



STATE OF UTAH CONTRACT
UTAH STATE BOARD OF EDUCATION

1. CONTRACTING PARTIES: This contract is between the Utah State Board of Education, referred to as the State Entity or USBE, and the following Contractor:

Ellevation Inc
Name
38 Chauncy St. Fl 9
Address
Boston MA 02111
City State Zip

LEGAL STATUS OF CONTRACTOR
 Sole Proprietor
 Non-Profit Corporation
 For-Profit Corporation
 Partnership
 Government Agency

Point of Contact: Marc Deising Phone # 415-378-3561 Email: marc.deising@ellevationeducation.com
Vendor # VC239486 Commodity Code # 71510E, 20800E

- 2. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide: English Language Learning software
- 3. PROCUREMENT: This contract is entered into as a result of the procurement process of Solicitation # USBEZC20067, in FY2020.
- 4. CONTRACT PERIOD: Effective Date: 7/13/2020 Termination Date: 6/30/2025 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any): N/A.
- 5. CONTRACT COSTS: CONTRACTOR will be paid in accordance to attached cost sheet.
- 6. ATTACHMENT A: State of Utah Standard Terms and Conditions
ATTACHMENT B: State SOW- RESERVED
ATTACHMENT C: Cooperative Contract Ts & Cs and Cost
ATTACHMENT D: Cooperative Contract Scope of Work
ATTACHMENT E: Cooperative Contract Additional Contractor Terms
The Order of Precedence, for any conflicts, shall be resolved in favor of 1) Attachment A; 2) other USBE terms and conditions, if any; 3) Scope of Work; 4) this Contract Signature Page; then 5) Contractor terms and conditions, if any. Any limit of liability or limit of the State Entity's rights must be signed by USBE.
- 7. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
b. Utah State Procurement Code, Procurement Rules, and Contractor's response to, and, Solicitation #USBEZC20067.
- 8. Each signatory below represents that he or she has the requisite authority to enter into this contract.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR
Edward C Rice
Edward C Rice (Aug 6, 2020 16:41 EDT)

Contractor's signature Date

Edward C Rice

Type or Print Name and Title

UTAH STATE BOARD OF EDUCATION
Scott Jones
Scott Jones, Deputy Superintendent of Operations (Aug 6, 2020 15:38 MDT)

Agency's signature Date

Scott Jones, Deputy Superintendent of Operations

Type or Print Name and Title

<u>Zac Christensen</u> Agency Contact Person	<u>801-538-7538</u> Telephone Number	<u></u> Fax Number	<u>zac.christensen@schools.utah.gov</u> Email
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ATTACHMENT A: UTAH STATE BOARD OF EDUCATION STANDARD TERMS AND CONDITIONS FOR GOODS AND SERVICES

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
 - 1.1. **“Authorized Persons”** means Contractor’s employees, officers, partners, Subcontractors or other agents of Contractor who require access to Data and have a legitimate educational interest in the education records to enable the Contractor to perform its responsibilities under this Contract.
 - 1.2. **“Confidential Information”** means information that is deemed confidential under applicable state and federal laws. The State Entity reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
 - 1.3. **“Contract”** means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term “Contract” shall include any purchase orders that result from this Contract.
 - 1.4. **“Contract Signature Page(s)”** means the State of Utah cover page(s) that the State Entity and Contractor signed.
 - 1.5. **“Contractor”** means the individual or entity delivering the Procurement Item identified in this Contract. The term “Contractor” shall include Contractor’s agents, officers, employees, partners, and subcontractors.
 - 1.6. **“Data”** includes Student Personally Identifiable Information and Educator Data, and may also include Confidential Information.
 - 1.7. **“Destroy” or “Destruction”** means to remove Data such that it is not maintained in retrievable form and cannot be retrieved in the normal course of business.
 - 1.8. **“Educator Data”** includes, but is not limited to, the educator’s name; any unique identifier, including social security number; and other information that, alone or in combination, is linked or linkable to a specific educator.
 - 1.9. **“Incident”** means the potentially unauthorized access to Data that Contractor believes could reasonably result in the use, disclosure, or theft of Data within the possession or control of Contractor or Contractor’s Subcontractors.
 - 1.10. **“Metadata”** includes all information created manually or automatically to provide meaning or context to other data.
 - 1.11. **“Person”** shall have the same meaning as found in Administrative Rule R33-1-1.
 - 1.12. **“Procurement Item,” “Good,” or “Service”** means a supply, a service, construction, or technology that Contractor is required to deliver to the State Entity under this Contract.
 - 1.13. **“Response”** means the Contractor’s bid, proposal, quote, or any other document used by the Contractor to respond to the State Entity’s Solicitation.
 - 1.14. **“Solicitation”** means an invitation for bids, request for proposals, notice of a sole source procurement, request for statements of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
 - 1.15. **“State Entity”** means the department, division, office, bureau, agency, or other organization identified on the Contract Signature Page(s).
 - 1.16. **“State of Utah” or “State”** means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - 1.17. **“Student Personally Identifiable Information” or “PII”** has the same meaning as that found in U.C.A § 53E-9-301 and 34 § CFR 99.3, and includes both direct identifiers (such as a student’s or other family member’s name, address, student number, or biometric number) and indirect identifiers (such as a student’s date of birth, place of birth, or mother’s maiden name). Indirect identifiers that constitute PII also include metadata or other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.
 - 1.18. **“Subcontractor”** means a person under contract with Contractor or another subcontractor to provide services or labor as provided herein or for design or construction, including a trade contractor or specialty contractor.
 - 1.19. **“Targeted Advertising”** means advertising to a student or a student’s parent by Contractor if the advertisement is based on information or Data Contractor collected or received under this Contract.

