

This Confidential Data Privacy Agreement (“**DPA**”) is entered into by and between:

THE BOARD OF EDUCATION OF JEFFERSON COUNTY KENTUCKY, a political subdivision of the Commonwealth of Kentucky, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 (the “**Board**” or “**Jefferson County Public Schools**”) and

Panorama Education, Inc., a corporation organized under the laws of Delaware with its principal place of business located at 24 School Street, Fourth Floor, Boston, MA 02108 (the “**Provider**”).

**WHEREAS**, the Provider is providing educational or digital services to the Board.

**WHEREAS**, the Provider and the Board recognize the need to protect personally identifiable student information and other regulated data exchanged between them as required by applicable laws and regulations, such as the Family Educational Rights and Privacy Act (“**FERPA**”) at 20 U.S.C. § 1232g (34 CFR Part 99); the Children’s Online Privacy Protection Act (“**COPPA**”) at 15 U.S.C. § 6501-6506 (16 CFR Part 312), applicable state privacy laws and regulations and

**WHEREAS**, the Provider and the Board desire to enter into this DPA for the purpose of establishing their respective obligations and duties in order to comply with applicable laws and regulations.

**NOW THEREFORE**, for good and valuable consideration, the Board and Provider agree as follows:

**ARTICLE I: PURPOSE AND SCOPE**

1. **Entire Agreement.** This DPA is the entire agreement between the Parties and supersedes any and all agreements, representations, and negotiations, either oral or written, between the Parties before the effective date of this DPA. This DPA may not be amended or modified except in writing as provided below. This DPA is supplemented by the Board’s Procurement Regulations currently in effect (hereinafter “**Regulations**”) that are incorporated by reference into and made part of this DPA. In the event of a conflict between any provision of this DPA and the Regulations, the Regulations shall prevail. In the event there is conflict between the terms of the DPA and any other writing, including, but not limited to the Service Agreement and Provider Terms of Service or Privacy Policy the terms of this DPA shall control.
2. **Term.** This DPA shall be effective as of November 15, 2023 (the “**Effective Date**”) and shall continue for three (3) years, terminating on November 14, 2026.
3. **Services.** The services to be provided by Provider to the Board pursuant to this DPA are detailed in **Exhibit “A”** (the “**Services**”). Any compensation to be provided by the Board to Provider is also detailed in **Exhibit “A”** (the “**Compensation**”). Each party shall be responsible for their portion of costs that may result from data sharing. Examples of potential costs to the Board are costs associated with the compiling of Confidential Data requested under this DPA and costs associated with the electronic delivery of Confidential DATA to Provider.
4. **Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities to protect Confidential Data including compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time. In performing the Services, the Provider shall be considered a School Official with a legitimate educational interest, and

performing services otherwise provided by the Board. Provider shall be under the direct control and supervision of the Board, with respect to its use of Confidential Data. The District and Board each represent that, if required by law (such as FERPA), either the District or Board will provide any required description or information this in their respective notices to consumers and individuals of Provider's role as a "School Official" and acknowledges that Provider is not responsible for providing any notices or representation on behalf of the District unless otherwise requested in writing (email being sufficient) and mutually agreed to in writing through and amendment or other documented executed by the applicable parties. In no event will such support be considered legal advice and the District and Board shall rely upon the advice of their legal counsel with regards to notices ultimately posted by each.

5. **Confidential Data to Be Provided.** In order to perform the Services described above, the Board shall provide Confidential Data as identified in the Schedule of Data, attached hereto as **Exhibit "B"**.
6. **DPA Definitions.** The definition of terms used in this DPA is found in **Exhibit "C"**. In the event of a conflict, definitions used in this DPA shall prevail over terms used in any other writing, including, but not limited to the Service Agreement, Terms of Service, Privacy Policies etc.

## ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Confidential Data Property of the Board.**
  - a. All Confidential Data transmitted to the Provider pursuant to the Service Agreement is and will continue to be the property of and under the control of the Board (or the teacher, student or their lawful guardian). The Provider further acknowledges and agrees that all copies of such Confidential Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this DPA in the same manner as the original Confidential Data. The Parties agree that as between them and except as provided below in section (b), all rights, including all intellectual property rights in and to Confidential Data contemplated per the Service Agreement, shall remain the exclusive property of the Board. For the purposes of FERPA, the Provider shall be considered a School Official, under the control and direction of the Board as it pertains to the use of Confidential Data, notwithstanding the above.
  - b. All patents, trademarks, servicemarks, copyrights, and other intellectual property shall be governed by the applicable terms in the Service Agreement and each party shall retain their existing intellectual property and respective derivatives. Any feedback or improvements for Provider's products or services shall be considered the intellectual property of the Provider – including any derivatives, whether mad by Provider or the Board/District/consumer of the Board or District. For avoidance of doubt, only a limited license is provided to each party of the other party's intellectual property for the limited purposes of fulfilling each party's obligations under the Service Agreement.
2. **Parent Access.** To the extent required by law the Board shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Education Records and/or Confidential Data in order to correct erroneous information, and procedures for the transfer of student-generated content to a personal account, consistent with the functionality of services. After the Board, District, or School has confirmed the identity and authority of the party requesting

