

Board Office Use: Legislative File Info.	
File ID Number	20-1388
Introduction Date	06/24/2020
Enactment Number	20-0979
Enactment Date	6/24/2020 If



# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Preston Thomas, Chief Systems and Services Officer  
Susan Beltz, Chief Technology Officer

**Board Meeting Date** June 24, 2020

**Subject** Approval by the Board of Education of Master Software as a Service Agreement between Oakland Unified School District and SchoolMint.  
Contractor: SchoolMint  
Services For: July 1, 2020 - June 30, 2021

**Action Requested and Recommendation** Approval by the Board of Education of Master Software as a Service Agreement between Oakland Unified School District and SchoolMint, San Francisco, CA, for the latter to provide hosting, maintenance, upgrades and associated support for the School Finder District Choice (Apply and Lottery) and Registration products including a two-way data exchange between Aeries and SchoolMint, for the period July 1, 2020 to June 30, 2021, for an amount not to exceed \$198,500.

**Background**  
*(Why do we need these services? Why have you selected this vendor)*

The Oakland Unified School District has successfully used SchoolMint to support the Enrollment Improvements program since 2017-18 and is using this firm going forward for similar services as previously provided. The School Finder is a web-based tool available on computers and mobile devices that helps families locate and learn about Oakland Unified schools. Searches can be filtered by school type, grades offered, ranking and other valuable criteria. The District Choice (Application and Lottery) applications are web-based tools available on computers and mobile devices that provide an end to end student application and enrollment solution for families and schools. With a single account, families can submit applications for multiple students to multiple schools, rank their preferences, track application status, respond to offers and complete student registration forms. Through a robust portal, schools and Enrollment staff can view all submitted applications, manage lotteries and placements, assign schools to students, manage applicant data, and view insights into applicant demographics. SchoolMint

integrates with the Aeries Student Information System (SIS) used by Oakland Unified to transfer data bidirectionally between the two systems.

The Master Software as a Service Agreement includes hosting, maintenance, upgrades and associated support for these solutions. As noted above, the software has been successfully used by Oakland Unified since the 2017-18 school year. The current agreement renews similar services as provided under the original Agreement for the period July 1, 2020 through June 30, 2021. Note that many registration functions are being transferred into the Aeries Student Information System (SIS) going forward, and hence the current agreement represents a substantial cost reduction over prior years. Specifically, the 2019-20 agreement encapsulated \$333,500 in annual fees whereas the current agreement is for \$198,500.

### **Competitively Bid**

No. Competitive bidding is not required where “the nature of the subject of the contract is such that [bidding] would be unavailing or would not produce an advantage, and the advertisement for competitive bid would thus be undesirable, impractical, or impossible.” (*Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631, 645.) In other words, a contract need not be bid where bidding would not serve its intended purpose--namely, to protect taxpayers from possible waste and dissipation of public funds--because it would “substantially impair[]” the public entity’s ability to operate, and/or would impose unnecessary additional costs. (*Ibid.*)

As explained above, Oakland Unified has been successfully utilizing this software since the 2017-18 school year, and relies on the software and services for student enrollment services throughout the District.

The original agreement was approved by the Board of Education on May 10, 2017 as File ID 17-0834 with subsequent agreements approved by the Board of Education on October 11, 2017 as File ID 17-2023 and June 26, 2019 as File ID 19-1474. The initial selection of SchoolMint was based upon an original purchase of the School Finder software by Educate 78; note that School Finder is interrelated to other components. The District subsequently conducted a formal Request for Information to obtain proposals from competitors to compare features and pricing. The launch of the SchoolMint platform has been ongoing, incurring \$87,125 in professional services costs from the prior contract approved in 2017 and significant staff time to implement and train on the system. It would be cost-prohibitive, and would risk a gap in enrollment services, to discontinue use of this software in order to change to another vendor.

For this reason, going out to bid for the software and services would not produce any advantage, would result in wasted taxpayer funds, and would substantially impair the District’s ability to operate because it could result in time gaps in enrollment services. Competitive bidding is therefore excused under the reasoning of *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631 and related case law.