- 1.20. **“USBE” or “Utah State Board of Education”** means the Utah State Board of Education, the board, and its elected or appointed officers, employees, agents, and authorized volunteers.
2. **GOVERNING LAW AND VENUE:** This Contract is governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** Contractor shall comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including 2 CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION AND RIGHT TO AUDIT:**
- 4.1. **Records:** Contractor shall maintain records necessary to properly account for Contractor’s compliance, performance, and the payments made by USBE to Contractor. These records shall be retained by Contractor for six years after final payment, or until all audits initiated within the six years have been completed, whichever is later.
- 4.2. **Audit:** Contractor agrees to provide, at no additional cost, the State of Utah, federal program staff, USBE staff, and their designees access to questionnaires and internal and external audit reports. This includes the right to audit all such records and Contractor’s sites and environments during normal business hours, and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to audit records and interview staff in any subcontract related to performance of this Contract.
5. **PERMITS:** Contractor shall, at its own expense, obtain all permits, licenses, and approvals necessary for the performance of this Contract.
6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT “STATUS VERIFICATION SYSTEM”:** Contractor shall comply with the requirements of the Status Verification System, also referred to as “E-verify,” as required by Utah Code § 13-47-2 et seq.
7. **DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST:** Contractor shall disclose whether any of its officers or employees are current or former officers or employees of USBE or the State of Utah. Contractor shall disclose if a current USBE employee is hired during the Contract (e.g., dual employment).
8. **INDEPENDENT CONTRACTOR:** Contractor is an independent contractor and shall not act or hold itself out as an officer, employee, or agent of USBE, except as to the specific and limited agency created by the section “Agent Designation” below.
9. **INDEMNITY:** Contractor shall be fully liable for its actions and shall fully indemnify USBE and the State of Utah from all claims arising out of Contractor’s performance, without limitation, except for the portion of any claim that is the sole fault of USBE or the State of Utah. Any limitation of Contractor’s liability shall not apply to injuries to persons, including death, or to damages to property.
10. **CONFIDENTIALITY:** Confidential Information obtained by the Contractor may only be used for the purposes identified in this contract. Contractor shall notify USBE within one calendar day of any potential or actual misuse or unauthorized disclosure of confidential information.
11. **AMENDMENTS:** Amendments to this Contract, including execution of renewal options and changes to the scope, must be made by signed written agreement of both parties.
12. **DEBARMENT/SUSPENSION:** Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, or declared ineligible by any governmental entity. Contractor shall notify USBE within 30 days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
13. **TERMINATION:**
- 13.1. **Termination for Cause:** This Contract may be terminated for cause by either party. A party in violation shall be given 10 days’ written notice to correct and cease the violations, after which this Contract may be terminated immediately.
- 13.2. **Termination for Convenience:** This Contract may be terminated without cause (for convenience) by USBE upon 30 days’ written notice to Contractor.
- 13.3. **Termination by Mutual Agreement:** USBE and Contractor may terminate this Contract, in whole or in part, at any time, by written amendment.
- 13.4. **Termination For Nonappropriation of Funds:** Upon 30 days’ written notice to Contractor, this Contract may be amended or terminated by USBE if USBE reasonably determines: (i) a change in federal or state legislation or applicable laws materially affects the ability of either party to perform under

the terms of this Contract; or (ii) a change in available funds affects USBE's ability to perform under this Contract.

13.5. Contract Closeout: USBE shall pay Contractor for all Procurement Items ordered prior to termination of this Contract and accepted by USBE. USBE's exercise of its right to terminate this Contract shall not relieve the Contractor of any liability to USBE for any damages or claims arising under this Contract. USBE shall not be liable for any penalties or liquidated damages that accrue after the effective date of termination.

13.6. Return or Destruction of Data: Following the termination of this Contract, USBE reserves the right to request a complete and secure (*i.e.*, encrypted and appropriately authenticated) download file of all data. After USBE has accepted the return of data, declines the return of data, or provides other instructions, Contractor shall immediately destroy all data. If, after 30 days from termination, USBE has failed to make a request regarding data, Contractor shall immediately destroy the data. The Contractor shall notify USBE in writing of the date the data is destroyed.

14. SALES TAX EXEMPTION: USBE is a tax-exempt organization, and Contractor shall not include sales tax in any request for payment.

15. WARRANTY OF PROCUREMENT ITEMS: Unless a longer warranty period is contained in the Contract, Contractor warrants for a period of one year that: (i) the Procurement Items perform according to all specific claims that Contractor made in its Response; (ii) the Procurement Items are suitable for the ordinary purposes for which such Procurement Items are used; (iii) the Procurement Items are suitable for any special purposes identified in the Contractor's Response; (iv) the Procurement Items are designed and manufactured in a commercially reasonable manner; (v) the Procurement Items are manufactured and in all other respects create no harm to persons or property; and (vi) the Procurement Items are free of defects. Unless otherwise specified, all Procurement Items provided shall be new and unused of the latest model or design.

16. CONTRACTOR'S INSURANCE RESPONSIBILITY:

16.1. Contractor shall maintain insurance during this Contract. All insurance policies required by this Contract shall be issued by insurance companies with an AM Best rating of A-VIII or better.

16.2. The Contractor shall maintain the following insurance coverage:

16.2.1. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction of the State of Utah at the statutory limits required by said jurisdiction.

16.2.2. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy shall be no less than \$1,000,000.00 per person per occurrence and \$3,000,000.00 aggregate.

16.2.3. If Contractor uses a vehicle in the performance of this Contract, Contractor shall maintain Commercial Automobile Liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in the performance of Services under this Contract. The minimum liability limit must be \$1,000,000.00 per occurrence, combined single limit.

16.2.4. If Contractor has access to Data, Contractor shall maintain Protected Information Liability insurance covering all loss of Data and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.

16.3. USBE shall be named as additional insured on all commercial general liability policies required of Contractor. Coverage required of Contractor shall be primary over any insurance or self-insurance program carried by Contractor or USBE.

