

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, _____, 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, Ellevation is a software platform for instructional and data management that supports English for Speakers of Other Languages (ESOL) programs; and

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

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

WHEREAS, Rule 6A-1.012, 11(b), and 14, Florida Administrative Code and School Board Policy 3320, Section II.H, authorizes the purchase of any type of copyrighted materials, instructional materials and computer software without competitive solicitations.

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

1.01 **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

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on July 1, 2020 and conclude on June 30, 2021. The term of the Agreement may, by mutual agreement between SBBC and VENDOR, be extended for one (1) additional one (1) year period.

2.02 **Description of Goods or Services Provided.**

(a) Ellevation Platform is used to manage and analyze English Language Learner (ELL) student data, capture decisions in meetings, generate individualized language plans and

parent letters while fulfilling compliance obligations. Ellevation Platform and Strategies provides classroom educators with tools to identify their ELLs, learn about their language acquisition needs, and collaborate with all stakeholders to ensure instructional success. Ellevation Dual Language resource provides instructional resources that focus on high academic achievement, bilingualism and biliteracy, and cross-cultural competency. Provide all dual language educators with access to high-quality, professionally transadapted instructional resources in English and Spanish.

(b) During the Term of this Agreement, VENDOR hereby grants SBBC a worldwide, non-exclusive, non-transferable right to access, use the features and functionality of the Platform solely for SBBC's educational purposes, subject to the terms and conditions of this Agreement. All rights not granted in this Agreement are reserved by VENDOR. SBBC shall ensure that: 1) it provides true, accurate, current and complete information to create and maintain accounts; 2) neither SBBC nor any SBBC User circumvents or otherwise interferes with any user authentication or security used by VENDOR; 3) SBBC Users maintain the confidentiality of their usernames and passwords; and 4) that neither SBBC nor any SBBC User will impersonate another user of the Platform or provide false identity information to gain access to or use the Platform.

(c) VENDOR retains all right, title and interest (including all intellectual property and proprietary rights therein) in and to the following but excluding all SBBC education records: 1) the Platform and the technology and software used to provide it; 2) all electronic and print documentation and other content made available or collected through the Platform; and 3) all data or information contained in or derived from the Platform (collectively, "Ellevation IP"). Except for SBBC's rights to access and use the Platform as set forth in this Agreement, nothing in this Agreement licenses or conveys any right to the Ellevation IP to anyone, including SBBC.

2.03 Cost and Payment.

(a) **Cost.** Total price for products and services rendered under this Agreement, in accordance with the cost schedule is Six Hundred Seventy-One Thousand, Nine Hundred and Forty-Nine Dollars and 32/100 Cents (\$671,949.32) as outlined in the **Attachment A** and summarized below:

Ellevation Platform	\$286,449.32
Ellevation Strategies license	\$368,000.00
<u>Onsite training</u>	<u>\$ 17,500.00</u>
Total	\$671,949.32

Other Services Provided Free of Charge

- 1) District-wide annual fee for Dual Language for Strategies
- 2) Receiving Assessment Data directly from Imagine Learning, Inc.

(b) **Payment.** SBBC shall pay VENDOR for satisfactory services rendered under this Agreement in accordance with the cost schedule outlined above and in the **Attachment A**. VENDOR shall submit a proper and appropriate invoices in the amount of Two Hundred Eighty-Six Thousand, Four Hundred and Forty-Nine Dollars and 32/100 Cents (\$286,449.32) and Three Hundred Sixty-Eight Thousand Dollars and 00/100 Cents (\$368,000.00) on or after July 1, 2020 and SBBC shall pay invoices within thirty (30) calendar days of the date of same invoice. VENDOR shall submit a proper and appropriate invoice in the amount of Seventeen Thousand, Five Hundred Dollars and 00/100 Cents (\$17,500.00) after satisfactory completion of services and SBBC shall pay invoice within thirty (30) calendar days of the date of same invoice.

