

Curriculum Associates, LLC Price Quote - Q-48294

Version: 1

Quote Date: 6/7/2024

Quote Expiration Date: 8/31/2024

V=1521

This price quote from Curriculum Associates, LLC having an address at 153 Rangeway Road, North Billerica, MA 01862 ("Company") has been prepared for the Customer Name identified as "Customer" below. Customer's use of Ellevation subscriptions shall be subject to the Ellevation Terms and Conditions of Use, which can be found at <https://ellevationeducation.com/platform-legal-notice>.

Company: Curriculum Associates, LLC
Representative: Erica Williams
Email: erica.williams@ellevationeducation.com
Phone: 617-307-5755
Address: 153 Rangeway Road,
North Billerica, MA 01862
Start Date: 9/1/2024

Customer: Fayette County Public Schools, KY
Contact Name: Rose Santiago
Email: rose.santiago@fayette.kyschools.us
Phone: (859) 381-4224
Address: 450 Park Place,
Lexington, KY 40511
End Date: 8/31/2025

Subscription Fees

Product	Quantity	Unit Price	Total Fees
Strategies	7,663	\$15.00	\$114,945.00
Subscription Total:			\$114,945.00

Services Fees

Product	Quantity	Unit Price	Training Product	Total Fees
Strategies Data/Implementation	1	\$17,241.75		\$17,241.75
Online Training Hour	7	\$1,250.00		\$8,750.00
Online Webinar Training - 1 Hr (Strategies)	5	\$1,250.00	Strategies	\$6,250.00
Services Total:				\$32,241.75

Total Investment - Q-48294

Grand Total:	\$147,186.75
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Invoicing Schedule: Up Front, In Full

Payment Term: Net 30

Contract Term: 12

- Account Number: 4418064408 | Account Name: Curriculum Associates, LLC
- Bank Name: Wells Fargo Bank - San Francisco, CA
- ABA Routing: 121000248
- Tax ID: 26-3954988

To the extent your purchase is subject to sales tax, tax will be applied at final invoicing. If tax exempt, please submit valid exemption certificate with PO and quote in order to avoid processing delays. Exemption certificates can also be submitted to exempt@cainc.com.

To place an order - Please submit this quote with your purchase order to your Ellevation Sales Rep at: erica.williams@ellevationeducation.com

CONTRACT

THIS CONTRACT is entered into this 29 day of May, 2024, by and between the **BOARD OF EDUCATION OF FAYETTE COUNTY, KENTUCKY**, 450 Park Place, Lexington, Kentucky 40511 ("Board") and [Curriculum Associates, LLC 153 Rangeway Road, North Billerica, MA 01862 ("Second Party").

A. PARTIES:

The Board of Education of Fayette County, Kentucky, Multilingual Department has established the need to have access to English learner program instructions tools and has determined that this need cannot be met by existing district staff.

[Curriculum Associates, LLC provides Strategies provides a comprehensive English learner program of instructional tools across three main cloud-based software solutions to support administrators, specialist, teachers, and students and has expertise or needed products as described herein.

B. PURPOSE:

The purpose of this contract is to improve the availability of [Strategies provides a comprehensive English learner program of instructional tools across three main cloud-based software solutions to support administrators, specialist, teachers, and students.

NOW, THEREFORE, for and in consideration of the mutual promises set out herein, it is hereby agreed by and between the parties hereto as follows:

1. The Second Party shall provide to the [Multilingual Department], as an independent contractor, services under the direction of Rose Santiago.
2. The second party shall provide . a comprehensive English learner program of instructional tools across three main cloud-based software solutions to support administrators, specialist, teachers, and students.
3. The Board agrees to pay the Second Party for the services/products provided in this contract the amount of \$ 147,186.75 . Additional expenses to be reimbursed are **none**, with a total amount of this contract not exceeding \$ **147,186.75**
4. The Second Party shall provide to the Fayette County Board of Education an invoice for services rendered under this contract and any agreed upon expenses to be reimbursed. Unless otherwise stated, travel and per diem shall be reimbursed based upon the district's current travel policies.
5. The Second Party is not debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."
6. This contract may be re-negotiated based upon, but not limited to, increases in services to participants. Any modifications shall be agreed to in writing and signed by both parties.
7. The staff providing services to the Board herein are employees of the Second Party and shall not represent to anyone that they are employees or agents of the Board.
8. Either party shall have the right to terminate this agreement at any time upon a fourteen (14) day written notice, either personally delivered or served by some form of return receipt mail evidencing delivery, to the other party.
9. Each of the parties agrees to comply with all applicable law concerning the performance of the provisions of this contract.
10. The Second Party certifies that it shall not discriminate in any of the services performed in