16.4. The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without the insurer giving at least 30 days' prior notice to Contractor. Contractor shall forward such notice to the USBE's contact as listed in the Contract within seven days of Contractor's receipt of such notice.

16.5. All insurance policies secured or maintained by Contractor in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or USBE, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

16.6. Contractor shall provide to USBE certificates evidencing Contractor's insurance coverage required in this Contract within seven days following the effective date. No later than 15 days before the

expiration date of Contractor's coverage, Contractor shall deliver to USBE certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by USBE, Contractor shall, within seven days following the request by USBE, supply to USBE evidence satisfactory to USBE of compliance with the provisions of this section.

16.7. USBE reserves the right to require higher or lower insurance limits where warranted.

17. PUBLIC INFORMATION: This Contract and all related solicitation documents, purchase orders, pricing documents, and invoices are public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA),

18. DELIVERY: All deliveries under this Contract shall be F.O.B. destination with all transportation and handling charges paid by Contractor. Risk of loss or damage shall remain with Contractor until final inspection and acceptance by USBE.

19. ACCEPTANCE AND REJECTION: USBE shall have 30 days after delivery of the Procurement Items to perform an inspection of the Procurement Items to determine if the Procurement Items conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Procurement Items by USBE. If the Procurement Item is not rejected, it is presumed to be accepted.

19.1. If Contractor delivers nonconforming Procurement Items, USBE may, at its option and at Contractor's expense: (i) return the Procurement Items for a full refund; (ii) require Contractor to promptly correct or replace the nonconforming Procurement Items; or (iii) obtain replacement Procurement Items from another source, subject to Contractor being responsible for any cover costs. Contractor shall not redeliver corrected or rejected Procurement Items without first, disclosing the former rejection or requirement for correction; and second, obtaining written consent of USBE to redeliver the corrected Procurement Items. Repair, replacement, and other correction and redelivery shall be subject to the terms of this Contract.

19.2. If at any point a latent defect or fraud is identified, acceptance by USBE may be immediately nullified.

20. PAYMENT: USBE shall make payment within 60 days after it receives a correct invoice by a check sent through the mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made 60 days after USBE receives a correct invoice, then Contractor may add interest in accordance with the Utah Prompt Payment Act. If the Contractor accepts final payment without a written protest to USBE within ten business days of receipt of final payment, Contractor releases USBE and the State of Utah from all claims for payment related to the Contract. USBE's payment for the Procurement Items shall not be deemed an acceptance of the Procurement Items as identified in the Contract and does not release any claims that USBE or the State of Utah may have against Contractor. Contractor shall not charge USBE electronic payment fees.

21. INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY: Contractor represents all Procurement Items are free of all liens and encumbrances and shall indemnify USBE and the State of Utah from any claim brought against USBE or the State of Utah for infringement of a third party's intellectual property. Any limitation of Contractor's liability does not apply to this section.

22. OWNERSHIP OF PROCUREMENT ITEM:

22.1. Contractor conveys to USBE full ownership and title to all Procurement Items delivered under this Contract. Procurement Items shall be transferred to USBE as work for hire, unless otherwise agreed to in the Contract.

22.2. Unless included in the Contract, neither party has any claim to the intellectual property of the other party.

23. ASSIGNMENT: Any assignment or delegation by Contractor must be made through an amendment to the Contract.

24. DEFAULT AND REMEDIES:

24.1. Default: Any of the following events may constitute cause for USBE to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements or obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. Termination or expiration of this Contract shall not extinguish or prejudice USBE's right to enforce this Contract with respect to any default of this Contract or defect in the Procurement Items that has not been cured.

24.2. Opportunity to Cure: If the Contractor is in default for non-performance or breach, USBE may issue a written notice of default providing a ten-day period in which Contractor shall have an opportunity to cure. Contractor shall repair, replace, or reimburse USBE, at USBE's discretion, the cost to cover Procurement Items at no charge to USBE. Time allowed for cure will not diminish or eliminate

Contractor's liability for damages.

