

Purchase Order

SF UNIFIED SCHOOL DISTRICT

PURCHASING DEPARTMENT
135 VAN NESS AVENUE, ROOM 123
SAN FRANCISCO CA 94102
Office - 415-241-6468
Fax - 415-241-6487

Dispatch via Print

Purchase Order SFU-0000148434	Date 11/19/2020	Revision	Page 1
Payment Terms NOW	Freight Terms FOB DESTINATION	Ship Via COMMON	
Buyer CHAN, SUSAN	Phone x1604	Currency USD	

Ship To: STATE & FEDERAL FUNDED PROGRAM
750 - 25TH AVENUE - 2ND FLOOR
SAN FRANCISCO CA 94121
United States

Bill To: STATE & FEDERAL FUNDED PROGRAM
750 - 25TH AVENUE - 2ND FLOOR
SAN FRANCISCO CA 94121
United States

Vendor: 0000066942
CORE DISTRICTS
1107 9TH STREET, SUITE 500
SACRAMENTO, CA 95814

PHONE: 818/661-8414
Fax:

Tax Exempt? N	Tax Exempt ID:	PO Reference: 0000034210
Line-Sch	Item/Description	Mfg ID

Line-Sch	Item/Description	Mfg ID	Quantity	UOM	PO Price	Extended Amt	Due Date
1- 1	Contract		1.00	YR	63,055.00	63,055.00	11/19/2020
	Attn: Maria J Vargas						

DATES OF SERVICE: 11/11/20 - 6/30/21

SERVICE: CORE SURVEY ADMINISTRATION IN CONJUNCTION WITH PANORAMA WILL SUPPORT ONLINE STUDENT, STAFF, AND FAMILY SURVEY PROGRAMS FOR SFUSD, INCLUDING SURVEY ADMINISTRATION AND REPORTING.

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DOLLAR AMOUNT: \$63,055.00

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CONTACT PERSON: MARIA VARGAS

TELEPHONE NO: 415-379-7618

EMAIL: CASTROR@SFUSD.EDU & HOOGEDYKJ@SFUSD.EDU

SubTotal PO Amount 63,055.00

Freight 0.00

Total PO Amount 63,055.00

All shipments, shipping papers, contracts, invoices, and correspondence must be identified with our Purchase Order Number. Overshipments and contract modifications will not be accepted unless authorized by Buyer prior to shipment. Bills payable on complete shipments only.

Authorized Signature

Susan Chan

SOFTWARE SUBSCRIPTION AND SUPPORT SERVICES AGREEMENT

This Software Subscription and Support Services Agreement ("Agreement") is dated for convenience as of **NOVEMBER 5, 2020**, between the **San Francisco Unified School District** ("District") and **CORE DISTRICTS** ("Service Provider"). The District and Service Provider may be individually referred to herein as a "Party" or collectively referred to herein as the "Parties."

RECITALS

WHEREAS, absent an exception or exclusion, competitive solicitation is required when contracting for Goods and Services in excess of the State bid limit, adjusted annually for inflation;

WHEREAS, Service Provider is the provider of software applications and cloud-based subscription services made digitally accessible via the Internet, and

WHEREAS, the District wishes to make these software applications and cloud-based subscription services available to its Authorized Users;

WHEREAS, Service Provider represents itself able and, for a consideration, willing to provide such software applications and cloud-based subscription services to the District;

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. PROVISION OF SOFTWARE APPLICATION SERVICES

Service Provider agrees to perform the to provide to the District the services as detailed herein and in strict conformity with the specific legal requirements related to student privacy protections, as set-forth for in the attached **APPENDIX A ("Data Privacy Requirements for Cloud-Based Software Application Providers")**.

- a. **Services.** Service Provider shall provide the services to District and its Authorized Users, in whole or in part, via Service Provider's Software Application. Service Provider will provide the Software Application in the following manner: the Software Application will be stored at one or more of Service Provider's U.S. locations, residing on one or more of Service Provider's servers in digital form, made accessible to the District and Authorized Users via the Internet.
- b. **Grant of License.** Service Provider hereby grants to District a limited, non-exclusive, non-transferable term license to use, access and benefit from the Software in fulfilling the District's public education mission during the term of this Agreement. The license hereby granted to District includes the right to provide to the District's Authorized Users access to the Software in accordance with this Agreement.
- c. **Copyright and Title.** The District acknowledges that the copyright and title to the Software Application and any trademarks or service marks relating thereto remain with Service Provider and/or its suppliers. Neither the District nor its Authorized Users shall have right, title or interest in the Software Application.
- d. **Authorized Uses.** Notwithstanding anything to the contrary in this Agreement, no term or provision of this Agreement shall be interpreted to limit or restrict the rights of the District and its Authorized Users, including Fair Use Rights, as provided by U.S. Copyright Act Sections 107 and 108 and other applicable intellectual property law. Notwithstanding anything to the contrary in this Agreement, Authorized Users shall not be restricted from extracting or using information (not including source code or object code) contained in the Software Application for the District's educational or research purposes, including extraction and manipulation of information for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis, if not engaged in for the purposes of commercial competition.
- e. **Access by and Authentications of Authorized Users.** Authorized Users shall be identified and then authenticated by the use of an ID and password assigned by the District after consultation with Service Provider.

2. TERM AND SERVICE PROVIDER TERMINATION; CONTRACT PRICING

a. TERM AND TERMINATION

Subject to District approval and the appropriation of funds, the term of this Agreement (“Term”) shall be for one (1) year, commencing November 11, 2020 (“Initial Term”), and may be extended by the District for two (2) additional one (1) year terms (“Extended Term”) for up to a total of three (3) years, and shall terminate on or before June 30, 2021. This Agreement may be terminated by Service Provider at any time by providing 90-days prior written notice to the District.

b. CONTRACT PRICING

The prices set forth in Appendix shall be firm through June 30th of the Initial Term. If the District elects to extend the Agreement beyond the Initial Term, Service Provider may request a rate increase or other adjustment, provided it is made in writing and presented to the District no later than 30 days prior to the ending date of each Extended Term contract year.

3. COMPENSATION

The breakdown of costs and payment schedule associated with this Agreement are detailed in the attached **APPENDIX B-2** (“Schedule of Fees and Charges”).

4. AVAILABILITY OF FUNDS; BUDGET AND FISCAL PROVISIONS; TERMINATION IN THE EVENT OF NON-APPROPRIATION

- a. This Agreement is subject to the budget and fiscal policies, regulations and practices of the District, and approval and appropriation of funds for this Agreement.
- b. The amount of the District’s obligation hereunder shall not at any time exceed the amount herein stated.
- c. The District has no obligation to renew this Agreement after expiration of its term.
- d. If funds are appropriated for only a portion of a fiscal year, this Agreement will terminate, without penalty, at the end of the term for which funds are appropriated.
- e. Service Provider’s assumption of risk of possible non-appropriation is part of the consideration for this agreement.

5. DISALLOWANCE

- a. If Service Provider claims or receives payment from the District for a service, reimbursement for which is later disallowed by the State of California or United States Government, Service Provider shall promptly refund the disallowed amount to the District upon the District’s request. At its option, the District may offset the amount disallowed from any payment due or to become due to Service Provider under this Agreement.
- b. By executing this Agreement, Service Provider certifies that Service Provider is not suspended, debarred or otherwise excluded from participation in federal or state programs. Service Provider acknowledges that this certification of eligibility to receive state or federal funds is a material term of this Agreement.

6. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES

Pursuant to Government Code §12650 et. seq., any person, including a Service Provider or a Service Provider’s sub-processors, who submits a false claim, shall be liable to the District for three times the amount of damages which the District sustains because of the false claim. A person who commits a false claim act shall also be liable to the District for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to the District for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim. A person will be deemed to have submitted a false claim to the District if the person:

- a. knowingly presents or causes to be presented to an officer or employee of the District, a false claim for payment or approval;
- b. knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the District;
- c. conspires to defraud the District by getting a false claim allowed or paid by the District;
- d. has possession, custody, or control of public property or money used or to be used by the District and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;
- e. is authorized to make or deliver a document certifying receipt of property used or to be used by the District and knowingly makes or delivers a receipt that falsely represents the property used or to be used;

- f. knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;
- g. knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the District; or
- h. is a beneficiary of an inadvertent submission of a false claim to the District, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the District within a reasonable time after discovery of the false claim.

7. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK

No payment shall in any way lessen the liability of Service Provider to remedy or replace unsatisfactory work, service, equipment, or materials, if the unsatisfactory character of such work, service, equipment or materials was not detected at the time of payment. Service, materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by the District and in such case must be remedied or replaced by Service Provider without delay at no additional cost to the District.

8. RESPONSIBILITY FOR EQUIPMENT

The District shall not be responsible for any damages to persons or property as a result of the use, misuse or failure of any equipment used by Service Provider, even though such equipment be furnished, rented or loaned to Service Provider by the District.

9. TAXES

Service Provider shall pay all taxes levied in connection with this Agreement, or the services delivered pursuant hereto.

10. INDEPENDENT CONTRACTOR

- a. Service Provider or any agent or employee of Service Provider shall be deemed at all times to be an independent contractor and not an employee of the District. Service Provider shall be wholly responsible for the manner in which it performs the services required of it under this Agreement. Nothing contained in this Agreement shall be construed as creating an employment or agency relationship between the District and Service Provider or its agents and employees.
- b. Any terms in this Agreement referring to direction from the District shall be construed as providing for direction as to policy and the result of Service Provider's work only, and not as the means by which such a result is obtained. The District does not retain the right to control the means or the method by which Service Provider performs work under this Agreement. Nothing contained in this Agreement shall be construed as creating an employment or agency relationship between the District and Service Provider or its agents and employees.
- c. If any governmental authority should, nevertheless, determine that Service Provider is an employee, then the District's payment obligations hereunder shall be reduced so that the aggregate amount of payments directly to Service Provider and to the applicable governmental authority does not exceed the maximum amount specified in this Agreement. Service Provider shall refund any amounts necessary to effect such reduction.

11. INSURANCE

Service Provider shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Service Provider, his or her agents, representatives, employees subcontractors or sub-processors. Specifics regarding the amount and type of insurance are set-forth in the attached **APPENDIX C** ("Insurance Requirements").

12. WARRANTY AND INDEMNIFICATION

- a. **Warranty of Right to Provide Software Application.** Service Provider warrants that it has the right to provide access to the Software Application to District pursuant to this Agreement, that Service Provider has obtained any and all necessary permissions from third parties to provide the Software Application, and that use of the Software Application by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party.
- b. **Warranty of Conformity to Specifications.** Service Provider warrants that the Software Application that it will provide to District will conform to the specifications described in Appendix A (Scope of Work), and that any updates and improvements to the Software Application that Service Provider may make

during the term of this Agreement will conform to or be consistent with the specifications described in Appendix A (Scope of Work).

- c. **General Indemnification.** Service Provider shall indemnify and hold harmless the District, its Board, officers, employees and agents from, and, if requested, shall defend them against any and all third-party claims, demands, liabilities, obligations, losses, damages, judgments, costs or expenses (including legal fees and costs of investigation) (collectively "Claim"), whether actual or alleged, arising directly or indirectly from or in any way connected with the performance of this Agreement by Service Provider and/or Service Provider's agents or employees, including but not limited to any Claim for personal injury, death, property damage, loss of profits, infringement upon intellectual property rights, failure to comply with the criminal background check requirements of Education Code section 45125.1 and/or disclosure of confidential information which might be obtained by Service Provider or Service Provider's agents or employees in the performance of this Agreement. Notwithstanding the foregoing, Service Provider shall have no obligation under this Section 12 with respect to any third-party Claim that is caused by the active negligence or willful misconduct of District and which is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by Service Provider or Service Provider's agents or employees.
- d. **Infringement Indemnification.** Service Provider shall indemnify, defend and hold harmless the District, its Board, officers, employees and agents, for any losses, claims, damages, awards, penalties, or injuries incurred (hereafter "Claims"), including but not limited to Claims of reasonable attorney's fees, which arise from any Claim by any third party of an alleged infringement of copyright, patent right, trade secret, trade name, trademark, service mark, or any other right in intellectual property arising out of the use of the Software Application by the District in accordance with the terms of this Agreement. This indemnity shall survive the termination of this Agreement. NO LIMITATION OF LIABILITY SET FORTH ELSEWHERE IN THIS AGREEMENT IS APPLICABLE TO THIS INDEMNIFICATION. Service Provider shall have the right to investigate, defend and settle any such claim against the District and the District will reasonably cooperate with Service Provider at Service Provider's expense.
- e. **Indemnity Conditions.** Service Provider's defense and indemnification obligations under this Section 12 ("Warranty and Indemnification") are conditioned upon the following: (i) District providing Service Provider with prompt written notice of any claim for which indemnification is sought, provided however that no delay on the part of the District shall relieve Service Provider from any obligation hereunder; (ii) Service Provider having sole control of the defense and settlement of such claim, provided, however, that Service Provider will not consent to the entry of any judgment or enter into any settlement with respect to the claim without the prior written consent of District (which consent will not be unreasonably withheld) except where the judgment or proposed settlement involves only the payment of money damages by Service Provider, does not impose any obligation upon District, and Service Provider obtains the full and complete release of District; District shall have the right to have any suit or proceeding monitored by counsel of District's choice and at its expense; and (iii) District's reasonable cooperation with Service Provider in the defense and settlement of the claim, at Service Provider's expense.
- f. The provisions of this Section 12 shall survive the termination or expiration of this Agreement.

13. LIABILITY OF DISTRICT

DISTRICT'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT PROVIDED TO SERVICE PROVIDER UNDER THIS AGREEMENT. DISTRICT SHALL NOT BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, IN CONNECTION WITH THIS AGREEMENT.

14. SPECIFIC RESTRICTIONS ON USE OF SOFTWARE APPLICATION; INTELLECTUAL PROPERTY

- a. **Unauthorized Use.** Except as specifically provided elsewhere in this Agreement, District shall not knowingly permit anyone other than Authorized Users to use the Software Application.
- b. **Removal of Copyright Notice.** District may not remove, obscure or modify any copyright or other notices included in the Software Application or included, if any, on the materials produced by the Software Application.
- c. **Commercial Purposes.** Other than as specifically permitted in this Agreement, District may not use the Software Application for commercial purposes, including but not limited to the sale of the Software Application or bulk reproduction or distribution of the Software Application in any form. District shall only use the Software Application pursuant to its public education mission.

- d. **Proprietary Rights and Obligations.** The Software Application is valuable property of Service Provider. District will not make or have made, or permit to be made, any copies of the Software Application or any portion thereof. District agrees not to modify, adapt, translate, decompile, disassemble or create derivative works based on the Software Application. District agrees not to create derivative works based on the Software Application's accessible data, except as pursuant to the District's permitted use of the Software Application including for illustrative purposes and without limitation viewing, manipulating, and printing data, tables, and reports from the Software Application.
- e. **Trade Secret.** District acknowledges that the Software Application is confidential in nature and constitutes a trade secret of Service Provider. District agrees not to sell, rent, license, distribute, transfer, directly or indirectly permit the sale, rental, licensing, distribution, or transfer of the software to any other party, either during the term of this Agreement or thereafter. District agrees to use reasonable efforts to prevent inadvertent disclosure of the Software Application to any third party during the term of this Agreement or thereafter.

15. PROPRIETARY INFORMATION OF DISTRICT; STUDENT INFORMATION – (Reference Appendix A)

Service Provider understands and agrees that, in connection with this Agreement, the Service Provider may have access to proprietary and/or confidential information which may be owned or controlled by the District, the disclosure of which to third parties may be damaging to the District, its employees or students. Service Provider also understands and agrees that the disclosure of such information may violate state and/or federal law and may subject the Service Provider to civil liability. Consequently, Service Provider certifies that all information disclosed by the District to the Service Provider shall be held in strict confidence and used only in performance of the Agreement, unless disclosure is required by law or court order. Service Provider shall exercise the same standard of care to protect such information as is used to protect its own proprietary and/or confidential information and in no case less than a reasonable standard of care.

