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Enactment Date	8/8/18 If

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Marcus Battle, Chief Business Officer
Susan Beltz, Chief Technology Officer *SB*

Board Meeting Date August 22, 2019

Subject Ratification of Services Agreement between Oakland Unified School District and TalkingPoints, Inc.

Action Requested Ratification of Services Agreement between Oakland Unified School District and TalkingPoints, Inc. beginning August 1, 2018 through July 31, 2021 in the amount of \$90,000.

Background The Oakland Unified School District has successfully used TalkingPoints for two-way multi-lingual texting for 2017-18 and is using this firm going forward for the same services as previously provided, with the exception that the student count will be increased to meet growing demand for this application by OUSD school sites. Note that the Agreement may be terminated by either party at any time with written notice for any reason.

Discussion The TalkingPoints application is used by Oakland Unified School District (OUSD) staff to support two-way multi-lingual texting between school site staff and families. Schools use a web application to send text messages to



parents who receive them in their own languages as well as English. Parents can reply in their own languages, and receive both the English and the original version of the messages. Since TalkingPoints works via text messages, TalkingPoints is accessible for all parents who own a simple mobile phone. Analytics dashboards are also available to track engagement statistics of parents.

TalkingPoints was successfully used in 2017-18 and the student count is being increased in 2018-19 to meet growing demand by OUSD school sites. Over 450,000 messages between school site staff and families across 35 sites were sent in 2017-18. In addition, a survey of over 3000 parents (45% response rate) from May 2017 yielded extremely positive results: 97% of parents said that they feel more informed about what is happening at their school, 93% of parents said that they are receiving more communication from their school, and 89% of parents said that they are having more conversations about school with their child.

The Software Services and Support Agreement with TalkingPoints Software includes licensing, data imports, upgrades, support, and stakeholder engagement for the 2018-19 fiscal year. Ratification of this Agreement will enable OUSD to continue using TalkingPoints support text-based communications between school site staff and OUSD families.

Recommendation	Ratification of Services Agreement between Oakland Unified School District and TalkingPoints, Inc. beginning August 1, 2018 through July 31, 2021 in the amount of \$90,000.
Fiscal Impact	\$90,000 from Funding Resource 010-0000-0-0000-7700-5846-999-9860-9994-9999-99999: General Purpose (GP), Data Processing, License Agreements, Districtwide
Attachments	TalkingPoints-Oakland Unified School District Software Services and Support Agreement (2018/2019)



CONTRACT JUSTIFICATION FORM
This Form Shall Be Submitted to the Board Office With *Every* Consent Agenda Contract.

Legislative File ID No. 18-1670
 Department: Technology Services
 Vendor Name: TalkingPoints
 Contract Term: Start Date: August 1, 2018 End Date: July 31, 2021
 Annual Cost: \$ 90,000.00
 Approved by: Susan Beltz

Is Vendor a local Oakland business? Yes No

Why was this Vendor selected?

The TalkingPoints application is used by Oakland Unified School District (OUSD) staff to support two-way multi-lingual texting between school site staff and families. Schools use a web application to send text messages to parents who receive them in their own languages as well as English. Parents can reply in their own languages, and receive both the English and the original version of the messages. Since TalkingPoints works via text messages, TalkingPoints is accessible for all parents who own a simple mobile phone. Analytics dashboards are also available to track engagement statistics of parents.

TalkingPoints is a non-profit organization with the mission to meaningfully connect teachers, parents and students across technological and language barriers to increase parent engagement. TalkingPoints was born out of Startup Weekend Education Oakland that OUSD co-sponsored, and won the Teachers ' Pick Prize for Parent Engagement.

Summarize the services this Vendor will be providing.

TalkingPoints will provide licensing, data imports, upgrades, support, and stakeholder engagement for the contract term. Note that the Agreement may be terminated by either party at any time with written notice for any reason.

Was this contract competitively bid? Yes No

If No, answer the following:

1) How did you determine the price is competitive?

The Oakland Unified School District receives TalkingPoints at a significantly discounted rate of \$4.50 per student per year. (The retail price for TalkingPoints is \$6.00 per student per year). The platform contains features not found in most other communications platforms, including the ability to automatically detect mobile numbers, support for over 20 languages, support for bi-directional machine and human translation, and rich analytics. In addition, TalkingPoints support stakeholders by visiting schools and helping them get started with the platform. The platform was successfully used in 35 schools in 2017-18. Prior surveys indicated very positive feedback from families. The current agreement grows this to cover 20,000 OUSD students based upon requests from additional OUSD school sites for the application.

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$ 90,200 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- Emergency** contracts [requires Board resolution declaring an emergency]
- Technology** contracts
 - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$ 90,200 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
 - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
 - Western States Contracting Alliance Contracts (WSCA)
 - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- "Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception**

TalkingPoints-Oakland Unified School District Software Services and Support Agreement (2018/2019)

1. Overview

This Software Services and Support Agreement (“Agreement” or “Contract”) is entered into by and between TalkingPoints, a California corporation and the Oakland Unified School District (“OUSD”), a California school district.