- 24.3. Additional Remedies:** If the default remains after Contractor has been provided the opportunity to cure, USBE may: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from USBE or the State of Utah; and (v) demand a full refund of any payment USBE has made to Contractor under this Contract for Procurement Items that do not conform to this Contract.
- 25. FORCE MAJEURE:** Neither party to this Contract shall be held responsible for unavoidable delay or default caused by circumstances, including fire, riot, an act of God, and/or war, that are beyond that party's reasonable control. USBE may terminate this Contract after determining such delay or default will prevent successful performance of this Contract.
- 26. PUBLICITY:** Contractor shall not use USBE's name, logo, or endorsement (implied or actual) in any advertising, marketing, or publicity materials without prior written approval from USBE.
- 27. WORK ON STATE OF UTAH PREMISES:** Contractor shall ensure that its personnel working on State of Utah premises: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized areas; (iii) follow all instructions from USBE; and (iv) if required by USBE, pass a background check prior to entering the premises. USBE may remove any individual for a violation hereunder.
- 28. CONTRACT INFORMATION:** During the duration of this Contract, USBE is required to make available contact information of Contractor to the State of Utah Department of Workforce Services pursuant to Utah Code § 35A-2-203. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies within the State of Utah.
- 29. WAIVER:** A waiver of any right under the Contract shall not be construed as a subsequent waiver of that right or as a waiver of any other right.
- 30. SUSPENSION OF WORK:** USBE may suspend and reinstate work under this Contract by written notice to Contractor.
- 31. ATTORNEY'S FEES:** The prevailing party in a judicial action to enforce rights under this Contract shall be entitled to its costs and expenses, including reasonable attorney's fees.
- 32. TRAVEL COSTS:** Unless otherwise agreed, all travel costs must be pre-approved by USBE and may be booked by USBE at State of Utah per diem rates.
- 33. DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. USBE and Contractor will mutually agree upon a mediator, or if a mutually agreeable mediator is not selected, USBE will select an independent third party, who shall be a Utah Courts certified mediator, to assist in the resolution of a dispute. USBE and Contractor agree to cooperate in good faith in mediation proceedings.
- 34. SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not diminish USBE's right to enforce any term of this Contract that by its nature would continue beyond termination, cancellation, or expiration.
- 35. SEVERABILITY:** The invalidity or unenforceability of any term of this Contract shall not affect the validity or enforceability of any other term of this Contract.
- 36. ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
- 37. GENERAL DATA PROVISIONS:**
- 37.1. DATA OWNERSHIP:** USBE retains all rights, title, and interest, including all intellectual property and proprietary rights, in and to system data, Data, and all related data and content.
- 37.2. AGENT DESIGNATION:** Contractor is hereby designated as an agent of USBE pursuant to FERPA for the limited purpose of receiving Student Personally Identifiable Information to fulfill the purposes of this contract. Contractor may use the Student Personally Identifiable Information as provided herein, but may not transfer or otherwise convey Student Personally Identifiable Information to any other Person.
- 37.3. COMPLIANCE WITH DATA PRIVACY LAWS:** Contractor, as USBE's agent, shall comply with all applicable data privacy laws, regulations, code, and rules including FERPA 20 U.S.C. § 1232g et seq. and 34 C.F.R. Part 99 et seq., the Individuals with Disabilities Education Act, 30 U.S.C. § 1400 et seq. and 34 C.F.R. Part 300 ("IDEA"), and the Utah Student Privacy and Data Protection Act , Utah Code § 53E-9 101 et seq.
- 37.4. DESTRUCTION OF DATA:** If USBE requests the Destruction of PII in Contractor's possession as a result of this Contract, Contractor shall Destroy the information within five calendar days after the

date of the request. Contractor shall provide USBE with written confirmation of the date the data is Destroyed.

37.4.1. USBE retains the right to use the established operational services to access and retrieve Data stored on Contractor's infrastructure at its sole discretion.

37.5. ACCESS TO DATA:

37.5.1. Contractor shall limit access to Data to Authorized Persons only and shall require a non-disclosure agreement be signed by all Authorized Persons prior to being granted access to Data.

37.5.2. Contractor shall maintain past and current lists of all Authorized Persons, maintain each non-disclosure agreement, and shall permit inspection of the same by USBE upon request.

37.5.3. Contractor shall maintain an audit trail for the duration of this Contract, which reflects the granting and revoking of access privileges to Authorized Persons. A copy of this audit trail may be requested by USBE from Contractor at any time and shall be provided within 10 days of the USBE request.

37.5.4. Contractor shall have strong access controls in place. Contractor shall disable and/or immediately delete unused or terminated Authorized Persons' accounts and shall periodically assess account inactivity for potential stale accounts.

37.5.5. Contractor shall provide annual, mandatory privacy and security awareness and training for all Authorized Persons, maintain past and current lists of Authorized Persons that have completed training, and permit inspection of the same by USBE upon request.

37.6. USE AND DISCLOSURE OF DATA:

37.6.1. Contractor shall not collect, use, or share Data beyond the purposes set forth as follows:

37.6.1.1. To carry out the Contractor's responsibilities listed in the Statement of Work.

37.6.2. Contractor shall share Data only for the purposes stated in the Statement of Work and only with the following entities:

37.6.2.1. Law enforcement agencies or individuals only as authorized by law or court order. Contractor receives such a request, Contractor shall notify USBE within two business days of the receipt of the request, as permitted by law.

37.6.3. If Contractor seeks to publicly release Data, Contractor must aggregate the Data by totaling the Data and reporting it at the group, cohort, school, school district, region, or state level. Contractor shall, upon request of USBE, provide USBE with a document that lists the steps and methods the Contractor shall use to de-identify the information. Any aggregate data that is publicly released without being redacted using the methods in this section shall be considered an Incident. The following methods shall be used on any aggregated reports:

37.6.3.1. Aggregate data shall be reported publicly only if there is a sufficient number of individuals represented in any demographic or subgroup so that an individual cannot be identified.

37.6.3.2. Aggregated reports shall be redacted using complementary suppression methods that remove the risk of Data being identifiable using simple mathematics or formulas.

37.6.4. Contractor shall not use Data for any secondary use, including Targeted Advertising, except under the following conditions:

37.6.4.1. For adaptive learning or customized student learning purposes.

37.6.4.2. To market an educational application or product to a parent or legal guardian of a student if Contractor did not use Data, shared by or collected per this Contract, to market the educational application or product.

37.6.4.3. To use a recommendation engine to recommend to a student (i) content that relates to learning or employment, within the third-party contractor's application, if the recommendation is not motivated by payment or other consideration from another party; or (ii) services that relate to learning or employment, within the third-party contractor's application, if the recommendation is not motivated by payment or other consideration from another party;

37.6.4.4. To respond to a student request for information or feedback, if the content of the response is not motivated by payment or other consideration from another party.

37.6.4.5. To use Data to allow or improve operability and functionality of the third-party contractor's application.

37.6.5. Contractor shall not sell or otherwise monetize Data except Data transferred through the purchase of, merger with, or otherwise acquisition of Contractors provided that all parties remain in compliance with this Contract.

37.7. SECURITY AND PROTECTION OF DATA:

37.7.1. Contractor shall notify USBE of material system changes that may negatively impact the security

of Data prior to such changes being implemented.

37.7.2. If Contractor is given Data as part of this Contract, the protection of Data shall be an integral part of the business activities of Contractor to ensure that there is no inappropriate or unauthorized use of Data. Contractor shall safeguard the confidentiality, integrity, and availability of Data.

