

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2018, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(Hereinafter referred to as "SBBC"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

ELLEVIATION INC.
(Hereinafter referred to as "VENDOR"),
whose principal place of business is
38 Chauncy Street 9th Floor
Boston, MA 02111

WHEREAS, pursuant to School Board Policy 3320, Section II, H, and the Department of Education, Rule 6A-1.012, 11(b), Florida Administrative Code as authorized by Section 1010.04(4)(a), Florida Statutes, the requirement for requesting competitive solicitation for commodities or contractual services from three or more sources is hereby waived as for the SBBC's purchase of computer software; and

WHEREAS, SBBC desires to obtain subscription of certain computer software, training and post-training implementation support from the VENDOR; and

WHEREAS, the SBBC and VENDOR desire to memorialize the terms and conditions of their agreement; and

WHEREAS, VENDOR is willing to provide SBBC with Ellevation computer software subscriptions and all training support; and

WHEREAS, VENDOR is committed to ensuring the strongest possible privacy protections for any student data managed on the Ellevation computer software platform.

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

ARTICLE 1 – RECITALS

1.0 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

2.0 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.06 of this Agreement, the term of this Agreement shall commence on **July 1, 2018** and conclude on **June 30, 2020**.

2.01 **SBBC Responsibilities – Disclosure of Education Records.**

- (a) Student information is collected to allow educators to complete required workflows and reports, help administrators and other educators make important decisions about program placement and needed resources, and help teachers learn about a student in a way that informs instruction.
- (b) SBBC shall provide VENDOR with the following student data:
1. ***Student demographics*** - name (first, middle and last), school assigned teacher, local student number, state testing ID, grade level, gender, birthdate, address (including City, State, and zip code), home phone, cell phone, place of birth, native language, nationality, ethnicity, race, classroom schedule, classroom teacher; and
 2. ***Designation and status*** - ELP Designation, LEP Status, years in US Schools; and
 3. ***Key dates*** - date in US, date enrolled in the US, date enrolled in the District, date withdrawn, date graduated, date dropped out, date entered LEP, date exited LEP, date monitoring started; and
 4. ***Status flags - homebound***; migrant, immigrant, dropped out, withdrawn, deceased, homeless, bilingual, dual language program; and
 5. Any additional data for which VENDOR has a legitimate educational interest, defined as needing the information to perform the responsibilities of this Agreement.
- (c) VENDOR is considered a "school official" with a legitimate educational interest to receive the types of information from SBBC student education records listed below for the purposes listed below. Prior written consent of the parent or student age 18 or over is needed for any types or purposes of disclosures of education records beyond those listed below.

2.02 **Confidentiality of Education Records.**

(a) Notwithstanding any provision to the contrary within this Agreement, VENDOR shall:

- 1) fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (FERPA) and its implementing regulations (34 C.F.R. Part 99), and any other state or federal law or regulation regarding the confidentiality of student information and records;

2) hold any education records in strict confidence and not use or redisclose same except as required by this Agreement or as required or permitted by law unless the parent of each student or a student age 18 or older whose education records are to be shared provides prior written consent for their release;

3) ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Agreement, and that access to education records is limited only to its employees that require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to SBBC upon request;

4) safeguard each education record through administrative, physical and technological safety standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements;

5) utilize the education records solely for the purposes of providing products and services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party;

6) notify SBBC immediately upon discovery of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at privacy@browardschools.com, and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;

7) fully cooperate with appropriate SBBC staff, including Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner;

8) prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;

9) be responsible for any fines or penalties for failure to meet breach notice requirements pursuant to federal and/or Florida law;

10) provide SBBC with the name and contact information of its employee who shall serve as SBBC's primary security contact and shall be available to assist SBBC in resolving obligations associated with a security breach of confidentiality of education records; and

11) securely erase education records from any media once any media equipment is no longer in use or is to be disposed; secure erasure will be deemed the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

(b) All education records shall remain the property of SBBC, and any party contracting with SBBC serves solely as custodian of such information pursuant to this Agreement and claims no ownership or property rights thereto and, upon termination of this Agreement shall, at SBBC's

request, return to SBBC or dispose of the education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

(c) VENDOR shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes. This section shall survive the termination of all performance required or conclusion of all obligations existing under this Agreement.