### **Fiscal Impact**

\$198,500 from 2020-21 Funding Resource 010-0000-0-0000-7700-5846-999-9860-9994-9999-99999: General Purpose (GP), Data Processing, License Agreements, Districtwide

**Attachments**

- Master Software as a Service Agreement
  - Pupil Records Rider
-



## Contract for Oakland Unified School District

**Prepared for:**

Susan Beltz  
Chief Technology Officer  
Oakland Unified School District

**Created by:**

Samantha Remeika  
VP Customer Success  
SchoolMint, Inc.

## Master Services Agreement

This Master Services Agreement ("Agreement") is entered into as of July 1, 2020 (the "Effective Date") between Oakland Unified School District ("Client") and SchoolMint, Inc., a Delaware corporation having its principal place of business at 251 Post Street, #200, San Francisco, CA. 94108 ("SchoolMint") (Client and SchoolMint are referenced herein as each a "Party" and collectively the "Parties").

### 1. Definitions.

- a. **"Services"** means the services and Software described in the applicable Order Form that references this Agreement ("Order Form") and any Documentation related thereto.
- b. **"Documentation"** means technical materials provided by SchoolMint to Client in hard copy or electronic form describing the use and operation of the Software, which does not include any sales and/or marketing materials that SchoolMint may provide Client to describe functionality intended for sales and/or marketing purposes.
- c. **"Software"** means the SchoolMint software products and solutions described in the Order Form.
- d. **"Subscription Term"** means the subscription term for the Software as set forth in the Order Form unless terminated earlier in accordance with Section 14 ("**Termination**").

**2. Subscribing to the Software and Access to the Services.** Client will subscribe to the Software and gain access to the Services by executing an Order Form with SchoolMint. In the event of any conflict between this Agreement and the terms set forth in the Order Form, the Order Form shall control, except this Agreement shall govern all terms relating to intellectual property rights, confidential information, warranty, indemnity and liability. Additional Order Forms may be entered into by the Parties to subscribe to additional or different features of the Services.

### 3. License.

- a. **License Grant.** Subject to the terms and conditions of this Agreement and SchoolMint's Privacy Policy, available upon request, and fully incorporated by reference herein, SchoolMint grants to Client a non-exclusive, non-transferable license during the Subscription Term, to access the Software through the User IDs and to operate the features of the Software according to the Documentation under normal circumstances.
- b. **User IDs.** SchoolMint will issue unique User IDs to each of the Client Personnel (as defined below) specified by Client from time to time to access and use the Software. Client Personnel will access and use the Software only through the User IDs issued by SchoolMint for such Client Personnel. Each User ID may be used only to access the Software during one (1) concurrent login session. Client will not allow Client Personnel to share User IDs with any third parties, which require prior written approval for access by SchoolMint. **"Client Personnel"** means those personnel of Client who have been provided with authorized administrative access to the Software. Client is responsible for all activity occurring under its User IDs. Client is responsible for all use of the Services by Client Personnel and for maintaining the confidentiality of all User IDs and will promptly notify SchoolMint of any actual or suspected unauthorized use of the Services. SchoolMint reserves the right to suspend or terminate any User ID which it determines may have been used for an unauthorized purpose.
- c. **Limitations.** Client agrees that it will not and will not permit any Client Personnel or other party to: (i) to access or use the Services other than Client Personnel explicitly authorized by SchoolMint; (ii) modify, adapt, alter or translate the Software or Documentation, except as expressly allowed hereunder; (iii) sublicense, lease, rent, loan, distribute, or otherwise transfer the Services to any third party; (iv) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or algorithms, structure or organization) of the Software; (v) use or copy the Software or Documentation except as expressly allowed hereunder; (vi) disclose or transmit any data contained in the Software to any individual other than Client Personnel. Client shall hold SchoolMint harmless from any and all claims relating to Client's misuse of Software and/or Services rendered by SchoolMint to Client, including SchoolMint's intellectual property.
- d. **Harmful Content.** In using the Software, Client agrees to the following: (i) Client shall not incorporate into or otherwise transmit through the Software any content that violates or infringes the rights of others, including without limitation any material that: (A) may be abusive, indecent, threatening, obscene, harassing, violent, defamatory, libelous, fraudulent, or otherwise objectionable; (B) encourages or otherwise promotes conduct that would constitute a criminal offense or give rise to civil liability; (C) impersonates any person or entity or that otherwise misrepresents Client's affiliation with a person or entity; (D)

