

Ellevation Inc. Order Form - Q-23372

This Order Form is being entered into between Ellevation Inc., having an address at 38 Chauncy Street, Boston, Massachusetts 02111 ("Ellevation") and the Company Name identified as "Customer" below, pursuant to the parties' Master Services Agreement dated 8/1/2021 ("MSA"). In the event of any conflict between this Order Form and the MSA, the terms of this Order Form shall control. This Order Form is effective as of the Subscription Start Date set forth below.

Company: Ellevation Education	Customer: Boone County Schools, KY
Representative: Tony DeJesus	Contact Name: Geniene Piche
Email: tony.dejesus@ellevationeducation.com	Email: geniene.delahunty@boone.kyschools.us
Phone: 617-307-5755	Phone: (859) 283-3225
Address: 38 Chauncy St, 9th Floor, Boston, MA 02111	Address: 8330 US Highway 42, Florence, KY 41042
Start Date: 8/1/2021	End Date: 7/31/2022

Subscription Fees

Product	Quantity	Unit Price	Total Fees
Ellevation Platform (Start Date: 08/01/2021)	1,455	\$13.50	\$23,061.75
Subscription Total:			\$23,061.75

Services Fees

Services Total:	\$0.00
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Total Investment - Q-23372

Grand Total:	\$23,061.75
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Invoicing Schedule: Up Front, In Full

Payment Term: Net 30

Contract Term: 12

ELLELEVATION INC.

By (Signature): _____

Name (Print): _____

Title: _____

Date: _____

Boone County Schools, KY

By (Signature): _____

Name (Print): Geniene Piche

Title: _____

Date: _____

This Master Services Agreement (this "Agreement") is dated as of 8/1/2021 ("Effective Date") by and between Ellevation Inc., a Delaware corporation ("Ellevation"), and Boone County Schools, KY ("Customer"). Ellevation and Customer are each referred to individually as a "Party" and collectively the "Parties" hereto.

1 Definitions.

1.1 **"System"** means Ellevation's proprietary, Internet-delivered SaaS platform of servers, software and related technology that is owned and operated by Ellevation and furnished to Customer under this Agreement. The System provides Customer the ability to: (a) use Ellevation's proprietary data management framework for English Language Learners ("**ELLs**"); (b) access reporting tools related to the productivity and performance of Customer's ELLs; (c) utilize instructional content for Customer's ELLs; and (d) provide Customer's ELLs with tools to improve language acquisition.

1.2 **"Customer User"** means any of Customer's authorized users of the System.

2 **Services.** Ellevation shall perform the services listed in the Order Form and/or described in any Statement of Work ("**SOW**") that may be agreed to by both Parties from time to time (the "Services"), with any such Order Form or SOW incorporated into this Agreement by reference.

3 **Fees and Payment.** Customer will pay the fees as set forth in the Order Form or SOW. All invoices are payable within 30 days following receipt by Customer.

4 **Term.** The term of this Agreement shall be one year commencing on the Effective Date, and shall continue for so long as Ellevation continues to provide the System and/or Services to the Customer pursuant to a valid Order Form or SOW (the "Term"). The term of any particular Services is as provided on the Order Form or SOW.

5 License Grant

5.1 During the Term and subject to the terms and conditions of this Agreement, Ellevation grants Customer a worldwide, non-exclusive, non-transferable right to access and use the features and functionality of the System solely for Customer's internal educational purposes. All rights not specifically granted in this Agreement are fully reserved by Ellevation.

6 Restrictions

6.1 **Prohibited Use** Customer will not, and will ensure that Customer Users do not, (a) use the System other than in compliance with this Agreement and applicable federal, state, and local laws; (b) frame, distribute, resell, or permit access to the System by any third party; (c) interfere with the System or disrupt any other users' access to the System; (d) attempt to gain unauthorized access to the System, or attempt to discover the underlying source code or structure of the System, or otherwise reverse engineer the System; (f) submit to the System any content or data that is false, misleading, defamatory or threatening; infringing of intellectual property rights; reasonably deemed to involve moral turpitude or that contains mass mailings or any form of "spam"; (g) submit to the System any data or code that contains a time bomb, virus, or any other malware that is designed to delete, disable or otherwise inhibit or harm any element of the System, or which is intended to provide unauthorized access to the System; or (h) use any robot, spider, data scraping or extraction tool or similar mechanism with respect to the System.