correction or transfer (and, if an artifact or record of verification is required by law, then provided a copy to Provider or a representation of having completed such verification that Provider may rely upon). Provider shall respond in a reasonably timely manner (and no later than forty five (45) days from the date of the request or pursuant to the time frame required under state law for the Board to respond to a parent or student, whichever is sooner) to the Board's request for Confidential Data in a student's records held by the Provider to view or correct as necessary. In the event that individual or group of individuals contacts the Provider to review any of the Confidential Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the Board, who will follow the necessary and proper procedures regarding the requested information. Additionally, in such circumstances and as provided in the foregoing, the parties each expressly hereby agree that it will not make any representations about the other party when responding to a parent of student, the student or individual contact without the prior written authorization of the other party. In the event any Confidential Data has been deleted, destroyed or otherwise made unavailable so that a request cannot be fulfilled, Provider will notify the Board as soon as practicable and work to enable the Board to meet its obligations under applicable law.

3. **Separate Account.** If Student-Generated Content is stored or maintained by the Provider, Provider shall, at the request of the Board and if still available (e.g., not corrupted, deleted or destroyed), transfer, or provide a mechanism for the Board to transfer, said Student-Generated Content to a separate account created by the student after the Board has confirmed the identity and authority of the student or legal guardian for the transfer.
4. **Law Enforcement Requests.** Should law enforcement or other government entities ("Requesting Party(ies)") contact Provider with a request for Confidential Data held by the Provider pursuant to the Services, the Provider shall notify the Board in advance of a compelled disclosure to the Requesting Party, unless lawfully directed by the Requesting Party not to inform the Board of the request.
5. **Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions for the Provider in order for the Provider to provide the Services pursuant to the Service Agreement, whereby the Subprocessors agree to protect Confidential Data in a manner no less stringent than the terms of this DPA.
6. **Research and Program Evaluation.** For any project, involving data collection or research (e.g., program evaluation or monitoring activities), student or staff participation is voluntary. As a federally authorized Institutional Review Board (IRB), the Board complies with the federal definition for research, which includes sharing of Personally Identifiable Information (PII) for the purposes of answering a question or evaluating activities for effectiveness beyond standard educational or operational procedures. Thus, all data collection and research activities must be approved by the Board's IRB and shall not begin before approval is secured from the IRB. If Provider wishes to collect data specifically for program evaluation, research or purposes related to the proper operations and administration of the Service(s), or if Provider wishes to use identifiable data for program evaluation or research purposes, Provider must apply for and obtain permission from the Board's IRB prior to beginning any research or evaluation related data collection.

### ARTICLE III: DUTIES OF THE BOARD

1. **Provide Data in Compliance with Applicable Laws.** The Board shall provide Confidential Data for the purposes of obtaining the Services in compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time.
2. **Annual Notification of Rights.** If the Board has a policy of disclosing Education Records and/or Confidential Data under FERPA (34 CFR § 99.31(a)(1)), the Board shall include a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest in its annual notification of rights. For avoidance of doubt and notwithstanding anything to the contrary, Provider will not be responsible for obtaining consents or providing notice of privacy rights to users for the Services the Board selects (which shall remain the obligation of the District, Board or its authorized delegate).
3. **Reasonable Precautions.** The Board shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted Confidential Data.
4. **Unauthorized Access Notification.** The Board shall notify Provider promptly of any known unauthorized access. The Board will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

#### ARTICLE IV: DUTIES OF PROVIDER

1. **Privacy Compliance.** The Provider shall comply with all applicable federal, state, and local laws, rules, and regulations pertaining to Confidential Data privacy and security, all as may be amended from time to time, including but not limited to FERPA; the Kentucky Family Educational Rights and Privacy Act, KRS 160.700 et seq.; the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.; the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq.; 7 C.F.R. 245.6 et seq.; the Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931 et seq.; and the Kentucky Open Records Act, KRS 61.820 et seq.
2. **Data Custodian.** For the purposes of this DPA and ensuring Provider's compliance with the terms of this DPA and all application of state and federal law, Provider designated Lisa Nee as the data custodian ("Data Custodian") of the Confidential Data. The Board will release all data and information under this DPA to Data Custodian. Data Custodian shall be responsible for transmitting all data requests and maintain a log or other record of all data requested and received pursuant to this DPA, including confirmation of the return or destruction of data as described below. The Board may, upon request, review the records Provider is required to keep under this DPA.
3. **Authorized Use.** The Confidential Data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services outlined in **Exhibit "A"** or stated in the Service Agreement and/or otherwise authorized under the statutes referred to herein this DPA or as permitted under specific provisions of this DPA. Provider will not contact the individuals included in the data sets without obtaining advance written authorization from the Board unless lawfully directed by the Requesting Party, applicable law or court order not to obtain authorization from the Board.
4. **Provider Employee Obligation.** Provider shall require all of Provider's employees and agents who have access to Confidential Data to comply with all applicable provisions of this DPA with respect

to the Confidential Data shared under the Service Agreement. Provider agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Confidential Data pursuant to the Service Agreement.