connection with this contract or in any program or activity it operates on the basis of race, color, national origin, religion, age, creed, political affiliation, marital status, sex, or disabling condition.

11. The Second Party certifies that it has read and will comply with the Family Education Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g; 34 CFR Part 99).

12. Any contractor who is permitted access to school grounds on regularly scheduled and continuing basis pursuant to a written agreement for the purpose of providing services directly to a student or students as part of a school-sponsored program or activity must submit to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from the Cabinet for Health and Family Services ("CHFS") stating the contractor is clear to hire based on no finding of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services. The required background checks and letter from CHFS must be submitted to the FCPS Human Resources Office prior to the beginning of work. Failure to comply with this statute will be considered a breach of contract and will subject the contract to cancellation without penalty.

13. KRS 45A.455 PROHIBITS CONFLICTS OF INTEREST, GRATUITIES, AND KICKBACKS TO EMPLOYEES OF THE BOARD OF EDUCATION IN CONNECTION WITH CONTRACTS FOR SUPPLIES OR SERVICES WHETHER SUCH GRATUITIES OR KICKBACKS ARE DIRECT OR INDIRECT. KRS 45A.990 PROVIDES SEVERE PENALTIES FOR VIOLATIONS OF THE LAWS RELATING TO GRATUITIES OR KICKBACKS TO EMPLOYEES WHICH ARE DESIGNED TO SECURE A PUBLIC CONTRACT FOR SUPPLIES OR SERVICES.

14. If any section, paragraph, or clause of this contract shall be held invalid by any court of competent jurisdiction, the invalidity of said section, paragraph, or clause shall not affect any remaining provisions herein.

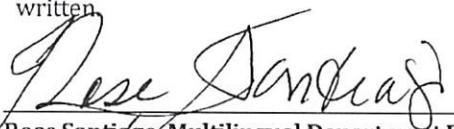
15. This contract is deemed to be made under and shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

16. Venue for any legal action filed concerning this contract shall be Fayette County, Kentucky.

17. This writing reflects the entire agreement between the parties. No change or modification of this Agreement shall be valid or binding upon the parties hereto, nor shall any waiver of any terms or conditions hereof be deemed a waiver of such terms or conditions in the future, unless such change, modification or waiver shall be in writing and signed by the parties hereto.

18. This agreement will be in effect from **August 1, 2024** , through **July 31, 2025** , unless terminated by either party as defined in Paragraph 8. The agreement may be renewed annually based upon evaluation of the effectiveness of the agreement in meeting the goals set forth herein and funding availability.

IN WITNESS WHEREOF, the parties have executed this contract the day, month, and year above written


Rose Santiago, Multilingual Department Director

6/7/2024
Date

Dr. Demetrus Liggins, Superintendent or Designee
BOARD OF EDUCATION OF FAYETTE COUNTY
KENTUCKY

Date

LEGAL IN-
CAB. IN- 

Curriculum Associates, LLC

Date



Fayette County Public Schools

Executive Summary Fayette County Public Schools Board Meeting Agenda Item

MEETING: Regular

DATE: 6/3/2024

TOPIC: Strategies by Curriculum Associates, LLC

PREPARED BY: Rose Santiago

Recommended Action on: 7/22/2024

Action Item for Vote (REGULAR MEETING)

Superintendent Prior Approval: No

Recommendation/Motion: The recommendation is for the Board of Education to approve the 2022-2023 contract with Curriculum Associates, LLC for Ellevation Strategies Tool

Background/Rationale: Strategies by Ellevation: Fayette County Public Schools' English Learners Department has contracted with Ellevation to provide Strategies, a comprehensive English learner instructional tool. Strategies provides both classroom and EL teachers data-based language acquisition tools aligned with Kentucky Academic Standards to meet the unique learning needs of EL students. As an extension of Ellevation, our district's student records platform, individual student data is matched to specific instructional strategies for every EL student in FCPS.

