



## **Board of Education Agenda Abstract**

Meeting Date: May 27, 2020

Agenda Type: Consent

Agenda Item #: 5f

**Subject: Approval of Contract with Panorama for Universal Social and Emotional Screener and Student Survey.**

<b>Division:</b>	Student Services	<b>Department:</b>	Counseling Services
<b>Person Responsible:</b>	Dr. Charlos S. Banks, Senior Executive Director for Student Services Mr. Jonathan Scott, Interim Chief Finance Officer	<b>Feedback Requested From:</b>	All Principals, Social and Emotional Learning Work Group

### **Strategic Plan Goal(s):**

SS Goal 4: Develop a continuum of services to promote the social, emotional and academic development of all students

- SS 4.6 Adopt and implement evidence-based programming to support Social and Emotional Learning.

SS Goal 5: Create a culture and system of support which empowers, inspires, engages and encourages the school community to embrace diversity, inclusion and different learners.

- SS 5.1 Administer a student climate survey annually.

**Previous Work Session**                      Y/N                      Date

**Previous Discussion and Action**      Y/N                      Date

**Attachment(s): Memo - Selection Process, Contract, Sole source letter**

**PURPOSE:** To secure the Board of Education's approval of utilizing Panorama, to serve as the vendor for the district's Strategic Plan Student survey and universal social and emotional

screeners for 2020 and 2021 school year.

**BACKGROUND:**

There is a growing body of research that indicates that student learning is much more than academics. Student learning is about developing the whole child to include social and emotional learning (SEL), which leads to a strong set of life skills that ensures our youth are prepared for the classroom and life. Students are often screened to determine academic needs, but the understanding of their social and emotional abilities are often left to be determined after a behavioral concern has emerged. In order to improve student outcomes prior to them experiencing failure, the Student Services Division has explored the use of a universal behavior screener to determine barriers to learning and strategies to support creating equitable student learning outcomes. The universal screener would provide an understanding of where our students are in their social and emotional development in order to determine the appropriate interventions to increase student success.

Student Services recommends Panorama as the district's universal screener. This screener will cost \$29,000 annually to implement district-wide. CHCCS was awarded a grant through the Oak Foundation to cover the cost of the SEL screener over the next three years. This instrument is aligned with CASEL competencies and the current curriculum (Second Step) used in our schools to teach SEL in grades K-8. The screener aligns with Multi-tiered Systems of Support (MTSS) practices for identifying effective universal, targeted and intense supports. The Panorama screener will serve as an early warning instrument to assist MTSS teams in assessing and identifying the social and emotional development of each student to ensure the application of appropriate interventions as needed.

The Board received the contract for parents and community survey on April 2, 2020. Attached is the contract for the universal screener which will also be used as the student survey.

The combination of both contracts will exceed \$90,000.00 cumulatively.

**Recommended:** Approval of the contract for Panorama as the vendor for the universal social and emotional screener and student survey.

**FINANCIAL IMPACT:** Oak Grant funding was secured to finance the survey so there is no impact on district funds.

**PERSONNEL IMPACT:** Staff will be impacted in that they will be asked to take the survey, administer it to students.

<b>RECOMMENDATION:</b>	Approve the contract with Panorama.
<b>RESOLUTION:</b>	Be it, therefore resolved that the Board of Education approves the contract for Panorama.



## SOLE SOURCE STATEMENT

March 2020

To Whom It May Concern:

I am an authorized representative of Panorama Education, and I am writing to affirm that Panorama is the sole source supplier of our proprietary platform for measuring and growing students' social-emotional learning (SEL), and providing educators with actionable data and resources for using the information to improve student outcomes.

The Panorama platform enables school districts to administer Panorama's validated, research-backed social-emotional learning surveys to students and optionally staff. These measures gather information about students' development of key social-emotional learning skills, such as grit and growth mindset, as well as information about the school's support for social-emotional development, such as teacher-student relationships and whether the school makes each student feel a sense of belonging. Part of Panorama's unique approach is customizability: rather than a one-size-fits all assessment, CHCCS will be able to customize Panorama to match their social-emotional learning goals, while retaining the validity and reliability that is essential in this work.