16. SERVICE PROVIDER PERFORMANCE OBLIGATIONS

- a. **Provision of Documentation.** Service Provider will provide and maintain help files and other appropriate user Documentation.
- b. **Support Services.** Service Provider will offer activation support, including assisting with the implementation of any other software as needed. Service Provider will offer reasonable levels of continuing support to assist the District and Authorized Users in use of the Software Application. Service Provider will make its personnel available by email, phone or fax for feedback, problem-solving, or general questions. User support services will be provided by Service Provider to District Monday through Friday from 8am to 5pm PST. Support requests will be processed within 24hrs.
- c. **Online Hosting.** Service Provider shall use reasonable efforts to provide continuous service in its provision of online hosting of the Software Application and any derivative works on Service Provider's website. Permissible down-time includes periodic unavailability due to maintenance of the server(s), installation or testing of software, loading of additional software, features, or materials as they become available, and downtime related to the failure of equipment or services outside the control of Service Provider, including but not limited to public or private telecommunications services or internet nodes or facilities. Scheduled down-time will be performed at a time to minimize inconvenience to users of the online hosted Software Application. If the online hosted Software Application on Service Provider's website fails to operate in conformity with the terms of this Agreement, District shall immediately notify Service Provider, and Service Provider shall promptly use reasonable efforts to restore access to and full use of the online hosted Software Application as soon as possible.
- d. **Implementation of Developing Security Protocols.** Given that risks and threats to online security are constantly evolving, Service Provider will, on an ongoing basis, develop and implement security measures designed to protect against the latest risks and threats, consistent with current industry standards for online hosted software applications holding confidential data.
- e. **Security Certificate.** Service Provider will ensure that all of its websites hosting the Software Application have attached to them a Secure Sockets Layer (SSL), and that such websites will include issuance of a SSL certificate, or other equivalent security certificate, to verify such websites' identity and to enable secure and encrypted communications between Authorized Users and the online hosted Software Application.
- f. **Training and Updates.** Service Provider shall provide District staff with initial training and support in the use of the Software Application. Service Provider will provide additional training to District staff made necessary by any updates or modifications to the Software Application.

- g. **Usage Data.** Service Provider shall provide to District statistics regarding usage of the Software Application by District and its Authorized Users according to the then current standards in the industry.
- h. **Information Backup.** Service Provider shall conduct daily backups of District data, either incremental or full, and must conduct full weekly backups.

17. DEFAULT

Service Provider shall be in default if Service Provider: (a) fails to perform any term, covenant, or condition contained in this Agreement; (b) files or is the subject of a petition for bankruptcy or insolvency; or, (c) has a court-ordered receiver or trustee appointed with respect to Service Provider's assets.

18. REMEDIES

If a default has occurred and is continuing, the District may, in its sole discretion, and individually or in combination with any other remedy:

- a. Terminate this Agreement upon ten or fewer days' written notice at the discretion of the District. District shall specify the date of termination in its written notice of termination for default. Service Provider shall be paid for services satisfactorily rendered through the date of termination;
- b. Offset the amount of any outstanding liability of Service Provider against funds otherwise due and owing hereunder or any other agreement with Service Provider;
- c. Withhold funds due hereunder;
- d. Cure the default, in which event all amounts expended by the District in effecting such cure shall be payable upon demand, with interest from the date of incurrence at the maximum rate permitted by law; and/or
- e. Exercise any other remedy available by law.

19. TERMINATION

- a. It is expressly understood and agreed that in an Event of Default by the Service Provider under this Agreement, this Agreement may be terminated for cause by the District and all the Service Provider's rights hereunder ended. Termination for cause shall be upon ten (10) days written notice, and no work will be undertaken by Service Provider after receipt of the notice of termination for cause, with the exception of actions necessary to effectuate the termination.
- b. It is further understood and agreed that the District may terminate this Agreement for the District's convenience and without cause at any time by giving the Service Provider thirty (30) days written notice of such termination.
- c. Upon receipt of any notice of termination of this Agreement, Service Provider shall commence and perform, with diligence, all actions necessary on the part of Service Provider to effect the termination of this Agreement on the date specified by District in a manner that minimizes the liability of Service Provider and District to third parties as a result of termination. All such actions shall be subject to prior approval by District and shall include, without limitation: canceling orders, assigning interests to the District, settling outstanding liabilities and claims, securing and safe-guarding District property, and halting or completing services in the manner specified by the District.
- d. In no event shall District be liable for costs incurred by Service Provider or any of its sub-provider Providers after the effective date of termination, except for those costs specifically approved by the District as necessary to effect the termination in a manner acceptable to the District. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, or prejudgment interest.
- e. Within thirty (30) days after the effective date of termination, the Service Provider will submit an itemized invoice detailing the unpaid costs incurred for the services rendered pursuant to this Agreement up to the effective date of termination. The District's payment obligation under this Section 17 shall survive termination of this Agreement. Upon payment of approved charges under such invoice by the District, the District shall be under no further obligation to the Service Provider, monetarily or otherwise.

20. SOURCE CODE AND DATA ESCROW

In the event that (i) Service Provider becomes insolvent or bankrupt, (ii) Service Provider makes an assignment for the benefit of creditors, (iii) Service Provider consents to a trustee or receiver appointment, (iv) a trustee or receiver is appointed for Service Provider or for a substantial part of its property without its consent, (v) Service Provider voluntarily initiates bankruptcy, insolvency, or reorganization proceedings, or is the subject of

involuntary bankruptcy, insolvency, or reorganization proceedings, or (vi) Service Provider announces that it has entered into an agreement to be acquired by a then named Competitor, then agrees to enter into a source code escrow agreement with a mutually agreed upon source code escrow company. Notwithstanding the foregoing, the escrow instructions shall provide for a release of the source code Service Provider's Software Application, and the District's Data it contains, only upon the occurrence of (a) the filing of a Chapter 7 bankruptcy petition by Service Provider, or a petition by Service Provider to convert a Chapter 11 filing to a Chapter 7 filing; (b) the cessation of business operations by Service Provider; or (c) the failure on the part of Service Provider to comply with its contractual obligations to the District under this Agreement. In the event of a release of a Software Application / application source code pursuant to this section, said source code shall continue to be the Confidential Information of Service Provider or its successor in interest.

21. **NOTICES**

Any notices or communications required or permitted to be given by this Agreement must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party to whom such notice or communication is directed, to the mailing address or regularly-monitored electronic mail address of such party as follows:

NOTICE TO THE DISTRICT:

SITE/DEPARTMENT	State and Federal Programs
HEAD OF SITE/DEPARTMENT	Dr. Roderick Castro and Jill Hoogendyk
CONTACT PERSON	Maria Vargas
STREET ADDRESS	750 25 th Avenue,
CITY, STATE, ZIP	San Francisco, CA 94121
TELEPHONE	(415) 379-7618
EMAIL ADDRESS	castor@sfusd.edu. and hoogedykj@sfusd.edu

NOTICE TO THE SERVICE PROVIDER:

SERVICE PROVIDER NAME	CORE DISTRICTS
CONTACT PERSON	Noah Bookman
STREET ADDRESS	1107 9 th Street, Suite 500
CITY, STATE, ZIP	Sacramento, CA 95814
TELEPHONE	(916) 569-2548
EMAIL ADDRESS	whitney@coredistrict.org

With Copy to:

San Francisco Unified School District
Contracts Office
135 Van Ness Street, Room 102
San Francisco, CA 94102
contract@sfusd.edu

Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or communication is sent electronically, provided that the sender has received a confirmation of such electronic transmission. A party may, for purposes of this Agreement, change his, her or its address, email address or the person to whom a notice or other communication is marked to the attention of, by giving notice of such change to the other party pursuant to this Section.

22. **CRIMINAL BACKGROUND CHECK/SUBSEQUENT ARREST NOTIFICATION REQUIREMENTS**

a. **Criminal Background Check**

- 1) Throughout the term of this Agreement, if Service Provider or any of its employees, agents or volunteers that Service Provider hires or assigns, will have more than limited contact with SFUSD students, Service Provider is required to comply with the criminal background check provisions of Education Code Section 45125.1. Service Provider must conduct criminal background checks through the California Department of Justice (CDOJ), including both CDOJ and Federal Bureau of Investigation (FBI) background checks, and must obtain subsequent arrest notification (as below), for all Service Provider employees, agents, and volunteers who will have more than limited contact with District students pursuant to this Agreement.