Strategic Priority:

- ☒ Student Achievement ☐ Diversity, Equity, Inclusion & Belonging
- ☐ Highly Effective & Culturally Responsive Workforce
- ☐ Stakeholder Engagement & Outreach ☐ Organizational Health & Efficiency

Data Considerations: Fayette County Public Schools has 7,768 students enrolled in the English Learners program and 2,108 monitored redesignated fully English proficient students.

Policy: 08.13452 Curriculum and Instruction: English as a Second Language

Fiscal Impact: \$147,186.75 – Title III

Attachments(s): Click here to enter text.

Date Received _____ Date Returned _____ Requested by: _____

Request for Superintendent's Signature Form

Please attach this form to all documents needing the signature of the Superintendent

- A. Purpose of Document-i.e. Is the document an MOU, contract, request for services, etc. (Please briefly describe the purpose/intent of the document needing to be signed. The information should be such that it will provide the Superintendent with a brief, yet comprehensive understanding of what she is being asked to sign, and why. It is suggested that you provide this information in bulleted format.)

Ellevation Strategies provides a comprehensive English learner program of instructional tools to support administrators, specialists, teachers and students.

- B. What is the fiscal amount related/connected to this document? \$147,186.75

- C. What budget will cover the expenses connected to this item? Title III

- D. Who is the immediate contact for this document? Rose Santiago

- E. What is the telephone # of this individual? 859-381-2131

- F. Is there an alternate contact? (If yes, name and contact) Martha Rodriguez
(859)381-4179

- G. Does this item require Board approval? Yes X No _____

If yes, on what date was it approved by the Board: July 22, 2024

Is there urgency for having this document signed?

If yes, by when _____

Why is there an urgency? _____

Comments from Superintendent:

**Fayette County Public Schools
Determination Form**

Completed form must be sent to Purchasing for review before going through the signature process

Date: May 28, 2024

Determination # _____
Provided by Purchasing Department

School or Department: Multilingual Department

Amount of Purchase: \$147,186.75

Vendor Name: Curriculum Associates, LLC (Ellevation)

Sole source requests may not be used for the purpose of expediting a purchase which otherwise would not qualify as a sole source or to bypass purchasing procedures to use a preferred vendor. If there are other vendors that offer similar items or services district purchasing procedures must be followed based on the amount of purchase including getting quotes, sealed bids or request for proposals.

I have determined that, pursuant to KRS 45A.380, the following item(s)/ service(s) should be obtained by non-competitive negotiation methods, since **competition is not feasible**.

Please select reason for no competition:

- ☐ An emergency exists which will cause public harm as a result of the delay in competitive procedures.
- ☒ There is a single source within a reasonable geographical area of the product or service to be procured
- ☐ A Service of a Licensed Professional, educational specialist or technician.
- ☐ The contract is for the purchase of perishable items purchased on a weekly or more frequent basis, such as fresh fruits, vegetables, fish, or meat.
- ☐ The contract is for replacement parts where the need cannot be reasonably anticipated, and stockpiling is not feasible.
- ☐ The contract relates to an enterprise in which the buying or selling by students is a part of the educational experience.
- ☐ The contract or purchase is for expenditures made on authorized trips outside of the boundaries of the local public agency.
- ☐ The contract is for proprietary items for resale.

Explanation/details of purchase and why competition is not feasible (additional pages and documentation may be attached if needed)

Ellevation EL Tool & Strategies Data: Ellevation gives visibility into our EL program's data and processes. From language proficiency information on an individual student, to roll-up reports and data views across the district. Ellevation gives us the information we need to make key programmatic decisions. We can capture key decisions about ELs, monitor progress pre- and post-exit, conduct meeting, and generate reports to share information record key decisions about ELs in Ellevation, that information is instantly available. Teachers know their students' ELP levels, descriptors, recommended accommodations, and goals, and much more. By bringing all relevant EL data into Ellevation, our teachers have the information they need to make key decisions, right at their fingertips. Proficiency scores, state assessment results, course grades, monitoring forms, exit criteria and more all available as our team makes placement, programmatic and instructional decisions.

