

Ellevation Order Form and Customer Agreement

This Order Form, which incorporates Ellevation's online Terms and Conditions (located at ellevationeducation.com/legalnotices) (together, the "Agreement") is made between the customer named below ("Customer") and Ellevation Inc., having an address at 38 Chauncy St, Boston MA 02111 ("Ellevation"), and sets forth the terms and conditions on which Ellevation will supply Products to Customer.

Company: Ellevation Education
Representative: Tony DeJesus
Email: tony.dejesus@ellevationeducation.com
Phone: 978-310-5207
Address: 38 Chauncy St, 9th Floor, Boston, Ma 02111

Customer: Boone County Schools, KY
Contact Name: Geniene Delahunty
Email: geniene.delahunty@boone.kyschools.us
Phone: (859) 283-1003
Address: 8330 US Highway 42, Florence, KY, 41042

Start Date: 8/1/2018

End Date: 7/31/2019

Annual Subscription Fees

Product	Quantity	Unit Price	Total Fees
Ellevation Platform	23	\$425.00	\$9,775.00
Small District - Up to 50 Ellevation users			
Collaborate	1,195	\$4.00	\$4,780.00
ELL Range: 1,000-4,999 Minimum: \$2,500 Multi-Year discounts: 5% for 2 yrs 10% for 3 yrs			
Subscription Total:			\$14,555.00

Service Fees

Total Investment

Subscription Total:	\$14,555.00
Grand Total:	\$14,555.00

Invoicing Schedule: Annual

Payment Term: 30 Days

Contract Term: 12 months

SERVICE AGREEMENT

This SERVICE AGREEMENT ("**Agreement**") is effective as of the date indicated on the signature page below ("**Effective Date**") and is made by and between Ellevation Inc., ("**Ellevation**") and the undersigned customer Boone County Schools

Ellevation maintains a suite of productivity, collaboration and instructional tools designed to help educators support English Language Learners or "ELLs" achieve their highest aspirations. Customer desires access to certain Ellevation software solutions and services for use by its employees ("**End Users**"), and Ellevation desires to provide and perform the same, all subject to the terms and conditions in this Agreement.

Unless otherwise indicated, this Agreement is inclusive of the Ellevation Platform Terms of Use (located at <https://ellevationeducation.com/legal-notices>) and Data Privacy Policy (located at <https://ellevationeducation.com/privacy-policy>) , which are incorporated herein by reference.

1. **Services.** Ellevation agrees to deliver the software and perform the services described in the Statement of Work attached hereto as Attachment A which is incorporated into this Agreement by reference (the "**Services**"). Ellevation warrants that it will provide the Services in a professional and workmanlike manner and in accordance with the specifications set forth in the Statement of Work and its Terms of Use.
2. **Compensation.** The total compensation for performance of the Services are listed below and shall be due and payable to Ellevation 30 days after invoice.
- \$ 15,705
Customer agrees to pay all charges associated with the Services and understands that its right to use the Services is conditional upon our receipt of payment. If payment is not received by the required date, Ellevation reserves the right to immediately either suspend or terminate Customer and its End User access, thereby terminating such subscription and all Ellevation obligations hereunder. Customer is required to pay any amounts still owed to Ellevation at the time the account is suspended or terminated.
3. **Term and Renewal.** The term of this Agreement shall be for an initial term of **one (1) year** commencing on the Effective Date of this Agreement. Thereafter, this Agreement shall automatically renew on a year-to-year basis for up to **five (5)** additional one-year periods.
4. **Termination.** Customer may terminate this Agreement at any time and for any reason upon sixty (60) days' prior written notice to Ellevation. Either party may terminate this Agreement by written notice upon (a) a material breach of any obligation by a party under this Agreement not cured within twenty (20) days after written notice; (b) failure and/or inability of Ellevation to perform the Services; or (c) willful misconduct, breach of duty, or neglect of responsibility by either party.

4.1 Duties Upon Termination. Prior to termination and upon written request from Customer, Ellevation will provide Customer with a one-time, delimited file export of its data from the Services via SFTP. Within 90 days of termination, or within 30 days of receipt of written request from Customer, Ellevation will securely destroy Customer's personally

identifiable student data, including such data held in Ellevation's backup systems.

Upon termination, Ellevation will refund to Customer the pro-rata unused portion of any prepaid software subscription.