37.7.3. Contractor shall comply with and protect and maintain Data using methods that are at least as good as or better than that established in the Utah Student Data Privacy Agreement Version 2.0 (https://sdpc.a4l.org/agreements/UT_DPA_V2.pdf)

37.7.4. Contractor shall only transmit or exchange Data via secure means (ex. HTTPS or FTPS). Contractor shall not use, store or process Data on any unencrypted portable or laptop computing device or any portable storage medium.

37.7.5. Contractor shall store and maintain all Data in data centers located only within the United States.

37.7.6. Contractor shall permit its employees and Subcontractors to access Data remotely only via a secured manner, such as Virtual Private Networks (VPN).

37.7.7. Contractor shall store all Data, as well as any backups made of that data, in encrypted form using no less than 128-bit key and include all Data as part of a designated backup and recovery process.

37.7.8. Contractor shall enforce strong password protections on all devices and networks with access to or that store Data.

37.8. INCIDENTS:

37.8.1. If Contractor becomes aware of an Incident involving Data by either Contractor or any of Contractor's Subcontractors, Contractor shall notify USBE within one calendar day and cooperate with USBE regarding recovery, remediation, and the necessity to involve law enforcement, if any.

37.8.2. Contractor shall produce a written remediation plan that includes information about the cause and extent of the Incident, and the actions Contractor will take to remediate the Incident and reduce the risk of incurring a similar type of Incident in the future. Contractor shall present its analysis and remediation plan to USBE within ten calendar days of notifying USBE of an Incident. USBE reserves the right to adjust this plan, in its sole discretion. If Contractor cannot produce its analysis and plan within the allotted time, USBE, in its sole discretion, may perform such analysis and produce a remediation plan, and Contractor shall reimburse USBE for the reasonable costs thereof.

37.8.3. In the event of an Incident, Contractor shall provide USBE or its designated representatives with access 7 days a week, 24 hours a day, for the purpose of evaluating, mitigating, or resolving the Incident.

37.8.4. Unless Contractor can establish that Contractor or any of its Subcontractors is not the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person whose personal information may have been compromised by the Incident.

37.8.5. Disclosure of Data by Contractor or any Subcontractor for any reason may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the State, its employees, and agents against any and all claims, damages, liability, and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this Contract. Notwithstanding any other provision of this Contract, Contractor shall be liable to the State for all direct, consequential, and incidental damages arising from an Incident caused by Contractor or its Subcontractors.

Attachment C:

Cooperative Contract Ts & Cs and Cost

A) Additional Terms and Conditions:

- 1) **DEFINITIONS:** “**Eligible User(s)**” means those authorized to use this Cooperative Contract and is limited to Local Education Agencies, which includes school districts, charter schools, Utah Schools for the Deaf and the Blind, and any other entity that the Utah State Board of Education has authority over.
- 2) **INVOICING:** Contractor will submit invoices within thirty (30) days after the delivery date of the Procurement Item(s) to the Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time of the invoice. It is Contractor’s obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.
- 3) **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah’s Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by an Eligible User, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the Eligible User within ten (10) business days of receipt of final payment, shall release the Eligible User from all claims and all liability to the Contractor. An Eligible User’s payment for the Procurement Item(s) and/or Services shall not be deemed an acceptance of the Procurement Item(s) and is without prejudice to any and all claims that the Eligible User may have against Contractor. Contractor shall not charge Eligible Users electronic payment fees of any kind.
- 4) **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
- 5) **ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Procurement Items based upon the same terms, conditions, and prices of this Contract.
- 6) **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Procurement Items from this Contract will be treated as individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. USBE is not responsible for any unpaid invoice.
- 7) **ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.
- 8) **END USER AGREEMENTS:** If Eligible Users are required by Contractor to sign an End User Agreement before participating in this Contract, then a copy of the End User Agreement must be

attached to this Contract as an attachment. The term of the End User Agreement shall not exceed the term of this Contract, and the End User Agreement will automatically terminate upon the completion or termination of this Contract. An End User Agreement must reference this Contract, and it may not be amended or changed unless approved in writing by USBE. Eligible Users will not be responsible or obligated for any early termination fees if the End User Agreement terminates as a result of completion or termination of this Contract.

- 9) **REPORTS:** Contractor agrees to provide an annual utilization report, reflecting number of licenses in each category to Eligible Users during the period. The report will show the dollar volume of purchases by each Eligible User. Reports are due by December 31 of each year to the program contact.

B) Cost for Cooperative Contract Users:

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Ellevation Standard Pricing and Utah Cooperative Contract Pricing for 2020/2021

# of ELs within an LEA	Ellevation Regular Pricing Per EL Student							Utah Cooperative Contract Pricing Per EL Student						
	Platform		Ellevation Basics	Strategies		Dual Language	Ellevation Math		Platform & Strategies Bundle			Ellevation Math		
	Ellevation	Trainings + Variable Charge for Data/Imp	Data & Instructional Planning Fee	Full District Strategies (per-EL price)	Trainings + Variable Charge for Data/Imp	Dual Language Resource Fee (annual, per district)	Per-Student	Per Campus	Bundle Price	Trainings + Variable Charge for Data/Imp	Savings Per EL	Utah Per-Student	Utah Per Campus	Savings
Minimum	\$6,000	\$3,900	\$2,500	\$6,000	\$2,100	\$2,000	\$65 (100 student min.)	\$8,000	\$10,000	\$5,750	16.67%	\$60 (100 student min.)	\$7,000	\$5 Savings Per EL (7.69%)
436-1000	\$13.75	\$4500 + 15%	\$2,500	\$13.75	\$1500 + 10%	\$2,000	\$65 (100 student min.)	\$8,000	\$23.00	\$6000 + 12.5%	\$4.50 (16.35%)	\$60 (100 student min.)	\$7,000	or
1001-5000	\$13.25	\$9000 + 15%	\$5,000	\$13.25	\$3000 + 10%	\$6,000	\$65 (100 student min.)	\$8,000	\$23.00	\$12,000 + 12.5%	\$3.50 (13.21%)	\$60 (100 student min.)	\$7,000	\$1000 Savings per Campus (12.5%)
>5000	\$12.75	\$12,000 +15%	\$10,000	\$12.75	\$7500 + 10%	\$15,000	\$65 (250 student min.)	\$8,000	\$23.00	\$19,500 + 12.5%	\$2.50 (9.80%)	\$60 (250 student min.)	\$7,000	