2.03 VENDOR Responsibilities:

(a) VENDOR shall provide SBBC with a software subscription, software updates, maintenance, training, and other support as identified in the Ellevation Pricing for SBBC, which is attached hereto as **Attachment A** and incorporated herein reference; and

(b) VENDOR's Ellevation computer software is subject to FERPA compliance; and

(c) VENDOR shall only use SBBC data, on both students and educators, to fulfill the obligations under this Agreement and cannot be used for other commercial purposes; and

(d) VENDOR shall not sell or share any personal data, nor do anything else with partners' data, save for delivering services through its Ellevation platform; and

(e) Any personally identifiable information about a student, which is protected under the Family Educational Rights and Privacy Act of 1974, as amended (20 U.S.C. § 1232g et seq.) and disclosed to Ellevation by SBBC or user ("FERPA Protected Data"), shall be used solely to fulfill obligations under this Agreement and shall not be disclosed to any other party without the prior written consent of the student's parent (or of the student if he/she is age 18 or older); and

(f) VENDOR shall only use personally identifiable information from students' records to enable SBBC to access and use Ellevation; and

(g) Unless SBBC expressly instructs otherwise, VENDOR shall not share or reuse personally identifiable information from education records for any other purpose; and

(h) VENDOR shall not use student personally identifiable information to target students or their families for advertising or marketing efforts or sell rosters of student information to third parties; and

(i) All personal information of students remains the property of the SBBC, and the VENDOR serves solely as custodian of such information pursuant this Agreement and claims no ownership or property rights thereto; and

(j) Upon termination of this Agreement, VENDOR shall, at SBBC's request, return to SBBC or user, or destroy, any FERPA Protected Data in its possession.

2.04 **Cost of Services.**

- (a) For Year 1, SBBC shall pay VENDOR \$615,200 in two (2) installment payments as specifically stated herein. SBBC shall pay the first installment \$340,000, upon approval by the SBBC of this Agreement and net 30 days from receipt of invoice from VENDOR. On or after July 1, 2018, SBBC shall pay the second installment of \$275,200, net 30 days from receipt of invoice from VENDOR. See **Attachment A**.
- (b) For Year 2, SBBC shall pay VENDOR net 30 days from receipt of invoice on or after July 1, 2019. Payment shall be based on the needs of SBBC and shall not exceed the following unit prices:

Price Breakdown for Year 2: July 1, 2019- June 30, 2020			
ELL Tiers	Ellevation Platform	Collaborate & Strategies	Ellevation Academy
15-000 -35,999 ELLs	\$8.50/ELL	\$16/ELL	\$10,000
36,000 - 55,999 ELLs	\$8/ELL	\$14/ELL	\$10,000

Price Breakdown for Year 2: Professional Development	
Online Training	\$2,000/session (Number of sessions will depend on the needs of BCPS)
In-Person Training	\$3,000/day (Number of days will depend on the needs of BCPS)

2.05 **Inspection of VENDOR Records by SBBC:** VENDOR shall establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All VENDOR Records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC’s agent or its authorized representative to permit SBBC to evaluate, analyze and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify any and all invoices, billings, payments and/or claims submitted by VENDOR or any of VENDOR’S payees pursuant to this Agreement. VENDOR Records subject to examination shall include, without limitation, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. VENDOR Records subject to this section shall include any and all documents pertinent to the evaluation, analysis, verification and reconciliation of any and all expenditures under this Agreement without regard to funding sources.

- (a) **VENDOR Records Defined.** For the purposes of this Agreement, the term “VENDOR Records” shall include, without limitation, accounting records, payroll time sheets, cancelled payroll checks, W-2 forms, written policies and procedures, computer records, disks and

software, videos, photographs, executed subcontracts, subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including sufficient supporting documentation and documentation covering negotiated settlements), and any other supporting documents that would substantiate, reconcile or refute any charges and/or expenditures related to this Agreement.

(b) Duration of Right to Inspect. For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to VENDOR Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR pursuant to this Agreement.

(c) Notice of Inspection. SBBC's agent or its authorized representative shall provide VENDOR reasonable advance notice (not to exceed two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction.

(d) Audit Site Conditions. SBBC's agent or its authorized representative shall have access to the VENDOR'S facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(e) Failure to Permit Inspection. Failure by VENDOR to permit audit, inspection, examination, evaluation and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the denial of some or all of any VENDOR claims for payment by SBBC.

(f) Overcharges and Unauthorized Charges. If an audit conducted in accordance with this Section discloses overcharges or unauthorized charges to SBBC by VENDOR in excess of two percent (2%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by the VENDOR. If the audit discloses billings or charges to which the VENDOR is not contractually entitled, the VENDOR shall pay said sum to SBBC within twenty (20) days of receipt of written demand under otherwise agreed to in writing by both parties.