6.2 **Customer Responsibilities** Customer must comply with, and ensure that its Customer Users comply with, the Ellevation Terms of Use found at <https://ellevationeducation.com/platform-legal-notice>, as well as ensure that: (a) Customer provides true, accurate, current and complete information to create and maintain accounts; (b) neither Customer nor any Customer User circumvents or otherwise interferes with any user authentication or security mechanism used by Ellevation; (c) Customer Users maintain the confidentiality of their usernames and passwords; (d) neither Customer nor any Customer User will impersonate another user of the System or provide false identity information to gain access to or use the System; and (e) Customer immediately notifies Ellevation of any known or suspected unauthorized access to Customer or Customer User accounts or compromise of account credentials.

7 Ownership and Rights

7.1 **Ownership of Customer Content** Customer retains all right, title and interest in (a) any data, files, images, and other content that Customer or a Customer User uploads or submits to the System pursuant to this Agreement; and (b) any reports produced by Customer in connection with use of the System (collectively, "**Customer Content**").

7.2 **Limited Use of Customer Content by Ellevation** During the Term, Customer grants Ellevation the right to use and transmit the Customer Content for purposes of providing the Services. During the Term and thereafter, Customer grants Ellevation the right to use the Customer Content on an aggregated, de-identified basis (a) to develop and improve its products; (b) for the purposes of adaptive and customized learning; and (c) to demonstrate the effectiveness of its products.

7.3 **Ownership of System** The Services, including all trademarks, service marks, logos, documents, graphics, content, and/or other materials viewed or obtained from or through the Services (collectively, "**Service Materials**"), are owned and/or licensed by Ellevation and are protected by copyright and other intellectual property rights. Customer has no rights to transfer, reproduce, or prepare any derivative works with respect to the Services, or to disclose confidential information pertaining to the Services. This Agreement does not convey any right of ownership in or related to the Service or other intellectual property owned by Ellevation.