5. **Insurance.** Provider shall maintain, during the term of this Agreement, a cyber-insurance liability policy, in the amount of \$5M. Upon request, Provider shall furnish the certificate of insurance evidencing this coverage. The certificate of insurance shall name the Board of Education of Jefferson County as additional insured in the Description of Operations section of the Certificate of Insurance which shall read:

Board of Education of Jefferson County  
Attn: Insurance/Real Estate Dept.  
3332 Newburg Road  
Louisville, Kentucky 40218

6. **No Disclosure.** Provider acknowledges and agrees that it shall not make any re-disclosure of any Confidential Data or any portion thereof, including without limitation, user content or other nonpublic information and/or personally identifiable information contained in the Confidential Data other than as required by law or court order. If Provider becomes legally compelled to disclose any Confidential Data (whether by judicial or administrative order, applicable law, rule, regulation, or otherwise), then Provider shall use all reasonable efforts to provide the Board with prior notice before disclosure so that the Board may seek a protective order or other appropriate remedy to present the disclosure or to ensure the Board's compliance with the confidentiality requirements of federal or state law. This prohibition against disclosure shall not apply to aggregate summaries of De-Identified information or to Subprocessors performing services on behalf of the Provider pursuant to this DPA. Provider will not Sell Confidential Data to any third party.
7. **De-Identified Data:** Provider is permitted to de-identify data accessed by it through contracts, authorizations and other written permission by the Board or its delegates for purposes (1) through (3) below. Provider agrees not to attempt to re-identify De-Identified Confidential Data. De-Identified Data may be used by the Provider for those purposes allowed under FERPA and the following purposes: (1) assisting the Board or other governmental agencies in conducting research and other studies; and (2) research and development of the Provider's educational sites, services, or applications, and to demonstrate the effectiveness of the Services; and (3) for adaptive Learning purpose and for customized student Learning. Provider's use of De-Identified Data shall survive termination of this DPA or any request by the Board to return or destroy Confidential Data. Except for Subprocessors, Provider agrees not to transfer de-identified Confidential Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to the Board who has provided prior written consent for such transfer. Prior to publishing any document that names the Board explicitly or indirectly, the Provider shall obtain the Board's prior written approval.
8. **Disposition of Data.** Upon written request from the Board, Provider shall dispose of or provide a mechanism for the Board to transfer Confidential Data obtained under the Service Agreement in a usable format, within sixty (60) days of the date of said request and according to a schedule and procedure as the Parties may reasonably agree. Upon termination of this DPA, if no written request from the Board is received to return the data in a usable format, Provider shall dispose of all Confidential Data after providing the Board with reasonable prior notice. The duty to dispose of

Confidential Data shall not extend to Confidential Data that had been De-Identified or placed in a separate student account pursuant to section II 3. The JCPS may employ a **“Directive for Disposition of Data”** form, a copy of which is attached hereto as **Exhibit “D”**. If the JCPS and Provider employ **Exhibit “D”**, no further written request or notice is required on the part of either party prior to the disposition of Confidential Data described in **Exhibit “D”**.

9. **Advertising Limitations.** Provider is prohibited from using, disclosing, or selling Confidential Data to (a) inform, influence, or enable Targeted Advertising; or (b) develop a profile of a student, family member/guardian or group, for any purpose other than providing the Service to the Board. This section does not prohibit Provider from using Confidential Data (i) for adaptive Learning or customized student Learning (including generating personalized Learning recommendations); or (ii) to make product recommendations to teachers or JCPS employees; or (iii) to notify account holders about new education product updates, features, or services or from otherwise using Confidential Data as permitted in this DPA and its accompanying exhibits. The Board will notify Provider of any parent, student, teachers, JCPS employees, account holders of their opt-out or lack of opt-in (as applicable) to any of the foregoing as soon as practicable to ensure such request to opt-out is respected.
10. **Liability.** Provider agrees to be responsible for and assumes all liability for any claims, costs, damages or expenses (including reasonable attorneys’ fees) that may arise from or relate to Provider’s intentional or grossly negligent release of personally identifiable student, parent or staff data (“Claim” or “Claims”). Provider agrees to hold harmless the Board and pay any costs incurred by the Board in connection with any Claim proportionate to the degree of fault by Provider’s acts or omissions. The provisions of this Section shall survive the termination or expiration of this DPA.