contains malicious code; (E) is in violation of the CAN-SPAM Act or any other applicable laws pertaining to unsolicited email, SMS, text messaging or other electronic communications, or the transmission of emails to an individual or entity with which Client has no preexisting relationship; (F) includes the private information of another without express permission, including but not limited to contact information, social security numbers, credit card numbers or other information which a reasonable would consider private in nature, (G) violates any privacy, intellectual property or proprietary right of another; (H) is pornographic or sexual in nature; (I) expressly targets children under the age of 13; or (J) is unlawful or otherwise objectionable in SchoolMint's sole opinion; and (ii) Client shall ensure that Client's use of the Services is at all times compliant with all applicable local, state, federal and international law, regulations and conventions, including without limitation, those related to data privacy, international communications, and the exportation of data of any kind, regulations of the U.S. Securities and Exchange Commission and/or any rules of a securities exchange in the U.S. or elsewhere.

- e. **Client Responsibility.** Client shall perform the responsibilities necessary to establish Client's use of the Services, including (a) providing Client Personnel lists to setup User IDs, (b) properly maintaining all associated equipment, software and environmental conditions in accordance with applicable industry standards and/or specifications SchoolMint provides Client, and (c) designating Client Personnel to participate in training.
- f. **Client Authorization; Enforceability.** Client represents and warrants that (i) it has obtained all necessary authorizations to enter into this Agreement and the Order Form, (ii) the person signing and/or consenting on behalf of Client is a duly authorized representative of the Client, and (iii) this Agreement is a duly authorized binding and enforceable obligation of Client.
- g. **Hosting Services.** SchoolMint will provide the hosting services ("**Hosting Services**") for the Software through a third party hosting facility (such as AWS) and may update the content, functionality and user interface of the Hosting Services from time to time in its sole discretion and in accordance with this Agreement. In order to use the Software, Client must have or obtain access to the internet. Client agrees that SchoolMint is not providing Client with access to the internet in order to use the Software and that Client is solely responsible for obtaining and maintaining such internet access and for providing all equipment necessary to obtain and maintain such internet access. SchoolMint does not and cannot control the flow of data to or from SchoolMint's network, designated hosting facility and/or other portions of the internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Client's connections to the internet (or portions thereof). SchoolMint agrees to use commercially reasonable efforts to take any actions it deems appropriate to remedy and avoid such events. However, SchoolMint cannot guarantee that such events will not occur. Accordingly, SchoolMint disclaims any and all liability resulting from or related to such event.
- h. **Equipment.** If Client has purchased any equipment from SchoolMint as set forth in the Order Form, then such equipment is provided "AS-IS" from the manufacturer and SchoolMint makes no warranties, express or implied, with respect to such equipment. To the extent permitted by the manufacturer, all manufacturer's warranties are hereby passed through to Client.

#### 4. Reservation of Rights.

- a. **SchoolMint.** SchoolMint expressly reserves all rights in the Services, Software, Documentation, and all other materials provided by SchoolMint hereunder not specifically granted to Client. It is acknowledged that all right, title and interest in the Services, Software, Documentation, and all other materials provided by SchoolMint hereunder, any update, adaptation, translation, customization or derivative work thereof, and all intellectual property rights therein will remain with SchoolMint (or third party suppliers, if applicable) and that the Services, Software, Documentation, and all other materials provided by SchoolMint hereunder are licensed on a subscription basis and not transferred to Client apart from the temporary license discussed herein.
- b. **Client.** Client expressly reserves all rights in any data that Client (or Client Personnel) uploads through the Services and all results from processing such data, including compilations, derivative works thereof, and aggregated and/or de-identified data (the "**Client Data**"), except that Client grants SchoolMint a non-exclusive, royalty-free, license to use, reproduce, and create derivative works of the Client Data in operating the Service features for Client's benefit, and, notwithstanding the foregoing, SchoolMint may use and distribute aggregated and/or de-identified data that is derived from the Client Data for any lawful purpose with Client's permission. Client represents and warrants that Client has all rights under applicable law to provide the Client Data, including any personal information of any of the students and or other persons included therein.