Further, the Panorama platform provides analysis of social-emotional learning information and produces interactive, online reports for users who are working at different levels in school systems, including teachers, school leaders, and district administrators. These reports include national benchmarks so that schools can compare themselves to other campuses within their district and across the country. Panorama's platform integrates with existing PowerSchool data for advanced analytics and subgroup analysis. Additionally, the Panorama platform includes Playbook for teachers and principals, a resource library with recommendations for what actions to take in response to social-emotional learning results. This unique resource library is based on ideas and input from Panorama's community of more than 100,000 educators across the world, as well as SEL organizations, such as Second Step, Teaching Tolerance, Character Lab, Open Circle, and more.

### Panorama's Unique, One of a Kind Qualifications:

#### Survey Content and Design

- Research-backed, valid and reliable survey instruments for students and teachers/staff that have been used at scale across the country.
- Research-backed, valid and reliable social-emotional learning instruments for students and teachers, aligned to the CASEL framework, that have been used at scale across the country.
- Surveys and social-emotional learning measures can be customized to match CHCCS' needs while retaining validity and reliability.
- Surveys and SEL measures translated and validated in multiple languages, to ensure an inclusive and accessible program.

## Implementation and Administration

- Access to a large, responsive customer service team with experience supporting large districts in survey and SEL implementation.
- Ability to measure SEL using a mix of online and paper surveys.

## Reporting and Professional Development

- CHCCS educators and leaders can view survey and SEL results in one single place, with the ability to explore online or in print.
- Ability to see national benchmark comparisons with a national data set larger than 3,000,000 respondents, and the ability to compare CHCCS to similar districts.
- Survey and SEL reporting is protected by secure role-based permissioning to ensure that each authorized CHCCS user is able to access their data and only the data to which they are authorized.
- Ability to view social-emotional learning data at the student level, so that teachers and school leaders can personalize support, celebrate areas of strength, and target competencies that need improvement.
- Ability to analyze survey and SEL data by meaningful subgroups including demographics, FRPL, ELL, SPED, attendance, academics, and behavior data.
- Teachers and school leaders are able to find recommended actions and practices around social-emotional learning that they can use in their classrooms and schools.

We have done extensive market research and conclude that there is no other provider that provides this type of integrated product and scope of service.

By using Panorama social-emotional surveys, reporting, and Playbook, teachers and administrators in CHCCS will have a rich data source for identifying student needs and developing strategies to ensure that all students succeed across the district. This integrated, customizable approach to social-emotional learning measurement and growth makes Panorama, to the best of our market knowledge, the only product of its kind for measuring social-emotional learning, analyzing the information, and supporting teachers and school leaders as they take action.

Please let us know if you have any questions.

Sincerely,

Aaron Feuer

CEO and Co-Founder  
Panorama Education

Primary Contact Information			
Client		Panorama Education, Inc. ("Panorama")	
<i>Client Legal Name ("Client")</i>	Chapel Hill-Carrboro City Schools	<i>Company Name</i>	Panorama Education, Inc.
<i>Primary Contact, Title</i>	Charlos Banks, Senior Executive Director of Student Services	<i>Primary Contact, Title</i>	Caleb Donovan, Outreach Director
<i>Billing / Payment Address</i>	750 Merritt Mill Rd	<i>Billing Address</i>	24 School Street, 4 <sup>th</sup> Floor
<i>City / State / Zip</i>	Chapel Hill, North Carolina, 27516	<i>City / State / Zip</i>	Boston, MA 02108
<i>Email</i>	cbanks@chccs.k12.nc.us	<i>Email</i>	cdonovan@panoramaed.com
<i>Phone</i>	(919) 967-8211 ext. 28251	<i>Phone</i>	720 545 7033
<i>Billing Contact</i>			
<i>Billing Email Address</i>			
(1) Description of Services and (2) Fees			
Description of Services		Fees	
<b>Panorama Platform License Fee: Full District SEL</b>  Access to Platform and Support (as defined in the Terms and Conditions): Survey administration, analysis, and reporting <ul style="list-style-type: none"> <li>Social-emotional learning measures</li> </ul> <b>Project Management</b>  Includes a dedicated Panorama Professional Services Manager who will work with the district's main point of contact to execute a successful project administration. <ul style="list-style-type: none"> <li>Develop project timeline</li> <li>Manage setup and administration</li> <li>Customized configurations</li> <li>Coordinate the rollout of reports</li> </ul> <b>Professional Development</b> <ul style="list-style-type: none"> <li>Two customizable, on-site workshops focused on increasing staff's knowledge and capacity of actioning planning with SEL data</li> </ul>		<b>Effective Date:</b>	8/1/2020
		<b>Contract Term:</b> (From Effective Date)	1 Year
		<b>Annual License Fee:</b>	\$29,000/ year
		<b>Includes:</b> <ul style="list-style-type: none"> <li><i>Project Management:</i></li> <li><i>Professional Development</i></li> </ul>	
		<b>Annual Total:</b> (Due on Effective Date for Year 1)	\$29,000/year
		<b>Total Over Contract Term:</b>	\$29,000



<b>Other Terms and Conditions (if any)</b>		
<b>Agreement</b>		

The agreement by and between the Client and Panorama (this "Agreement") consists of this Service Order (the "SO") and the Terms and Conditions attached to the SO.