Notes:

- Ellevation Basics is required if an LEA chooses to Purchase Ellevation Strategies and/or Ellevation Math without Purchasing Ellevation Platform. This is a recurring annual fee that gives LEAs access to a more basic version of Ellevation Platform.
- Ellevation Basics cannot be purchased without the purchase of either Ellevation Strategies and/or Ellevation Math.
- If the LEA later purchases the Ellevation Platform, the "Data & Instructional Planning Fee" will be retired.
- Ellevation Math minimum varies by LEA size - starts at 100 students for small, up to 250 students for large.
- The Dual Language Resource Fee will be based on the total number of ELs within the LEA. This fee is also included in the Utah Cooperative Contract Price.

Utah Cooperative Contract Price:

- Utah LEAs that choose to purchase both products can receive a multi-product discount, by virtue of the Utah Cooperative Contract.
- The Bundle will include Ellevation Platform and Ellevation Strategies as well as the Dual Language Resources for Ellevation Strategies.
- LEAs have the option of adding on Ellevation Math at the discounted Utah Cooperative Contract Pricing only if purchased in combination with the Utah Ellevation Platform and Strategies Bundle.
- The "Trainings and Variable Charge for Data/Implementation" includes the minimum number of Online Trainings for each product dependent on the total number of ELs in a particular LEA, as follows:

# of ELs	Minimum # of Trainings
Minimum	3
436-1000	4
1001-5000	8
>5000	13

- Additional Trainings may be purchased with the following charges:

- \$1500 per online training session
- \$3500 per in-person training session (availability subject to LEA's and Ellevation's COVID-19 Travel Restrictions)

Pricing:

The Pricing indicated in this document is valid from the start of cooperative contract (July 13, 2020) until June 30, 2021, and thereafter subject to annual increases.

Ellevation Scope of Work

I. Overview

This District Scope of Work (“SOW”) is made pursuant to the Agreement between Ellevation and <<District Name>> (“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 District 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 **Partner Success Manager (PSM)** will work closely with the District to provide project leadership and consulting during periods of software implementation. The PSM 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 four-phase implementation process with clearly defined steps, deliverables, and timeframes to deploy Ellevation. The four phases of our implementation process will be lead by your Partner Success Manager and includes:

1. **Onboard:** Review the project plan, confirm implementation goals and priorities, and import data from the Student Information System (SIS).
2. **Plan:** Ensure platform configurations are in-line with district programs and policies, and will support the desired instructional practices.
3. **Launch:** Train users and deploy Ellevation for use by District.
4. **Engage:** Monitor usage and adoption of all aspects of the product post-training.

III. General Assumptions

1. During the first year of the Agreement, an Ellevation Partner Success Manager (PSM) will be assigned based on confirmed start date and will be available for completion of implementation items as outlined in this District Scope of Work.
2. Implementation services will be delivered remotely as a standard.
3. District 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

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 PSM 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 PSM and the District Implementation Project Lead.
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 Partner Success Manager will provide the appropriate procedures, guidelines, standards, reference materials, and system/application documentation to the District as needed throughout the year.
12. All pre-paid training must be scheduled and conducted within 12 months of original purchase and are non-refundable after the 12-month period.
13. District training should be requested at least four (4) weeks in advance of the desired training date.
14. Upon receipt of the District training request, Ellevation will confirm training dates within five (5) business days or suggest alternate dates.
15. All District data must be loaded and QA'd at least two (2) weeks in advance of District 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. Due to COVID-19 all trainings are currently delivered in online format. When these restrictions are lifted, LEAs will be able to purchase in-person training. If in-person training is scheduled, and an LEA requests a change that is within two (2) weeks of a confirmed training date any associated additional travel costs may be billed to the LEA.

1 Definitions.

- 1.1 The **“Platform”** is Ellevation’s proprietary, Internet-delivered SaaS platform of servers, software and related technology that is hosted, served or managed by Ellevation or Ellevation’s third-party service provider, and furnished to Customer under this Agreement. The Platform provides for the ability for Customer to: (1) utilize Ellevation’s proprietary data management system for English Language Learners or “ELLs”; (2) access reporting tools related to the productivity and performance of Customer’s ELLs; and (3) utilize instructional content for Customer’s ELLs.
- 1.2 **“Customer User”** shall mean any of Customer’s authorized users of the Platform.

2 **Services.** Ellevation agrees to deliver the software and perform the services described in any Statement of Work (“SOW”) which may be issued hereunder from time to time, and any such SOW are incorporated into this Agreement by reference (the **“Services”**).

3 **Fees and Payment.** Customer will pay the Subscription Fees and any related fees, as applicable, as set forth in Customer’s Subscription Agreement. All invoices are payable within thirty (30) calendar days following receipt by Customer. Past due amounts are subject a late payment charge, until paid, at the rate of One and a Half Percent (1.5%) per month or the maximum amount permitted by law, whichever is less.