2.04 **SBBC Disclosure of Education Records.**

(a) SBBC will provide VENDOR the education records listed in this section for the purposes below:

- 1) to allow educators to complete required workflows and reports; and
- 2) help administrators and other educators make important decisions about program placement and needed resources; and
- 3) to identify the areas that students need help with in listening, speaking, reading, and writing and puts students in groups for teachers or pinpoints strategies they can implement in their classroom when planning lessons.

(b) SBBC will provide VENDOR with the following data on a nightly basis, through the District's integration system:

- 1) Student demographics - name (first, middle and last), school assigned teacher, local student number, state testing identification number, grade level, gender, birthdate, address (including City, State, and zip code), home phone number, cell phone number, place of birth, native language, nationality, ethnicity, race, classroom schedule, classroom teacher; and
- 2) Designation and status - English Language Proficiency (ELP) Designation, Limited English Proficient (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 will receive the following Assessment Data directly from Imagine Learning, Inc.: Lexile Score, Literacy Score, and Oral Vocabulary Score.

(d) VENDOR is considered a "school official" with a legitimate educational interest to receive the aforementioned types of information from SBBC student education records for the purposes listed above. Pursuant to the Family Education Rights and Privacy Act (FERPA), 34 CFR 99.31(a)(1), these records may be provided without prior parental consent. Prior written consent of the parent or student age eighteen (18) or over is needed for any types or purposes of disclosures of education records beyond those listed above.

(e) The requirements of this section shall supersede any use of student information as listed in VENDOR's privacy policies.

2.05 VENDOR 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; and

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; and

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; and

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; and

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; and

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; and

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; and

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; and

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

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, 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.

2.06 **SBBC Disclosure of Employee Records.**

(a) SBBC will provide VENDOR the employee records listed in this section to create user accounts.

(b) SBBC will provide the following employee information to VENDOR:

- 1) employee first and last name; and
- 2) employee identification number; and
- 3) employee work email address.

(c) VENDOR shall not use the employee records listed in this section for any purpose other than those listed above or re-disclose the records to any outside source without the prior written consent of the employee, except as required or allowable by law.

(d) The requirements of this section shall supersede any use of employee records as listed in VENDOR's privacy policies.

2.09 **VENDOR Safeguarding Confidential Employee Records.** Notwithstanding any provision to the contrary within this Agreement, VENDOR shall:

(a) fully comply with the requirements of state or federal law or regulation regarding the confidentiality of employee records;

(b) hold the employee records in strict confidence and not use or disclose same except as required by this Agreement or as required or permitted by law;

(c) only share employee records with those who have a need to access the information in order to perform their assigned duties in the performance of this Agreement;

(d) protect employee records through administrative, physical and technological safeguards to ensure adequate controls are in place to protect the employee's records and information;

(e) notify SBBC immediately upon discovery of a breach of confidentiality of employee 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;

(f) prepare and distribute, at its own cost, any and all required notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so; and

(g) be responsible for any fines or penalties for failure to meet notice requirements pursuant to federal and/or Florida law. This section shall survive the termination of all performance or obligations under this Agreement.

2.06 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 warrants that it will provide the services in a professional manner consistent with general industry standards and that the services will performed in accordance with the this Agreement and that VENDOR shall correct any product non-conformance, defect, or software error or bug during the term of this Agreement and at no additional charge to SBBC in a accordance with this Agreement; and

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

(d) 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

(e) 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

(f) 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

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

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

(i) 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

(j) 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

(k) 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; and

(l) SBBC acknowledges that, as an internet-delivered software application, the Platform may experience periods of downtime, including due to scheduled maintenance, and third-party service outages. Accordingly, VENDOR DOES NOT WARRANT THAT THE PLATFORM WILL BE ERROR-FREE OR OPERATE WITHOUT INTERRUPTIONS OR DOWNTIME. OTHER THAN AS EXPLICITLY SET FORTH IN THIS AGREEMENT, VENDOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PLATFORM, INCLUDING ITS DOCUMENTATION, SOFTWARE, OR ANY DATA OR CONTENT MADE AVAILABLE THROUGH THE PLATFORM.