(g) Inspection of Subcontractor's Records. VENDOR shall require any and all subcontractors, insurance agents and material suppliers (hereafter referred to as "Payees") providing services or goods with regard to this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by VENDOR to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for the exclusion of some or all of any Payee's costs from amounts payable by SBBC to VENDOR pursuant to this Agreement and such excluded costs shall become the liability of the VENDOR.

(h) Inspector General Audits. VENDOR shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.06 **Notice:** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: Director, Bilingual/ESOL Department
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

To VENDOR: Jordan Meranus, CEO and Co-Founder
Ellevation Inc.
38 Chauncy Street 9th Floor
Boston, MA 02111

2.07 **BACKGROUND SCREENING.** VENDOR agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of the VENDOR or its personnel providing any services under the conditions described in the previous sentence. VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to the VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. VENDOR agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from VENDOR'S failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.08 **Insurance Requirements.** VENDOR shall comply with the following insurance requirements throughout the term of this Agreement:

(a) **General Liability.** VENDOR shall maintain General Liability insurance during the term of this Agreement with limits not less than \$1,000,000 per occurrence for Bodily Injury/Property Damage; \$1,000,000 General Aggregate; and limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

(b) Professional Liability/Errors & Omissions. *VENDOR* shall maintain Professional Liability/Errors & Omissions insurance during the term of this Agreement with a limit of not less than \$1,000,000 per occurrence covering services provided under this Agreement.

(c) Workers' Compensation. *VENDOR* shall maintain Workers' Compensation insurance during the term of this Agreement in compliance with the limits specified in Chapter 440, Florida Statutes, and Employer's Liability limits shall not be less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

(d) Auto Liability. *VENDOR* shall maintain Owned, Non-Owned and Hired Auto Liability insurance with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit.

(e) Acceptability of Insurance Carriers. The insurance policies required under this Agreement shall be issued by companies qualified to do business in the State of Florida and having a rating of at least A- VI by AM Best or Aa3 by Moody's Investor Service.

(f) Verification of Coverage. Proof of the required insurance must be furnished by *VENDOR* to SBBC's Risk Management Department by Certificate of Insurance within fifteen (15) days of the date of this Agreement. To streamline this process, SBBC has partnered with EXIGIS Risk Management Services to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by SBBC's Risk Management Department before any work commences to permit *VENDOR* to remedy any deficiencies. *VENDOR* must verify its account information and provide contact details for its Insurance Agent via the link provided to it by email.

(g) Required Conditions. Liability policies must include the following terms on the Certificate of Insurance:

1. The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured.
2. All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida.
3. Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P.O. Box 4668-ECM, New York, New York 10163-4668.

(h) Cancellation of Insurance. *VENDOR* is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two (2) business days if required insurance is cancelled.

(i) SBBC reserves the right to review, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

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

3.03 **Independent Contractor.** The parties to this agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, and contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **M/WBE Commitment.** Throughout the term of the Agreement, VENDOR shall take commercially reasonable steps and use commercially reasonable resources to identify SBBC-certified M/WBE VENDORS who may be engaged to fulfill various aspects of the Agreement, including, for instance, without limitation, M/WBE VENDORS to provide office supplies, travel, printing, janitorial supplies/services, consulting services, trade services, installation and repair services, medical supplies, where feasible. VENDOR agrees to provide monthly reports and to conduct quarterly meetings with SBBC to discuss progress in meeting the SBBC's objectives regarding M/WBE participation, including dollars spent on M/WBE VENDORS for the quarter; and to continue to assess throughout the term of the Agreement new possibilities for M/WBE VENDOR participation suggested by SBBC. If at any time during the term the parties agree that it is reasonably feasible to include a specific dollar figure for M/WBE participation, the Agreement shall be amended to include the dollar participation objective.