Notwithstanding the above, Ellevation does retain aggregated, de-identified data from the Customer, without restriction or obligation to Customer, to (i) improve its educational products for the purposes of adaptive and customized learning, (ii) demonstrate the effectiveness of its products, including in the marketing of its products, and (iii) for the development and improvement of its educational sites, services, or applications.

- 5. Limited License.** Ellevation hereby grants Customer a limited license to access and use the Services for the educational use contemplated herein, and Customer shall not modify Ellevation software or download such software for any purpose not contemplated herein, without the prior written consent of Ellevation. This license does not include any resale or commercial use of the Services; any collection and use of any property listings, descriptions, or prices; any derivative use of the Services or its contents; or any use of data mining, robots, or similar data gathering and extraction tools. The Services or any portion of the Services may not be reproduced, duplicated, copied, sold, resold, visited, or otherwise exploited for any commercial purpose without the express written consent of Ellevation. Customer may not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form) of Ellevation or its affiliates without their express written consent. Customer may not use any meta-tags or any other "hidden text" utilizing Ellevation's name or service marks without the express written consent of Ellevation. Any unauthorized use terminates the permission or license granted by Ellevation.

Customer grants Ellevation a non-exclusive, worldwide right to use, copy, store, transmit and display Customer data hosted on the Services solely for the purpose of providing the Services in accordance with the terms of this Agreement and the Ellevation Privacy Policy. Notwithstanding this limited license, Customer maintains exclusive ownership of its data.

- 6. Customer and End User Responsibilities.** Customer and its End Users agree to provide true, accurate, current and complete information to create and maintain accounts, and are responsible for any and all activities that occur under their accounts. Customer and End Users shall: maintain the confidentiality of their usernames and passwords; (ii) notify Ellevation immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (iii) report to Ellevation immediately and use reasonable efforts to stop immediately any known or suspected use of the Service inconsistent with the terms of the License provided herein; (iv) assure that use of the Service shall at all times comply with all applicable local, state, federal, and international

Laws, regulations, and conventions, including without limitation those related to data collection, use, disclosure and privacy; international communications; and the exportation of technical or personal data; (v) assure that use of the Service shall at all times conform to the terms and conditions of this Agreement; and (vi) not impersonate another user of the Service or provide false identity information to gain access to or use the Service.

7. **Compliance with Applicable Law and Regulations.** Ellevation and Customer represent that they comply with all applicable laws in their respective performance and receipt of the Service, including all applicable data privacy laws with respect to the personal data collected, stored and maintained through the Service.

7.1 **Response to Legal Requests for Data.** Customer retains ownership and control of all personally identifiable student data that Ellevation maintains. At no point is Ellevation the owner of such data, nor at any point does Ellevation control such data. In the event that Ellevation receives a court or other law enforcement request, including but not limited to an administrative subpoena or judicial warrant, for access to, use of, or inspection of Customer data, including Customer's student data, wherever legally permissible, Ellevation will not act directly on such request, but will instead promptly refer such requests directly to Customer. To the extent Ellevation is legally required to provide the information requested prior to or in addition to such referral, wherever legally permissible, Ellevation will promptly notify the Customer of the request and its intent to comply with the request.

8. Intellectual Property and Proprietary Information.

(a) All reports produced by Customer in connection with the Services are hereby acknowledged to be the exclusive property of Customer, unless and to the extent that the parties agree otherwise, as evidenced in writing and included as a part of this Agreement.

(b) Ellevation represents and warrants that it owns or has the right to use all intellectual property required providing the Services, including but not limited to any necessary trademark, copyright or patent rights. As between Ellevation and Customer, all right, title and interest in Ellevation's software solutions, tools and any other Ellevation materials furnished or made available hereunder, including, but not limited to all books, manuals, and reports produced or provided by Ellevation in connection with the Services, and all modifications and enhancements thereof, and all suggestions, ideas and feedback proposed by Customer regarding such solutions, tools, materials or the Services, if any, including all copyright rights, patent rights and other intellectual property rights in each of the foregoing, belong to and are retained solely by Ellevation or Ellevation's licensors and providers, as applicable. All rights not granted in this Agreement are reserved by Ellevation.

