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Ellevation Subscription Agreement

This Subscription Agreement ("Agreement") is being entered into between Ellevation Inc., having an address at 38 Chauncy Street, Boston, Massachusetts 02111 ("Ellevation") and the Company Name identified as "Customer" below. Customer understands that this Agreement is governed by the Terms and Conditions attached hereto as **Exhibit A**, which are incorporated herein by reference. In the event of any conflict between this Agreement and **Exhibit A**, the terms of this Agreement shall control. This Agreement is effective as of the Subscription Start Date set forth below

Company:	Ellevation Education	Customer:	San Leandro Unified School District, CA
Representative:	Alex Mukherjee	Contact Name:	Joanne Clark
Email:	alexander.mukherjee@ellevationed	Email:	joanneclark@slusd.us
Phone:	617-307-5755	Phone:	
Address:	38 Chauncy St, 9th Floor, Boston, MA 02111	Address:	14735 Juniper Street, San Leandro, CA 94579
Start Date:	7/1/2020	End Date:	6/30/2021

Annual Subscription Fees

Product	Quantity	Unit Price	Discount	Total Fees
Ellevation (CA)	2,240	$11.25	15 %	$21,420.00
			Subscription Savings:	$3,780.00
			Subscription Total:	$21,420.00

Services Fees

Product	Quantity	Unit Price	Discount	Total Fees
Online Training	1	$2,500.00	100 %	$0.00
			Services Savings:	$2,500.00
			Services Total:	$0.00

Total Investment

Savings Total:	$6,280.00
Grand Total:	$21,420.00

Invoicing Schedule: Up Front, In Full Payment Term: Net 30 Contract Term: 12

1 **Definitions.**

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

1.2 **"Customer User"** shall mean any of Customer's authorized users of the Platform.

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

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

4 **Term and Renewal**

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

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

5 **License Grant**

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

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

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

Customer must also ensure that: (a) it provides true, accurate, current and complete information to create and maintain accounts; (b) neither Customer nor any Customer User circumvents or otherwise interferes with any user authentication or security used by Ellevation; (c) Customer Users maintain the confidentiality of their usernames and passwords; and (d) that neither Customer nor any Customer User will impersonate another user of the Platform or provide false identity information to gain access to or use the Platform.

6 **Ownership and Rights**

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

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

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

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

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

7 **Confidentiality and Data Security.**

7.1 Confidentiality. As used herein, the "Confidential Information" of a party (the "Disclosing Party") means all financial, technical, or business information of the Disclosing Party that the Disclosing Party designates as confidential at the time of disclosure to the other party ("Receiving Party") or that the Receiving Party reasonably should understand to be confidential based on the nature of the information or the circumstances surrounding its disclosure. Without limiting the generality of the foregoing, Confidential Information includes but is not limited to, the terms and conditions of this Agreement; pricing for the Platform; and information about Ellevation's tools and features. Except as expressly permitted in this Agreement, the Receiving Party will not disclose, duplicate, publish, transfer or otherwise make available Confidential Information of the Disclosing Party in any form to any person or entity without the Disclosing Party's prior written consent. The Receiving Party will not use the Disclosing Party's Confidential Information except to perform its obligations under this Agreement (including, in the case of Ellevation, to provide the Platform). Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to the extent required by law, provided that the Receiving Party: (a) gives the Disclosing Party prior notice of such disclosure so as to afford the Disclosing Party a reasonable opportunity to appear, object, and obtain a protective order or other appropriate relief regarding such disclosure (if such notice is not prohibited by applicable law); (b) uses diligent efforts to limit disclosure and to obtain confidential treatment or a protective order; and (c) allows the Disclosing Party to participate in the proceeding. Further, Confidential Information does not include any information that: (x) is or becomes generally known to the public without the Receiving Party's breach of any obligation owed to the Disclosing Party; (y) was independently developed by the Receiving Party without the Receiving Party's breach of any obligation owed to the Disclosing Party; or (z) is received from a third party who obtained such Confidential Information without any third party's breach of any obligation owed to the Disclosing Party. For the sake of clarity Confidential Information does not include information independently acquired by the newsroom of or the editorial staff of Ellevation or any of its related companies. The Receiving Party will return or destroy all Confidential Information upon the Disclosing Party's request after the termination or expiration of this Agreement and (if requested by the Disclosing Party) certify such return or destruction in writing.

7.2 Confidentiality of Student Records. Customer appoints Ellevation a "school official" as that term is used in the Family Educational Rights and Privacy Act ("FERPA"), 34 C.F.R. §99 et. seq., and determines that Ellevation has a "legitimate educational interest," for the purpose of carrying out its responsibilities under this Agreement. Ellevation agrees to be bound by the relevant provisions of FERPA, including that it will remain under the "direct control" of Customer with respect to its collection, use and handling of personally identifiable student data. Ellevation will use personally identifiable student data only to fulfill the Services in performance of this Agreement, and as permitted pursuant to Section 6.2 of this Agreement, will only share personally identifiable student data with its third-party vendors as necessary to fulfill the Services in performance of this Agreement.

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

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

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

8 **Representation and Warranties; Disclaimers**

8.1 Ellevation Representations and Warranties. Ellevation warrants that:

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

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

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

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

8.2 Customer Representations and Warranties. Customer hereby represents and warrants that: (a) it has the necessary authority to enter into this Agreement; (b) it has all rights, permissions and consents necessary to submit all Customer Content to the Platform and to grant Ellevation the rights to use Customer Content set forth in Section 6.2; (c) any materials uploaded to the Platform does not contain anything that is defamatory, libelous, infringes upon any third party intellectual property rights, or violates any confidentiality obligations Customer has with a third party; and (d) it will comply with all applicable laws that apply to its performance under this Agreement.