- 2) Service Provider certifies that no Service Provider employee, agent or volunteer who has been convicted of a serious or violent felony as defined by Education Code Section 45125.1 (citing Education Code Section 45122.1), a sexual offense as defined by Education Code Section 44010, a controlled substance offense as defined by Education Code Section 44011, or any other offense that renders Service Provider's proximity to children or services to the District inappropriate, shall have contact with District students under this Agreement. This prohibition does not apply to an employee, agent or volunteer who has obtained a certificate of rehabilitation and pardon pursuant to California Penal Code Section 4852.01 et seq. for a serious or violent felony listed under Education Code Section 45122.1.
 - 3) It is the Service Provider's sole responsibility to comply with the CDOJ fingerprint and criminal background investigation requirements and maintain compliance throughout the duration of this Agreement.
 - 4) The District will not be responsible for the costs of the criminal background checks.
 - 5) Service Provider's employees, agents or volunteers who will have no contact or only limited contact with students are not required to meet criminal background check and subsequent arrest notification requirements.
 - 6) If Service Provider asserts that all of its employees, agents or volunteers will have no contact or only limited contact with District students, the District Administrator supervising this Agreement will be required to affirm that Service Provider has correctly disclosed the level of student contact associated with the services provided under this Agreement. The District's determination shall control.
- b. **Subsequent Arrest Notification**
- 1) In addition to the initial criminal background check, Service Provider will obtain from CDOJ subsequent arrest notification to monitor future arrests of employees, agents and volunteers who will have more than limited contact with District students pursuant to this Agreement. District shall not be responsible for the costs associated with the subsequent arrest notifications.
 - 2) Upon receipt of notice that any of its employees, agents, or volunteers who will have more than limited contact with District students pursuant to this Agreement has been arrested or convicted of a serious or violent felony as defined by Education Code Section 45125.1 (citing Education Code Section 45122.1), a sexual offense as defined by Education Code Section 44010, or a controlled substance offense as defined by Education Code Section 44011, or any other offense that renders Service Provider's proximity to children or services to the District inappropriate Service Provider will immediately prohibit such employee, agent, or volunteer from having any contact with District students pursuant to this Agreement, and Service Provider will immediately notify the District of such arrest.
 - 3) Without limiting any other available legal remedies, failure by Service Provider to comply with this Section may result in termination of this Agreement at the District's sole discretion.
- c. Service Provider certifies that it will comply with all CDOJ fingerprint and criminal background investigation requirements of Education Code section 45125.1 et seq., and maintain compliance throughout the duration of this Agreement with SFUSD.
- d. **Evidence of compliance with these requirements shall be immediately available to the District upon request or audit.**

23. TUBERCULOSIS SCREENING REQUIREMENTS

- a. California law requires that school Service Providers working with students be free of infectious tuberculosis (TB).
- b. If Service Provider, its employees and/or sub-providers ("Service Provider Parties") shall or may be on a District school site and have contact with District students three or more times per month during the term of this Agreement, then Service Provider shall at all times during the duration of the Agreement maintain compliance with the tuberculosis ("TB") certification requirements as set forth herein.
- c. Service Provider shall maintain on file documents confirming that Service Provider Parties received a TB test or TB assessment that complies with the requirements of California Education Code section 49406. These documents shall be regularly maintained and updated by Service Provider and shall be available to District upon request or audit. Service Provider further agrees and acknowledges that all new personnel hired after the Effective Date of this Agreement are subject to the TB certification requirements and shall be prohibited from having any contact with District students until the TB certification requirements have been satisfied.

- d. All costs to comply with the TB certification requirements are the Service Provider's responsibility.
- e. Service Provider shall indemnify, defend and hold harmless the District and its officers, directors, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from any failure to comply with these TB certification requirements.
- f. **Evidence of compliance with these requirements shall be immediately available to the District upon request or audit.**

24. CALIFORNIA STATE TEACHERS RETIREMENT SERVICES - POSTRETIREMENT EARNINGS LIMIT

- a. Service Provider certifies that it is cognizant and fully informed of regulations regarding Postretirement Earnings Limits applicable to retirees from California State Teachers Retirement Services (Cal STRS). Service Provider further certifies that it has informed any of its employees/owners who are CAL STRS retirees of the Postretirement Earnings Limit. (California Education Code Sections 22714, 24114, 24116, 24214, 24214.5 and 24215.)
- b. Service Provider shall indemnify, defend (by counsel reasonably acceptable to the District) and hold harmless the District and its officers, directors, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from any failure to adhere to CalSTRS regulations applicable to retirees Postretirement Earnings Limit.

25. CONFLICT OF FINANCIAL INTEREST

- a. It shall be Service Provider's responsibility to know, and comply with, all requirements of California law pertaining to Conflicts of Financial Interest in contracting with public agencies. It is the obligation of the Service Provider to determine whether or not participation in a contract may constitute a conflict of interest. While the District staff maintains records regarding the award and execution of contracts, it does not have access to specific information concerning which entities, partners, sub-providers or team members perform specific work on these contracts. A conflict of interest or an unfair advantage may exist without any knowledge of the District. The determination of the potential for a conflict must be made by the Service Provider. Service Provider is responsible to notify the District immediately if it finds that a potential conflict may exist.
- b. Service Provider certifies that it has read, understood and will comply with conflict of interest laws and regulations, set-forth in **Board Rule and Procedure 9270 / Conflict of Interest and the Appendix to Board Rule and Procedure 9270 / Conflict of Interest**.
- c. Service Provider certifies that it is familiar with the provisions of set-forth in Board Rule and Procedure 9270 / Conflict of Interest and the Appendix to Board Rule and Procedure 9270; certifies that it does not know of any facts that constitute a violation of such provisions; and agrees to promptly notify the District if it becomes aware of any such facts during the term of this Agreement. Please refer to the following links for the complete text of Board Rule and Procedure 9270 and Appendix to Board Rule and Procedure 9270:
<http://go.boarddocs.com/ca/sfusd/Board.nsf/goto?open&id=AGUTL477D602>;
<http://go.boarddocs.com/ca/sfusd/Board.nsf/goto?open&id=AWU6KM1553E4>

26. NON DISCRIMINATION

The District is committed to providing equal opportunity for all individuals in education. Service Provider understands and agrees that in providing services to the District, it is Service Provider's obligation to comply with **Board Policy 0410 / Nondiscrimination in District Programs and Activities**, which requires that all District programs, activities, and practices be free from discrimination based on race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation, gender, gender identity or expression, or genetic information; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics. To the extent that the services Service Provider will provide to the District under this Agreement include the provision of services to students, Service Provider further understands and agrees that, in providing such services to the District, Service Provider shall comply with **Board Policy 6141 / Curriculum Development and Evaluation**, which recognizes that the District's curriculum may sometimes include instruction related to controversial issues that may arouse strong reactions based on personal values and beliefs, political philosophy, culture, religion, or other influences. The services provided by Service Provider shall not reflect adversely upon persons because of their race, color, ancestry, national origin, ethnic group identification, age, religion, marital or parental status, physical or mental disability, sex, sexual orientation,

gender, gender identity or expression, or genetic information; the perception of one or more of such characteristics; or association with a person or group with one or more of these actual or perceived characteristics. By signing this Agreement, Service Provider certifies that its programs, activities, and practices are free from discrimination and that it shall strictly adhere to and comply with District policies. **Please refer to the following links for the complete text of Board Policy 0410 and Board Policy 6141:**

<http://go.boarddocs.com/ca/sfusd/Board.nsf/goto?open&id=B4T49X7AED0E>

<http://go.boarddocs.com/ca/sfusd/Board.nsf/goto?open&id=AGP2W9042347>

27. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

Service Provider acknowledges that, pursuant to the Americans Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a Service Provider or sub-provider, must be accessible to the disabled public. Service Provider shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation including without limitation Section 504 of the Rehabilitation Act. Service Provider agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agree that any violation of this prohibition on the part of Service Provider, its employees, agents or assigns will constitute a material breach of this Agreement.

28. MANDATED REPORTING OF SUSPECTED CHILD ABUSE OR NEGLECT

If Service Provider will provide services at a school site and work with District students pursuant to this Agreement, Service Provider is a mandated reporter of suspected child abuse or neglect under California Penal Code section 11165.7, and Service Provider will submit reports of suspected child abuse or neglect to Child Protective Services (CPS) as required by law. (Cal. Penal Code section 11165.7, e.g. subsections (a) (7) and (a) (8); Sections 11164 and sequential.) Service Provider shall maintain copies of such reports. Service Provider is requested, but is not required, to notify the District school site administrator when a CPS report has been filed.

29. NOTICE OF “CLICK-THROUGH” TERMS OR OTHER MEANS OF PASSIVE ASSENT

THIS AGREEMENT EXPRESSLY SUPERSEDES ANY CLICK-THROUGH, CLICK-ON, “SCREEN WRAP” OR OTHER USER AGREEMENT APPEARING ON SERVICE PROVIDER’S SOFTWARE APPLICATION WEBSITE.