## Authorization

By signing below, the parties hereto ACCEPT AND AGREE to this Agreement as of the last date executed.

Client Signature:	Print Name, Title:	Date:
Panorama Signature:	Print Name, Title:	Date:

## Terms and Conditions

### BACKGROUND

Panorama is an education technology company that has developed a cloud-based platform-as-a-service that enables schools and school districts to analyze student and school data, measure social-emotional learning, and design and implement survey programs for students, staff and parents (the “Platform”).

Client and Panorama have entered into the SO and, from time to time hereafter, Client and Panorama may enter into additional Service Orders (“Future SOs”) pursuant to which Client will purchase rights to use the Platform and receive services. These Terms and Conditions are incorporated by reference into the SO to create this Agreement and will be incorporated by reference into each Future SO to create separate future agreements for the rights and services described in the applicable Future SO, in each case to the exclusion of any other terms or conditions that either party seeks to impose or incorporate or that are implied by course of dealing.

### 1 RIGHT TO USE PLATFORM

**1.1 Platform.** Subject to the terms and conditions of this Agreement, Panorama hereby grants Client the limited, nonexclusive, nontransferable, non-sublicenseable right to access and use the Platform via the Internet during the Term solely for Client’s use (including use by Client’s students, staff and parents, as described in the SO, if applicable (“Authorized Users”).

**1.2 Limitations.** The following limitations and restrictions will apply to the Platform:

(a) Client will not provide access to the Platform to any person who is not an employee or contractor of Client or an Authorized User.

(b) Except as expressly permitted hereunder, Client will not and will not permit or authorize any third party to: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Platform; (ii) modify, translate or create derivative works based on the Platform; (iii) copy, rent, lease, distribute, pledge, assign or otherwise transfer or allow any lien, security interest or other encumbrance on the Platform; (iv) use the Platform for timesharing or service bureau purposes or otherwise for the benefit of a third party; (v) hack, manipulate, interfere with or disrupt the integrity or performance of or otherwise attempt to gain unauthorized access to the Platform or its related systems, hardware or networks or any content or technology incorporated in any of the foregoing; or (vi) remove or obscure any proprietary notices or labels of Panorama or its suppliers on the Platform.

### 2 OWNERSHIP; RESERVATION OF RIGHTS

**2.1 Client Ownership.** Client owns (a) any data Client inputs into the Platform that identifies Client or its students, staff or parents (including Authorized Users) and any Survey responses provided by Client, its students, staff or parents (including Authorized Users) (“Data”), and (b) any other data and content provided by Client or Authorized Users to Panorama or input into the Platform, such as Survey questions (“Other Data”, and, together with the Data, “Client Data”). Client hereby grants to Panorama a non-exclusive, worldwide, royalty-free, fully paid up, sublicenseable (through multiple tiers) (i) right and license during the Term to copy, distribute, display and create derivative works of and use the Client Data to perform Panorama’s obligations under this Agreement; (ii) perpetual, irrevocable right and license to copy, modify and use Client Data to create aggregated, non-personally identifiable data or information (“Blind Data”) and copy, distribute, display, create derivative works of and use the Blind Data for benchmarking, research or development purposes, including published research, and (iii) perpetual, irrevocable right and license to copy, distribute, display and create derivative works of and use Other Data for any and all purposes, in any form, media or manner. Client reserves any and all right, title and interest in and to the Client Data other than the licenses therein expressly granted to Panorama under this Agreement.

**2.2 Panorama Ownership.** Panorama retains all right, title and interest in and to the Platform, all copies or parts thereof (by whomever produced) and all intellectual property rights therein. Panorama grants no, and reserves any and all, rights other than the rights expressly granted to Client under this Agreement with respect to the Platform.