TalkingPoints product

TalkingPoints’ product is a two-way, multi-lingual texting platform that allows for fast, cheap and accessible communication between districts, schools and teachers with parents and students. Schools use a web application to send text messages to parents who receive them in their own languages as well as English. Parents can reply in their own languages, and receive both the English and the original version of the messages. Since TalkingPoints works via text messages, TalkingPoints is accessible for all parents who own a simple mobile phone.

TalkingPoints allows for instant translation (machine and human-driven) both outbound and inbound, opening up communication channel for parents who do not speak English. Schools can also send interactive messages drawn from pre-written text message programs, conduct surveys (with data visualization), send multiple-choice questions, send automatic follow up messages depending on how the parent replies. Analytics dashboards are also available to track engagement statistics of parents.

TalkingPoints organization

TalkingPoints is a non-profit organization with the mission to meaningfully connect teachers, parents and students across technological and language barriers to increase parent engagement. We believe that parent engagement is critical to student success, yet is often challenging. TalkingPoints helps change this to drive parent engagement through opening up communication channels that build relationships. TalkingPoints was born out of Startup Weekend Education Oakland that OUSD co-sponsored, and won the Teachers’ Pick Prize for Parent Engagement. Our product development has been heavily influenced by OUSD teachers. TalkingPoints was a top 10 finalist in the Google Impact Challenge: Bay Area in 2015. Our current philanthropic funders include Google.org, AT&T Aspire, Stanford University, Echoing Green and Walton Family Foundation.

2. Scope of work

TalkingPoints will license the use of its multi-lingual texting platform (“Software”) to select schools in OUSD for the 2018-19 school year for 20,000 students. Please refer to the Software License and Support Agreement (Attachment A) for detailed provisions.

This Agreement includes data import support, system maintenance, system support, and user support to OUSD for the length of the Agreement. It also includes ongoing system upgrades at no additional cost to OUSD.

3. Data import

TalkingPoints will import all OUSD data for the purposes of text message communication for the participating schools. This data can be obtained from a variety of sources, which would include OUSD Student Information System (“SIS”) or prepopulated data files. TalkingPoints will import OUSD’s clean data at no additional cost, but OUSD and its schools will have access to online import tools if it wishes to control its own data imports. TalkingPoints will charge for any data clean up required. If OUSD opts to have TalkingPoints import its data, it will take a minimum of two (2) weeks and up to a maximum of six (6) weeks to import all data, provided that TalkingPoints has access to clean, high-quality data.

4. Fees and Payments

TalkingPoints’ fee breakdown for the 2018-19 school year is as follows:

2018-19 school year

For a minimum of 20000 students

- \$4.50 per student for implementation and licensing the TalkingPoints software.

Total cost at \$90,000 (“Annual License Fee”) for the 2018-19 school year.

Student Count

Student count to be used in calculating the Annual License Fee for each school year shall be determined based on CBEDs at schools in OUSD that will be using or are authorized to use the Software.

Payment Schedule

The fees will be paid by OUSD within 30 days of receipt of an invoice from TalkingPoints (but no sooner than 30 days after execution of this Agreement by the parties). Invoices will be generated within 14 days of signing this Agreement and to be paid upfront for the minimum number of students, in this case 20,000 students, with additional payment with regards to additional students due at the start of each quarter.

(a) Failure to Make Payment. In the event OUSD fails to pay the Annual License Fee or other fees due hereunder when due it will constitute a material breach of this Agreement and, upon

notice from TalkingPoints, OUSD agrees to immediately cease, and to cause OUSD Users to cease, using the Software and TalkingPoints will have no further obligation to provide any maintenance or support to OUSD or OUSD Users.

(b) Taxes. The fees in Statement of Work Section 4 do not include sales, use or similar taxes which may be applicable. District is solely responsible and liable for payment of all sales, use, excise, value added or similar taxes, duties or charges imposed by any federal, state or local government or jurisdiction with respect to any fees or other payments to be made by District to TalkingPoints under this Agreement, excluding taxes based on TalkingPoints's overall net income.

(c) Additional cost If the recipient of the service incurs additional charges for receiving text messages, such as text message fees or data fees, then additional charges are payable by the recipient or District Users

5. Responsibilities

TalkingPoints is responsible for all development and provision of Software to OUSD and its schools, and for maintenance and support for the Software.

OUSD's responsibilities are

- Selection of schools to participate in the initiative
- Involvement in the stakeholder engagement process, including introduction of key stakeholders to TalkingPoints
- Providing access to contact information via SIS or otherwise for data import

6. Excluded Services

Other than the services outlined above, TalkingPoints is not responsible for any other activities, unless mutually agreed to in writing.

7. Client Obligations

In order to fulfill the scope of services described herein, TalkingPoints relies on OUSD and its schools to provide timely, accurate and complete information, to cooperate reasonably with TalkingPoints and to timely complete all tasks assigned to OUSD pursuant to the mutually agreed project plan developed at the outset of the project.