2.07 **Inspection of VENDOR's 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's applicable 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 the applicable business records of VENDOR directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year.

(a) **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's 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.

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

(c) **Audit Site Conditions.** SBBC's agent or its authorized representative shall have access to 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.

(d) **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 SBBC's denial of some or all of any VENDOR's claims for payment.

(e) **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 VENDOR. If the audit discloses billings or charges to which VENDOR is not contractually

entitled, **VENDOR** shall pay said sum to **SBBC** within twenty (20) calendar days of receipt of written demand unless otherwise agreed to in writing by both parties.

(f) **Inspection of Subcontractor's Records.** If applicable, **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 Payees' costs from amounts payable by **SBBC** to **VENDOR** pursuant to this Agreement and such excluded costs shall become the liability of **VENDOR**.

(g) **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.

2.08 **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 :	Dennis Morgan, CFO Ellevation Inc. 38 Chauncy Street 9 th Floor Boston, MA 02111

2.09 **Background Screening.** **VENDOR** shall 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 **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 **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.

2.10 **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 transfers 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, RECORDREQUESTS@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.

2.11 **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, up to the limits of Section 768.28, Florida Statutes, 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 third-party 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.

2.12 **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) **Technical/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.

2.13 **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.

2.14 **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.

2.15 **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.

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

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 Agreement.

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, contributions to

unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **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) calendar days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) calendar 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) calendar 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.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) calendar days written notice to the other parties of its desire to terminate this Agreement. In the event of such termination, SBBC shall be entitled to a *pro rata* refund of any pre-paid amounts for any services scheduled to be delivered after the effective date of such termination. 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.

3.06 **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.

3.07 **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.

3.08 **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.

3.09 **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.

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

3.11 **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. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.12 **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.

3.13 **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.

3.14 **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.

3.15 **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.

3.16 **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.

3.17 **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.

3.18 **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.

3.19 **Agreement 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.

3.20 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

3.21 **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.

FOR SBBC:

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Donna P. Korn, 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 PAGE FOLLOWS]

FOR VENDOR:

(Corporate Seal)

ELLEVIATION INC.

ATTEST:

By 
Signature


_____, Secretary

Printed Name: Edward Rice

-or-

Title: PRESIDENT & CO-FOUNDER


Witness


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 by means of physical presence or online notarization, this June 11, 2020 (date) by Edward Rice (name of officer or agent, title of officer or agent) of Ellevation (name of corporation acknowledging), a Delaware (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ (type of identification) as identification and who did/ did not first take an oath this 11 day of June, 2020.

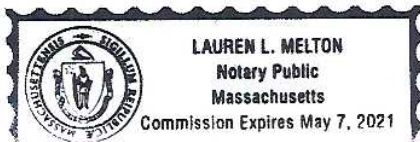
My Commission Expires: May 7, 2021


Signature - Notary Public

(SEAL)

Lauren L. Melton
Printed Name of Notary

N/A
Notary's Commission No.





Tuesday, April 21, 2020

Vicky Saldala
Broward County Schools

Dear Vicky,

We are pleased to submit this proposal to Broward County Schools for the continuation of the Ellevation partnership. To date, we have worked to identify the evolving needs of the ESOL department, configure and enhance the Ellevation software to help meet these goals, and expand our support of all schools through our instructional suite of tools. Classroom teachers have used our suite to scaffold their instruction and put in place activities to help ELLs access content. Our work together over the past several years 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.
8. Provide instructional resources that focus on high academic achievement, bilingualism and biliteracy, and cross-cultural competency. All dual language educators will have access to high-quality, professionally transadapted instructional resources in English and Spanish.

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 six 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.