**2.3 Feedback.** Client may from time to time provide suggestions, comments for enhancements or functionality or other feedback (“Feedback”) to Panorama with respect to the Platform. Panorama has full discretion to determine whether to proceed with development of the requested

enhancements, features or functionality. Client hereby grants Panorama a royalty-free, fully paid-up, worldwide, transferable, sublicenseable, irrevocable, perpetual license to (a) copy, distribute, transmit, display, perform, and create derivative works of the Feedback in whole or in part; and (b) use the Feedback in whole or in part, including without limitation, the right to develop, manufacture, have manufactured, market, promote, sell, have sold, offer for sale, have offered for sale, import, have imported, rent, provide and lease products or services that practice or embody, or are configured for use in practicing, the Feedback in whole or in part.

**2.4 Client Responsibilities.** Client will (a) use commercially reasonable efforts to prevent unauthorized access to or use of the Platform and notify Panorama promptly of any such unauthorized access or use, and (b) use the Platform only in accordance with the documentation and applicable laws and regulations.

**2.5 Data Security.** Panorama will implement and maintain reasonable administrative, physical and technical safeguards (“Safeguards”) which attempt to prevent any collection, use or disclosure of, or access to Client Data that this Agreement does not expressly authorize, including, without limitation, an information security program that meets commercially reasonable industry practice to safeguard Client Data. Such information security program includes: (a) physical security of all premises in which Client Data will be processed and/or stored; and (b) reasonable precautions taken with respect to the employment of, access given to, and education and training of any and all personnel furnished or engaged by Panorama to perform any part of the services hereunder.

**2.6 Privacy Policy.** Panorama cares deeply about privacy, and we recognize that it is important to the educators, students, and parents we serve. Please see our Privacy Policy at <https://www.panoramaed.com/privacy> for more information about how we protect the privacy of those we serve.

**2.7 Right to Data Destruction.** If requested by the Client, during or after the term of this agreement, Panorama will make reasonable efforts to destroy or otherwise render Client Data inaccessible.

### 3 FEES; PAYMENT TERMS

**3.1 Fees; Payment Terms.** Unless otherwise indicated on the SO, Client will pay all fees within thirty (30) days of the invoice date. If payment of any fee is not made when due and payable, a late fee will accrue at the rate of the lesser of one and one-half percent (1.5%) per month or the highest legal rate permitted by law and Client will pay all reasonable expenses of collection. In addition, if any past due payment has not been received by Panorama within thirty (30) days from the time such payment is due, Panorama may suspend access to the Platform until such payment is made.

**3.2 Net of Taxes.** All amounts payable by Client to Panorama hereunder are exclusive of any sales, use and other taxes or duties, however designated, including without limitation, withholding taxes, royalties, know-how payments, customs, privilege, excise, sales, use, value-added and property taxes (collectively “Taxes”). Client will be solely responsible for payment of any Taxes, except for those taxes based on the income of Panorama. Client will not withhold any Taxes from any amounts due Panorama.

### 4 TERM, TERMINATION

**4.1 Term.** The term of this Agreement will commence on the Effective Date and, unless earlier terminated in accordance with this Section 4, will continue through the date set forth on the SO (the “Term”).

**4.2 Termination; Effect of Termination.** In addition to any other remedies it may have, either party may terminate this Agreement if the other party breaches any of the terms or conditions of this Agreement and fails to cure such breach within thirty (30) days’ notice (or ten (10) days in the case of nonpayment) after receiving notice thereof. Upon any termination of this Agreement, Client will pay in full for the use of the Platform up to and including the last day on which the Platform is provided. Upon any termination of this Agreement for any reason, Panorama may, but is not obligated to, in its sole discretion and without delivery of any notice to Client, delete any Client Data stored or otherwise archived on the Platform or on Panorama’s network. Upon termination of this Agreement, all rights granted hereunder and all obligations of Panorama to provide the Platform will immediately terminate and Client will (a) cease use of the Platform; and (b) return or destroy all other copies or other embodiments of Panorama’s Confidential Information.



## Terms and Conditions

4.3 Survival. Upon expiration or termination of this Agreement, all obligations in this Agreement will terminate, provided that Sections 2 (Ownership; Reservation of Rights), 3 (Fees; Payment Terms), 4.2 (Termination; Effect of Termination), 4.3 (Survival), 5 (Confidentiality), 6.2 (Disclaimer), 7 (Limitations of Liability; Indemnification), and 8 (General) will survive.