8. Product Maintenance and Support

TalkingPoints agrees to provide maintenance and support of the TalkingPoints Software. Maintenance and support of the Software is provided at no additional cost to OUSD. However, TalkingPoints will not be responsible for, nor will it have any liability resulting from (a) modifications to or alterations of the Software or databases by OUSD or OUSD users, unless

such modification or alteration is approved in writing by TalkingPoints, or (b) any failure of OUSD's or OUSD users' equipment or Software.

9. Term, Termination and Extension

The Term of this Agreement is from August 1, 2018 through July 31, 2021. Either party may cancel this Agreement at the end of July 2019 or the end of July 2020 by submitting written intent to do so by May 1 of the year in question.

Either party may also terminate this Agreement at any time with written notice for any reason, provided that a pro-rata amount of fees are paid, based on time elapsed from signature of this Agreement until termination. In this event, TalkingPoints is not responsible for producing any of the deliverables under the Agreement. If OUSD terminates this Agreement without cause as provided for in this paragraph, TalkingPoints will refund OUSD any prepaid fees covering the remainder of the effective term of the Agreement after the effective date of termination, as calculated on a daily pro rata basis.

Either party may terminate this Agreement prior to the expiration of the Term, effective immediately upon written notice to the other party, in the event of a material breach of this Agreement by the other party hereto, if such breach remains uncured for more than thirty (30) days after written notice thereof. In addition, either party may terminate this Agreement upon ten (10) days written notice to the other party upon the occurrence of any one or more of the following: (i) the institution by or against the other party of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of the other party's debts; (ii) the other party making an assignment for the benefit of creditors; or (iii) the other party's dissolution. If OUSD terminates this Agreement as provided for in this paragraph, TalkingPoints will refund OUSD any prepaid fees covering the remainder of the effective term of the Agreement after the effective date of termination, as calculated on a daily pro rata basis.

In addition, TalkingPoints may terminate this Statement of Work immediately upon written notification, if OUSD violates any of the OUSD Responsibilities, listed above. However, if TalkingPoints terminates this Agreement as provided for in this paragraph, TalkingPoints will refund OUSD any prepaid fees covering the remainder of the effective term of the Agreement after the effective date of termination, as calculated on a daily pro rata basis.

10. License of Software to District; Third Party Services.

(a) License. Subject to the terms of this Agreement, TalkingPoints hereby grants to OUSD a limited, non-exclusive, non-sublicensable and non-transferrable license for OUSD employees and staff, and their students or parents or guardians (collectively, "*District Users*") to use the Software during the Term with respect to each of the OUSD locations as selected by OUSD. The OUSD Users may not use the Software other than with respect to the locations set forth and defined as OUSD locations or for other than OUSD operations. OUSD is responsible for the actions of all OUSD Users, for ensuring that only authorized OUSD Users are provided access

to the Software, and that access of OUSD Users authorized by OUSD is limited to that portion of the Software and OUSD Data (as defined below) as is reasonably necessary in order to fulfill the purposes of this Agreement. By agreeing to license the Software, OUSD is also agreeing to comply with the Privacy Policy incorporated as an attachment to this Agreement (see Attachment A: Talking Points Privacy Policy Last Modified August 15, 2017).

11. Ownership of Software; Third Party Materials. TalkingPoints and its licensors are and will remain the exclusive owners of all right, title and interest in and to the Software and all derivative works, and in the materials licensed by TalkingPoints from third parties ("**Third Party Materials**"), including but not limited to copyrights, patent rights, and trade secrets and all other intellectual property rights as may exist now and/or hereafter come into existence, subject only to the rights of third parties in open source components and the limited license granted under this Agreement. In addition, TalkingPoints shall own any and all other ideas, concepts, themes, technology, algorithms, programming codes, documentation or other intellectual property or copyrightable material conceived, developed, created, written or contributed by TalkingPoints pursuant to this Agreement ("**Specific Developments**"). OUSD will have no rights in the Software, any derivative works, the Specific Developments or Third Party Materials, except the license and related rights expressly set forth in this Agreement. OUSD agrees not to (i) alter, merge, modify, adapt or translate the Software or Third Party Materials, or decompile, reverse-engineer, disassemble, or otherwise reduce the Software or Third Party Materials to a human-perceivable form, (ii) sell, rent, lease or sublicense the Software or Third Party Materials or (iii) create derivative works based upon the Software or Third Party Materials.

12. Software Implementation, Data Conversion, Hosting and Training Services. TalkingPoints agrees to provide the services associated with the implementation of the Software, data conversion, hosting and training of OUSD employees on the use of the Software as follows:

(a) Task List. A preliminary list of tasks and associated targeted completion dates are set forth on Exhibit A attached hereto, and incorporated as if fully set forth herein.

(b) Hosting. The Software and OUSD's data will be hosted on TalkingPoints's servers (included in the Annual License Fee).

(c) Importing of Data. TalkingPoints will assist OUSD with importing OUSD's data into the Software within 45 business days after TalkingPoints is provided reasonable access to usable OUSD Data.