9. **Confidentiality of Student Records.** Customer appoints Ellevation a "school official" as the term is used in the Family Educational Rights and Privacy Act ("FERPA"), 34 C.F.R. §99 et. seq., and determines that Ellevation has a "legitimate educational interest," for the

purpose of carrying out its responsibilities under this Agreement. Ellevation agrees to be bound by the relevant provisions of FERPA, including that it will remain under the "direct control" of Customer with respect to its collection, use and handling of personally identifiable student data. Ellevation will use

personally identifiable student data only to fulfill the Services in performance of this Agreement, and, consistent with the provisions of paragraph 7.1 of this Agreement, will only share personally identifiable student data with its third party partners as necessary to fulfill the Services in performance of this Agreement.

- 10. Security.** Ellevation deploys commercially reasonable security precautions intended to protect against unauthorized access to Customer data stored by Ellevation, including use of firewalls, encryption, authentication technologies and background screenings for all employees. Not all security risks are reasonably foreseeable, however, and Ellevation is not responsible for the consequences of security breaches that are not reasonably foreseeable and not reasonably within its control.

Neither Customer nor any faculty, staff or student may circumvent or otherwise interfere with any user authentication or security used by Ellevation. Customer will immediately notify Ellevation of any breach, or attempted breach, of security that Customer knows of or reasonably believes to know of.

Should Ellevation become aware of a security breach impacting Customer's data, Ellevation shall notify Customer without unreasonable delay, and will assist Customer in notifying its impacted End Users, parents and students as required by law.

- 11. Duty to Defend and Hold Harmless.** Each party agrees to defend, and hold harmless the other party from and against any and all claims, demands, complaints, liabilities, losses, damages, including reasonable costs and attorneys' fees, resulting from or caused by such indemnifying party's (a) breach of any covenant, representation or warranty in this Agreement, or (b) negligence, omission or willful misconduct. Ellevation will maintain commercially reasonable insurance coverages against its obligations in this section.

- 12. Equal Opportunity Compliance.** Ellevation will perform its obligations under this Agreement without discrimination on account of race, color, religion, national origin, ancestry, age, gender, genetic information, physical or mental disability, medical condition, marital status or veteran's status and in compliance with all applicable laws related thereto.

- 13. No Warranty; Disclaimer.** EXCEPT FOR ANY EXPRESS WARRANTY PROVIDED HEREIN, ELLEVATION AND ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM ALL, AND MAKE NO, WARRANTIES (WHETHER EXPRESS, STATUTORY, IMPLIED OR OTHERWISE ARISING IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE), INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON- INFRINGEMENT OF THIRD PARTY RIGHTS. ELLEVATION DOES NOT WARRANT THAT THE ELLEVATION SOLUTION OR ELLEVATION SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE ELLEVATION SOLUTION OR ELLEVATION SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

14. Limitation of Liability.

- (a) Limitation on Direct Damages. IN NO EVENT SHALL ELLEVATION'S AGGREGATE

LIABILITY, IF ANY, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE FEES (IF ANY) PAID BY CUSTOMER TO ELLEVATION HEREUNDER, WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE.

(b) Waiver of Consequential Damages. IN NO EVENT SHALL ELLEVATION OR ITS LICENSORS OR SUPPLIERS BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF DATA OR LOSS OF PROFITS, WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF ELLEVATION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15. Notices. Any notice, demand or other communication required or permitted to be given under this Agreement, with the exception of notice or communication pursuant to sections 7.1 and 10, must be in writing, properly addressed to the party to receive notice at the address for notice set forth beneath its signature on the signature page hereto or to such other address or addresses for notice as either party may hereafter designate in writing to the other party given in the manner required herein, and will be deemed given and received: (i) upon receipt if delivered personally or by facsimile with confirmed receipt, (ii) on the next business day after delivery to a nationally recognized overnight courier service, and (iii) on the third business day after deposit with the United States Postal Service if sent by registered or certified mail, return receipt requested.

16. Miscellaneous.

(a) Legality and Severability. In the event a court of competent jurisdiction finds any provision of this Agreement to be illegal or unenforceable, the parties agree that the court shall modify such provision(s) to make such provision(s) and this Agreement valid and enforceable. The provisions of this Agreement are severable, and any illegal or unenforceable provision, or any modification by any court, shall not affect the remainder of this Agreement, which shall continue at all times to be valid and enforceable.