5. **Term.** Unless earlier terminated pursuant to this Agreement, this Agreement shall be in effect pursuant to the dates set forth in the Order Form ("**Initial Subscription Term**"), and thereafter may be renewed by written amendment signed by the Parties for additional one (1) year periods upon each anniversary of the commencement of the Initial Term (each subsequent period will be known as a "**Renewal Term**" and together with the Initial Term, the "**Term**"), for a maximum of five years as set forth in Education Code section 17596. The Renewal Terms will be invoiced at then-current market rates. Expiration or termination of an Order Form shall not affect any other Order Form, unless the Agreement Term expires or the Agreement as a whole is terminated under Section 14 ("**Termination**").

6. **User Documentation.** The Services may contain online Documentation describing the operation of the Services under normal circumstances. No source code or technical-level documentation to the Services is licensed under this Agreement.

7. **Client Support.** During the Subscription Term for the applicable Services, SchoolMint will provide the following standard customer support:

- a. **Web Support.** Client's designated representative shall have access to SchoolMint's technical support web site and may use the website to submit service requests. SchoolMint will use reasonable efforts to respond in a timely manner under the given circumstances.
- b. **Client's Responsibilities.** To receive support, Client shall: (i) report errors or suspected errors for which support is needed, and supply SchoolMint with sufficient information and data to reproduce the error; (ii) procure, install, operate and maintain hardware, operating systems and other software that are compatible with the most current supported version of Software and otherwise in conformity with SchoolMint's minimum requirements as made available to Client; and (iii) maintain an operating environment free of any modifications or other programming that might interfere with the functioning of Software. Client acknowledges that fixes and new versions may be made available electronically, and that, in some cases, SchoolMint may maintain e-mail distribution lists that are used to notify customers of the availability of fixes and new versions and to provide other information to customers that are eligible for support. Client shall be responsible for including the appropriate Client Personnel on any such e-mail distribution lists of SchoolMint so that Client receives such notifications and other information.
- c. **Service Upgrades and Scheduled Downtime.** Client shall receive access to upgraded versions of the Services as made available by SchoolMint from time to time, and at no additional charge. SchoolMint may from time to time schedule downtime for maintenance and upgrades. SchoolMint shall provide Client notice of any scheduled downtime, including any scheduled user disruption, if the circumstances permit such notice. SchoolMint will strive to perform updates during non-peak hours.

8. **Professional Services.** In consideration of Client's payment of the applicable fees and expenses set forth in the Order Form for professional services, SchoolMint will provide Client the professional services set forth therein, which may include attendance at designated training sessions provided by SchoolMint as set forth herein ("**Professional Services**"). Training may be conducted at SchoolMint's training facility, at Client's location, or by teleconference, as agreed by the Parties. In the event that Professional Services are provided beyond standard service offerings provided in connection with the licensing of the Software (such as custom

design or custom implementations), then such additional Professional Services shall be described in a separate statement of work to be entered into between the Parties.

#### 9. Fees and Payment.

- a. **Subscription Fees.** Subscription Fees (set forth in each Order Form) are payable in advance pursuant to subsection 9(b) below. SchoolMint will issue an invoice for each payment annually.
- b. **Fees.** The Subscription Fees and all other fees and expenses set forth in each Order Form (all such fees are collectively "**Fees**") will be invoiced and are payable net thirty (30) days after the invoice date.
- c. **Late Payment.** Client may not withhold or "setoff" any amounts due hereunder. SchoolMint reserves the right to suspend access to the Services until all undisputed past due amounts are paid in full after giving Client advance written notice and an opportunity to cure as specified in this Agreement.
- d. **Certain Taxes.** Fees quoted do not include and Client shall pay, indemnify and hold SchoolMint harmless from all gross receipts, value-added, GST, personal property or other taxes, and all applicable duties, tariffs, assessments, export and import fees or similar charges (including interest and penalties imposed thereon) on the transaction contemplated herein, other than taxes based on the net income or profits of SchoolMint. If Client is exempt from federal, state, sales, and use taxes the Client will not be charged the same upon providing SchoolMint with sufficient evidence of said exemption.