In addition and in response to policy changes at both the Federal and State levels, we have made a number of important enhancements to our product since we last formally contracted with Broward County in 2017. Specifically, the new Every Student Succeeds Act (ESSA) requires more district and school leaders to share accountability for English Learners, and evolving interpretations of the Florida Meta Consent Decree require new workflows and data reports to fulfill compliance obligations. These shifts have prompted Ellevation to invest in new capabilities that now provide:

- *Customizable data dashboards* providing key insights and transparency about EL performance across the district, including for new roles like instructional coaches, principals, and counselors.
- *Robust student list analytics* that support more compliance and instructional planning needs than ever before, as federal and state legal requirements have grown (e.g., sub-group reporting).
- Digital workflows that facilitate both *progress monitoring of subgroups and exited students* across the district to ensure compliance with state and federal protocols.
- *New user management functionality* designed to ensure customized permissioning and usage data. Broward’s administrators can now create custom experiences for key stakeholders like teachers, principals, and specialists, which supports more effective programming.
- *Customizable saved ELL Plans* allowing flexibility to meet the compliance requirements of the state, including new requirements around accommodations tracking that commenced in 2019.
- *Tools to meet Florida’s Consent Decree requirements* and the framework for compliance within federal and state laws, which includes ability to ensure effective communication with parents.

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 Platform & Strategies will be priced per ELL.



ATTACHMENT A

- This year’s agreement (2020-2021) will be based on a total of 32,000 ELLs for the Platform and 32,000 ELLs for Strategies. In the following year we will base the cost for all products on the prior year October headcount number.
- Access to our Dual Language Resource for Strategies will be offered to Broward County at no cost for both Year 1 and Year 2.
- In Year 1 BCPS will have a total of 16 training days, 11 of which will be rolled over from the previous year at no additional cost. 5 additional days were requested based on the needs of BCPS.
- Training for Year 2 will be based on the needs of BCPS at that time.

Cost Summary for Year 1: July 1, 2020 - June 30, 2021					
Product	Ellevation Platform	Ellevation Strategies	Dual Language for Strategies for All Educators	Onsite Training	Total
Total Value	\$11.50 per ELL/ 32,000 ELL's \$368,000	\$11.50 per ELL / 32,000 ELL's \$368,000	District Wide Annual Fee \$30,000	\$3,500 per day/ 5 days \$17,500	\$783,500.00
Discount	\$81,550.68 Discount (22%)	-	\$30,000 Discount (100%)	-	\$111,550.68
Total Investment	\$286,449.32	\$368,000	\$0	\$17,500*	\$671,949.32

*In addition, BCPS has 11 training days, which were rolled over from the previous year at no additional cost.

Price Breakdown for Year 2: July 1, 2021 - June 30, 2022			
Product	Ellevation Platform	Ellevation Strategies	Dual Language For Strategies for All Educators
Pricing	\$11.50 per ELL	\$11.50 per ELL	\$0 - Provided at No Cost to District

Price Breakdown for Year 2: Professional Development	
Online Training	\$2,500/session (Number of sessions will depend on the needs of BCPS)
In-Person Training	\$3,500/day (Number of days will depend on the needs of BCPS)

3. Training and Support

To effectively support Ellevation district-wide, and ensure the highest quality training and continued support, Ellevation will offer the following services and resources throughout the 2020-2021 school year:

1. **Training:** Ellevation will work with BCPS administrators to deliver a customized training program in the 2020-2021 school year over the course of 16 of training days/sessions.



ATTACHMENT A

2. **Ellevation Academy:** In addition to training led 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.
3. **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.
4. **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. Users can find the Resource Center within the Ellevation platform, and it is always accessible.
5. **Ongoing Support:** In addition to responding to users when they encounter challenges, **Ellevation will dedicate a Partner Success Director to support Broward County users** through the entire implementation and beyond. The Partner Success Director will work with administrators to support their program goals, and help address any challenges that may arise.