4 Term and Renewal

4.1 **Subscription Terms.** The term of this Agreement shall be for an initial term of twelve (12) months commencing on the Effective Date of this Agreement unless otherwise expressly stated in the Agreement (“the **“Initial Subscription Term”**”). Following expiration of the Initial Subscription Term, Customer’s subscription will automatically renew for successive twelve (12) month renewal terms (each a **“Renewal Term”**) unless either party provides written notice of non-renewal at least thirty (30) calendar days prior to the expiration of the Initial Subscription Term or any subsequent Renewal Term. The Initial Subscription Term and Renewal Term(s) shall be collectively referred to herein as **“Term.”** Ellevation may raise the Subscription Fees any time after the expiration of the Initial Subscription Term with such increases effective thirty (30) days following advance written notice to Customer

4.2 **Services and Training Terms.** All training and services must be scheduled and conducted by the later of either 12 months from the purchase date or the current contract end date.

5 License Grant

5.1 **Customer Users** Ellevation will provide user account(s) for the number of authorized Customer’s Users.

5.2 **Permitted Use** During the Term of this Agreement, Ellevation hereby grants Customer a worldwide, non-exclusive, non-transferable right to access, use the features and functionality of the Platform solely for Customer’s educational purposes, subject to the terms and conditions of this Agreement. All rights not granted in this Agreement are reserved by Ellevation.

5.3 **Prohibited Use** Customer will not (and will ensure that Customer Users do not): (a) use the Platform other than in compliance with this Agreement and applicable federal, state, and local laws; (b) “frame,” distribute, resell, or permit access to the Platform by any unauthorized third party; (c) interfere with the Platform or disrupt any other user’s access to the Platform; (d) attempt to gain unauthorized access to the Platform, or attempt to discover the underlying source code or structure of the Platform, or otherwise reverse engineer the Platform; (f) submit to the Platform any content or data that is: false, misleading, defamatory, threatening, or which could otherwise constitute hate speech; 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 Platform any routine, device or other undisclosed feature, including a so-called time bomb, virus, software lock, drop dead device, malicious logic, worm, Trojan horse or trap or back door or software routine, that is designed to delete, disable, deactivate, interfere with or otherwise harm any software, program, data, device, system or service, or which is intended to provide unauthorized access or to produce unauthorized modifications; or (h) use any robot, spider, data scraping or extraction tool or similar mechanism with respect to the Platform.

Customer must also ensure that: (a) it 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 used by Ellevation; (c) Customer Users maintain the confidentiality of their usernames and passwords; and (d) that neither Customer nor any Customer User will impersonate another user of the Platform or provide false identity information to gain access to or use the Platform.

6 Ownership and Rights

6.1 **Ownership of Customer Content.** Customer retains all right, title and interest in: (i) any data, files, attachments, text, images, and other content that Customer or a Customer User uploads or submits to the Platform under this Agreement; and (ii) any reports produced by Customer in connection with use of the Platform (collectively, **“Customer Content”**).

6.2 **Limited Use of Customer Content by Ellevation.** During the Term, Customer hereby grants Ellevation the right to use and transmit the Customer Content for purposes of: (a) making Customer Content available for viewing and downloading by Customer Users. During the Term and thereafter, Customer grants Ellevation the right to use the Customer Content solely on an aggregated, de-identified basis, to (i) improve its educational products for the purposes of adaptive and customized learning; (ii) demonstrate the effectiveness of its products (in terms of

benchmarks, trends, statistics, and comparisons) for purposes of promotion, marketing, and sale of its products and services; and (iii) for the development and improvement of its educational sites, services, or applications.

6.3 Ownership of Platform. As between the parties, Ellevation retains all right, title and interest (including all intellectual property and proprietary rights therein) in and to the following but excluding any Customer Content: (a) the Platform and the technology and software used to provide it; (b) all electronic and print documentation and other content made available or collected through the Platform; and (c) all data or information contained in or derived from the Platform (collectively, "Ellevation Data"). Subsections (a), (b) and (c) are defined as the "Ellevation IP". Except as expressly set forth in this Agreement, Ellevation shall have the right to use or disclose the Ellevation IP including the Ellevation Data at its sole discretion. In addition, except for Customer's rights to access and use the Platform set forth in this Agreement, nothing in this Agreement licenses or conveys any right to the Ellevation IP to anyone, including Customer

6.4 Feedback. Ellevation will have a perpetual right but not the obligation to use and incorporate into the Platform any feedback or suggestions for enhancement that Customer provides to Ellevation concerning the Platform ("Feedback"), without any obligation of compensation. Customer hereby acknowledges that Feedback shall be considered Ellevation IP.

7 **Confidentiality and Data Security.**

7.1 Confidentiality. As used herein, the "Confidential Information" of a party (the "Disclosing Party") means all financial, technical, or business information of the Disclosing Party that the Disclosing Party designates as confidential at the time of disclosure to the other party ("Receiving Party") or that the 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, the terms and conditions of this Agreement; pricing for the Platform; and information about Ellevation's tools and features. Except as expressly permitted in this Agreement, 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 without the Disclosing Party's prior written consent. The Receiving Party will not use the Disclosing Party's Confidential Information except to perform its obligations under this Agreement (including, in the case of Ellevation, to provide the Platform).

Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to the extent required by law, provided that the Receiving Party: (a) gives 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 (if such notice is not prohibited by applicable law); (b) uses diligent efforts to limit disclosure and to obtain confidential treatment or a protective order; and (c) allows the Disclosing Party to participate in the proceeding. Further, Confidential Information does not include any information that: (x) is or becomes generally known to the public without the Receiving Party's breach of any obligation owed to the Disclosing Party; (y) was independently developed by the Receiving Party without the Receiving Party's breach of any obligation owed to the Disclosing Party; or (z) is received from a third party who obtained such Confidential Information without any third party's breach of any obligation owed to the Disclosing Party. For the sake of clarity Confidential Information does not include information independently acquired by the newsroom of or the editorial staff of Ellevation or any of its related companies. The Receiving Party will return or destroy all Confidential Information upon the Disclosing Party's request after the termination or expiration of this Agreement and (if requested by the Disclosing Party) certify such return or destruction in writing.