30. FORCE MAJEURE

The parties agree that neither shall be liable to the other under this Agreement as a result of any delay, failure or interruption in services directly caused by an act of God or public enemy; acts of civil or military authorities; catastrophes such as an earthquake, epidemic, pandemic, viral or communicable disease outbreak; quarantines; disruption of supply chains, transportation systems, or national emergency, that is beyond the reasonable control of the Party and which renders impossible the performance of contractual obligations, either totally or in part (a “Force Majeure Event”), excluding in all cases claims of financial hardship, and such nonperformance will be excused and will not be deemed a default hereunder or a ground for termination of the Agreement, provided that as soon as reasonably possible the affected Party (1) provides the other party with notice of such Force Majeure Event, (2) provides detailed documentation establishing that such Force Majeure Event was beyond the Party’s reasonable control and not due to any fault or negligence on its part, and (3) works diligently to restore services as soon as reasonably possible. In no event shall any work stoppage, strike or labor dispute at a District or Service Provider site, or by District or Service Provider personnel, constitute a Force Majeure Event under this Agreement. In no event shall District be liable to Service Provider for payment for services that cannot be and are not provided as a result of a Force Majeure Event.

31. GENERAL RESPONSIBILITIES REGARDING DISTRICT DATA

Service Provider acknowledges that the District Data that will be imported or otherwise inputted, or gathered by, the Software may contain personally identifiable student, parent and/or employee data which are confidential, and Service Provider agrees to protect such data from unauthorized disclosures and to comply with all applicable state and federal confidentiality laws including but not limited to the California Education Code and FERPA and the regulations promulgated thereunder.

- a. Service Provider shall designate **[Insert Name and Title of Service Provider's Designee]** as the person responsible for the security and confidentiality of the data and will notify the District immediately in writing of any change in Service Provider’s designee.
- b. Service Provider will use reasonable security safeguards, including but not limited to encryption and

other electronic and technological measures, to prevent the use or disclosure of District Data other than as provided by this Agreement.

- c. Service Provider shall train and instruct all of Service Provider's staff who require access to District Data in order to carry out their professional responsibilities in relation to this Agreement about the requirements for handling such data, and require each such person who will have access to such information and data to sign a non-disclosure agreement to comply with the confidentiality provisions of this Agreement and any other confidentiality requirements of the Service Provider.

32. OWNERSHIP OF DATA; OWNERSHIP OF THE RESULTS

- a. **Ownership of Data.** While the Software Application provided pursuant to this Agreement is the proprietary information and property of Service Provider, Service Provider acknowledges and agrees that the District owns the District data imported or otherwise inputted into, or gathered by, the Software Application ("District Data"); that the District has a right to control, access and retrieve District Data at any time during the term of the Agreement, in computer-readable format; and that any access to and use of such data by Service Provider shall be for the sole purpose of supporting the District's use of the Software Application pursuant to this Agreement. District Data includes student data, meta data, user content, and pupil records as defined in California Education Code 49073.1(d)(5). Service Provider may, however, use and disclose to third parties such District Data that has been anonymized and de-identified ("De-identified Data") in accordance with applicable law. De-identified Data shall have all direct and indirect personal identifiers removed, which includes but is not limited to name, social security number, birth date, demographic information, location information, and student ID number. Service Provider shall not attempt to re-identify De-identified Data and not to transfer De-identified Data to any party unless that party agrees not to attempt re-identification of De-identified Data.
- b. **Ownership of the Results.** Any results, reports, data tables, charts, studies, memoranda, computer data files and media, or other documents in electronic or paper format, or in any format or media that may come into existence, which are prepared by Service Provider in connection with services to be performed under this Agreement, or produced using the Software Application by Authorized Users of the District, and which contain District student information, shall be the property of the District and available to the District during the term of this Agreement.

33. AUDIT AND INSPECTION OF RECORDS

Service Provider agrees to maintain and to permit the District to audit, examine and make copies, excerpts and transcripts of all records including without limitation accurate accounting books and records, invoices, timesheets, documents, reports, student records, payroll and personnel records and other materials and data related to Service Provider's performance of this Agreement, whether funded in whole or in part under this Agreement. The Service Provider shall maintain such records and data in an accessible location and condition for a period of not less than five (5) years after a final payment under this Agreement or until after final audit has been completed, whichever is later.

34. SUBCONTRACTING

Subject to the provisions in Appendix A authorizing engagement with sub-processors, Service Provider is prohibited from subcontracting this Agreement or any services provided pursuant to this Agreement without the prior written consent of the District. The District acknowledges CORE is subcontracting this work with Panorama.

35. ASSIGNMENT

It is understood and agreed that the services to be performed by the Service Provider under this Agreement are personal in character and neither this Agreement, nor any duties or obligations hereunder, shall be assigned or delegated by the Service Provider without the prior written consent of the District.

36. WAIVER

Either party's failure at any time to enforce any default or right reserved to it, or to require performance of any of the Agreement's terms, covenants, or provisions by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

37. DISPUTE RESOLUTION

Prior to any action or resort to any other legal remedy, District and Service Provider agree to exercise reasonable efforts and to negotiate in good faith to resolve to the satisfaction of the parties any dispute that may arise concerning the performance by either party of its obligations under this Agreement.

38. COMPLIANCE WITH LAWS

Service Provider shall keep itself fully informed of the applicable federal, state and local laws affecting the performance of this Agreement, and shall at all times comply with such laws as they may be amended from time to time. (Note: The penalty for noncompliance with the requirements of Education Code section 49073.1 is that Agreement be voided and unenforceable if, following the provision of notice of deficiency, Service Provider does comply within a reasonable amount of time.)

39. MODIFICATION OF AGREEMENT

Any amendment or modification to this Agreement shall be by written instrument and shall only be effective upon execution by the duly authorized representatives of the parties and written approval by the Board of Education.

40. USE OF NAME; MARKETING

Excluding a simple statement or acknowledgement that Service Provider has a written agreement with the District, Service Provider will not use the name, marks or logos of the District in any planned advertisement, press release, or other planned publicity or marketing materials, in any form or media, without the prior written approval of the District. Notwithstanding the foregoing provisions of this Section, nothing in this Section shall infringe upon the First Amendment rights of either party.

41. GOVERNING LAW; VENUE

This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, without regard to its conflict of laws rules. The venue for all litigation relative to this Agreement shall be San Francisco, California.

42. SECTION HEADINGS

The section headings contained herein are for convenience of reference only and are not intended to define the scope of any provision of this Agreement. In the event of any inconsistency between the *terms* of this Agreement and language set forth in any Appendix to this Agreement, the terms of this Agreement shall take precedence in resolving the conflicting terms

43. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof, and supersedes any prior or contemporaneous written or oral understanding or agreement, and may be amended only by written amendment executed by the parties to this Agreement. In the event of any inconsistency between the terms of this Agreement and language set forth in any Appendix to this Agreement, the terms of this Agreement shall take precedence in resolving the conflicting terms

44. EXECUTION OF THE AGREEMENT, EXECUTION IN COUNTERPARTS

- a. Original copies of this Agreement shall be executed by the respective party's authorized signatories.
- b. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement, but all of which shall be considered one instrument and shall become a binding agreement when one or more counterparts have been signed by each of the parties and delivered to the other.

45. SEVERABILITY

If any term or provision of this Agreement shall be found illegal or unenforceable, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

46. APPENDICES

The Appendices set-forth below and attached hereto are an integral and definitive part of this Agreement and are incorporated herein by this reference. In signing this Agreement, Service Provider certifies that it will comply

with all laws, regulations, and SFUSD Board Policies referenced in the Appendices; affirms that it is familiar with the laws, regulations, and SFUSD Board Policies referenced in the Appendices; certifies that it does not know of any facts that constitute a violation of any such laws, regulations, and SFUSD Board Policies contained therein; and agrees to promptly notify the District if it becomes aware of any such facts during the term of this Agreement.

Appendix A - Data Privacy Requirements for Cloud-Based Software Application Providers
Appendix B - Description of Software Application Services; Schedule of Fees and Charges
Appendix C - Insurance Requirements

47. PUPIL-GENERATED CONTENT


"Pupil-generated content" means materials created by a student, including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, and account information that enables ongoing ownership of student content. "Pupil-generated content" does not include student responses to a standardized assessment where student possession and control would jeopardize the validity and reliability of that assessment. Does the software application permit the creation of student generated content?