## ARTICLE V: DATA PROVISIONS

1. **Data Storage.** Where required by applicable law, Confidential Data shall be stored within the permitted regions of such law. Upon request of the Board, Provider will provide a list of the locations where Confidential Data is stored.
2. **Audits.** No more than once a year, or following unauthorized access, upon receipt of a written request from the Board with at least ten (10) business days’ notice (or longer if mutually agreed by the parties). and upon the execution of an appropriate confidentiality agreement, the Provider will allow the Board to audit the non-confidential artifacts (or artifacts whose sharing would not risk the security and privacy of any Confidential Data) of security and privacy measures that are in place to ensure protection of Confidential Data or any portion thereof as it pertains to the delivery of services to the JCPS. The Provider will cooperate reasonably with the Board and any local, state, or federal agency with oversight authority or jurisdiction in connection with any audit or investigation of the Provider and/or delivery of Services to students and/or the Board, and shall provide reasonable access (and subject to premise and other security, confidentiality or legal measures) to the Provider’s facilities, staff, agents and the Board’s Confidential Data and all records pertaining to the Provider, the Board and delivery of Services to the Board. Failure to reasonably cooperate or remedy after receipt of notice from the Board of an alleged breach of this section shall be deemed a material breach of the DPA.
3. **Data Security.** The Provider agrees to utilize administrative, physical, and technical safeguards designed to protect Confidential Data from unauthorized access, disclosure, acquisition,

destruction, use, or modification. The Provider shall adhere to any applicable law relating to data security. The provider will accurately represent answers to the selected Cybersecurity Framework identified in **Exhibit "E"**. Additionally, Provider may choose to further detail its security programs and measures that augment or are in addition to what is provided in **Exhibit "E"**. Provider shall provide, in the Standard Schedule to the DPA, contact information of an employee who the Board may contact if there are any data security concerns or questions. Additionally, The Provider agrees to maintain a minimum security standard including but limited to the following precautions and protections:

- a) Encrypting all data, at rest and in transit;
- b) Maintaining multi-factor authentication on accounts that can access the network or email remotely, including 3rd party accounts;
- c) Securing access to any physical areas/electronic devices where sensitive data are stored;
- d) Establishing and enforcing well-defined data privilege rights which follow the rule of least privilege and restrict users' access to the data necessary for this to perform their job functions;
- e) Ensuring all staff and 3rd parties sign a nondisclosure statement, and maintaining copies of the signed statements;
- f) Installing end-point protection including but not limited to anti-malware and anti-spyware on any device connected to the network that has access to scoped data, when applicable

4. **Data Breach.** In the event of an unauthorized release, disclosure or acquisition of Confidential Data that compromises the security, confidentiality or integrity of the Confidential Data maintained by the Provider the Provider shall provide notification to the Board within seventy-two (72) hours of confirmation of the incident, unless notification within this time limit would disrupt investigation of the incident by law enforcement. In such an event, notification shall be subject to confidentiality obligations of the parties (and potentially common-interest legal privilege) and shall be made within a reasonable time after the incident and as permitted by law/law enforcement. Provider shall follow the following process:

- (1) The security breach notification described above shall include, at a minimum, the following information to the extent known by the Provider and as it becomes available and as permitted by law/law enforcement:
  - i. The name and contact information of the individual reporting a breach subject to this section.
  - ii. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
  - iii. If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
  - iv. Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided; and

- i. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
  - (2) Provider agrees to adhere to all applicable federal and state requirements with respect to a data breach related to the Confidential Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
  - (1) Provider further acknowledges and agrees to have a written incident response plan that reflects reasonably best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Confidential Data or any portion thereof, including personally identifiable information and agrees to provide the Board, upon request, with a summary of said written incident response plan.
  - (2) Unless otherwise not permitted by law enforcement or applicable law, the Board shall provide notice and facts surrounding the breach to the affected students, parents or guardians, or staff, as applicable.
  - (3) In the event of a breach originating from the Board's use of the Service, Provider shall cooperate with the Board to the extent necessary to expeditiously secure Confidential Data in a reasonable manner.