3.06 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to the other parties of its desire to

terminate this Agreement. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to this Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

3.07 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days' notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.08 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.09 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

3.10 **Public Records:** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. VENDOR shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, VENDOR shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. VENDOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if VENDOR does not transfer the public records to SBBC. Upon completion of the Agreement, VENDOR shall transfer, at no cost, to SBBC all public records in possession of VENDOR or keep and maintain public records required by SBBC to perform the services required

under the Agreement. If VENDOR transfer all public records to SBBC upon completion of the Agreement, VENDOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If VENDOR keeps and maintains public records upon completion of the Agreement, VENDOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, REQUEL.BELL@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

3.11 **Compliance with Laws.** Each party shall comply with all applicable federal state and local laws, SBBC policies codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.12 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.13 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

3.14 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

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

3.16 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. Notwithstanding, the foregoing, VENDOR may, within sixty (60) days prior written notice to

SBBC assign this Agreement to a successor entity in the event of a merger, acquisition or sale of all or substantially all of its assets. In the event of such an assignment, SBBC may, in its sole discretion and with no liability, whatsoever, terminate this Agreement pursuant to Section 3.06. Nothing herein is intended to prevent VENDOR from assigning this Agreement to a successor entity in the event of a merger, acquisition or sale of all or substantially all of its assets contingent upon the above mentioned SBBC's right to terminate and receive a pro rata refund. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.17 **Incorporation by Reference.** Attachment A, attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

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

3.19 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

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

3.21 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.22 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.23 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual

expense (“Force Majeure”). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.24 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.25 **Contract Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.26 **Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

(a) By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees’ acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

(b) By VENDOR: VENDOR agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney’s fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by VENDOR, its agents, servants or employees; the equipment of VENDOR, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of VENDOR or the negligence of VENDOR’S agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC’s property, and injury or death of any person whether employed by VENDOR, SBBC or otherwise.

3.27 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

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

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]

FOR SBBC

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Nora Rupert, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]

FOR VENDOR

(Corporate Seal)

ELLEVATION INC.

ATTEST:

By *Jordan Mervanus*

_____, Secretary

or- *Jennifer Quintero*
Witness

Daniel Hoffman
Witness

The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF MA

COUNTY OF Suffolk

The foregoing instrument was acknowledged before me this 25 day of April, 2018 by Jordan Mervanus of Ellevation Inc. on behalf of the corporation/agency.
Name of Person
Name of Corporation or Agency

He/She is personally known to me or produced personally known to me as identification and did/did not first take an oath. Type of Identification

My Commission Expires: 5/7/21

Lauren L Melton
Signature – Notary Public

Lauren L Melton
Printed Name of Notary



Notary's Commission No.

ATTACHMENT A
COST OF SERVICES



ATTACHMENT A

Monday, March 5, 2018

Vicky Saldala
Broward County Schools

Dear Vicky,

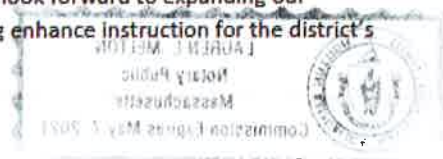
On behalf of Ellevation, I am pleased to submit this proposal to Broward County Schools for the continuation of the Ellevation partnership. To date, we have worked together to identify the goals of the ESOL Department, configure and enhance the Ellevation software to help meet these goals, fully implement the customized Meeting Center tool and online ELL Plan to inform decision making and individualize learning across the entire district. Further, this year we worked together to extend Ellevation, and the Instructional Strategies solution, to classroom teachers in approximately 150 schools. Classroom teachers in these schools have started to use Ellevation to scaffold their instruction and put in place activities to help ELLs access content. Our work together over the past year has helped deepen the use of Ellevation, expand collaboration among educators, and connect the use of Ellevation to other departments across the district. We are confident that our work this year will continue to:

1. Deepen the use of Ellevation to conduct critical ESOL meetings, inform discussion, and help ESOL administrators make program decisions for ELLs.
2. Help administrators and teachers look at ELL-specific data at the district and school level and analyze demographic information, ELP assessment performance, services, and much more.
3. Support the rollout of the ESSA requirements by ensuring compliance with state and Title III requirements, including the four-year federal monitoring process.
4. Help educators easily generate comprehensive individualized instructional plans for ELLs.
5. Help content teachers gain a greater understanding of the ELLs they serve and collaborate more easily with the team of educators working with individual ELLs.
6. Support the rollout of the WIDA standards and the implementation of best practices for ELLs.
7. Help educators personalize learning, including supporting early grade teachers focused on literacy and high school teachers helping students stay on track to graduate.

We highly value our relationship with Broward County Schools. We look forward to expanding our partnership, supporting a greater number of educators, and helping enhance instruction for the district's English Language Learners.