Definitions of Noncompetitive Negotiation can be found in the FCPS Purchasing Procedures on the Purchasing website. A Determination Form must be filled out and returned to the Purchasing Office whenever a purchase of an item(s) or service(s) exceed \$4,999, quotes cannot be obtained, items cannot be obtained from an approved bid or contract and one of the above findings is met.

Requested by: _____

Originator

Date: 6/7/2024

Approved by: _____

Chief of Schools or Department Director

Date: _____ (required \$5,000 and over)

Approved by: _____

Deputy Superintendent

Date: _____ (required \$10,000 and over)

Approved by: _____

Superintendent

Date: _____ (required \$40,000 and over)

Number Assigned: _____

Director of Logistical Services/ Purchasing

Date: _____ (required \$5,000 and over)



Indispensable Tools for Today's EL Education Professionals

SOLE SOURCE STATEMENT

Fayette County Public Schools
450 Park Place
Lexington, KY 40511

May 28, 2024

To Whom It May Concern,

I am an authorized representative of Curriculum Associates, LLC and I affirm that Curriculum Associates, LLC is the sole source supplier, publisher and holder of all copyrights for all items related to the Ellevation subscription-based instructional management and training service.

Subscriptions and support services related to all Curriculum Associates, LLC data management and training products are provided only by Curriculum Associates, LLC and are not available through resellers.

We have done extensive market research and confirm there is/are no other like products or services available for purchase that would serve the same purpose or function for the above-named product or service.

Please let us know if you have any questions. Our contact information is below.

Sincerely,

Teddy Rice
President and Co-Founder
Ellevation Education
50 Milk Street, Floor 20
Boston, MA 02109
sales@ellevationeducation.com

**Request for Taxpayer
Identification Number and Certification**

Give Form to the
requester. Do not
send to the IRS.

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. Curriculum Associates, LLC	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input checked="" type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► P Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ►	
	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ (Applies to accounts maintained outside the U.S.)	
	5 Address (number, street, and apt. or suite no.) See instructions. 153 Rangeway Road, N. Billerica, MA 01862	Requester's name and address (optional)
	6 City, state, and ZIP code North Billerica, MA, 01862	
	7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)																					
Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> , later. Note: If the account is in more than one name, see the instructions for line 1. Also see <i>What Name and Number To Give the Requester</i> for guidelines on whose number to enter.																					
Social security number	Employer identification number																				
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Part II Certification	
Under penalties of perjury, I certify that:	
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and	
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and	
3. I am a U.S. citizen or other U.S. person (defined below); and	
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.	
Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.	
Sign Here	Signature of U.S. person ► <i>Liam Yarb</i> Date ► 1/3/24

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

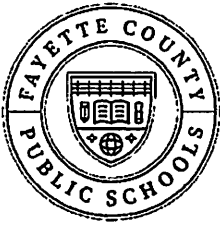
Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
 - Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
 - Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
 - Form 1099-S (proceeds from real estate transactions)
 - Form 1099-K (merchant card and third party network transactions)
 - Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
 - Form 1099-C (canceled debt)
 - Form 1099-A (acquisition or abandonment of secured property)
- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.



450 Park Place
Lexington, KY 40511
Phone: (859) 381-4100
FCPS.net

Board of Education:
Tyler Murphy, Chair
Amy Green, Vice Chair
Amanda Ferguson
Marilyn Clark
Jason Moore

Superintendent:
Demetrus Liggins, PhD

An Equal Opportunity
School District

Memorandum of Agreement: Data Sharing Agreement

PARTIES

1. Fayette County Public Schools ("FCPS") is a public school district organized and existing under and pursuant to the constitution and laws of the State of Kentucky and with a primary business address at 450 Park Place, Lexington, Kentucky 40511.
2. Curriculum Associates, LLC ("Contractor") provides License to access and use its Elevation platform [CONTRACTOR TO INSERT DESCRIPTION] with a primary place of business at 153 Rangeway Rd, North Billerica, MA 01862 [ADDRESS].