(d) Initial Training. TalkingPoints will provide up to five (5) days of initial training to OUSD in the basic use of the Software to be presented as both parties mutually agree.

13. Ownership and Control of OUSD Data. OUSD will retain ownership of, and the ability to control, all OUSD data imported into the Software ("**OUSD Data**"). OUSD Data includes pupil records, as defined in California Education Code §49073.1(d)(5) ("**Pupil Records**"). TalkingPoints may, however, internally use OUSD Data that has been de-identified in order to

improve its educational products. Upon the expiration or termination of this Agreement, to the extent OUSD Data resides on TalkingPoints servers, TalkingPoints agrees to assist in the transfer all OUSD Data back to OUSD in an industry standard open format, such as CSV, at no charge.

14. Responsibilities of OUSD. OUSD agrees to prepare and furnish to TalkingPoints upon request such information as is reasonably requested by TalkingPoints in order for TalkingPoints to perform its obligations under this Agreement.

15. TalkingPoints Software Maintenance and Support. TalkingPoints agrees to provide maintenance and support of the Software. Such maintenance and support will include coverage in the form of bug fixes and other corrections to the Software; telephone and e-mail support for questions regarding operations of the Software; change the Software as necessary to incorporate upgrades and new features; support to OUSD in resolving problems/errors resulting from misuse or hardware/software failure; and telephone or web conferences with OUSD to address future growth or modifications to the Software. Maintenance and support of the Software is provided at no additional cost to OUSD. TalkingPoints' maintenance of the Software will be at complete discretion of TalkingPoints other than bug fixes. TalkingPoints is not responsible for, nor will it have any liability resulting from, (a) modifications to or alterations of the Software or databases by OUSD or OUSD Users, unless such modification or alteration is approved in writing by TalkingPoints, or (b) any failure of OUSD or OUSD Users equipment or software or (c) quality of the translation services as provided by the Software.

16. Confidentiality.

(a) Confidential Information Defined. Each party (the "**Disclosing Party**") may from time to time during the Term disclose to the other party (the "**Receiving Party**") certain information regarding the Disclosing Party's business, including technical, marketing, financial, employee, planning, and other confidential or proprietary information ("**Confidential Information**"). The Software, Third Party Materials and related know-how, technology, system designs, layouts, software, concepts, techniques, data and files will be considered Confidential Information of TalkingPoints. OUSD Data will be considered Confidential Information of OUSD.

(b) Protection of Confidential Information. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care. OUSD acknowledges that the Software is maintained as a trade secret by TalkingPoints, and agrees to use reasonable care in preserving such secrecy, including making such information available only to those OUSD Users required to have access in order to fulfill the purposes of this Agreement.

(c) Exceptions. The Receiving Party's obligations under this section with respect to any Confidential Information of the Disclosing Party will terminate if the Receiving Party can demonstrate that such information: (i) was already known to the Receiving Party at the time of disclosure by the Disclosing Party; (ii) is disclosed to the Receiving Party by a third party who

had the right to make such disclosure without any confidentiality restrictions; (iii) is, or through no fault of the Receiving Party has become, generally available to the public; or (iv) is independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

(d) Return of Confidential Information. In addition to TalkingPoints's obligations under Section 13, promptly upon the written request of the Disclosing Party following termination of this Agreement, the Receiving Party will either, at Disclosing Party's option, return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and certify in writing that it has fully complied with its obligations under this Section.

(e) Use of Confidential Information. The Receiving Party will not use Confidential Information of the Disclosing Party for any purpose prohibited by law or other than as required or specifically permitted by this Agreement. TalkingPoints further agrees it will not use any personally identifiable information in OUSD Data to engage in or facilitate targeted advertising.

(f) Injunctive Relief. Because monetary damages may not be sufficient to remedy a violation of the provisions of this section, a Disclosing Party shall be entitled, upon becoming aware of any such violation and without waiving any other rights or remedies it may have, to seek injunctive or other equitable relief it may deem appropriate.

(g) Non-Retention Certification. TalkingPoints certifies that, in accordance with this Agreement, Pupil Records shall not be retained or available to TalkingPoints or its employees or agents upon completion of the terms of this Agreement. This certification may be enforced by any lawful means, including, without limitation, through civil action.