5. **Kentucky Personal Information Security and Breach Investigation Procedures and Practices Act.** If Provider receives Personal Information as defined by and in accordance with the Kentucky Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq. (the "Act"), Provider shall secure, protect and maintain the confidentiality of the Personal Information by, without limitation, complying with all requirements applicable to "non-affiliated third parties" set forth in the Act, including but not limited to the following:

- a. "Personal Information" is defined in accordance with KRS 61.931(6) as an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:
  - i. An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
  - ii. A Social Security number;
  - iii. A taxpayer identification number that incorporates a Social Security number;
  - iv. A driver's license number, state identification card number or other individual identification number issued by an agency;
  - v. A passport number or other identification number issued by the United States government; or



- vi. Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by FERPA.
  - b. As provided in KRS 61.931(5), a "non-affiliated third party" means any person or entity that has a contract or agreement with an agency and receives (accesses, collects or maintains) personal information from the agency pursuant to the contract or agreement.
  - c. Provider shall not re-disclose, without the written consent of JCPS, any "personal information," as defined in KRS 61.931, or any other personally identifiable information of a student or other persons, such as employees.
  - d. Provider agrees to cooperate with JCPS in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.
  - e. Provider agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.
6. **Cloud Computing Service Providers.** If Provider is a cloud computing service provider (as defined in KRS 365.734(1)(b) as "any person other than an educational institution that operates a cloud computing service"), and except as provided in this DPA Provider agrees that:

Provider shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the provider receives express permission from the student's parent. Provider shall work with the student's school and district to determine the best method of collecting parental permission. KRS 365.734 defines "process" and "student data."

Pursuant to KRS 365.734(2), Provider shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.

Pursuant to KRS 365.734(2), Provider shall not sell, disclose, or otherwise process student data for any commercial purpose.

Pursuant to KRS 365.734(3), Provider shall certify in writing to the agency that it will comply with KRS 365.734(2).

## ARTICLE VI: MISCELLANEOUS

1. **Termination.** Either party may terminate this DPA if the other party breaches any terms of this DPA, provided however, the breaching party shall have thirty (30) days to cure such breach and this DPA shall remain in force. The Board may terminate this DPA in whole or in part at any time by giving written notice to Provider of such termination and specifying the effective date thereof, at Least thirty (30) days before the specified effective date. In accordance with **Attachment A**, the Board shall compensate Provider for Services satisfactorily performed through the effective date of termination.

2. **Effect of Termination Survival.** If the Service Agreement is terminated, the Provider shall destroy all of JCPS's Confidential Data pursuant to Article IV, section 8 (Disposition of Data).
3. **Priority of Agreements.** This DPA shall govern the treatment of Confidential Data in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the terms of the DPA and the Service Agreement, Terms of Service, Privacy Policies, or with any other bid/RFP, license agreement, or writing, the terms of this DPA shall apply and take precedence.
4. **Modification.** No waiver, alteration or modification of the provisions of this Agreement shall be binding unless in writing and mutually agreed upon. Any modifications or additions to this Agreement must be negotiated and approved by both parties.
5. **Disputes.** Any differences or disagreements arising between the Parties concerning the rights or liabilities under this DPA, or any modifying instrument entered into pursuant to this DPA, shall be resolved through the procedures set out in the Regulations.
6. **Notices.** All notices or other communication required or permitted to be given hereunder may be given via e-mail transmission, or certified mail, sent to the designated representatives below.

The designated representative for the Board for this DPA is:

Name: Robert Moore Title: Chief of Schools

Address: 3332 Newburg Road, Louisville, KY 40218

Phone: (502) 485-7623 Email: robert.moore4@jefferson.kyschools.us

The designated representative for the Provider for this DPA is:

Name: Lisa Nee Title: Privacy and Compliance Officer

Address: 24 School Street, Fourth Floor, Boston, MA 02108

Phone: (775) 249-5424 Email: lnee@panoramaed.com

7. **Amendment and Waiver.** This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both Parties. Neither failure nor delay on the part of any Party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.
8. **Severability.** Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the Parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.

9. **Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF KENTUCKY, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR JEFFERSON COUNTY KENTUCKY FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY. HOWEVER, IN THE EVENT THAT THE LISTED REQUIRED VENUE WILL REQUIRE EITHER PARTY TO SPEND MORE THAN FIFTY THOUSAND DOLLARS (50,000USD) FOR THE REASONABLE TRAVEL OR SHIPMENT EXPENSE OF EVIDENCE SUCH AS SERVERS, MAINFRAMES, EQUIPMENT OR OTHERWISE, A PARTY MAY EITHER: (A) SUBMIT A MOTION TO CHANGE VENUE OR (B) DEMAND THE OTHER PARTY TO PAY FOR ALL EXPENSES EXCEEDING FIFTY THOUSAND DOLLARS (50,000) DUE TO HAVING JEFFERSON COUNTY KENTUCKY AS THE EXCLUSIVE VENUE.
10. **Successors Bound:** This DPA is and shall be binding upon the respective successors in interest to Provider in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business In the event that the Provider sells, merges, or otherwise disposes of its business to a successor during the term of this DPA, the Provider shall provide written notice to the Board no later than sixty (60) days after the closing date of sale, merger, or disposal. Such notice shall include a written, signed assurance that the successor will assume the obligations of the DPA and any obligations with respect to Confidential Data within the Service Agreement. The Board has the authority to terminate the DPA if it disapproves of the successor to whom the Provider is selling, merging, or otherwise disposing of its business.
11. **Authority.** Each party represents that it is authorized to bind to the terms of this DPA, including confidentiality and destruction of Confidential Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Confidential Data and/or any portion thereof.
12. **Relationship of Parties.** The Board is not an employee, agent, partner or co-venturer of or with Services Provider. Neither Services Provider nor the Board shall represent or imply to any party that it has the power or authority to enter into a contract or commitment in the name of or on behalf of the other, or to otherwise bind the other.
13. **Equal Opportunity.** During the performance of this DPA, Provider agrees that Provider shall not discriminate against any employee, applicant or subcontractor because of race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, disability, or limitations related to pregnancy, childbirth, or related medical conditions. If the Compensation is paid from federal funds, this DPA is subject to Executive Order 11246 of September 24, 1965 and in such event the Equal Opportunity Clause set forth in 41 Code of Federal Regulations 60-1.4 is hereby incorporated by reference into this DPA as if set forth in full herein.
14. **Prohibition on Conflicts of Interest.** It shall be a breach of this DPA for Provider to commit any act which is a violation of Article XI of the Regulations entitled "Ethics and Standards of