PURPOSE AND SCOPE

1. The purpose of this Data Sharing Agreement ("DSA") is to allow FCPS to provide the Contractor with student and teacher personally identifiable information (PII) data and the subsequent processing of that data.
2. This Agreement is meant to ensure that both parties adhere to the requirements concerning the use of student information protected under the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. §1232g, 34 Code of Federal Regulations Part 99; the Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. §6501-6506, 16 Code of Federal Regulations Part 312
3. This DSA shall be effective as of 7/1/2024 ("Effective Date"), terminating on 06/30/2029 and shall not continue longer than five (5) years.
4. This Agreement is deemed to be made under and shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, pursuant to KRS 61.932 and KRS 365.734.

5. This Agreement excludes any data which is freely and publicly available through other sources.

PROCESS FOR DATA TRANSFER

FCPS and the Contractor will at the appropriate time agree on a file or data sharing process that will involve the encrypted transfer of the data via the public network.

FCPS DUTIES

FCPS shall provide confidential data in compliance with all applicable federal, state, and local privacy laws, rules, and regulations.

CONTRACTOR DUTIES

The Contractor warrants that it will:

1. Use this data only for the joint project outlined above.
2. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations pertaining to data privacy and security, including but not limited to FERPA; the Kentucky Family Educational Rights and Privacy Act, KRS 160.700 et seq.; the Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.932 et seq.;
3. While in possession of this data maintain it in a secure, non-public location.
4. Allow FCPS access to any relevant records for the purposes of completing authorized audits
5. Ensure that the student data will be accessed, used and manipulated **only** by those individuals necessary for the successful implementation of the project.
6. Advise all individuals accessing the data on proper procedures for securely maintaining the data.
7. Take appropriate technical and organizational measures against the unauthorized or unlawful accessing of the data.

8. Securely delete all copies of the student data when they are no longer required. "Securely delete" means that industry-standard methods will be taken for the purpose of ensuring that no unauthorized person shall be able to reasonably locate or extract the data after the deletion date.
9. Promptly comply with any request from FCPS to amend, transfer or delete the data or a subset thereof.
10. The Contractor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purpose, and shall not sell, disclose, or otherwise process student data for any commercial purpose.
11. To the extent permitted by law, the Contractor assumes all liability for damages which may arise from its use, storage or disposal of the data. FCPS will not be liable to the Contractor for any loss, claim or demand made by the Contractor, or made against the Contractor by any other party, due to or arising from the use of the data by the Contractor, except to the extent permitted by law when caused by the gross negligence or willful misconduct of FCPS.
12. Defend, indemnify, and hold harmless FCPS its agencies, officers and employees from any and all claims of any nature, including all costs, expenses, and attorney's fees, which may in any manner result from or arise out of this Agreement, except for claims resulting from or arising out of the FCPS' sole negligence. The legal defense provided by the contracting party to FCPS under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the FCPS is necessary. The contracting party also agrees to defend, indemnify, and hold FCPS harmless for all costs, expenses, and attorneys' fees finally awarded by a court or that are included in a settlement entered into by the parties. FCPS agrees to notify the contracting party of such a claim within a reasonable time and agrees to cooperate with the contracting party in the defense and any related settlement.

DATA BREACH ACT

In the event of an unauthorized release, disclosure, or acquisition of confidential data that compromises the security, confidentiality, or integrity of the confidential data maintained by the Contractor, the Contractor shall provide notification to FCPS within seventy-two (72) hours of confirmation of the incident. The contractor shall follow the following process:

1. The security breach notification described above shall include, at a minimum, the following information to the extent known by the Contractor and as it becomes available:
 - a. The name and contact information of the individual reporting a breach subject to this section
 - b. A list of the types of personal information that were or are reasonably believed to have been subject of a breach.
 - c. If the information is not possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
 - d. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
2. The Contractor agrees to adhere to all federal and state requirements with respect to a data breach related to the confidential data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
3. The Contractor further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incidents or unauthorized acquisition or use of confidential data or any portion thereof, including personally identifiable information and agrees to provide FCPS, upon request, with a summary of said written incident response plan.
4. FCPS shall provide notice and facts surrounding the breach to the affected students, parents or guardians, or staff, as applicable.
5. In the event of a breach originating from FCPS's use of service, the Contractor shall cooperate with FCPS to the extent necessary to expeditiously secure the confidential data.
6. If the Contractor receives personal information as defined by and in accordance with Kentucky Personal Information Security and Breach Investigation Procedure and Practices Act, KRS 61.932, *et seq.*, the Contractor shall secure, protect and maintain the confidentiality of the personal information by, without limitation, complying with all requirements applicable to "non-affiliated third parties" set forth in KRS