## 10. Confidential Information.

- a. **Definitions.** For purposes of this section, a Party receiving Confidential Information (as defined below) shall be the "**Recipient**" and the Party disclosing such information shall be the "**Discloser**" and "**Confidential Information**" means all information disclosed by Discloser to Recipient during the Term and marked as "confidential" or "proprietary". Client hereby acknowledges that the Services (including any Documentation, Software, and any translations, compilations, partial copies and derivative works thereof) will be considered Confidential Information belonging exclusively to SchoolMint (or its designated third party supplier), and SchoolMint hereby acknowledges that Client Data will be considered Confidential Information belonging to Client, in each case regardless of whether or not marked as "confidential" or "proprietary".
- b. **Covenant.** To the extent permitted by law, the Recipient hereby agrees that during the Term and at all times thereafter it shall not (i) disclose such Confidential Information of the Discloser to any person or entity, except to its own personnel having a "need to know" (and who themselves are bound by similar nondisclosure restrictions), and to such other recipients as the Discloser may approve in writing; provided that all such recipients shall have first executed a confidentiality agreement in a form acceptable to Discloser; (ii) use Confidential Information of the Discloser except to exercise its license rights or perform its obligations under this Agreement; or (iii) alter or remove from any Confidential Information of the Discloser any proprietary legend. Recipient shall use at least the same degree of care in safeguarding the Confidential Information of the Discloser as it uses in safeguarding its own confidential information of a similar nature, but in no event shall less than due diligence and reasonable care be exercised. Upon the earlier of Discloser's written request or termination or expiration of this Agreement, and regardless of whether a dispute may exist, Recipient shall return or destroy (as instructed by Discloser) all Confidential Information of Discloser in its possession or control and cease all further use thereof. Notwithstanding the foregoing, Recipient may disclose Discloser's Confidential Information to the extent that such disclosure is necessary for the Recipient to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that the Recipient promptly notifies the Discloser in writing of such required disclosure and cooperates with the Discloser to seek an appropriate protective order.
- c. **Injunctive Relief.** Recipient acknowledges that violation of the provisions of this section would cause irreparable harm to Discloser not adequately compensable by monetary damages. In addition to other relief, it is agreed that injunctive relief shall be available without necessity of posting bond to prevent any actual or threatened violation of such provisions.

## 11. Disclaimers.

- a. **DISCLAIMER OF OTHER WARRANTIES. SOFTWARE AND SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND (UNLESS EXPLICITLY PROVIDED FOR HEREIN), AND SCHOOLMINT AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND POTENTIAL IMPLEMENTATION DELAYS. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, SCHOOLMINT DOES NOT WARRANT THAT THE FUNCTIONALITY CONTAINED IN THE SOFTWARE WILL MEET CLIENT'S REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE OR HOSTING SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE LICENSED PRODUCT WILL BE CORRECTED. FURTHERMORE, SCHOOLMINT DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE OR SERVICES IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, SECURITY OR OTHERWISE. CLIENT AGREES THAT THE USE OF SOFTWARE AND SERVICES IS AT CLIENT'S OWN RISK. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SCHOOLMINT OR AN SCHOOLMINT REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT FULLY APPLY TO CLIENT.**
- b. **Limited Non-Infringement Warranty.** SchoolMint warrants that it has the right to license to Client the Software and provide the Services as contemplated by this Agreement. SchoolMint represents and warrants that as of the date the Software and Services, when properly used in accordance with the Documentation and this Agreement, will not misappropriate or infringe any third party's intellectual property rights recognized under any trade secret law, any U.S. copyright, or U.S. patent issued as of the Effective Date.
- c. **Limited Privacy Warranty.** SchoolMint hereby recognizes that the Client Data which Client provides to SchoolMint may include personal information of students. In order for SchoolMint to carry out its obligations under this Agreement, it is necessary for SchoolMint to use the Client Data. SchoolMint agrees to use the Client Data, some of which may contain personal information of students, only for the purpose of fulfilling its obligations under this Agreement. SchoolMint agrees all

usage of Client Data shall be in compliance with the requirements of applicable privacy laws. SchoolMint warrants that it has put in place reasonable and appropriate security, technical and organizational measures to protect its usage of the Client Data against accidental or unlawful destruction or accidental loss, alterations, and unauthorized use, disclosure or access. SchoolMint also warrants that it shall not disclose to, permit the disclosure to, or provide access to the Client Data to any third parties, except as is necessary for SchoolMint to fulfill its obligations under this Agreement and under the law. In the event the Client or any third party believes there has been a material breach of this provision, SchoolMint shall have a reasonable amount of time, which will be a minimum of thirty (30) days from the date of receiving written notice to cure any such alleged breach.