Conduct,” or to assist or participate in or knowingly benefit from any act by any employee of the Board which is a violation of such provisions.

15. Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to Provider for the duration of this DPA and shall reveal any final determination of a violation by the Provider of the preceding KRS chapters.

16. **Access to School Grounds.** Unless otherwise permitted in writing by the Board, its delegates or law enforcement and except for required maintenance or repairs, no employee or agent of Provider shall access the Board’s school grounds on a regularly scheduled or continuing basis for purposes of providing services to students under this DPA.

IN WITNESS WHEREOF, The Board and Provider execute this DPA as of the Effective Date above.

**BOARD OF EDUCATION OF JEFFERSON COUNTY KENTUCKY**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title/Position: \_\_\_\_\_

**PANORAMA EDUCATION, INC.**

*Michael Reynolds*

By: \_\_\_\_\_ Date: 10 / 23 / 2023  
Printed Name: Michael Reynolds  
Title/Position: Director of Legal

**EXHIBIT "A"**

**DESCRIPTION OF SERVICES**

Provider shall provide software licenses and support for the following products at prices equal or below Provider's standard pricing rates for the products:

Panorama Student Success Software Platform

**COMPENSATION**

Purchase orders shall be entered by each participating school and/or location. Funds for purchase shall come from individual school budgets. Total payments under this DPA shall not exceed standard vendor pricing per fiscal year, running from July 1-June 30.

**EXHIBIT "B"**

**SCHEDULE OF DATA**

<b>Category of Data</b>	<b>Elements</b>	<b>Check if Used by Your System</b>
Application Technology Meta Data	IP Addresses of users, Use of cookies, etc.	<input checked="" type="checkbox"/>
	Other application technology meta data-Please specify: - Information from the browser may be logged for security or usage purposes	<input checked="" type="checkbox"/>
Application Use Statistics	Meta data on user interaction with application	<input checked="" type="checkbox"/>
Assessment	Standardized test scores	<input checked="" type="checkbox"/>
	Observation data	<input checked="" type="checkbox"/>
	Other assessment data-Please specify: Including and integrating any assessment data is completely optional and the school district has complete control over what they choose to integrate..	<input checked="" type="checkbox"/>
Attendance	Student school (daily) attendance data	<input checked="" type="checkbox"/>

	Student class attendance data	<input checked="" type="checkbox"/>
Communications	Online communications captured (emails, blog entries)	<input type="checkbox"/>
Conduct	Conduct or behavioral data	<input checked="" type="checkbox"/>
Demographics  Note from Vendor: Demographic data is completely optional and the school district has complete control over what they choose to integrate.	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, or primary language spoken by student)	<input checked="" type="checkbox"/>
	Student disability information	<input checked="" type="checkbox"/>

Category of Data	Elements	Check if Used by Your System
	<p>Other demographic information-Please specify:</p> <p>Note from Vendor: Additional demographic data is completely optional and the school district has complete control over what they choose to integrate.</p>	<input checked="" type="checkbox"/>
Enrollment	Student school enrollment	<input checked="" type="checkbox"/>
	Student grade level	<input checked="" type="checkbox"/>
	Homeroom	<input checked="" type="checkbox"/>
	Guidance counselor	<input checked="" type="checkbox"/>
	Specific curriculum programs	<input checked="" type="checkbox"/>
	Year of graduation	<input checked="" type="checkbox"/>
	<p>Other enrollment information-Please specify:</p> <p>Note from Vendor: Additional enrollment data is completely optional and the school district has complete control over what they choose to integrate.</p>	<input checked="" type="checkbox"/>



