor’s services (collectively, “Contractor IP”). Contractor grants to the HCSB a personal, nonexclusive license to use the Contractor IP for its own non-commercial, incidental use as set forth in the end user license agreement accompanying such software and as contemplated herein. All data of the HCSB remains the property of the HCSB.

37.7.8.It is understood and agreed that the HCSB is the exclusive Owner of the HCSB data and that at no point in time does or will the Contractor become the Owner of any HCSB Data, PII or HCSB files, and that should the Contractor be subject to dissolution or insolvency, HCSB data, PII, or files will not be considered an asset or property of the Contractor. The

HCSB reserves the right to demand the prompt return of any and all HCSB data and PII at any time and for any reason whatsoever.

38.Illegal Alien Labor. The parties shall each comply with all federal and state laws, including but not limited to section 448.095, Florida Statutes, prohibiting the hiring and continued employment of aliens not authorized to work in the United States. The parties must not knowingly employ unauthorized aliens working under this agreement and should such violation occur shall be cause for termination of the Agreement. The parties will utilize the E-verify system established by the U.S. Department of Homeland Security to verify the employment eligibility of its new employees working under this agreement hired during the contract term, and will further include in all subcontracts for subcontractors performing work or providing services pursuant to this Agreement an express written requirement that the subcontractor utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor to work under this agreement during the contract term. The Contractor shall receive and retain an affidavit from the subcontractor stating that the

subcontractor does not employ, contract with, or subcontract with an unauthorized alien to work under this agreement. Contractor's knowing failure to comply with this subsection may result in termination of the Agreement and debarment of the Contractor from all public contracts for a period of no less than one (1) year.

39. FEDERAL GRANTS TERMS AND CONDITIONS. For any agreement that involves, receives or utilizes Federal Grants funding, the following terms and conditions shall be considered a part of the agreement and the Contractor accepts and acknowledges that it is and will continue to be in compliance with said terms and conditions for the term of the award:

39.1. Recovered Materials (2 CFR §200.322) applies to all contracts greater than \$10,000.

Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

39.2. Federal Drug Free Workplace. Contractor agrees to comply with the drug-free workplace requirements for federal contractors pursuant to 41 U.S.C.A. § 8102.

39.3. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) applies if contract is greater than or equal to \$100,000. Contractor certifies that it has filed the required certification and that it will not and has not used Federal appropriated funds to pay any person or organization for

influencing or attempting to influence an officer or employee of an agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

39.4. Energy Efficiency / Conservation (42 U.S.C. 6201). Contractor agrees to comply with the mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

39.5. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended applies to contracts and subgrants in excess of \$150,000. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Contractor shall report any and all violations

to the Federal awarding agency and the Regional Office of the EPA, and notify HCSB concurrently within 30 days of notice of the violation.

- 39.6. Remedies For Violation or Breach of Contract.** Failure of the vendor to provide products within the time specified in the ITB shall result in the following: The Buyer shall notify vendor in writing within five (5) calendar days via the Vendor Performance Form and provide five (5) calendar days to cure. If awarded vendor cannot provide product, HCSB reserves the right to purchase product from the next lowest responsive and responsible bidder. The defaulting vendor may be responsible for reimbursing HCSB for the price differences.
- 39.7. Debarment and Suspension.** Contractor certifies that it complies fully with the Federal Debarment Certification regarding debarment suspension, ineligibility and voluntary exclusion. In accordance with 2 CFR part 180 that implement Executive Orders 12549 and 12689. Furthermore, Contractor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- 39.8. Equal Employment Opportunity.** During the performance of this contract, Contractor agrees as follows:

39.8.1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation;

and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

39.8.2. Contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

39.8.3. Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation

conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

39.8.4. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a Record Retention and access requirements to all records. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

39.8.5. Contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

39.8.6. Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

39.8.7. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible

for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

39.8.8. Contractor will include the provisions of paragraphs 39.8 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

39.9. Copeland "Anti-Kickback" Act (18 U.S.C. 874 And 40 U.S.C. 276c). Contractor certifies that it is, and will continue to be, for the term of this contract in for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the

compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

39.10. Davis-Bacon Act, as Amended (40 U.S.C. 276A TO A-7). Contractor, certifies that it is, and will continue for the term of this contract, to be in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, the Contractor is herein required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor agrees to pay wages not less than once a week. Contractor must provide a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. Contractor acknowledge that the decision to award this contract or subcontract is conditioned upon the acceptance of the wage determination which the Contractor accepts. Contractor agrees to report all suspected or reported violations to the Federal awarding agency and to notify HCSB concurrently. Contractor certifies that it is, and will continue to be, for the term of this contract in full compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or

Grants from the United States"). The Act provides that each contractor or sub recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

39.11. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333). Contractor, certifies that it is, and will continue for the term of this contract, to be in compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

39.12. Health And Safety Standards in Building Trades and Construction Industry (40 U.S.C. 3704). No laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous.

39.13. All website or software terms contained in click-through agreements in connection with Contractors services are disclaimed by HCSB to the extent the terms are in addition to, conflict

or are inconsistent with the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

School Board:

Ch. Cornbl
_____, Chairperson

Date: 7-28-23

*Vendor: Learning Ally, Inc.

Timothy Wilson
By:

Title: Chief Financial Officer

Date: 07/28/2023

Attachments: (list all attachments with the exact title of the document)

Exhibit A, Data Sharing and Privacy Agreement

Exhibit __, Statement of Work or Proposal # __, _____

Contractor Contact Name: Timothy Wilson

Phone Number: _____

Email Address: twilson@learningally.org