8.3 Disclaimer. Customer acknowledges that, as an internet-delivered software application, the Platform may experience periods of downtime, including but not limited to due to scheduled maintenance, and third-party service outages. Accordingly, ELLEVATION DOES NOT WARRANT THAT THE PLATFORM WILL BE ERROR-FREE OR OPERATE WITHOUT INTERRUPTIONS OR DOWNTIME. ELLEVATION MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PLATFORM, INCLUDING ITS DOCUMENTATION, THE PLATFORM SOFTWARE, OR ANY DATA OR CONTENT MADE AVAILABLE THROUGH THE PLATFORM. ELLEVATION SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ACCURACY

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

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

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

11 **Termination.**

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

11.2 Treatment of Customer Content at Termination. Customer shall have sixty (60) days following the termination or expiration of this Agreement to provide Ellevation with a written request for a one-time, delimited file export of its data from the Platform via SFTP. Regardless of whether Customer timely requests a one-time export within this 60-day period and except as otherwise provided in Section 6.2 above, within sixty (60) days of the termination or expiration of this Agreement, Ellevation will securely destroy any and all of Customer's personally identifiable student data stored in the Platform, including any such data stored in Ellevation's backup systems.

12 **Indemnification**

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12.1 Ellevation will defend, indemnify and hold harmless Customer and its employees and agents from and against any third party claim, demand or action, and all resulting damages, settlement amounts, penalties, costs and expenses, to the extent such claim, demand or action alleges that the Platform, or Customer's use thereof in accordance with this Agreement, infringes or violates any copyright, trademark, U.S. patent, or other proprietary right of any third party; provided, that Ellevation will not be obligated under this sentence to the extent any such infringement or violation arises from use of the Platform in combination with technology or services not provided by Ellevation and/or from use of the Platform and/or the Ellevation Network in violation of the terms and conditions set forth in this Agreement.

12.2 To the extent permitted by applicable law, Customer will defend, indemnify and hold harmless Ellevation and its corporate affiliates, directors, officers, employees, successors, assigns and agents from and against any third party claim, demand or action, and all resulting damages, settlement amounts, penalties, costs and expenses (including reasonable outside legal costs), that arises out of or relates to Customer Content (except to the extent such claim arises from Ellevation's use of Customer Content in violation of this Agreement), including without limitation claims that Customer Content infringes or violates any intellectual property or proprietary right of a third party, violates any confidentiality obligation owed to a third party, or violates any applicable law or regulation.

13 **LIMITATION OF LIABILITY. NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES IN CONNECTION WITH ANY CLAIM OF ANY NATURE ARISING UNDER THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN GIVEN ADVANCE NOTICE OF SUCH POSSIBLE DAMAGES. IN ADDITION, NEITHER PARTY'S TOTAL, AGGREGATE LIABILITY FOR ALL CLAIMS OF ANY NATURE ARISING OUT OF THIS AGREEMENT (EXCLUDING WITHOUT LIMITATION CLAIMS FOR INDEMNIFICATION UNDER SECTION 10) WILL NOT EXCEED THE FEES ACTUALLY PAID TO ELLEVATION UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.**

14 **Notices.** All notices under this Agreement must be in writing and sent via email to notices@ellevationeducation.com and, if to Customer at the email address provided in Customer's Subscription Agreement

15 **Entire Agreement.** The Subscription Agreement together with these Terms and Conditions represent the entire agreement between the parties regarding Customer's use of the Platform and related matters addressed in this Agreement, and supersedes any prior oral or written agreements, promises, representations, warranties, or inducements between or by the parties regarding such subject matters

16 **Assignment**. Ellevation may not assign this Agreement without Customer's prior written consent, not to be unreasonably withheld; provided, however, that no consent shall be required for the assignment of this Agreement to the acquirer of all or substantially all of Ellevation's assets provided that such successor agrees to be bound by all of the terms and conditions hereof.

17 **Force Majeure.** Neither party is liable for delay or default under this Agreement if caused by conditions beyond its reasonable control, whether or not foreseeable (e.g., technology malfunctions, outages of Internet Service; outages in third party hosted services), or any other Force Majeure events. "Force Majeure" events will mean: armed conflicts, famine, floods, Acts of God, labor strikes or shortages, governmental decree or regulation, court order, severe weather, fire, earthquake, acts of terrorism, failure of suppliers, unavailability of communications transport facilities and breakdowns in communications transport facilities; provided however, that this provision does not apply to Customer's obligations to make payments hereunder.

18 **Miscellaneous.** This Agreement shall be governed by the laws of the state where Customer is located without regard to the conflict of law provisions of such state; provided that jurisdiction for any dispute that arises hereunder shall be in the state and federal courts of the Commonwealth of Massachusetts. In the event a court of competent jurisdiction finds any provision of this Agreement to be illegal or unenforceable, the parties agree that the court shall modify such provision(s) to make such provision(s) and this Agreement valid and enforceable. The provisions of this Agreement are severable, and any illegal or unenforceable provision, or any modification by any court, shall not affect the remainder of this Agreement, which shall continue at all times to be valid and enforceable. This Agreement can only be modified by a writing signed by both parties. The failure of the parties to insist upon or enforce strict performance of any provision of this Agreement or to exercise any right or remedy thereunder will not be construed as a waiver by such party to assert or rely upon any such provision, right, or remedy in that or any other instance. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or electronically by the parties will constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or electronically will be deemed to be their original signatures for any purpose whatsoever.

ELLEVATION INC.		**San Leandro Unified School District, CA**	
By:		**By:**	DocuSigned by: Joanne Clark 66D1DF69B4104F7...
Name:		**Name:**	Joanne Clark
Title:		**Title:**	Senior Direction Ed Services
Date:		**Date:**	7/15/2020