Sincerely,

Jordan Meranus
Co-Founder and CEO





1. Overview

Over the past four years Ellevation and Broward County Public Schools have built a strong, impactful, and enduring partnership. Working together, Ellevation and the Broward ESOL team developed a set of clear goals for the partnership, worked together to configure Ellevation to reflect the Broward ESOL program requirements, and trained directly and through “train-the-trainer sessions” thousands of educators across all district and charter schools. With the Ellevation Platform, the Broward ESOL team has made the transition from a paper-based system to one that uses technology to improve efficiency and save time, leveraged technology to inform instruction and personalize learning for ELLs, and enhanced collaboration to ensure that educators work closely together to understand the needs of ELLs and take action.

2017-2018 School Year: Progress to Date

The following are a set of the goals for the use of Ellevation set by the ESOL department prior to the start of the 2017-2018 school year.

Goal	Progress
<p>BCPS educators will continue to use the Platform to meet important instructional, communication, and reporting needs. Specifically, educators will use the Platform to conduct all Reevaluation Meetings in the Meeting Center, generate all ELL Plans and Title III Parent Letters, record state testing accommodations, use export templates and more.</p>	<ul style="list-style-type: none"> ● Between August 1, 2017 and December 31, 2017, 21,166 Reevaluation meetings and 8,560 other meeting types were conducted to ensure the appropriate decisions and programs are identified for ELLs in Broward. ● BCPS educators have generated over 600,000 student reports, including individualized ELL Student Plans and WIDA ELP Standard Reports. ● BCPS educators have used Ellevation’s parent letter feature to generate over 150,000 parent letters
<p>BCPS classroom teachers in the 150 schools will use Ellevation to gain a greater understanding of the ELLs they serve, including their proficiency levels, accommodations and more, collaborate more easily with the team of educators working with individual ELLs, and access Instructional Strategies curated for ELLs and tied to the language proficiency levels of their students.</p>	<ul style="list-style-type: none"> ● Very strong feedback from ESOL contacts and ESOL leaders about the availability of data and the ease of use. ● 11,445 classroom teachers have logged on to Ellevation. ● Over 173 ESOL contacts/leaders and campus administrators attended and were trained on Ellevation.
<p>All users of Ellevation in the selected 150 schools will have access to and use Instructional Strategies, a curated library of strategies and</p>	<ul style="list-style-type: none"> ● BCPS educators have viewed specific strategies to scaffold instruction for ELLs over 9,500 times.

activities specifically for language acquisition and helping ELLs access classroom content. Educators will be able to use, share, save and much more as they increase their capacity to best serve ELLs.	
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2018-2019 School Year: Goals and Rollout

Building on the deep use of Ellevation across the district, strong interest from the ESOL team and school-based educators to extend Ellevation to classroom teachers, and the encouragement of leaders from other BCPS departments (ECE; Curriculum and Instruction), BCPS and Ellevation will work together in 2018-2019 to deepen the Ellevation implementation. By extending the benefits of Ellevation to and providing deep professional development for classroom teachers, BCPS will significantly increase district capacity to personalize instruction for ELLs. The 2018-2019 rollout includes:

- **Ellevation Platform:** BCPS educators will continue to use this core product to manage and analyze ELL student data, capture decisions in meetings, generate individualized language plans and parent letters, set goals focused on language acquisition and keep track of ELLs across the district while fulfilling compliance obligations.
- **Ellevation Collaborate & Strategies:** BCPS classroom teachers in the selected 150 schools will continue to use Ellevation to gain a greater understanding of the ELLs they serve, including their proficiency levels, accommodations and more. BCPS educators will use Ellevation to address student needs through collaborative workflows such as monitoring, recommending accommodations, and sharing key student documents. BCPS educators will also have access to an instructional framework to guide professional development and more than 80 activities that any classroom teacher can use to incorporate language learning into existing lessons.

Deepen implementation of Ellevation will help increase educator capacity to meet the needs of BCPS's large and diverse ELL population. Doing so will help BCPS make progress on a variety of other district priorities and goals, including:

1. Implementation of best practices, including adoption of WIDA standards and CAN DO Descriptors;
2. Use of data to accelerate literacy acquisition in grades K-3;
3. Focusing on and supporting the approximately 4,000 students that enter their senior year having not met the FSA standard necessary for graduation;
4. Contribute to BCPS goal of ensuring teachers can personalize instruction.

Over the course of the spring Ellevation and the ESOL team will review data from the current Implementation year, engage with multiple stakeholders, and set specific goals for the 2018-2019 school year partnership.