☒ **NO**, Service Provider's Software does **not** permit the creation of pupil-generated content by District student Authorized Users in the performance of this Agreement.

☐ **YES**, Service Provider's Software **does** permit the creation of pupil-generated content by District student Authorized Users in the performance of this Agreement.

If **YES**, Service Provider must comply with the requirements of Appendix A, Section 5 b.

48. **STUDENT CONTACT DISCLOSURE**

<p>Will Service Provider have <u>MORE THAN LIMITED CONTACT or FREQUENT OR PROLONGED CONTACT</u> with District students in the performance of this Agreement? Check one:</p> <p><input type="checkbox"/> <u>YES</u> <input checked="" type="checkbox"/> <u>NO</u></p> <p>If <u>YES</u>, Service Provider must comply with the requirements of Sections 22 and 23 to Board ratification or approval.</p>	<p><i>I have reviewed and affirm that the Service Provider has correctly disclosed the level of student contact associated with the services provided under this Agreement.</i></p> <p></p> <p>_____ Dr. Roderick Castro Director</p> <p>_____ Date: November 5, 2020</p>
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IN WITNESS WHEREOF the Parties hereto have executed this Agreement as approved/ratified by the Board of Education on 12/08/20.


CORE DISTRICTS

APPROVED:

BY: _____
Authorized Signature
Rick Miller
Executive Director

SAN FRANCISCO UNIFIED SCHOOL DISTRICT

RECOMMENDED:

BY: _____
Signature of Site/Dept. Administrator
Dr. Roderick Castro
Director

APPENDIX A

DATA PRIVACY REQUIREMENTS FOR CLOUD-BASED SOFTWARE APPLICATION PROVIDERS

In accordance with California Education Code § 49073.1 (AB 1584), California Business and Professions Code § 22584 (SB 1177) ("SOPIPA"), the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99) ("FERPA"), and applicable law, the parties hereby agree as follows:

1. **DEFINITIONS.** Unless otherwise stated, whenever the words "as directed," "as required," "as permitted," shall be understood as the direction, requirement, or permission of the District. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the District unless otherwise indicated by the context. Capitalized terms shall have the meaning ascribed to such terms in the Agreement, unless otherwise explicitly defined below:
 - a. **Authorized Users.** "Authorized Users" means all persons holding a valid ID and password issued by the District.
 - b. **California Business and Professions Code § 22584 (SB 1177),** also known as the **Student Online Personal Information Protection Act ("SOPIPA")**, sets forth privacy laws for operators of Service Provider websites, online services, and applications that are marketed and used for K-12 school purposes, even if those operators do not contract with educational agencies. While primary responsibility for compliance with SOPIPA lies with Service Provider website operators, the District proceeds with reasonable due diligence when evaluating technology service providers, especially providers based outside of California, to ensure their policies and procedures comply with SOPIPA. SOPIPA adds to the K-12 student privacy scheme the following requirements:
 - I. Service Providers cannot target advertising on their Service Provider website or any other Service Provider website using information acquired from students.
 - II. Service Providers cannot create a profile for a student, except for school purposes.
 - III. Service Providers cannot sell a student's information.
 - IV. Service Providers cannot disclose student information, unless for legal, regulatory, judicial, safety, or operational improvement reasons.
 - V. Service Providers must protect student information through reasonable security procedures and practices.
 - VI. Service Providers must delete school- or district-controlled student information when requested by schools or districts.
 - VII. Service Providers must disclose student information: when required by law; for legitimate research purposes; or for school purposes to educational agencies.
 - c. **Covered Information** has the meaning ascribed to "Covered Information" in SOPIPA (defined above) and includes any Personal Student Information that may, alone or in combination with other available information, be reasonably used to identify a current or former student enrolled in a District School.
 - d. **Documentation.** The technical publications relating to the use of the Software Application, such as reference, installation, administrative and programmer manuals, provided by Service Provider to the District.
 - e. **Internet.** "Internet" shall mean the global network of computers and devices commonly referred to as the "Internet," including (without limitation) the World Wide Web.
 - f. **Online.** "Online" and "online" shall mean that the item so described is accessible and available via the Internet.
 - g. **Personally identifiable information ("PII")** is any data that could potentially identify a specific individual student. Any information that can be used to distinguish one student from another and can be used for de-anonymizing anonymous data can be considered PII. PII includes information that can be used to distinguish or trace an individual's identity either directly, or indirectly through linkages with other information.
 - h. **Pupil-Generated Content** has the meaning ascribed to "Pupil-generated content" in California Education Code § 49073.1.
 - i. **Pupil Records** has the meaning ascribed to "Pupil records" in California Education Code § 49073.1., and include any information directly related to a pupil that is maintained by the District or acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other District employees.
 - j. **Software Application.** "Software Application" means the online hosted computer software application residing on Service Provider's servers that Service Provider uses to provide to District

services, and that Service Provider makes digitally accessible to the District and its Authorized Users via the Internet.

- k. **Sub-processor.** A “sub-processor” is a third-party data processor engaged by Service Provider who has or potentially will have access to or process Pupil Records or Personally Identifiable Information. Third parties that do not have access to or process Pupil Records, Pupil Generated Content or PII, but who may be used with District permission to provide Services are referred to as “**sub-providers**” and not **sub-processors**.

2. **FERPA COMPLIANCE; SCHOOL OFFICIAL EXCEPTION.** Service Provider and District jointly agree as follows:

- a. Service Provider and District shall comply at all times with the requirements of the Family Educational Records Privacy Act (“FERPA”) and relevant state law regarding the confidentiality and handling of student records, including but not limited to California Education Code sections 49073 et. seq. Service Provider shall only access and use confidential student information for the performance of duties on behalf of SFUSD under this Agreement, prior written parent consent, or other provision of federal and state law permitting access to confidential student information. **Service Provider shall not use confidential Pupil Records for any purpose other than providing services to the District pursuant to this Agreement. Service Provider shall not re-disclose confidential student information to any third party without the prior written consent of the District and any such re-disclosure shall be consistent with state and federal law.**
- b. District designates Service Provider as and Service Provider agrees to act as a “District official” with “legitimate educational interests” in District’s educational records under FERPA to the extent that Service Provider receives “educational records” as defined under FERPA regulation 34 CFR § 99.31(a)(1), or agrees act under another applicable FERPA exception, such as the “directory information” exception. Service Provider further agrees to reasonably cooperate with District to appropriately respond to FERPA access and correction requests by District in accordance with this Appendix A and applicable state and federal law

3. **PUPIL RECORDS / DATA PRIVACY OBLIGATIONS**

- a. **Ownership and Control of Pupil Records.** At all times, Pupil Records shall be the property of and under control of the District.
- b. **Restrictions on Pupil Records Use.** Service Provider will not use Pupil Records for any purpose other than those required or specifically set forth in this Appendix A and the Agreement between District and Service Provider.
- c. **Pupil Records Access and Review.** Service Provider will cooperate with District to fulfill requests made by a parent, legal guardian, eligible student, or District personnel to request a review and correction of erroneous PII contained in Pupil Records pursuant to District’s verification and instruction within a commercially reasonable amount of time and in compliance with state and federal law.
- d. **Protection of Pupil Records.** Service Provider will implement commercially reasonable technical, administrative, and physical safeguards designed to protect Pupil Records, including specific training of appropriate personnel.
 - i. **Breach of Pupil Records**In the event of a breach of Pupil Records, Service Provider will comply with all applicable breach response laws (including, as applicable, California Civil Code § 1798.82) to assist in providing notification or directly providing notification as required to District, affected parents, legal guardians, eligible students, and regulators.
 - ii. In the event of any unauthorized disclosure of District Data, including without limitation personally identifiable information from student education records, the Service Provider will promptly notify the District in writing upon discovery of such unauthorized disclosure and, in accordance with applicable law, the Service Provider will promptly notify all affected individuals, including without limitation notifying the parents or legal guardians of minor students, or students if at least 18 years of age, as applicable, in writing of such unauthorized disclosure.

4. **PROHIBITION ON TARGETED ADVERTISEMENT AND SALE OF PUPIL RECORDS**

Service Provider will not use Pupil Records, Pupil-Generated Content or Covered Information to engage in targeted advertising as prohibited by applicable law including as prohibited by California Education

Code § 49073.1 and SOPIPA. Additionally, Service Provider agrees not to sell Pupil Records, Pupil-Generated Content, or Covered Information, to amass a profile about a K-12 educational student for a non-educational purpose, or for any purposes prohibited by FERPA, SOPIPA, or California Education Code § 49073.1.