17. Privacy and Collection of District Data.

(a) Compliance with Law. TalkingPoints and OUSD each represents and warrants that it, and its officials, agents, employees and subcontractors have and will continue to receive training so as to be familiar with the provisions of the Family Educational Rights and Privacy Act ("*FERPA*") and equivalent state provisions, and each party agrees that it will comply with such provisions and take all reasonable measures necessary to protect student education records from unauthorized acquisition or release. In the event that any unauthorized acquisition or release of student education records occurs, each party agrees to advise the other promptly upon discovery of such unauthorized acquisition or release and, if required by law, OUSD will notify the affected parent, legal guardian or student (if at least 18 years of age), as applicable, in writing of

such unauthorized acquisition or unauthorized release. TalkingPoints acknowledges that Pupil Records must be protected and will take all legally required actions, including the designation and training of responsible individuals, to ensure the security and confidentiality of Pupil Records. TalkingPoints will identify those employees and subcontractors who will have access to Pupil Records and ensure such individuals receive appropriate instructions as to how to comply with the security and confidentiality requirements of this Agreement with respect to Pupil Records. TalkingPoints warrants that all Pupil Records will be encrypted in transmission using a minimum of 128 bit AES encryption. In addition, TalkingPoints will use industry-standard and up -to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing services under this Agreement. The parties agree that the commitments agreed to in this section are to ensure compliance with California Education Code Section 49073.1. If TalkingPoints experiences an unauthorized acquisition or release of OUSD's student education records, other than through the fault of OUSD, TalkingPoints shall take reasonable steps to immediately limit and mitigate such breach, including immediately notifying OUSD.

(b) Sharing of OUSD Data. TalkingPoints will not share OUSD Data with, or disclose it to, any third party except (i) as directed by OUSD or OUSD Users, (ii) to OUSD Users as contemplated by this Agreement, (iii) to TalkingPoints's subcontractors who need access to fulfill TalkingPoints's obligations under this Agreement and who have agreed to maintain the confidentiality of such information or (iv) as required by applicable law. When TalkingPoints believes that any disclosure is required by applicable law, it shall promptly notify OUSD prior to the disclosure and give OUSD a reasonable opportunity to object to the disclosure.

(c) Storage and Process. TalkingPoints will store and process OUSD Data in accordance with commercially reasonable practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use.

(d) Right to Correct. A parent, legal guardian, or student who has reached 18 years of age may review personally identifiable information in the student's education records and correct erroneous information by serving a written request for access or description of the erroneous information and written request for correction upon OUSD and furnishing OUSD, upon request, such information as is reasonably requested to respond to the request. OUSD is responsible for correcting all such erroneous information and TalkingPoints agrees to fully cooperate with OUSD to make such corrections.

(e) Social Security Numbers. OUSD agrees that it will not collect or store as part of OUSD Data or otherwise any social security numbers.

18. TalkingPoints Warranty.

(a) Software Warranty. TalkingPoints warrants to OUSD that the Software as delivered, will materially comply with the published specifications of TalkingPoints for such Software. TalkingPoints's obligations under this warranty are limited to providing OUSD with a copy of corrected Software. TalkingPoints does not warrant that the operation of the Software will be

uninterrupted or error-free. IN PARTICULAR, FOR PURPOSES OF THE FOREGOING WARRANTY, TALKINGPOINTS AND OUSD ACKNOWLEDGE THAT THE SOFTWARE IS NOT AND CANNOT BE MADE TO BE 100% ACCURATE, AND THAT ANY ERRORS OR FAILURE TO PERFORM SHALL NOT BE DEEMED A BREACH OF SUCH WARRANTY UNLESS THEY ARE SIGNIFICANT AND NOT TO BE EXPECTED IN LIGHT OF THE LIMITATIONS OF SOFTWARE OF THIS TYPE.

(b) No Other Warranty. EXCEPT AS EXPRESSLY SET FORTH ABOVE, TALKINGPOINTS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO ALL TECHNOLOGY, THIRD PARTY MATERIALS, SOFTWARE OR DERIVATIVE WORKS PROVIDED OR OTHERWISE LICENSED TO OUSD IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NON-INFRINGEMENT.

19. Rights in Law and Equity Remain.

The foregoing rights to terminate as set forth in Section 9, above, are in addition to, not in lieu of, all other rights and remedies which may be available to either party under this Agreement, at law and/or in equity.

20. Miscellaneous.

(a) Governing Law & Venue. This Agreement will be governed by, and construed and enforced in accordance with, the substantive laws of the State of California, without regard to its principles of conflicts of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.

(b) Relationship of the Parties. Nothing contained in this Agreement will be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties will at all times be that of independent contractors. Neither party will have authority to contract for or bind the other in any manner whatsoever. This Agreement confers no rights upon either party except those expressly granted herein.

(c) Interpretation. This Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement.

(d) No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(e) Limitation of Liability. In no event will either party be liable to the other party or to any

third party for any incidental, special, indirect, exemplary, punitive or consequential damages arising out of or relating to this Agreement, including any damages for business interruption, loss of use, or lost or damaged data, whether arising out of breach of contract, tort (including negligence) or otherwise, even if such party or any of its authorized representatives has been advised of the possibility of such damages. Each party's aggregate liability arising out of or relating to this Agreement for any damages, costs, judgments, expenses or loss resulting from any claims, demands, or actions arising out of or relating to this Agreement will not exceed the fees paid or due payable by OUSD to TalkingPoints during the preceding twelve (12) months pursuant to this Agreement. OUSD also agrees that the TalkingPoints Software is not intended or designed for use in high-risk activities or highly-sensitive information, or in any situation where failure of delivery or limited performance (including translational quality of the Software) or any error in the Software could lead to death, damage to property, personal injury or where other damages could result if an error occurred. Notwithstanding the foregoing, this Limitation of Liability Section 21(e) shall have no effect on or applicability to the indemnification obligations as set forth in Section 21(f), below.