**12. Limitation of Liabilities.** The Parties acknowledge that the following provisions have been negotiated by them and reflect a fair allocation of risk and form an essential basis of the bargain and shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy:

**NEITHER SCHOOLMINT NOR CLIENT SHALL NOT BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES; OR LOST PROFITS, LOST FUNDING, LOST SAVINGS, OR LOST OR DAMAGED DATA; OR FOR CLAIMS OF A THIRD PARTY; ARISING OUT OF THIS AGREEMENT, SOFTWARE, THIRD PARTY SOFTWARE, SUPPORT, HOSTING, SERVICES, OR OTHER ITEMS PROVIDED, OR THE USE OR INABILITY TO USE ANY OF THE FOREGOING, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORESEEABLE. IN ANY EVENT, IN RESPECT OF ANY CLAIM, DEMAND OR ACTION ARISING OUT OF THIS AGREEMENT, THE PARTIES SHALL BE LIMITED TO RECEIVING ACTUAL AND DIRECT DAMAGES IN A MAXIMUM AGGREGATE AMOUNT EQUAL TO THE CHARGES PAID BY CLIENT TO SCHOOLMINT HEREUNDER FOR THE APPLICABLE LICENSED PRODUCT, ITEM OR SERVICE ON WHICH THE CLAIM IS BASED IN THE PREVIOUS TWELVE (12) MONTHS.**

**13. Notices.** Any notice or communication required or permitted under this Agreement shall be in writing to the parties at their respective addresses of record or at such other address as may be given in writing by either party to the other in accordance with this section and shall be deemed to have been received by the addressee (i) if given by hand, immediately upon receipt; (ii) if given by overnight courier service, the first business day following dispatch or (iii) if given by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail.

#### **14. Termination.**

- a. Termination for Breach.** SchoolMint shall have the right to immediately suspend performance under this Agreement in the event that Client is in breach of any of its obligations under this Agreement. In addition, either party shall have the right to terminate this Agreement in whole or in part upon thirty (30) days written notice to the other party, in the event the other party materially breaches this Agreement and fails to correct such breach within such thirty (30) day period; provided that each Party shall have the right to terminate this Agreement immediately upon written notice in the event that the other Party has breached any of its obligations under Section 10. The Parties further acknowledge that, as breach of the provisions of Section 10 could result in irreparable injury to the Discloser, that each Party shall have the right to seek equitable relief against any actual or threatened breach thereof, without proving actual damages.
- b. Survival.** Upon termination or expiration of this Agreement for any reason: (i) all rights and obligations of both Parties (except for Client's payment of all Fees then owing), including all licenses granted hereunder, shall immediately terminate except as provided below; (ii) within thirty (30) days after the effective date of termination, each Party shall comply with the obligations to

return or destroy, at a Discloser's determination, all Confidential Information of the other Party, as set forth in Section 10 ("**Confidential Information**"). The following Sections and Subsections will survive expiration or termination of this Agreement for any reason: Section 4 ("**Reservation of Rights**"), Section 10 ("**Confidential Information**"), Section 11 ("**Warranties and Disclaimer**"), Section 12 ("**Limitation of Liabilities**"), Section 14(c) ("**Survival**"), and Section 15 ("**General Provisions**"). Upon termination, as long as Client is not in breach, if requested, SchoolMint shall make a final backup of Client Data and provide the backup media to Client at SchoolMint's then-current rates.