5. TRANSFER OF PUPIL-GENERATED CONTENT

- a. "Pupil-generated content" means materials created by a student, including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, and account information that enables ongoing ownership of student content. "Pupil-generated content" does not include student responses to a standardized assessment where student possession and control would jeopardize the validity and reliability of that assessment.

- b. To the extent that students submit their Pupil-Generated Content on Service Provider's products, a parent, guardian, or eligible student may submit a request to Service Provider to transfer this information as follows:

INSERT A DESCRIPTION OF THE MEANS BY WHICH STUDENTS MAY RETAIN POSSESSION AND CONTROL OF STUDENT-GENERATED CONTENT, INCLUDING OPTIONS BY WHICH A STUDENT MAY TRANSFER STUDENT-GENERATED CONTENT TO A PERSONAL ACCOUNT

- c. Following verification of the requestor's authorization to receive the information (which may require verification by the District), Service Provider will provide the Pupil-Generated Content that Service Provider possesses within a commercially reasonable time, and in a mutually-agreeable format. If Service Provider's Products are primarily used as a platform for students to submit Pupil-Generated Content, Service Provider **guarantees retention** of Pupil-Generated Content; otherwise Service Provider shall use commercially reasonable methods for retaining and transferring Pupil-Generated Content as requested.

6. PUPIL RECORDS DELETION AND STORAGE REQUESTS

- a. Service Provider will act upon District's documented and verified instructions to delete Pupil Records during the term of the Agreement, unless Service Provider is required to retain such information to comply with Service Provider's legal obligation.
- b. Within thirty (30) days of the termination or expiration of the Agreement, if no subsequent agreement is in place between the parties to allow Service Provider to have access to the District's confidential Pupil Records, then any such data that is in the possession of Service Provider shall be confidentially and securely returned to District in all forms in which the Service Provider is holding such data, including, if applicable, in a computer-readable format. Once such data are received by District, and, if applicable, District confirms that the computer-readable format is indeed readable, Service Provider shall securely destroy any remaining copies of the data that it holds in any form or media within fourteen (14) days of such confirmation from District. Service Provider shall destroy all such data utilizing a method of secure destruction that renders such information unreadable, such as shredding or burning, erasure of magnetic media, electronic deletion using file shredding software, or other industry-standard method of secure destruction. Upon request, Service Provider shall provide District with written certification that such destruction has occurred.
- c. To the extent that Service Provider's Software permits District student Authorized Users to create pupil-generated content, the data return and destruction provisions of this Section shall not apply to pupil-generated content if the student chooses to establish or maintain an account with the Service Provider.

7. ENGAGEMENT OF SUB PROCESSORS

- a. **List of Sub processors.** A current list of Sub processors, including the identities of those Sub processors and their country of location, will be provided to the District upon request. Service Provider shall inform the District of any intended changes concerning the addition or replacement of other Sub processors, thereby giving the District the opportunity to object to such changes.
- b. **Liability.** Service Provider shall be liable for the acts and omissions of its Sub processors to the same extent Service Provider would be liable if performing the Products of each Sub processor directly under the terms of the Agreement and this Appendix A.

8. DEMONSTRATION OF COMPLIANCE

- a. At least once per contract year and as otherwise required by relevant Data Protection Laws and

data protection authorities, during Service Provider's regular business hours and at the District's sole expense, Service Provider will make available to the District all information necessary to demonstrate compliance with the obligations set-forth in the Agreement and this Appendix A, and allow for and contribute to audits, including inspections, conducted by the District, pursuant to the Agreement. All information accessed or obtained by the District in connection with this audit shall be considered confidential information of Service Provider.

- b. Service Provider shall inform the District in compliance with and as required by relevant Data Protection Laws, if, in its opinion, a Purpose or any documented instruction it receives from the District with respect to the Processing of Personal Data, infringes or prevents it from complying with Data Protection Laws.

9. MISCELLANEOUS

- a. **Business Transfer:** Under certain circumstances, Service Provider may share or disclose certain information, in connection with or during negotiations of any merger, sale of company assets, financing, or acquisition of all or a portion of its business to another company. If such transfer is subject to additional mandatory restrictions under applicable laws, Service Provider will comply with such restrictions. The successor entity will be subject to all applicable federal and state laws, including student privacy laws.
- b. **Legal Requirements.** Service Provider may share or disclose certain information if necessary to comply with any law enforcement, legal, or regulatory process, such as to respond to a warrant, subpoena, court order, or other applicable laws and regulations.
- c. If any provision of this Appendix A conflicts with a provision in the Agreement and is otherwise incapable of being construed in conjunction with the Agreement, the terms of this Appendix A shall take precedence to the extent of such conflict. For avoidance of doubt, all other provisions and terms in the Agreement remain in full force and effect.

--end--

APPENDIX B-1

I. DESCRIPTION AND DATA COLLECTION OF SOFTWARE APPLICATION SERVICES

1. DESCRIPTION OF SOFTWARE APPLICATION, AND RELEVANT SERVICES:

CORE survey administration in conjunction with Panorama will support online student, staff, and family survey programs for SFUSD, including survey administration and reporting. Survey results are included as part of our data measures for the LCAP, the SPSA and used collectively as dashboard measures across the CORE districts. Panorama will also provide SFUSD with technical assistance and guidance.

Under this agreement, SFUSD will receive the following services:

- Online administration and reporting of student SEL and/or culture-climate surveys.
- Online administration and reporting of teacher reports on students (optional).
- Online administration and reporting of staff culture-climate survey.
- Online administration and reporting of family culture-climate survey.
- Addition of custom questions at the end of the surveys. (Custom questions may be free response or multiple choice; multiple choice items will be scored using the same metric as the main survey items). Raw extracts of the responses to CORE's analytical partners.

2. SINGLE SIGN-ON (SSO) REQUIREMENTS

The District requires applications support the use of SFUSD-provided Single Sign-on (SSO) credentials for students and educators to access instruction materials, preferably Clever or Google Federated Login. Which of the following will your organization be using to process SSO authentication requests?

Clever

Note: If Clever is used, please provide the following additional information

<input type="checkbox"/>	Clever Note: If Clever is used, please provide the following additional information		
	1.	What Clever API version does the integration support today?	
	2.	Is the iOS application certified by Clever's partner engineering team?	YES <input type="checkbox"/> NO <input type="checkbox"/>
	3.	Does the integration support student SSO?	YES <input type="checkbox"/> NO <input type="checkbox"/>
	4.	Does the integration support school admin SSO?	YES <input type="checkbox"/> NO <input type="checkbox"/>
	5.	Does the integration support district admin SSO?	YES <input type="checkbox"/> NO <input type="checkbox"/>
	6.	Does the integration support co-teachers?	YES <input type="checkbox"/> NO <input type="checkbox"/>
	7.	Does the integration support multi-site students?	YES <input type="checkbox"/> NO <input type="checkbox"/>
	8.	Does the integration support multi-site teachers?	YES <input type="checkbox"/> NO <input type="checkbox"/>
	9.	Does the integration support multiple classes per student?	YES <input type="checkbox"/> NO <input type="checkbox"/>
	10.	Does the integration support multiple classes per teacher?	YES <input type="checkbox"/> NO <input type="checkbox"/>

	11.	Does the integration have any quirks or limitations that should be kept in mind? (e.g. only certain section subjects are supported) – if yes, please explain:	YES <input type="checkbox"/>	NO <input type="checkbox"/>
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- ☒ **Google**
- ☐ **SFUSD – ADFS (Local)**
- ☐ **None**
- ☐ **Other**

3. DESCRIPTION OF PERSONAL STUDENT DATA COLLECTED:

[Check all applicable Personal Student Information collected by Service Provider's Software Application and stored on Service Providers servers]