(f) Indemnification: TalkingPoints agrees to hold harmless, indemnify, and defend OUSD and its officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement. TalkingPoints also agrees to hold harmless, indemnify, and defend OUSD and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to TalkingPoints in connection with the performance of this Agreement. This provision survives termination of this Agreement.

(g) Force Majeure. Neither party will be liable to the other for any delay or failure to perform due to causes beyond its reasonable control. Performance times will be considered extended for a period of time equivalent to time lost because of any such delay by providing prompt written notice of such expected delay to the other party.

(h) Assignment: The obligations of TalkingPoints under this Agreement shall not be assigned by TalkingPoints without the express prior written consent of OUSD.

(i) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: TalkingPoints certifies to the best of his/her/its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>)

(j) Incorporation of Recitals and Exhibits: The Recitals and each exhibit attached hereto are hereby incorporated herein by reference. TalkingPoints agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Agreement, the terms and provisions of this Agreement shall govern.

(k) Integration/Entire Agreement of Parties: This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

(l) Counterparts: This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

(m) Due Authority of Signatories. Each individual signing this Agreement on behalf of a party represents and warrants that he or she has been duly authorized by appropriate action of such party to execute, and thereby bind such party to, this Agreement.

(n) Contract Contingent on Governing Board Approval: OUSD shall not be bound by the terms of this Agreement until it has been formally approved by OUSD's Governing Board, and no payment shall be owed or made to TalkingPoints absent that formal approval. This Agreement shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

(o) Agreement Publicly Posted: This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

TalkingPoints

OUSD



Aimee Eng 8/9/18

Name: Heejae Lim

Name: Aimee Eng
President, Board of Education

Title: Founder and Executive Director

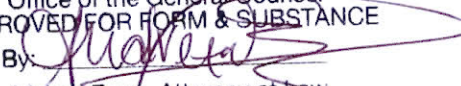
Title: _____

Date: April 23rd 2018

Date: _____

Kyla R. Johnson-Trammell 8/9/18

Kyla R. Johnson-Trammell
Secretary, Board of Education

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE
By: 
Andrea Epps, Attorney at Law

Attachment A: TalkingPoints Privacy Policy, last modified August 15th 2017

TalkingPoints Privacy Policy

Last Modified: August 15th 2017

Welcome to TalkingPoints, the online and mobile service of TalkingPoints (“**TalkingPoints**,” “**we**,” “**our**,” or “**us**”). TalkingPoints understands that privacy is important to our Users. This Privacy Policy explains how TalkingPoints collects, uses, and shares information provided to us by and about users and visitors of, and others who access (collectively, “**Users**”), our website, mobile products, and the software provided on or in connection with our service (collectively, the “**Service**”).

By using our Service, you agree to the terms of this Privacy Policy and our Terms of Service.

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1. WHAT INFORMATION DO WE COLLECT AND FOR WHAT PURPOSE?

We collect information that identifies or relates to an identifiable individual (“**Personal Information**”) from our Users in order to provide a personalized, useful and efficient experience. Personal Information we collect may include:

- Name;
- Phone number;
- Email address;
- Demographic information;
- Home address;
- Social media account ID;
- Photo; and
- Username and password.

We may collect information, including Personal Information, from a variety of sources, including:

- **Information you provide through our website.** Visitors can browse some areas of our website without providing any Personal Information. However, certain interactions with us require Personal Information. For example, we may collect Personal Information when you register for a User account, use our Service, or correspond with us.
- **Information that we collect through the TalkingPoints Service:** In providing our Service to you, we collect, store, process and disclose your Personal Information. Once you begin using the Service, we will keep records of activities related to the Service, including the content of messages that you may send. We use these records to improve the Service, including by providing content suggestions to you.
- **Information we receive from third parties:** We may receive information about you from third parties. For example, if you access our websites or Service through a third-party connection or log-in, for example, through Google, or by interacting with our brand on social media sites, that third party site will pass certain information about your use of its service to TalkingPoints. This information could include, but is not limited to, the User ID associated with your third party account, an access token necessary to access that service, any information that you have permitted the third party to share with us, and any information you have made public in connection with that service. You should always review, and if necessary, adjust your privacy settings on third-party websites and services before linking or connecting them to the Service. You may also unlink your third party account from the Service by adjusting your settings on the third party service.
- **Address Book Information.** With your permission, TalkingPoints may access your contact list available on your mobile device or in your email accounts in order to locate your friends and contacts on the Service and to invite your friends and contacts to connect with our Service. When we invite your friends to join the Service, we will include your name and photo to let them know that you are the person extending the invitation. After sending these invitations, we may also send reminder emails to your invitees on your behalf. We will store these contacts for purposes of alerting you when your contacts join TalkingPoints at a later time so that you may connect with them on the Service, and to suggest friends and connections to other members of TalkingPoints.
- **Student Data:** TalkingPoints may have access to personally identifiable information about students (“**Student Data**”) in the course of providing its Service. We consider Student Data to be confidential and do not use such data for any purpose other than to provide the Service. TalkingPoints has access to Student Data only as provided by a teacher, school or district administrator, as requested by the student’s school or district administrator or provided by the student’s parent or legal guardian and only for the purposes of performing the Service. If a student contacts TalkingPoints with a question about our Service, we will collect Personal Information from that student only as necessary to respond to the student’s request and direct the student to contact his or her school, and we will then delete or anonymize the personal data of the student after providing our response.