- 7.4 **Feedback** Customer may, at its option, provide to Ellevation feedback or suggestions for enhancement concerning the System ("**Feedback**"), and Ellevation will have a perpetual right to use and incorporate Feedback into the System without any compensation or other obligation to Customer. Customer shall not gain any right, title or interest in the System or Ellevation's IP as a result of its furnishing or Ellevation's use of Feedback.
- 8 **Confidentiality. "Confidential Information"** of a Party ("**Disclosing Party**") means all financial, technical, or business information of the Disclosing Party that the Disclosing Party designates as confidential or that the other party ("**Receiving Party**") reasonably should understand to be confidential based on the nature of the information or the circumstances surrounding its disclosure. Without limiting the generality of the foregoing, Confidential Information includes (but is not limited to) personally identifiable student information; the Fees contained in any Order Form or SOW; and Ellevation's IP and other proprietary tools, features and methodologies. Confidential Information does not include any information that (a) is or becomes generally known to the public without the Receiving Party's breach of any obligation owed to the Disclosing Party; (b) was independently developed by the Receiving Party without the Receiving Party's breach of any obligation owed to the Disclosing Party; or (c) is received from a third party who obtained such Confidential Information without any breach of any obligation owed to the Disclosing Party. Except as expressly permitted in this Agreement or by written consent of the Disclosing Party, the Receiving Party will not disclose, duplicate, publish, transfer or otherwise make available Confidential Information of the Disclosing Party in any form to any person or entity. The Receiving Party will not use Confidential Information except to perform its obligations under this Agreement. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to the extent required by law, provided that the Receiving Party shall (x) give the Disclosing Party prior notice of such disclosure so as to afford the Disclosing Party a reasonable opportunity to appear, object, and obtain a protective order or other appropriate relief regarding such disclosure; (y) use diligent efforts to limit disclosure and to obtain confidential treatment or a protective order; and (z) allow the Disclosing Party to participate in the proceeding. Further, the Receiving Party will return or destroy all Confidential Information upon the Disclosing Party's request at any time, and/or after the termination or expiration of this Agreement, and (if requested by the Disclosing Party) certify such return or destruction in writing.
- 9 **Data Protection**
- 9.1 **Privacy Policy** Ellevation maintains a Privacy Policy found at <https://ellevationeducation.com/platform-privacy-policy> and incorporated into this Agreement. Ellevation reserves the right to modify the Privacy Policy in accordance with the procedure outlined in the Privacy Policy.
- 9.2 **Family Educational Rights and Privacy Act** Customers subject to the Family Educational Rights and Privacy Act, 34 C.F.R. §99 et. seq. ("**FERPA**"), appoint Ellevation a "school official" as that term is used in FERPA, and determine that Ellevation has a "legitimate educational interest" for the purpose of carrying out its responsibilities under this Agreement. Ellevation shall be bound by the relevant provisions of FERPA, including that it will remain under the "direct control" of Customer with respect to its use and maintenance of "education records" as that term is defined in FERPA. Ellevation will use personally identifiable student data only as necessary to fulfill the Services in performance of this Agreement, and will only share personally identifiable student data with its third-party vendors as necessary to fulfill the Services in performance of this Agreement.
- 9.3 **Children's Online Privacy Protection Act ("COPPA")** If Customer purchases Services available for use by students, Customer will be responsible for obtaining verifiable parent consent prior to making such Services available to its students under the age of 13. Ellevation shall comply with its responsibilities under COPPA.
- 9.4 **Data Security** Ellevation deploys security precautions intended to help maintain the confidentiality, integrity, and availability of Customer data stored by Ellevation, including use of firewalls, encryption, authentication technologies and background screenings for all employees. However, the internet is not perfectly secure and Ellevation is not responsible for security incidents not reasonably foreseeable or reasonably within its control. Customer specifically shall not provide to Ellevation, or store on the System, the Social Security number, driver's license or state-issued identification card number, financial account number, or credit or debit card number of any Customer student or employee.
- 9.5 **Notification of Breach** Ellevation shall notify Customer within 48 hours of determination that a data breach impacting Customer has occurred. Ellevation shall be responsible for the direct costs associated with a breach not caused by Customer or Customer Users.
- 9.6 **Legal Requests for Data** If Ellevation receives a court order or subpoena for Customer Content, Ellevation shall provide the Customer with a copy of such court order or subpoena within two (2) business days of its receipt, unless legally prohibited from doing so.
- 10 **Representation and Warranties; Disclaimers**
- 10.1 **Ellevation Representations and Warranties** Ellevation represents and warrants that (a) it has the necessary authority to enter into this Agreement; (b) it will provide the System and related services in a professional and workmanlike manner and in accordance with the specifications set forth in any Order Form or SOW; and (c) it will comply with all applicable laws.
- 10.2 **Customer Representations and Warranties** Customer represents and warrants that (a) it has the necessary authority to enter into this Agreement; (b) it has all rights, permissions and consents necessary to submit all Customer Content to the System and to grant Ellevation the rights to use Customer Content as set forth in this Agreement; (c) any

material uploaded to the System does not contain anything that is defamatory, libelous, infringes upon any third party intellectual property rights, or violates any confidentiality obligations Customer has with a third party; and (d) it will comply with all applicable laws.