(b) Entire Agreement; Modification. This Agreement and any attachments, together with the Ellevation Platform Terms of Use and Data Privacy Policy constitute the entire understanding between the parties regarding the subject matters addressed in this Agreement and supersedes any prior oral or written agreements, promises, representations, warranties, or inducements between or by the parties regarding such subject matters. The attachments to this Agreement are intended to supplement this Agreement and accordingly, this Agreement and the attachments should be interpreted as consistent to the extent possible; however, if there is a conflict between any attachment and the terms of this Agreement, the terms set forth in this Agreement shall control. This Agreement can only be modified by a writing signed by both parties.

(c) Governing Law. This Agreement shall be governed by the laws of the state where Customer is located without regard to the conflict of law provisions of such state.

(d) Review and Voluntariness of Agreement. The parties each acknowledge that each (i) has had a sufficient and reasonable amount of time in which to review and consider this Agreement,

(ii) has the full legal capacity and authority to enter into this Agreement, (iii) has carefully read, and has fully and completely understood, all of the provisions of this Agreement and their meaning, intent, and legal effect, and (iv) has knowingly and voluntarily entered into this Agreement pursuant to any necessary approval procedures or protocols.

(e) Non-Waiver. The failure of the parties to insist upon or enforce strict performance of any provision of this Agreement or to exercise any right or remedy thereunder will not be construed as a waiver by such party to assert or rely upon any such provision, right, or remedy in that or any other instance.

(f) Open Records Laws. Ellevation acknowledges that this Agreement may be subject to certain laws regarding access to government records in the state where Customer is located.

(g) Assignment. This Agreement may not be assigned, nor may any assignment of monies due, or to become due to Ellevation, be assigned without the prior written agreement of Customer; provided, however, either party may assign this contract and its rights and obligations hereunder to a successor by way of merger, consolidation, or acquisition of all or substantially all of the assets or business of Ellevation so long as such successor shall agree to be bound by all of the terms and conditions hereof. This Agreement shall be binding upon and benefit the parties to this Agreement and their respective heirs, successors, or assigns.

(i) Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or electronically by the parties will constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or electronically will be deemed to be their original signatures for any purpose whatsoever.

(j) Force Majeure.

If by reason of labor disputes, strikes, lockouts, riots, war, inability to obtain labor or materials, earthquake, fire or other action of the elements accidents, Internet service provider failures or delays, governmental restrictions, appropriations or other causes beyond the reasonable control of a party hereto (each, a "**Force Majeure Event**"), either party is unable to perform in whole or in part its obligations as set forth in this Agreement, excluding any obligations to make payments hereunder, then such party will be relieved of those obligations to the extent it is so unable to perform and such inability to perform will not make such party liable to the other party. Neither party will be liable for any losses, injury, delay or damages suffered or incurred by the other party due to a Force Majeure Event; provided, however, payment of any amount due hereunder shall not be excused by a Force Majeure Event.

[Signature Page Follows]



Inexpensive Tools for Today's EL Professionals

IN WITNESS WHEREOF, the persons signing below acknowledge and agree that notwithstanding the date of the execution hereof, this Service Agreement shall be effective from and after the 08/01/2018 - 07/31/2019

CUSTOMER:

Boone County Schools

[Print District Name]

Boone County Schools

Signature

Geniene Delahunty

Printed Name

EL Coordinator

Title

ELLEVATION:

ELLEVATION INC.

Edward Rice

Signature

Edward Rice

Printed Name

President

Title

Send notices to:

Ellevation Inc.

Attention: Edward Rice

P.O. Box 961870

Boston, MA 02196

Phone: 617-307-5755

Fax: 617-812-5686

Ellevation Scope of Work

I. Overview

This District Scope of Work ("SOW") is made pursuant to the Agreement between Ellevation and Boone County Schools ("District"), and describes the scope of the services for the next period of the Agreement term. The products and services to be provided by Ellevation pursuant to this SOW and the Agreement are sometimes referred to herein collectively as the "Program." The term of this SOW shall commence on the Effective Date and shall continue for the term of the Agreement.