- **Other Sources:** We may collect information from other sources, such as during Users' telephone conversations with us for customer service purposes, as well as from third-party public databases that contain aggregate demographic information on school districts.

We use the foregoing information, including your Personal Information, to operate, maintain, and provide to you the features of the Service, as well as to improve the Service. We may also use this information to communicate with you, such as to send you text messages with your consent, to permit other Users of the Service to send you messages or to follow up with you to offer information about our Service and your account. We may also (i) send you Service-related emails or messages (*e.g.*, account verification, transactional communications, change or updates to features of the Service, technical and security notices), and (ii) send you marketing-related emails or messages based on aggregate information obtained from public databases, as well as usage data (as further described in "How we Use Cookies and Other Tracking Technology to Collect Information," below). For information about your communication preferences, see "Your Choices Regarding Your Information," below.

We may use a third-party payment service to process payments made through the Service. If you wish to make a donation through the Service, your Personal Information may be collected by such third party and not by us, and will be subject to the third party's privacy policy, rather than this Privacy Policy. We have no control over, and are not responsible for, this third party's collection, use and disclosure of your Personal Information.

If you disclose any Personal Information relating to other people to us or to our service providers, you represent that you have the authority to do so, including that you have any necessary written consents to do so, including any consents required from the parent or guardian of a minor whose Personal Information you disclose, and to permit us to use the Personal Information in accordance with this Privacy Policy. We reserve the right, but have no obligation, to request from you a copy of the consents described above.

We may use and disclose information that is not Personal Information for any purpose permitted by applicable law.

2. HOW WE USE COOKIES AND OTHER TRACKING TECHNOLOGY TO COLLECT INFORMATION

We and our third party partners may automatically collect certain types of usage information when you visit our website or use our Service. For instance, when you visit our websites, we may send one or more cookies — a small text file containing a string of alphanumeric characters — to your computer to uniquely identify your browser and let us help you log in faster and enhance your navigation through the site. A cookie may also convey information to us about how you use the Service (*e.g.*, the pages you view, the links you click, how frequently you access the Service, and other actions you take on the Service), and allow us to track your usage of the Service over time.

We may collect log file information about your browser or mobile device each time you access the Service. Log file information may include information such as your web request, Internet Protocol address, browser type, information about your mobile device, referring / exit pages and

URLs, number of clicks and how you interact with links on the Service, domain names, landing pages, pages viewed, and other such information. We may employ clear gifs (also known as web beacons) which are used to track the online usage patterns of our Users. In addition, we may also use clear gifs in HTML-based emails sent to our Users to track which emails are opened and which links are clicked by recipients. The information allows for more accurate reporting and improvement of the Service. We may also collect analytics data, or use third-party analytics tools, to help us measure traffic and usage trends for the Service. These tools collect information sent by your browser or mobile device, including the pages you visit, your use of third party applications, and other information that assists us in analyzing and improving the Service. Although we do our best to honor the privacy preferences of our Users, we are not able to respond to Do Not Track signals from your browser at this time.

When you access our Service through a mobile device, we may collect a unique identification number associated with your device or our mobile application (including, for example, a UDID, Unique ID for Advertisers, Google Ad ID, or Windows Advertising ID), mobile carrier, device type, model and manufacturer, mobile device operating system brand and model and, depending on your mobile device settings, the approximate geographical location of your mobile device.

We may use the information collected through cookies, log file, device identifiers, location data and clear gifs to: (a) remember information so that you will not have to re-enter it during your visit or the next time you visit the site; (b) provide custom, personalized content and information, including advertising, on the Service, to the extent permitted by applicable law; (c) provide and monitor the effectiveness of our Service; (d) monitor aggregate metrics such as total number of visitors, traffic, usage, and demographic patterns on our website and our Service; (e) diagnose or fix technology problems; and (f) otherwise to plan for and enhance our Service.

You may “opt out” of the collection of information through cookies or other tracking technology by managing the settings on your browser or mobile device. Please refer to your browser’s or mobile device’s technical information for instructions on how to delete and disable cookies, and other tracking/recording tools. To learn more about cookies, clear gifs/web beacons and related technologies and how you may opt-out of some of this tracking, you may wish to visit <http://www.allaboutcookies.org>.