### 5 CONFIDENTIALITY

5.1 As used herein, “Confidential Information” means, subject to the exceptions set forth in the following sentence, any information or data, regardless of whether it is in tangible form, disclosed by either party (the “Disclosing Party”) that the Disclosing Party has either marked as confidential or proprietary, or has identified in writing as confidential or proprietary within thirty (30) days of disclosure to the other party (the “Receiving Party”); provided, however, that a Disclosing Party’s business plans, strategies, technology, research and development, current and prospective Clients, billing records, and products or services will be deemed Confidential Information of the Disclosing Party even if not so marked or identified. Panorama’s Confidential Information includes, without limitation, the Platform and the terms of this Agreement. Information will not be deemed “Confidential Information” if such information: (a) is known to the Receiving Party prior to receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (b) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; or (c) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Receiving Party. Each party acknowledges that the Confidential Information constitutes valuable trade secrets and proprietary information of a party, and each party agrees that it will use the Confidential Information of the other party solely in accordance with the provisions of this Agreement and it will not disclose, or permit to be disclosed, the same directly or indirectly, to any third party without the other party’s prior written consent, except as otherwise permitted hereunder. Each party will use reasonable measures to protect the confidentiality and value of the other party’s Confidential Information. Notwithstanding any provision of this Agreement, either party may disclose the terms of this Agreement, in whole or in part (i) to its employees, officers, directors, professional advisers (e.g., attorneys, auditors, financial advisors, accountants and other professional representatives), existing and prospective investors or acquirers contemplating a potential investment in or acquisition of a party, sources of debt financing, acquirers and/or subcontractors who have a need to know and are legally bound to keep such Confidential Information confidential by confidentiality obligations or, in the case of professional advisors, are bound by ethical duties to keep such Confidential Information confidential consistent with the terms of this Agreement; and (ii) as reasonably deemed by a party to be required by law (in which case each party will provide the other with prior written notification thereof, will provide such party with the opportunity to contest such disclosure, and will use its reasonable efforts to minimize such disclosure to the extent permitted by applicable law). Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. In the event of actual or threatened breach of the provisions of this Section, the non-breaching party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it. Each party will promptly notify the other in writing if it becomes aware of any violations of the confidentiality obligations set forth in this Agreement. Upon the termination of this Agreement, each Receiving Party agrees to promptly return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party that is in the possession of the Receiving Party and to certify the return or destruction of all such Confidential Information and embodiments thereof.

### 6 REPRESENTATIONS, WARRANTIES AND DISCLAIMER

6.1 Representations and Warranties. Each party represents and warrants to the other party that (a) such party has the required power and authority to enter into this Agreement and to perform its obligations hereunder, (b) the execution of this Agreement and performance of its obligations thereunder do not and will not violate any other agreement to which it is a party, and (c) this Agreement constitutes a legal, valid and binding obligation when signed by both parties. Client represents and warrants that it has the right to provide the Client Identifying Data and Client Content for the purposes contemplated by this Agreement.

6.2 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PLATFORM IS PROVIDED ON AN “AS-IS” BASIS AND PANORAMA DISCLAIMS ANY AND ALL WARRANTIES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. ALL OTHER EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. EACH PARTY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. NEITHER PARTY WARRANTS AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE PRODUCTS OR SERVICES PROVIDED BY SUCH PARTY OR AGAINST INFRINGEMENT. NEITHER PARTY WARRANTS THAT THE PRODUCTS OR SERVICES PROVIDED BY SUCH PARTY ARE ERROR-FREE OR THAT OPERATION OF SUCH PARTY’S PRODUCTS OR SERVICES WILL BE SECURE OR UNINTERRUPTED. NEITHER PARTY WILL HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF THE OTHER PARTY TO ANY THIRD PARTY.

### 7 LIMITATIONS OF LIABILITY; INDEMNIFICATION

7.1 Disclaimer of Consequential Damages. THE PARTIES HERETO AGREE THAT, NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, EXCEPT FOR (A) CLIENT’S USE OF THE PLATFORM OTHER THAN EXPRESSLY PERMITTED BY SECTION 1 (RIGHT TO USE PLATFORM) ABOVE, (B) EITHER PARTY’S BREACH OF SECTION 5 (CONFIDENTIALITY) ABOVE, AND (C) LIABILITY ARISING FROM A PARTY’S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 7.4 AND 7.5 BELOW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, RELIANCE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, LOST OR DAMAGED DATA, LOST PROFITS OR LOST REVENUE, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF A PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY THEREOF.