- 10.3 **Ellevation Disclaimer** Customer acknowledges that, as an internet-delivered software application, the System may experience periods of downtime, including (but not limited to) due to scheduled maintenance and third-party service outages. Accordingly, ELLEVATION DOES NOT WARRANT THAT THE SYSTEM WILL BE ERROR-FREE OR OPERATE WITHOUT INTERRUPTIONS OR DOWNTIME. ELLEVATION MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SYSTEM, INCLUDING ITS DOCUMENTATION, THE SYSTEM SOFTWARE, OR ANY DATA OR CONTENT MADE AVAILABLE THROUGH THE SYSTEM. ELLEVATION SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ACCURACY.
- 11 **Insurance.** Ellevation shall provide professional liability insurance of no less than \$1,000,000 per incident and \$2,000,000 in the aggregate. Upon written request, Ellevation shall file with the Customer a Certificate of Insurance, that includes the liability coverage limits, dates of coverage, and names the District as an additional insured.
- 12 **Termination.**
- 12.1 **Termination** Either party may terminate this Agreement (a) immediately if the other party breaches any material provision and fails to cure its breach within 20 days after receiving the other party's written notice identifying the breach, or (b) for any or no reason, upon 60 days' prior written notice. Nevertheless, the Agreement will remain in effect for as long as Ellevation is continuing to provide the System or Services to the Customer pursuant to a valid Order Form or SOW. In addition, Ellevation may suspend Customer's access to the Services immediately if Customer fails to make a payment more than 30 days following its due date.
- 12.2 **Treatment of Customer Content at Termination** Customer shall have 30 days following the termination or expiration of this Agreement to provide Ellevation with a written request for a one-time, delimited file export of its data from the System via SFTP. Regardless of whether Customer makes such a written request, and except as otherwise provided in this Agreement, within 90 days of the termination or expiration of this Agreement Ellevation will securely destroy any and all of Customer's personally identifiable student data stored in the System, including any such data stored in Ellevation's backup systems.
- 13 **Indemnification**
- 13.1 Ellevation will defend, indemnify and hold harmless Customer and its employees and agents from and against any third party claim, demand or action, and all resulting damages, settlement amounts, penalties, costs and expenses, to the extent such claim, demand or action alleges that the System, or Customer's use thereof in accordance with this Agreement, infringes or violates any copyright, trademark, U.S. patent, or other proprietary right of any third party; provided, that Ellevation will not be obligated under this Section to the extent any such infringement or violation arises from use of the System in combination with technology or services not provided by Ellevation.
- 13.2 Unless prohibited by applicable law, Customer will defend, indemnify and hold harmless Ellevation and its corporate affiliates, directors, officers, employees, successors, assigns and agents from and against any third party claim, demand or action, and all resulting damages, settlement amounts, penalties, costs and expenses, that arises out of or relates to Customer Content, including claims that Customer Content infringes or violates any intellectual property or proprietary right of a third party, violates any confidentiality obligation owed to a third party, or violates any applicable law or regulation; provided, that Customer will not be obligated under this Section to the extent any such claim arises from Ellevation's use of Customer Content in violation of this Agreement.
- 14 **LIMITATION OF LIABILITY. NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES IN CONNECTION WITH ANY CLAIM OF ANY NATURE ARISING UNDER THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN GIVEN ADVANCE NOTICE OF SUCH POSSIBLE DAMAGES. IN ADDITION, NEITHER PARTY'S AGGREGATE LIABILITY FOR ALL CLAIMS OF ANY NATURE ARISING OUT OF THIS AGREEMENT (EXCLUDING ITS OBLIGATIONS OF CONFIDENTIALITY AND INDEMNIFICATION) WILL NOT EXCEED THE FEES ACTUALLY PAID TO ELLEVATION UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.**
- 15 **Notices.** All notices under this Agreement must be in writing and sent via email, if to Ellevation, to 'notices@ellevationeducation.com' or, if to Customer, at the email address provided on the Order Form.
- 16 **Entire Agreement.** The Agreement together with any Order Form, SOW and the Terms of Use, represents the entire agreement between the parties regarding Customer's use of the System and related 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.
- 17 **Assignment.** Ellevation may not assign this Agreement without Customer's prior written consent, not to be unreasonably withheld; provided, however, that no consent shall be required for the assignment of this Agreement to the acquirer of all or substantially all of Ellevation's assets, provided that such successor agrees to be bound by all of the terms and conditions hereof.
- 18 **Force Majeure.** Except for Customer's obligation to make payments hereunder, neither party shall be liable for delay or default under this Agreement if caused by conditions beyond its reasonable control, whether or not foreseeable (e.g., technology malfunctions, outages of Internet Service; outages in third party hosted services), or any other Force

Majeure events. “**Force Majeure**” means an armed conflict, flood, epidemic, pandemic, labor strike or shortage, governmental decree or regulation, court order, severe weather, fire, earthquake, act of terrorism, failure of suppliers, or unavailability of communications transport facilities.

19 **Miscellaneous.** 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. If a court of competent jurisdiction finds any provision of this Agreement to be illegal or unenforceable, the parties intend that the court shall modify such provision to make such provision 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. This Agreement can only be modified by a writing signed by both parties. 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. 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 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.

ELLE VATION INC.

By (Signature): _____
Name (Print): _____
Title: _____
Date: _____

Boone County Schools, KY

By (Signature): _____
Geniene Piche
Name (Print): _____
Title: _____
Date: _____