We use Google Analytics, which uses cookies and similar technologies to collect and analyze information about use of the Services and report on activities and trends. This service may also collect information regarding the use of other websites, apps and online resources. You can learn about Google’s practices by going to www.google.com/policies/privacy/partners/, and opt out of them by downloading the Google Analytics opt-out browser add-on, available at <https://tools.google.com/dlpage/gaoptout>.

3. SHARING OF YOUR PERSONAL INFORMATION

We may share your Personal Information in the instances described below. For information on your choices regarding our sharing of your Personal Information, see the “Your Choices About Your Information” section below.

Remember, our Service allows you to connect and interact with others. Your profile information, including your name, photo, and other Personal Information, may be available publicly to other members of the Service if you choose to share it. If you are a teacher and your User account was registered by your school or district administrator, your profile information may be available to the school or district administrator by default.

We may share your Personal Information with:

- Other Users with whom you choose to share data through our Service. This includes your school, other teachers or district administrators;
- Other companies owned by or under common ownership as TalkingPoints. These companies will use your Personal Information in the same way as we can under this policy;
- Third-party vendors and other service providers that perform services on our behalf, in order to carry out their work for us, which may include, for example, billing, payments, service fulfillment, web hosting or providing analytic services;
- To the extent permitted by applicable law, other parties in connection with a company transaction, such as a merger, sale of company assets or shares, reorganization, financing, change of control or acquisition of all or a portion of our business by another company or third party or in the event of a bankruptcy or related or similar proceedings; and
- To the extent permitted by applicable law, third parties as required by law or subpoena or if we reasonably believe that such action is necessary (a) to comply with the law and the reasonable requests of law enforcement; (b) to enforce our Terms of Service or to protect the security or integrity of our Service; and/or (c) to exercise or protect the rights, property, or personal safety of TalkingPoints, our Users, or others.

To the extent that we provide forums, blogs or bulletins that allow you to post user-generated content, such content may become available to the public and to other members of the Service. If you remove information that you posted to the Service, copies may remain viewable in cached and archived pages of the Service, or if other Users have copied or saved that information.

4. YOUR CHOICES ABOUT YOUR PERSONAL INFORMATION

How to control your communications preferences: You can stop receiving email communications from us or from another User by clicking on the “unsubscribe link” provided in such communications. You may also opt-out of receiving text messages from Users via the Services at any time by sending a text message back with any of STOP, CANCEL, GOODBYE. You may not opt out of Service-related communications (e.g., account verification, transactional communications, changes/updates to features of the Service, technical and security notices).

Modifying or deleting your Personal Information: We will retain your Personal Information for as long as necessary to provide the Service to you, unless a longer retention period is required or permitted by applicable law. We may not be able to modify or delete your Personal Information in all circumstances. For example, information we collect in the course of providing the Service may be shared by you with another User, or it may be shared with your school or

district administrator if they registered your User account, and we do not control access to that information once it has been shared.

If you are a resident of California, under 18 and a registered User of the Service, you may ask us to remove content that you have posted to the Service by writing to hello@talkingpts.org. Please note that your request does not ensure complete or comprehensive removal of the content, as, for example, some of your content may have been reposted by another User.

If you have any questions about reviewing, modifying or deleting your account information, contact us at hello@talkingpts.org.

5. HOW WE STORE AND PROTECT YOUR PERSONAL INFORMATION

Your Personal Information may be stored and processed in the United States and in any other country in which TalkingPoints or its subsidiaries, affiliates or service providers maintain facilities. We may transfer information, including Personal Information, to a country and jurisdiction that does not have the same data protection laws as your jurisdiction, including the United States, and you consent to the transfer of information to any country in which TalkingPoints or its parent, subsidiaries, affiliates or service providers maintain facilities. In certain circumstances, courts, law enforcement agencies or security authorities in other jurisdictions may be entitled to access your Personal Information.

TalkingPoints cares about the security of your information and uses physical, administrative, and technological safeguards designed to preserve the integrity and security of Personal Information collected through the Service. However, no security system is impenetrable and we cannot guarantee the security of our systems 100%. If you have reason to believe that your interaction with us is no longer secure, please immediately notify us at hello@talkingpts.org.

6. CHILDREN'S PRIVACY

TalkingPoints does not knowingly collect Personal Information online from children under the age of 13. Please contact us at hello@talkingpts.org if you believe we have inadvertently collected Personal Information online from a child under 13.

7. LINKS TO OTHER WEB SITES AND SERVICES

Our Service may integrate with or contain links to other third party sites and services. We are not responsible for the practices employed by third party websites or services embedded in, linked to, linked from, or connected with the Service, and your interactions with any third-party website or service are subject to that third party's own rules and policies.

8. HOW TO CONTACT US

If you have any questions about this Privacy Policy or the Service, please contact us at hello@talkingpts.org.

9. CHANGES TO OUR PRIVACY POLICY

TalkingPoints may modify or update this Privacy Policy from time to time to reflect the changes in our business and practices, and so you should review this page periodically. When we change the Privacy Policy we will update the 'last modified' date at the top of this Privacy Policy. Please do not use (or continue to use) the Service unless you agree to the modifications.