Curriculum Associates, LLC Order Form - Q-31887

This Order Form is being entered into between Curriculum Associates, LLC having an address at 153 Rangeway Road, North Billerica, MA 01862 ("Company") and the Customer Name identified as "Customer" below, pursuant to the parties' Master Services Agreement dated 8/1/2022 ("MSA"). In the event of any conflict between this Order Form and the MSA, the terms of this Order Form shall control. This Order Form is effective as of the Subscription Start Date set forth below.

Company:	Curriculum Associates, LLC	Customer:	Gridley Unified School District, CA
Representative:	Aurora Cabrera	Contact Name:	Michael Pilakowski
Email:	aurora.cabrera@ellevationeducation.com	Email:	mpilakowski@gusd.org
Phone:	617-307-5755	Phone:	5308464721 x32
Address:	153 Rangeway Road, North Billerica, MA 01862	Address:	429 Magnolia Street, Gridley,CA 95948
Start Date:	8/1/2022	End Date:	7/31/2023

Subscription Fees

Product	Quantity	Unit Price	Total Fees
Ellevation (CA)	333	Minimum	$6,250.00
		Subscription Total:	$6,250.00

Services Fees

Product	Quantity	Unit Price	Training Product	Total Fees
Online Training - 3 Hr (Platform)	1	$2,000.00	Ellevation	$2,000.00
Online Webinar Training - 1 Hr (Platform)	1	$1,000.00	Ellevation	$1,000.00
			Services Total:	$3,000.00

Total Investment - Q-31887

Grand Total:	$9,250.00

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

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

Curriculum Associates, LLC

By (Signature): _____

Name (Print): _____

Title: _____

Date: _____

Gridley Unified School District, CA

By (Signature): _____

Name (Print): _____

Title: _____

Date: _____

This Master Services Agreement (this "Agreement") is dated as of 8/1/2022 ("Effective Date") by and between Curriculum Associates, LLC ("Company"), and Gridley Unified School District, CA ("Customer"). Company and Customer are each referred to individually as a "Party" and collectively the "Parties" hereto.

1 **Definitions.**
1.1 **"System"** means Company's proprietary, Internet-delivered SaaS platform of servers, software and related technology that is owned and operated by Company and furnished to Customer under this Agreement. The System provides Customer the ability to: (a) use Company's proprietary data management framework for English Language Learners ("ELLs"); (b) access reporting tools related to the productivity and performance of Customer's ELLs; (c) utilize instructional content for Customer's ELLs; and (d) provide Customer's ELLs with tools to improve language acquisition.
1.2 **"Customer User"** means any of Customer's authorized users of the System, which may include students, teachers, administrators, or other Customer personnel.
2 **Services.** Company shall perform the services listed in the order form executed by both parties ("Order Form") and/or described in any Statement of Work executed by both parties ("SOW") that may be agreed to by both Parties from time to time (and such services are, the "Services"), with any such Order Form or SOW incorporated into this Agreement by reference.
3 **Fees and Payment.** Customer will pay the fees as set forth in the Order Form or SOW. The Customer will provide Company with a valid purchase order within ten (10) days of signing the Order Form or SOW. Company will invoice Customer based on such Order Form or SOW, and all invoices are payable within 30 days following receipt by Customer.
4 **Term.** The term of this Agreement shall commence on the Effective Date, and it shall continue for so long as Company provides access to the System and/or Services to the Customer pursuant to a valid Order Form or SOW (the "Term"). The term of any particular Services is as provided on the Order Form or SOW.
5 **License Grant**
5.1 During the term of the applicable Order Form(s) and/or SOW(s), and subject to the terms and conditions of this Agreement, Company grants Customer a limited, worldwide, non exclusive, non-transferable right to access and use the features and functionality of the System for the number of users listed on an Order Form or SOW solely for Customer's internal educational purposes in accordance with the terms and conditions expressed in this Agreement. All rights not specifically granted in this Agreement are fully reserved by Company.
6 **Restrictions**
6.1 Prohibited Use Customer will not, and will ensure that Customer Users do not, (a) use the System other than in compliance with this Agreement and applicable federal, state, and local laws; (b) frame, distribute, resell, or permit access to the System by any third party; (c) interfere with the System or disrupt any other users' access to the System; (d) attempt to gain unauthorized access to the System, or attempt to discover the underlying source code or structure of the System, or otherwise reverse engineer the System; (f) submit to the System any content or data that is false, misleading, defamatory or threatening; 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 System any data or code that contains a time bomb, virus, or any other malware that is designed to delete, disable or otherwise inhibit or harm any element of the System, or which is intended to provide unauthorized access to the System; or (h) use any robot, spider, data scraping or extraction tool or similar mechanism with respect to the System.
6.2 Customer Responsibilities Customer must comply with, and ensure that its Customer Users comply with, the Company's Terms of Use found at https://ellevationeducation.com/platform-legal-notices, as well as ensure that: (a) Customer 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 mechanism used by Company; (c) Customer Users maintain the confidentiality of their usernames and passwords; (d) neither Customer nor any Customer User will impersonate another user of the System or provide false identity information to gain access to or use the System; and (e) Customer immediately notifies Company of any known or suspected unauthorized access to Customer or Customer User accounts or compromise of account credentials.
7 **Ownership and Rights**
7.1 Ownership of Customer Content; De-identified Data Customer retains all right, title and interest in (a) any data, files, images, and other content that Customer or a Customer User uploads or submits to the System pursuant to this Agreement; and (b) any reports produced by Customer in connection with use of the System (collectively, "Customer Content"). "Customer Content" does not include de-identified data, which Company may create using Customer Content on a de-identified basis (a) to develop and improve its products; (b) for the purposes of adaptive and customized learning; (c) for research and development purposes; (d) to demonstrate the effectiveness of its products.
7.2 Ownership of System The Services, including all trademarks, service marks, logos, documents, graphics, content, and/or other materials viewed or obtained from or through the Services (collectively, "Service Materials"), are owned and/or licensed by Company and are protected by copyright and other intellectual property rights. Customer has no