Category of Data	Elements	✓if used by your system
Application Use Statistics	IP Addresses of users, Use of cookies etc.	<input type="checkbox"/>
	Meta data on user interaction with application	<input type="checkbox"/>
Assessment	Standardized test scores	<input type="checkbox"/>
	Observation data	<input type="checkbox"/>
	Other assessment data	<input type="checkbox"/>
	Please specify:	
Attendance	Student school (daily) attendance data	<input checked="" type="checkbox"/>
	Student class attendance data	<input type="checkbox"/>
Communications	Online communications that are captured (emails, blog entries)	<input type="checkbox"/>
Conduct	Conduct or behavioral data	<input type="checkbox"/>
Demographics	Date of Birth	<input checked="" type="checkbox"/>
	Place of Birth	<input type="checkbox"/>
	Gender	<input checked="" type="checkbox"/>
	Ethnicity or race	<input checked="" type="checkbox"/>
	Language information (native, preferred or primary language spoken by student)	<input type="checkbox"/>
	Other demographic information Please specify:	<input type="checkbox"/>
Enrollment	Student school enrollment	<input checked="" type="checkbox"/>
	Student grade level	<input checked="" type="checkbox"/>
	Homeroom	<input type="checkbox"/>
	Guidance counselor	<input type="checkbox"/>
	Specific curriculum programs	<input type="checkbox"/>
	Year of graduation	<input type="checkbox"/>
	Other enrollment information Please specify:	<input type="checkbox"/>
Parent/Guardian Contact Information	Address	<input type="checkbox"/>
	Email	<input type="checkbox"/>
	Phone	<input type="checkbox"/>
	Parent ID number (created to link parents to students)	<input type="checkbox"/>
	First and/or Last	<input type="checkbox"/>
Schedule	Student scheduled courses	<input type="checkbox"/>
	Teacher names	<input type="checkbox"/>

Category of Data	Elements	✓if used by your system
Special Indicator	English language learner information	<input checked="" type="checkbox"/>
	Low income status	<input checked="" type="checkbox"/>
	Medical alerts	<input type="checkbox"/>
	Student disability information	<input checked="" type="checkbox"/>
	Specialized education services (IEP or 504)	<input checked="" type="checkbox"/>
	Living situations (homeless/foster care)	<input checked="" type="checkbox"/>
	Other indicator information – Please specify: Newcomer	<input checked="" type="checkbox"/>
Student Contact Information	Address	<input type="checkbox"/>
	Email	<input type="checkbox"/>
	Phone	<input type="checkbox"/>
	First and/or Last Name	<input checked="" type="checkbox"/>
Student In App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	<input type="checkbox"/>
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	<input checked="" type="checkbox"/>
Student Survey Responses	Student responses to surveys or questionnaires	<input checked="" type="checkbox"/>
Student work	Student generated content; writing, pictures etc.	<input type="checkbox"/>
	Other student work data – Please specify:	<input type="checkbox"/>
Transcript	Student course grades	<input type="checkbox"/>
	Student course data	<input type="checkbox"/>
	Student course grades/performance scores	<input type="checkbox"/>
	Other transcript data – Please specify:	<input type="checkbox"/>
Transportation	Student bus assignment	<input type="checkbox"/>
	Student pick up and/or drop off location	<input type="checkbox"/>
	Student bus card ID number	<input type="checkbox"/>
	Other transportation data – Please specify:	<input type="checkbox"/>
Other	Please list each additional data element used, stored or collected by your application	<input checked="" type="checkbox"/>

4. Provide a summary of ALL OTHER data collected, including data collected by third-party sub-processors via cookies, plug-ins, ad networks, web beacons etc.

Default, Student Number and Zip Codes not addresses

APPENDIX B-2

SCHEDULE OF FEES AND CHARGES / CALCULATION OF CHARGES

For CORE Survey administration through Panorama Education, each member of CORE district will pay a variable cost based on size (ADA). The pricing for SFUSD is \$63,055.00(cost is \$1.10 per enrollee)

This per-student survey price includes:

Survey Administration;
Data Collection;
Data analysis; and
High-quality reports outlining school performance on SEL-CC Indicators

Payment made in arrears for services rendered. Two payments made in December 2020 and June 2021

SFUSD WILL INSERT CHART OF ITEMS/AMOUNTS, ETC

Additional product or service as determined by the school site:

Taxes (if appropriated) ____ %

Amount of Discount given by Service Provider:

Total for all products and services:

APPENDIX C

INSURANCE REQUIREMENTS

Service Provider shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Service Provider, his or her agents, representatives, employees or sub-providers.

Note: *Professional liability insurance coverage is normally required if the Service Provider is providing a professional service regulated by the state. (Examples of service providers regulated by the state are insurance agents, professional architects and engineers, doctors, certified public accountants, lawyers, etc.). However, other professional Service Providers, such as computer or software designers, technology services, and services providers such as claims administrators, should also have professional liability. If in doubt, consult with the District's Risk Manager. (Insurance certificates can be emailed to: contractinsuranceform@sfusd.edu*

MINIMUM SCOPE OF INSURANCE:

1. **Comprehensive/Commercial General Liability (CGL):** Insurance covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than One Million Dollars (\$1,000,000.00) per occurrence and a general aggregate in an amount twice the required occurrence limit, including coverages for Employers liability, contractual liability, personal injury, independent Service Providers, and sexual abuse and molestation. The Sexual Abuse and Molestation coverage will be waived, in the District's sole discretion, if the Service Provider has certified will have no contact with, or limited contact with, the District's students in the performance of this Agreement.
 - a. **Additional Insured Status:** The District, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Service Provider including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Service Provider's insurance.
 - b. **Primary Coverage:** For any claims related to this contract, the Service Provider's insurance coverage shall be primary insurance coverage as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Service Provider's insurance and shall not contribute with it.
2. **Automobile Liability** Insurance with limits not less than One Million Dollars (\$1,000,000.00) each accident Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired automobiles. A waiver of the Automobile liability insurance requirements may be requested by Service Provider through the District's Contracts Office provided that Service Provider will not use any automobiles in the performance of this Agreement. The parties understand and agree that the District shall rely upon the representations that the Service Provider shall make in any such waiver.
3. **Workers' Compensation** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease.
4. **Technology Errors and Omissions (E&O)** liability insurance coverage with limits of One Million Dollars (\$1,000,000.00) per occurrence/claim. The policy shall, at a minimum, cover failure to render professional services, negligence, professional misconduct and lack of the requisite skill required for the performance of services under this Agreement, and shall also provide coverage for the following risks:
 - a. Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personally identifiable information, such as, without limitation, name, address, social security number, protected health information, security codes, access codes, passwords, or personal identification numbers (PINs) stored or transmitted in electronic form, and shall include coverage for privacy notification costs, credit monitoring and regulatory fines & fees arising from such theft, dissemination and/or use of confidential information.
 - b. Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks.
 - c. Liability arising from the introduction of a computer virus into, or otherwise causing damage to the District's or a third party's computer, computer system, network, or similar computer-related property and the data, software, and programs thereon.
 - d. Liability arising from the failure of the technology services/product(s) provided pursuant to this Agreement
 - e. **Cyber-liability insurance** coverage with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence/claim and an annual aggregate of Two Million Dollars (\$2,000,000.00) covering liability

arising from occurrences/claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion, network security, and failure to render professional services. Such insurance shall provide coverage for liability assumed under a contract.

5. **Professional Liability (Errors and Omissions Insurance)** (This is needed if the Service Provider holds a professional license that is regulated by the state) appropriate to the Service Provider's profession, with limits no less than One Million Dollars (\$1,000,000.00) per occurrence or claim, Two Million Dollars (\$2,000,000.00) aggregate.
- a. **Claims Made Policies (note –applicable only to professional liability, see below)**
 - b. If any of the required policies provide claims-made coverage:
 - I. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
 - II. Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract of work.*
 - III. If coverage is canceled or non-renewed, and not replaced *with another claims-made policy form with a Retroactive Date prior to the contract effective date*, the Service Provider must purchase "extended reporting" coverage for a minimum of *five (5) years* after completion of work.

Please make sure that the address listed as Certificate Holder is:

San Francisco Unified School District
135 Van Ness Avenue, Room 102
San Francisco, CA 94102

Broader Coverage: If the Service Provider maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or higher limits maintained by the Service Provider.

Waiver of Subrogation: Service Provider hereby grants to District a waiver of any right to subrogation which any insurer of said Service Provider may acquire against the District by virtue of the payment of any loss under such insurance. Service Provider agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

Notice of Cancellation: Each insurance policy required above shall provide that **coverage shall not be canceled, except with notice to the District.**

Self-Insured Retentions: Self-insured retentions must be declared to and approved by the District. The District may require the Service Provider to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

Verification of Coverage: Service Provider shall furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the District within 30 days of completion of the executed contract. However, failure to obtain the required documents prior to the work beginning shall not waive the Service Provider's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances: District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

--end--