7.2 General Cap on Liability. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EXCEPT FOR (A) CLIENT’S USE OF THE PLATFORM OTHER THAN EXPRESSLY PERMITTED BY SECTION 1 (RIGHT TO USE PLATFORM) ABOVE, (B) EITHER PARTY’S BREACH OF SECTION 5 (CONFIDENTIALITY) ABOVE, AND (C) LIABILITY ARISING FROM A PARTY’S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 7.4 AND 7.5 BELOW, AS APPLICABLE, UNDER NO CIRCUMSTANCES WILL EITHER PARTY’S LIABILITY FOR ALL CLAIMS ARISING UNDER OR RELATING TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE AGGREGATE FEES PAID BY CLIENT TO PANORAMA UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

7.3 Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF THEY HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

7.4 Indemnification by Panorama. Except for liability for which Client is responsible under Section 7.5, Panorama will indemnify, defend and hold Client and the officers, directors, agents, and employees of Client (“Client Indemnified Parties”) harmless from settlement amounts and damages, liabilities, penalties, costs and expenses (“Liabilities”) that are payable to any third party or incurred by the Client Indemnified Parties (including reasonable attorneys’ fees) arising from any third party claim, demand or allegation that the use of the Platform in accordance with the terms and conditions of this

## Terms and Conditions

Agreement infringes such third party's copyright or results in a misappropriation of such third party's trade secrets. Panorama will have no liability or obligation under this Section 7.4 if such Liability is caused in whole or in part by (a) modification of the Platform by any party other than Panorama without Panorama's express consent; (b) the combination, operation, or use of the Panorama with other product(s), data or services not provided by Panorama where the Platform would not by itself be infringing; or (c) unauthorized or improper use of the Platform. If the use of the Platform by Client has become, or in Panorama's opinion is likely to become, the subject of any claim of infringement, Panorama may at its option and expense (i) procure for Client the right to continue using the Platform as set forth hereunder; (ii) replace or modify the Platform to make it non-infringing so long as the Platform has at least equivalent functionality; (iii) substitute an equivalent for the Platform or (iv) if options (i)-(iii) are not available on commercially reasonable terms, terminate this Agreement. This Section 7.4 states Panorama's entire obligation and Client's sole remedies in connection with any claim regarding the intellectual property rights of any third party.

**7.5 Indemnification by Client.** Client will indemnify, defend and hold Panorama and the officers, directors, agents, and employees of Panorama ("Panorama Indemnified Parties") harmless from Liabilities that are payable to any third party or incurred by the Panorama Indemnified Parties (including reasonable attorneys' fees) arising from any third party claim, demand or allegation arising from or related to (a) any use by Client or Authorized Users of the Platform in violation of this Agreement or (b) the Client Data.

**7.6 Indemnification Procedure.** If a Client Indemnified Party or a Panorama Indemnified Party (each, an "Indemnified Party") becomes aware of any matter it believes it should be indemnified under Section 7.4 or Section 7.5, as applicable, involving any claim, action, suit, investigation, arbitration or other proceeding against the Indemnified Party by any third party (each an "Action"), the Indemnified Party will give the other party (the "Indemnifying Party") prompt written notice of such Action. The Indemnified Party will cooperate, at the expense of the Indemnifying Party, with the Indemnifying Party and its counsel in the defense and the Indemnified Party will have the right to participate fully, at its own expense, in the defense of such Action with counsel of its own choosing. Any compromise or settlement of an Action will require the prior written consent of both parties hereunder, such consent not to be unreasonably withheld or delayed.

## 8 GENERAL

Client may not remove or export from, or use from outside, the United States or allow the export or re-export of the Platform or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. Neither party may assign this Agreement by operation of law or otherwise or assign or delegate its rights or obligations under the Agreement without the other party's prior written consent; provided however, that either party may assign this Agreement to an acquirer of or successor to all or substantially all of its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. Any assignment or attempted assignment by either party otherwise than in accordance with this Section 8 will be null and void. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and a party does not have any authority of any kind to bind the other party in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. Client acknowledges that any unauthorized use of the Platform will cause irreparable harm and injury to Panorama for which there is no adequate remedy at law. In addition to all other remedies available under this Agreement, at law or in equity, Client further agrees that Panorama will be entitled to injunctive relief in the event Client uses the Platform in violation of the limited license granted herein or uses the Platform in any way not expressly permitted by this Agreement. All notices under this Agreement will be in writing and sent to the recipient's address set forth in the SO and will be deemed to have been

duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. Each party agrees that it will not, without prior written consent of the other, issue a press release regarding their business relationship. Notwithstanding anything herein to the contrary, Panorama may identify Client and the relationship between Panorama and Client in Panorama's marketing collateral, website, and other promotional and marketing materials. Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service, in whole or in part, as a result of a cause beyond its reasonable control and without its fault or negligence, including, but not limited to, acts of God, acts of war, epidemics, fire, communication line failures, power failures, earthquakes, floods, blizzard, or other natural disasters (but excluding failure caused by a party's financial condition or any internal labor problems (including strikes, lockouts, work stoppages or slowdowns, or the threat thereof)) (a "Force Majeure Event"). Delays in performing obligations due to a Force Majeure Event will automatically extend the deadline for performing such obligations for a period equal to the duration of such Force Majeure Event. Except as otherwise agreed upon by the parties in writing, in the event such non-performance continues for a period of thirty (30) days or more, either party may terminate this Agreement by giving written notice thereof to the other party. Upon the occurrence of any Force Majeure Event, the affected party will give the other party written notice thereof as soon as reasonably practicable of its failure of performance, describing the cause and effect of such failure, and the anticipated duration of its inability to perform. This Agreement will be governed by the laws of the Commonwealth of Massachusetts without regard to its conflict of laws provisions. For all disputes relating to this Agreement, each party submits to the exclusive jurisdiction of the state and federal courts located in Boston, Massachusetts and waives any jurisdictional, venue, or inconvenient forum objections to such courts.



## CONTRACT FOR SERVICES

THIS AGREEMENT, between \_\_\_\_\_ of the Chapel Hill-Carrboro City Schools, hereinafter CHCCS, and \_\_\_\_\_ shall commence on the effective date herein, and shall remain in effect until \_\_\_\_\_. This Agreement may be terminated by either party for nonperformance or may be terminated by a 30-day written notice by either party to the other at the address indicated herein. It is agreed by the parties that all obligations under this agreement shall terminate if funds for continuation are not appropriated.

### SECTION 1: VENDOR INFORMATION

VENDOR NAME: \_\_\_\_\_ VENDOR #: \_\_\_\_\_ or NEW<sup>1</sup>: \_\_\_\_\_

TYPE of CONTRACT: Services (311) \_\_\_\_\_ Prof Dev (312) \_\_\_\_\_ Technical Support (319) \_\_\_\_\_ Software (418) \_\_\_\_\_

ESTIMATED TOTAL COST: \$ \_\_\_\_\_ ESTIMATED LENGTH OF SERVICE \_\_\_\_\_ Greater than 1 Year: \_\_\_\_\_

### SECTION 2: VENDOR RESPONSIBILITIES

**Part A:** VENDOR/PROVIDER AGREES TO THE FOLLOWING:

**Part B:** The provider must pay all Federal, State, and FICA taxes, and maintain appropriate insurance coverage including Workman's Compensation.

### SECTION 3: CHCCS RESPONSIBILITIES INFORMATION

**Part C:** CHCCS AGREES TO THE FOLLOWING:

### SECTION 4: STATUS OF CONTRACTOR

**Part D:** \_\_\_\_\_ and CHCCS shall be independent contractors, and nothing herein shall be construed as creating a partnership or joint venture; nor shall any employee of either party be construed as employees, agents, or principals of the other party hereto.

<sup>1</sup> If New vendor please attach a copy of the Companies W9 Form

## SECTION 5: INDEMNIFICATION

**Part E:** CHCCS to the extent allowed by state law, agrees to hold \_\_\_\_\_ harmless during the term of this Agreement from all claims, loss or damage of any kind or nature whatsoever which may be sustained solely by reason of any act or omission on the part of CHCCS and/or its employees.

**Part F:** \_\_\_\_\_, to the extent allowed by state law, agrees to hold CHCCS harmless during the term of this Agreement from all claims, loss or damage of any kind or nature whatsoever which may be sustained by reason of any act or omission on the part of \_\_\_\_\_, its employees and agents.