7.2 Confidentiality of Student Records. Customer appoints Ellevation a "school official" as that 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 as permitted pursuant to Section 6.2 of this Agreement, will only share personally identifiable student data with its third-party vendors as necessary to fulfill the Services in performance of this Agreement.

7.3 Data Security. Ellevation deploys commercially reasonable security precautions intended to protect against unauthorized access to Customer data, including Personal Information, stored by Ellevation, including use of firewalls, encryption, authentication technologies and background screenings for all employees. *Personal Information* shall mean an individual's first name and last name or first initial and last name in combination with any one or more of the following data elements that relate to such resident: (a) Social Security number; (b) driver's license number or state-issued identification card number; or (c) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a resident's financial account; provided, however, that "Personal Information" shall not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public.

7.4 Notification of Breach. Both parties agree to promptly notify the other party of any breach, or attempted breach, of security that such party knows of, or reasonably believes to know of, that may affect Customer Content on the Platform.

7.5 Legal Requests for Data. If Ellevation receives a court order or subpoena for Customer Content, Ellevation agrees to provide the Customer with a copy of such court order or subpoena within two (2) business days of its receipt of it and shall notify the Customer of the content of any testimony or information to be provided and provide the Company with copies of all documents to be produced.

8 **Representation and Warranties; Disclaimers**

8.1 Ellevation Representations and Warranties. Ellevation warrants that:

(a) it has the necessary authority to enter into this Agreement;

(b) it owns or has the right to use all intellectual property required by the Platform, including but not limited to any necessary trademark, copyright or patent rights;

(c) it will provide the Platform and related services in a professional and workmanlike manner and in accordance with the specifications set forth in any Statement of Work issued hereunder;

(d) it will comply with all applicable laws that apply to the Platform, including applicable laws regarding access to government records in the state where Customer is located; and

8.2 Customer Representations and Warranties. Customer hereby 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 Platform and to grant Ellevation the rights to use Customer Content set forth in Section 6.2; (c) any materials uploaded to the Platform 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 that apply to its performance under this Agreement.

8.3 Disclaimer. Customer acknowledges that, as an internet-delivered software application, the Platform 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 PLATFORM WILL BE ERROR-FREE OR OPERATE WITHOUT INTERRUPTIONS OR DOWNTIME. ELLEVATION MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PLATFORM, INCLUDING ITS DOCUMENTATION, THE PLATFORM SOFTWARE, OR ANY DATA OR CONTENT MADE AVAILABLE THROUGH THE PLATFORM. ELLEVATION SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ACCURACY

9 **Drug Free Workplace.** Ellevation provides a drug-free workplace for its employees, including; (i) posting in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Ellevation's workplace and disciplinary action may be taken for violations of such prohibition; (ii) stating in all job solicitations or advertisements for employees placed by or on behalf of Ellevation that it maintains a drug-free workplace; and (iii) going forward, it shall include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this Section 9, "drug-free workplace" means a site for the performance of work done in connection with this contract where the employees of Instructure are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

10 **Insurance.** Ellevation shall provide professional liability insurance with amounts of no less than \$1,000,000.00 per incident and \$2,000,000.00 per aggregate.

Upon written request, Ellevation shall file with the District a Certificate of Insurance. The Certificate of Insurance shall include the liability coverage limits, dates of coverage, coverage of the Ellevation and its agents, and a clause which names the District as an additional insured for claims arising under this Agreement.

11 **Termination.**

11.1 Termination. Either party may terminate this Agreement immediately if (i) the other party breaches any material provision and fails to cure its breach within twenty (20) days after receiving the other party's written notice identifying the breach, and/or (ii) for any or no reason, upon sixty (60) days' prior written notice. In addition, Ellevation may suspend Customer's access to the Platform immediately if Customer fails to make a payment for more than thirty (30) calendar days following its due date

11.2 Treatment of Customer Content at Termination. Customer shall have sixty (60) 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 Platform via SFTP. Regardless of whether Customer timely requests a one-time export within this 60-day period and except as otherwise provided in Section 6.2 above, within sixty (60) 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 Platform, including any such data stored in Ellevation's backup systems.

12 **Indemnification**

- 12.1 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 Platform, 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 sentence to the extent any such infringement or violation arises from use of the Platform in combination with technology or services not provided by Ellevation and/or from use of the Platform and/or the Ellevation Network in violation of the terms and conditions set forth in this Agreement.
- 12.2 To the extent permitted 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 (including reasonable outside legal costs), that arises out of or relates to Customer Content (except to the extent such claim arises from Ellevation's use of Customer Content in violation of this Agreement), including without limitation 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.
- 13 **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 TOTAL, AGGREGATE LIABILITY FOR ALL CLAIMS OF ANY NATURE ARISING OUT OF THIS AGREEMENT (EXCLUDING WITHOUT LIMITATION CLAIMS FOR INDEMNIFICATION UNDER SECTION 10) 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.**
- 14 **Notices.** All notices under this Agreement must be in writing and sent via email to notices@ellevationeducation.com and, if to Customer at the email address provided in Customer's Subscription Agreement
- 15 **Entire Agreement.** The Subscription Agreement together with these Terms and Conditions represent the entire agreement between the parties regarding Customer's use of the Platform 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
- 16 **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.
- 17 **Force Majeure.** Neither party is 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" events will mean: armed conflicts, famine, floods, Acts of God, labor strikes or shortages, governmental decree or regulation, court order, severe weather, fire, earthquake, acts of terrorism, failure of suppliers, unavailability of communications transport facilities and breakdowns in communications transport facilities; provided however, that this provision does not apply to Customer's obligations to make payments hereunder.
- 18 **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; provided that jurisdiction for any dispute that arises hereunder shall be in the state and federal courts of the Commonwealth of Massachusetts. 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. 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 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.