61.932, *et seq.*, including but not limited to the following:

- a. "Personal Information" is defined in accordance with KRS 61.931 (6) as an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements.
 - i. An account, credit card number, or debit card number that in combination with any required security code, access code or password, would permit access to an account;
 - ii. A Social Security number;
 - iii. A taxpayer identification number that incorporates a Social Security number;
 - iv. A driver's license number, state identification card number or other individual identification number issued by an agency;
 - v. A passport number or other identification number issued by the United States government; or
 - vi. Individually Identifiable Information as defined in 45 C.F.R. sec.160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by FERPA.
- b. As provided in KRS 61.931 (5), a "non-affiliate third party" means any person or entity that has a contract or agreement with an agency and receives (accesses, collects or maintains) personal information from the agency pursuant to the contract or agreement.
- c. The Contractor shall not re-disclose, without the written consent of FCPS, any "personal information" as defined in KRS 61.931, or any other personally identifiable information of a student or other persons, such as employees.
- d. The Contractor agrees to cooperate with FCPS in complying with the response, mitigation, correction, investigation, and notification requirements of KRS 61.931, *et seq.*
- e. The Contractor agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.

7. If the Contractor is a cloud computing service provider (as defined in KRS 365.734(1)(b) as "any person other than an educational institution that operates a cloud computing service"), The Contractor agrees that:
 - a. The Contractor shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the Contractor receives express permission from the student's parent. The Contractor shall work with the students' school and district to determine the best method of collecting parental permission. KRS 365.734 defines "process" and "student data."
 - b. Pursuant to KRS 365.734 (2), the Contractor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purpose, and shall not sell, disclose, or otherwise process student data for any commercial purpose.
 - c. Pursuant to KRS 365.734 (3), the Contractor shall certify in writing to the agency that it will comply with KRS 365.734 (2).
8. Within 48 hours of completion of the investigation, the contracting party shall notify the above if the investigation finds that the misuse of personal information occurred or is likely to occur.

NOTICES

All notices or other communication required or permitted to be given pursuant to this agreement may be given via e-mail transmission, or certified mail, sent to the designated representatives below.

The designated representative for FCPS for this DSA is:

Name: Raymond Ross Title: Information Security Manager

Address: 450 Park Place, Lexington, KY 40511

Phone: (859) 381-3886 Email: raymond.ross@fayette.kyschools.us

The designated representative for the Contractor for this DSA is:

Name: Legal Department Title: _____

Address: 153 Rangeway Rd, North Billerica, MA 01862

Phone: 800-225-0248 Email: customercontracts@cainc.com

DATA OPT OUT

FCPS may provide a mechanism for students, parents or guardians to opt out of any data sharing agreement with any contracting party.

SUCCESSORS BOUND

This DSA is and shall be binding upon the respective successors in interest to Contractor in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business. In the event that the Contractor sells, merges, or otherwise disposes of its business to a successor during the term of this DSA, the Contractor shall provide written notice to FCPS no later than sixty (60) days after the closing date of sale, merger, or disposal. Such notice shall include a written, signed assurance that the successor will assume the obligations of the DSA and any obligations with respect to confidential data within the service agreement. FCPS has the authority to terminate the DSA if it disapproves of the successor to whom the Contractor is selling, merging, or otherwise disposing of its business.

IN WITNESS WHEREOF, FCPS and the Contractor execute this DSA as of the Effective Date above.

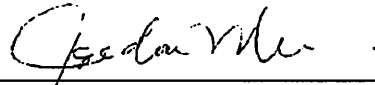
FCPS Superintendent/Designee (Print full name/title)

FCPS Superintendent/Designee (Signature)

Date

Jordan Meranus, Ellevation Division CEO

Contracting party representative (Printed)



Contracting party representative (Signature)

5/29/2024

Date