2. District Investment

Ellevation prices the suite of products on a per/ELL basis. The following chart summarizes pricing for each product as well as training, consultation, and on-going support for 2-years. Specifically, the charts reflect:

- Pricing for Collaborate & Strategies will be priced per ELL.
- This year's agreement (2018-2019) will be based on a total of 34,400 ELLs for the Platform and 18,000 ELLs for Collaborate & Strategies. In the following year we will base the cost for all products on the prior year October headcount number.
- In year one BCPS will have a total of 40 training days, 20 of those will be rolled over from the previous year at no additional cost.
- Training for Year 2 will be based on the needs of BCPS at that time.

Cost Summary for Year 1: July 1, 2018 - June 30, 2019			
Products	Serving # of English Learners 2018	Price Per ELL	Total Cost 2018
Platform	34,400	\$8	\$275,200
Collaborate & Strategies	18,000	\$15	\$270,000
Training (In-person)	34,400	\$3,000/day	\$60,000
Ellevation Academy	34,400	---	\$10,000
<i>Training (2017 Rollover) - 20 Days</i>			<i>\$0</i>
Total			\$615,200

Price Breakdown for Year 2: July 1, 2019- June 30, 2020			
ELL Tiers	Ellevation Platform	Collaborate & Strategies	Ellevation Academy
15,000 - 35,999 ELLs	\$8.50/ELL	\$16/ELL	\$10,000
36,000 - 55,999 ELLs	\$8/ELL	\$14/ELL	\$10,000



Price Breakdown for Year 2: Professional Development	
Online Training	\$2,000/session (Number of sessions will depend on the needs of BCPS)
In-Person Training	\$3,000/day (Number of days will depend on the needs of BCPS)

Ellevation offers additional discounts for districts who expand to the entire product suite. Outlined below is product pricing for Broward County Public Schools based on a full expansion of Collaborate & Strategies to all ELLs in 2019-2020.

Price Breakdown for Year 2: July 1, 2019- June 30, 2020 - Full Expansion			
ELL Tiers	Ellevation Platform	Collaborate & Strategies	Ellevation Academy
15-000 -55,999 ELLs	\$7/ELL	\$14/ELL	\$10,000

3. Training and Support

To effectively support Ellevation district-wide, and ensure the highest quality training and support program is implemented, Ellevation will deliver a 5 part training program throughout the course of the 2018-19 school year:

- 1. Train-the-Trainer Workshops:** Train-the-Trainer workshops will focus on having 2 and 5 representatives from each school who will develop a deep comfort with Ellevation and prepare to deliver training to the educators in their respective schools.
- 2. Advanced Tools:** This 3-hour training is intended to provide the users of the Platform with the skills and experience to broaden their use, begin taking advantage of new features, and using features that the ESOL team has prioritized (ex. Monitoring; Goals; Advanced Filters; Reports).
- 3. Principal Pump-Up:** Principals who attend this 3-hour session will walk away with a better understanding of what Ellevation is and does in Broward CPS. During this session, principals will understand how to utilize the Data Dashboard to meet some of their data request needs. They will also delve into a variety of reports that focus on supporting/meeting the needs of ELLs.
- 4. Platform Refresher Training:** This training can be done in person, or online, and will focus on new educators to Broward that will be using the Platform, or on existing educators that need or want additional support.
- 5. Ellevation Academy:** In addition to in-person training by the group of Broward trainers, Ellevation will offer a set of introductory modules delivered online designed to familiarize teachers with Ellevation, various features, and the goals the district has set.

Post-Training Implementation Support



Implementation support begins when training ends, and is designed to ensure that administrators and users have the resources they need to utilize Ellevation. Implementation support consists of distinct components:

- **The Help Center:** The Ellevation Help Desk is staffed by an experienced educator who can respond to user challenges not easily resolved by referencing other resources like the Resource Center (explained below). Real-time help, from an experienced educator is a great source for value for Ellevation users.
- **The Resource Center:** The Resource Center offers educators a resource library of instructional videos, process documents and a bank of frequently asked questions and answers. The Resource Center is designed to ensure that users can easily find answers to basic questions about Ellevation functionality and troubleshoot common challenges. User can find the Resource Center within the Ellevation platform, and it is always accessible.
- **Ongoing Implementation Support:** In addition to responding to users when they encounter challenges, Ellevation will dedicate an Engagement Director to support Broward County users through the entire implementation. The Engagement Director will work with administrators to support their program goals, and help address any challenges that may arise.