rights to transfer, reproduce, or prepare any derivative works with respect to the Services, or to disclose confidential information pertaining to the Services. This Agreement does not convey to Customer or any Customer User any right of ownership in or related to the Service or other intellectual property owned by Company.

7.3 <u>Feedback</u> Customer may, at its option, provide to Company feedback or suggestions for enhancement concerning the System ("Feedback"), and Company will have a perpetual right to use and incorporate Feedback into the System without any compensation or other obligation to Customer. Customer shall not gain any right, title or interest in the System or Company's IP as a result of its furnishing or Company's use of Feedback.

8 **Confidentiality "Confidential Information"** of a Party (**"Disclosing Party"**) means all financial, technical, or business information of the Disclosing Party that the Disclosing Party designates as confidential or that the other party ("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) personally identifiable student information; the Fees contained in any Order Form or SOW; and Company's IP and other proprietary tools, features and methodologies. Confidential Information does not include any information that (a) is or becomes generally known to the public without the Receiving Party's breach of any obligation owed to the Disclosing Party; (b) was independently developed by the Receiving Party without the Receiving Party's breach of any obligation owed to the Disclosing Party; or (c) is received from a third party who obtained such Confidential Information without any breach of any obligation owed to the Disclosing Party. Except as expressly permitted in this Agreement or by written consent of the Disclosing Party, 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. The Receiving Party will not use Confidential Information except to perform its obligations under this Agreement. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to the extent required by law, provided that the Receiving Party shall (x) give 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; (y) use diligent efforts to limit disclosure and to obtain confidential treatment or a protective order; and (z) allow the Disclosing Party to participate in the proceeding. Further, the Receiving Party will return or destroy all Confidential Information upon the Disclosing Party's request at any time, and/or after the termination or expiration of this Agreement, and (if requested by the Disclosing Party) certify such return or destruction in writing.

9 **Data Protection**

9.1 <u>Privacy Policy</u> Company maintains a Privacy Policy found at https://ellevationeducation.com/platform-privacy-policy and incorporated into this Agreement. Company reserves the right to modify the Privacy Policy in accordance with the procedure outlined in the Privacy Policy.

9.2 <u>Family Educational Rights and Privacy Act</u> Customers subject to the Family Educational Rights and Privacy Act, 34 C.F.R. §99 et. seq. ("FERPA"), appoint Company a "school official" as that term is used in FERPA, and determine that Company has a "legitimate educational interest" for the purpose of carrying out its responsibilities under this Agreement. Company shall be bound by the relevant provisions of FERPA, including that it will remain under the "direct control" of Customer with respect to its use and maintenance of "education records" as that term is defined in FERPA. Company will use personally identifiable student data only as necessary to fulfill the Services in performance of this Agreement, and will only share personally identifiable student data with its third-party vendors as necessary to fulfill the Services in performance of this Agreement.

9.3 <u>Parental Consent.</u> If Customer purchases Services available for use by students, , if required under applicable state or federal law, Customer will be responsible for obtaining verifiable parent consent prior to making such Services available to its students under the age of 13. Company shall comply with its responsibilities under the Children's Online Privacy Protection Act ("COPPA") and state law.