Parent/Guardian Contact Information	Address	<input checked="" type="checkbox"/>
	Email	<input checked="" type="checkbox"/>
	Phone	<input checked="" type="checkbox"/>
Parent/Guardian ID	Parent ID number (created to link parents to students)	<input checked="" type="checkbox"/>
Parent/Guardian Name	First and/or Last	<input checked="" type="checkbox"/>
Schedule	Student scheduled courses	<input checked="" type="checkbox"/>
	Teacher names	<input checked="" type="checkbox"/>
Special Indicator  Note from Vendor: Additional demographic data is completely optional and the school district has complete control over what they choose to integrate.	English language Learner information	<input checked="" type="checkbox"/>
	Low income status	<input checked="" type="checkbox"/>
	Medical alerts/ health data	<input type="checkbox"/>

Category of Data	Elements	Check if Used by Your System
Note from Vendor: Additional demographic data is completely optional and the school district has complete control over what they choose to integrate.	Specialized education services (IEP or 504)	<input checked="" type="checkbox"/>
	Living situations (homeless/foster care)	<input checked="" type="checkbox"/>
	Other indicator information-Please specify:	<input checked="" type="checkbox"/>
Staff Data	First and Last Name	<input checked="" type="checkbox"/>
	Email Address	<input checked="" type="checkbox"/>
Note from Vendor: Including additional Staff demographic data is completely optional and the school district has complete control over what they choose to integrate.	Staff ID number	<input checked="" type="checkbox"/>
	Other information – Please specify	<input checked="" type="checkbox"/>
Student Contact Information	Address	<input checked="" type="checkbox"/>
	Email	<input checked="" type="checkbox"/>
	Phone	<input checked="" type="checkbox"/>

Student Identifiers	Local (School district) ID number	<input checked="" type="checkbox"/>
	State ID number	<input checked="" type="checkbox"/>
	Provider/App assigned student ID number	<input checked="" type="checkbox"/>
	Student app username	<input checked="" type="checkbox"/>
	Student app passwords	<input type="checkbox"/>
Student Name	First and/or Last	<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 checked="" 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 checked="" type="checkbox"/>

Category of Data	Elements	Check if Used by Your System
	<p>Other student work data -Please specify:</p> <p>Note from Vendor: Additional student work could potentially be uploaded by users within the student profile. This is completely optional and the school district has complete control over what they choose to upload. Additionally, student surveys may contain free response answers if surveys contain that question type.</p>	<input checked="" type="checkbox"/>
Transcript	Student course grades	<input checked="" type="checkbox"/>
	Student course data	<input checked="" type="checkbox"/>
	Student course grades/ performance scores	<input checked="" type="checkbox"/>
	<p>Other transcript data - Please specify:</p> <p>Note from Vendor: Additional transcript data could potentially be uploaded to student profiles or detailed in support notes or intervention notes. This is completely optional and the school district has complete control over what they choose to enter into the platform.</p>	<input checked="" type="checkbox"/>
Transportation  Note from Vendor: Including any transportation data is completely optional and the school district has complete control over what they choose to enter into the platform.	Student bus assignment	<input checked="" type="checkbox"/>
	Student pick up and/or drop off location	<input checked="" type="checkbox"/>
	Student bus card ID number	<input checked="" type="checkbox"/>

	Other transportation data – Please specify:	<input type="checkbox"/>
Other	<p>Please list each additional data element used, stored, or collected by your application:</p> <p>This schedule of data includes all standard data that is requested for integration. Districts may choose to include additional custom demographics or notes through the duration of their contract. Including/using/storing any additional data would be by request of the district.</p>	<input checked="" type="checkbox"/>
None	No Confidential Data collected at this time. Provider will immediately notify JCPS if this designation is no longer applicable.	<input type="checkbox"/>

**EXHIBIT “C”**  
**DEFINITIONS**

**Compensation:** Amounts to be paid to the Provider in exchange for software licenses and support. The maximum amount of Compensation that may be paid under this DPA is set forth in Attachment A. The Board is not obligated to pay the maximum Compensation amount solely by its inclusion in this DPA. Compensation owed is determined by the purchase orders submitted to Provider. The cost for any single license or support provided under this DPA shall not exceed Provider’s standard pricing for that product.

**Confidential Data:** Confidential Data includes any data, whether gathered by Provider or provided by the Board or its users, students, or students’ parents/guardians, that is descriptive of the student including, but not limited to, information in the student’s educational record or email, first and last name, birthdate, home or other physical address, telephone number, email address, or other information allowing physical or online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, individual purchasing behavior or preferences, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, geolocation information, parents’ names, or any other information or identification number that would provide information about a specific student. Confidential Data includes Meta Data. Confidential Data further includes “Personally Identifiable Information (PII),” as defined in 34 C.F.R. § 99.3 and as defined under any applicable state law. Confidential Data shall constitute Education Records for the purposes of this DPA, and for the purposes of federal, state, and local laws and regulations. Confidential Data as specified in **Exhibit “B”** is confirmed to be collected or processed by the Provider pursuant to the Services. Confidential Data shall not constitute that information that has been anonymized or De-Identified, or anonymous usage data regarding a student’s use of Provider’s services.