II. Purpose and Description of Services

The purpose of this SOW is to outline the scope for the implementation and ongoing support of Ellevation. In your journey with Ellevation, there are three important resources that will help ensure the best possible experience with our software:

- Your **Account Manager (AM)** manages the ongoing customer relationship, ensures the partner is getting the most out of Ellevation via engagement consulting and demos of additional features, supports the buying process, and directs users to resources that optimize their experience.
- Your **Implementation Manager (IM)** will work closely with the District to provide project leadership and consulting during periods of software implementation. . The IM is accountable for delivering Ellevation software configured to District specifications and working closely with district leadership to ensure effective implementation.
- Ellevation's **Help Center** and our **Support and Data Specialists** work with the District as various configuration, data, and troubleshooting needs come up. Our Help Center ensures that the District is connected with the appropriate Support or Data Specialist to ensure issues are resolved effectively and efficiently.

To the extent you require implementation services over the course of the agreement term, Ellevation's Partner Support Organization utilizes a six-phase implementation process with clearly defined steps, deliverables, and timeframes to deploy Ellevation. The six phases of our implementation process will be lead by your Implementation Manager and includes:

1. Plan: Confirm goals and priorities and agree on a kick-off meeting date.
2. Discover: Understand match between Customer program needs and Ellevation solution.
3. Design: Configure Ellevation to meet unique program needs of the Customer and import data.
4. Qualify: Ensure that data and configurations are ready to be deployed for training.
5. Deploy: Train users and deploy Ellevation for use by Customer.
6. Support: Monitor usage and adoption post-training.

III. General Assumptions

1. During the first year of the Agreement, an Ellevation Implementation Manager (IM) will be assigned based on confirmed start date and will be available for completion of implementation items as outlined in this Customer Scope of Work.
 2. Implementation services will be delivered remotely as a standard. In the event that the Customer requests additional on site meetings or if travel is necessary for any reason, travel costs may be billed to the Customer at actual amounts. [REDACTED]
 3. Customer must identify a designated Implementation Project Lead before the project kickoff meeting. This person will be Ellevation's primary implementation contact and must be available
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- throughout the duration of the implementation effort. This role is generally the same person who will become the primary Ellevation Site Administrator. ☐
4. Services shall be based on the deliverables agreed to between the parties and described in this document. Precise dates will be reflected in the status updates provided by the Ellevation IM and any associated meeting agendas.
 5. Any changes to the scope or timelines of the project must first be reviewed and approved by the Ellevation IM and the Customer Implementation Project Lead prior to changes being made to the project plan.
 6. District will comply with all data format specifications required to load data into Ellevation.
 7. District will provide data and information requested by Ellevation in a timely and efficient manner.
 8. Ellevation expects that all districts will set up an automated SFTP file transfer for student, staff, and schedule data. However, we know that some data types cannot be included in this automation (for example, annual ELP test scores). As such, Ellevation's Data Integration team stands ready to upload required data files manually. *Note: Ellevation may, in its sole discretion and subject to the availability of technical resources, enable API use in place of SFTP transfer.*
 9. Ellevation will complete up to 4 manual data loads of each type of data that is not automated per year (including Student Demographic, Staff Roster, Schedule Data, Annual Standardized Test Scores, and ELP Test Scores).
 10. Ellevation will load all data files within 12 business days.
 11. The Ellevation AM will provide the appropriate procedures, guidelines, standards, reference materials, and system/application documentation to the Customer as needed throughout the year. ☐
 12. All pre-paid trainings must be scheduled and conducted within 12 months of original purchase and are non-refundable after the 12-month period.
 13. Customer training should be requested at least four (4) weeks in advance of the desired training date.
 14. Upon receipt of Customer training request, Ellevation will confirm training dates within five (5) business days or suggest alternate dates.
 15. All Customer data must be loaded and QA'd at least two (2) weeks in advance of Customer training. If data has not been QA'd and validated, Ellevation reserves the right to postpone training or train on a demo database. This reflects the importance of training educators using actual and accurate student data.
 16. Training that is rescheduled at the Customer's request within two (2) weeks of a confirmed training date may result in additional travel costs, and travel costs may be billed to the Customer.

Henderson, Tina M

From: Delahunty, Geniene P
Sent: Monday, June 18, 2018 2:47 PM
To: Henderson, Tina M; Knaley, Tonya
Subject: Discount if paid by 6/30
Attachments: Boone 2018 Renewal - Due by 6_30_2018.pdf

Please use any remaining C monies.

Dr. Geniene Delahunty
(Ja-neen De-la-hun-tee)

EL Coordinator
Learning Support Services
859-283-3225
Cell: 513-578-5816
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Voxer @gdelah336



Boone County Schools



#Boone2020