9.4 <u>Data Security</u> Company deploys security precautions intended to help maintain the confidentiality, integrity, and availability of Customer data stored by Company, including use of firewalls, encryption, authentication technologies and background screenings for all employees. However, the internet is not perfectly secure and Company is not responsible for security incidents not reasonably foreseeable or reasonably within its control. Customer specifically shall not provide to Company, or store on the System, the Social Security number, driver's license or state-issued identification card number, financial account number, or credit or debit card number of any Customer student or employee.

9.5 <u>Notification of Breach</u> Company shall notify Customer within 48 hours of determination that an actual data breach impacting Customer has occurred. Company shall be responsible for the direct costs associated with a breach not caused by Customer or Customer Users.

9.6 <u>Legal Requests for Data</u> If Company receives a court order or subpoena for Customer Content, Company shall provide the Customer with a copy of such court order or subpoena within two (2) business days of its receipt, unless legally prohibited from doing so.

10 **Representation and Warranties; Disclaimers**

10.1<u>Company Representations and Warranties</u> Company represents and warrants that (a) it has the necessary authority to enter into this Agreement; (b) it will provide the System and related services in a professional and workmanlike

manner and in accordance with the specifications set forth in any Order Form or SOW; and (c) it will comply with all applicable laws.

10.2 <u>Customer Representations and Warranties</u> Customer 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 System and to grant Company the rights to use Customer Content as set forth in this Agreement; (c) any material uploaded to the System 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.

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

11 **Insurance.** Company shall provide professional liability insurance of no less than $1,000,000 per incident and $2,000,000 in the aggregate. Upon written request, Company shall file with the Customer a Certificate of Insurance, that includes the liability coverage limits, dates of coverage, and names the District as an additional insured.

12 **Termination.**

12.1 <u>Termination</u> Either party may terminate this agreement (a) immediately if the other party breaches any material provision and fails to cure its breach within 20 days after receiving the other party's written notice identifying the breach, or (b) for any or no reason, upon 60 days' prior written notice. Nevertheless, the Agreement will remain in effect for as long as Company is continuing to provide the System or Services to the Customer pursuant to a valid Order Form or SOW. In addition, Company may suspend Customer's access to the Services immediately if Customer fails to make a payment more than 30 days following its due date. Customer agrees to use any professional development or training Services prior to termination or expiration of Customer's access to the System. Otherwise, Customer risks losing those Services.

12.2 <u>Treatment of Customer Content at Termination</u> Customer shall have 30 days following the termination or expiration of this Agreement to provide Company with a written request for a one-time, delimited file export of its data from the System via SFTP. Regardless of whether Customer makes such a written request, and except as otherwise provided in this Agreement, within 90 days of the termination or expiration of this Agreement Company will securely destroy any and all of Customer's personally identifiable student data stored in the System, including any such data stored in Company's backup systems.

13 **Indemnification**

13.1 Company will defend and indemnify 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 System, 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 Company will not be obligated under this Section to the extent any such infringement or violation arises from use of the System in combination with technology or services not provided by Company.

13.2 Unless prohibited by applicable law, Customer will defend and indemnify Company 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, that arises out of or relates to Customer Content, including 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; provided, that Customer will not be obligated under this Section to the extent any such claim arises from Company's use of Customer Content in violation of this Agreement.

14 **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 AGGREGATE LIABILITY FOR ALL CLAIMS OF ANY NATURE ARISING OUT OF THIS AGREEMENT (EXCLUDING ITS OBLIGATIONS OF CONFIDENTIALITY AND INDEMNIFICATION) WILL NOT EXCEED THE FEES ACTUALLY PAID TO COMPANY UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.**

15 **Notices.** All notices under this Agreement must be in writing and sent via email, if to Company, to 'notices@ellevationeducation.com' or, if to Customer, at the email address provided on the Order Form.

16 **Entire Agreement.** The Agreement together with any Order Form, SOW and the Terms of Use, represents the entire agreement between the parties regarding Customer's use of the System 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.

17 **Assignment.** Company 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 Company's assets or equity, provided that such successor agrees to be bound by all of the terms and conditions hereof.

18 **Force Majeure.** Except for Customer's obligation to make payments hereunder, neither party shall be 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"** means an armed conflict, flood, epidemic, pandemic, labor strike or shortage, governmental decree or regulation, court order, severe weather, fire, earthquake, act of terrorism, failure of suppliers, or unavailability of communications transport facilities.

19 **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. If a court of competent jurisdiction finds any provision of this Agreement to be illegal or unenforceable, the parties intend that the court shall modify such provision to make such provision 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 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.

Curriculum Associates, LLC

Gridley Unified School District, CA

By (Signature): _____

By (Signature): _____

Name (Print): _____

Name (Print): _____

Title: _____

Title: _____

Date: _____

Date: _____