**De-Identified Data and De-Identification:** Records and information are considered to be De-Identified when all personally identifiable information has been removed or obscured, such that the remaining information does not reasonably identify a specific individual, including, but not limited to, any information that, alone or in combination is linkable to a specific student and provided that the educational agency, or other party, has made a reasonable determination that a student’s identity is not personally identifiable, taking into account reasonable available information.

**Educational Records:** Educational Records are records, files, documents, and other materials directly related to a student and maintained by the school or local education agency, or by a person acting for such school or local education agency, including but not limited to, records encompassing all the material kept in the student’s cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs.

**Metadata:** means information that provides meaning and context to other data being collected; including, but not limited to: date and time records and purpose of creation Metadata that have been stripped of all direct and indirect identifiers are not considered Personally Identifiable Information.

**Operator:** means the operator of an internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used for K–12 school purposes. Any entity that operates an internet website, online service, online application, or mobile application that has entered into a signed, written agreement with the Board to provide a service to the Board shall be considered an “operator” for the purposes of this section.

**Provider:** For purposes of the DPA, the term “Provider” means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Confidential Data. Within the DPA the term “Provider” includes the term “Third Party” and the term “Operator” as used in applicable state statutes.

**Regulations:** The Board Procurement Regulations, available on the JCPS website, as may be amended from time to time.

**Student Generated Content:** The term “Student-Generated Content” means materials or content created by a student in the services including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of student content.

**School Official:** For the purposes of this DPA and pursuant to 34 CFR § 99.31(b), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of Confidential Data including Education Records; and (3) Is subject to 34 CFR § 99.33(a) governing the use and re-disclosure of Personally Identifiable Information from Education Records.

**Service Agreement:** Refers to the Contract, Purchase Order or Terms of Service or Terms of Use.

**Subprocessor:** For the purposes of this DPA, the term “Subprocessor” (sometimes referred to as the “Subcontractor”) means a party other than Board or Provider, who Provider uses for data collection, analytics, storage, or other service to operate and/or improve its service, and who has access to Confidential Data.

**Targeted Advertising:** means presenting an advertisement to a student where the selection of the advertisement is based on Confidential Data or inferred over time from the usage of the operator's Internet web site, online service or mobile application by such student or the retention of such student's online activities or requests over time for the purpose of targeting subsequent advertisements. "Targeted Advertising" does not include any advertising to a student on an Internet web site based on the content of the web page or in response to a student's response or request for information or feedback.

**Third Party:** The term “Third Party” means a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of Education Records and/or Confidential Data, as that term is used in some state statutes. However, for the purpose of this DPA, the term “Third Party” when used to indicate the provider of digital educational software or services is replaced by the term “Provider.”

**EXHIBIT “D”**

**DIRECTIVE FOR DISPOSITION OF DATA**

The Board of Education of Jefferson County Kentucky directs Provider to dispose of data obtained by Provider pursuant to the terms of the Service Agreement between The Board and Provider. The terms of the Disposition are set forth below:

**1. Extent of Disposition**

\_\_\_\_\_ Disposition is partial. The categories of data to be disposed of are set forth below or are found in an attachment to this Directive:

**[Insert categories of data here]**

\_\_\_\_\_ Disposition is Complete. Disposition extends to all categories of data.

**2. Nature of Disposition**

\_\_\_\_\_ Disposition shall be by destruction or deletion of data.

\_\_\_\_\_ Disposition shall be by a transfer of data. The data shall be transferred to the following site as follows:

**[Insert or attach special instructions]**

**3. Schedule of Disposition**

Data shall be disposed of by the following date:

\_\_\_\_\_ As soon as commercially practicable.

\_\_\_\_\_ By **[Insert Date]**

**Signature**

\_\_\_\_\_  
Authorized Representative of the Board

\_\_\_\_\_  
Date

**Verification of Disposition of Data**

\_\_\_\_\_  
Authorized Representative of Provider

\_\_\_\_\_  
Date



**EXHIBIT “E”**

**DATA SECURITY REQUIREMENTS**

**Adequate Cybersecurity Frameworks**

Provider will utilize one of the following known and credible cybersecurity frameworks which can protect digital learning ecosystems.

Cybersecurity Frameworks

	<b>MAINTAINING ORGANIZATION/GROUP</b>	<b>FRAMEWORK(S)</b>
	American Institute of CPAs	SOC2
	International Standards Organization (ISO)	Information technology — Security techniques — Information security management systems (ISO 27000 series)
X	The Board of Education of Jefferson County	Board provided standardized questionnaire