## SECTION 6: COSTS

**Part G:** CHCCS will pay \$ \_\_\_\_\_ at \_\_\_\_\_ (state unit cost i.e., per hour, day, total job, etc.).

Total cost shall not exceed \$ \_\_\_\_\_

**BUDGET CODE:** \_\_\_\_\_

*Please note: Any Contract \$90,000 or greater must be approved by the Board of Education before it may be finalized.*

## SECTION 7: CONFIDENTIALITY

**Part H:** \_\_\_\_\_ acknowledges that it may be given access to or acquire information which is confidential in nature. \_\_\_\_\_ agrees to hold such information in confidence and not to disclose such information to third parties or to use such information for any purpose other than providing the services outlined in this Agreement. Any violation of this section shall constitute a material breach of this Agreement and shall justify its immediate termination.

## SECTION 7: LUNSFORD ACT – BACKGROUND CHECKS

**Part I: LUNSFORD ACT:** Provider acknowledges that N.C. General Statute 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. This prohibition applies to persons required to register under Article 27A who have committed any offense in Article 7A of Chapter 14 or any offense where the victim of the offense was under the age of 16 years at the time of the offense.

**Part J: CRIMINAL BACKGROUND CHECKS:** THIS SECTION APPLIES WHEN PROVIDER'S EMPLOYEES WILL HAVE DIRECT CONTACT WITH STUDENTS OR STAFF. The Provider shall conduct criminal background checks on each of its employees who, pursuant to this Agreement, engage in any services on CHCCS property or at



CHCCS events. The Provider shall provide documentation that criminal background checks were conducted on each of its employees prior to hiring, and shall refuse employment to any person convicted of a felony or any other crime, whether misdemeanor or felony, that indicates the person poses a threat to the physical safety of students, school personnel or others. Such check shall include an annual check of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry. Provider shall not assign any employee or agent to provide services pursuant to this contract if (1) said worker appears on any of the listed registries; (2) said worker has been convicted of a felony; (3) said worker has been convicted of any crime, whether misdemeanor or felony, involving sex, violence, or drugs; or (4) said worker has engaged in any crime or conduct indicating that the worker may pose a threat to the safety or well-being of student or school personnel. CHCCS reserves the right to prohibit any individual employee of Provider from providing services on CHCCS property or at CHCCS events if CHCCS determines, in its sole discretion, that such employee poses a threat to the safety or well-being of students, school personnel or others.

## SECTION 8: IRAN DIVESTMENT ACT

**Part K: IRAN DIVESTMENT ACT:** By acceptance of this contract, vendors, contractors, and/or subcontractors affirm that they are not listed on the Federal Divestment List created by the North Carolina State Treasurer pursuant to NC G.S. 147-6E., Iran Divestment Act Certification.

## SECTION 9: CONTROLLING INTERESTS

**Part L: ENTIRE AGREEMENT:** This Agreement shall constitute the entire Agreement between \_\_\_\_\_ and CHCCS for the services, activities and functions addressed in this Agreement, and may only be amended by a separate writing mutually agreed to by both parties.

**Part M: CONTROLLING LAW:** This Agreement shall be governed by the laws of the State of North Carolina. The venue for initiation of any such action shall be Orange County, North Carolina.



## SECTION 10: CONTRACT APPROVAL SIGNATURES

THIS AGREEMENT shall be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CHAPEL HILL-CARRBORO CITY SCHOOLS

VENDOR/PROVIDER

\_\_\_\_\_

(Name and Title)

\_\_\_\_\_

(Name and Title)

\_\_\_\_\_

(Authorized Signature)

\_\_\_\_\_

(Authorized Signature)

\_\_\_\_\_

(Date)

\_\_\_\_\_

(Date)

## SECTION 11: PRE-AUDIT CERTIFICATE

This instrument has been pre-audited in the manner required by the School Budget and Fiscal Control Act.

\_\_\_\_\_

Finance Officer

\_\_\_\_\_

Date

## SECTION 12: NOTES AND ATTACHMENTS

**Note #1:** if any other documents are to be included in the agreement, example, a statement of work, they should be labeled amendment 1, 2, etc., and the following clause inserted and referenced as appropriate in this agreement, including, amendment 1, 2, etc., attached, and herein incorporated by reference, shall

**Note #2:** cost must be stated so that partial completion is clearly addressed i.e. A cost of \$900.00 for 3 sessions should be @ \$300.00 per session if they have the same value. Terms of payment should be specified i.e. after completion and upon submission of an invoice. It is not desirable to prepay for a service if prepay item is required, terms of repayment for nonperformance must be clearly stated.