**15. General Provisions.**

- a. **Assignment.** Client may not assign this Agreement to any third party without SchoolMint's prior written consent. SchoolMint may assign this Agreement to any purchaser of all or substantially all of its assets or capital stock. Any assignment in violation of this section shall be void. The terms of this Agreement shall be binding upon permitted assignees.
- b. **Choice of Law; Attorney's Fees.** This Agreement and any action related thereto shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of law principles. Each of the Parties hereto agrees to be subject to the exclusive jurisdiction, and venue shall reside, in the state and federal courts located in San Francisco, California for the purpose of adjudicating any dispute relating to or arising out of this Agreement. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any claim against SchoolMint must be brought within one (1) year after it arose, or be barred. The prevailing Party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.
- c. **Compliance with Export Regulations.** Client has or shall obtain in a timely manner all necessary or appropriate licenses, permits or other governmental authorizations or approvals; shall indemnify and hold SchoolMint harmless from, and bear all expense of, complying with all foreign or domestic laws, regulations or requirements pertaining to the importation, exportation, or use of the technology to be developed or provided herein. Client shall not directly or indirectly export or re-export (including by transmission) any regulated technology to any country to which such activity is restricted by regulation or statute, without the prior written consent, if required, of the administrator of export laws (e.g., in the U.S., the Bureau of Export Administration of the U.S. Department of Commerce).
- d. **Construction.** Except as otherwise provided herein, the Parties rights and remedies under this Agreement are cumulative. The term "including" means "including without limitation."
- e. **Force Majeure.** Neither Party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events which occur after the signing of this Agreement and which are beyond the reasonable control of such Party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency.
- f. **Severable.** Any provision hereof found by a tribunal of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect. Without limiting the generality of the foregoing, Client agrees that the section titled Limitation of Liabilities will remain in effect notwithstanding the enforceability of any other provision herein.
- g. **Waiver.** Waiver of any provision hereof in one instance shall not preclude enforcement thereof on future occasions.
- h. **Counterparts; Facsimile Signature.** This Agreement, and may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument
- i. **Independent Contractors.** Client's relationship to SchoolMint is that of an independent contractor, and neither Party is an agent or partner of the other. Client will not have, and will not represent to any third party that it has, any authority to act on behalf of SchoolMint.
- j. **Entire Agreement.** This Agreement, the Order Form, and Client's Purchase Order (if any) incorporated by reference constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all other communications, whether written or oral. This Agreement may be amended only by a written document signed by both Parties. In the event of any conflicts between this Agreement and the Order Form, the terms of the Order Form shall prevail. The headings of sections of this Agreement are for reference purposes only and have no substantive effect.

Accepted and agreed by the authorized representative of each Party:

Oakland Unified School District

SchoolMint, Inc.

By: \_\_\_\_\_

By:  \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Name: Bob Roepke  
Title: Chief Financial Officer

Approved as to form by OUSD Staff Attorney Joanna Powell on \_\_\_\_\_, 2020.

## **Addendum: SchoolMint SIS Integration Guidelines & Policies**

Aeries

Addendum to the Master Service Agreement

Provider: SchoolMint Inc.

Customer: Oakland Unified School District

Date:

SchoolMint, Inc. and Customer (the "Parties") entered into the Master Services Agreement for the sale of SchoolMint product(s) and/or service(s) for Customer. The Parties now hereby agree to this Addendum to the Master Services Agreement, which specifies the commitments from SchoolMint in regards to Customer's data mapping and/or integration with Customer's student information system. All other terms and conditions of the Master Services Agreement remain unmodified.

### TERMS OF INTEGRATION

**Fields supported:** SchoolMint supports an API-based integration with Aeries that enables the transfer of SchoolMint data to select Aeries tables. In particular, mapping to the Aeries data tables and fields listed in the document linked below will be provided at no additional cost IF fields are configured correctly as "SIS fields" in SchoolMint. "SIS fields" are a type of field in SchoolMint that corresponds directly with fields in your SIS. When establishing an API-based connection with your Aeries instance, we will be able to see which "SIS Fields" are available for use in your SchoolMint forms.

[https://docs.google.com/spreadsheets/d/1hwlbzDwHivmFRiAM2OOZRZWU7nNUUOBol0FTYii\\_Lus/edit#gid=0](https://docs.google.com/spreadsheets/d/1hwlbzDwHivmFRiAM2OOZRZWU7nNUUOBol0FTYii_Lus/edit#gid=0)

The fields listed are from the student table data, contacts table, addresses, and students-common-health table data. Note that the specific fields supported may change as Aeries makes revisions and/or the SchoolMint integration evolves.

SchoolMint's default SIS contact block format is included as part of this contract at no additional cost. However, other contact block formats require extra engineering time and will be charged an additional fee. For alternative contact blocks and other fields that CANNOT be supported as "SIS fields," Customer can purchase extended mappings at the hourly consulting rate listed in your contract. Note that the limitations below will still apply.

### **Data transfer limitations:**

- Mapping to Aeries tables outside of those listed in the link under "fields supported" above cannot be

supported by the API and thus is NOT included under this agreement.

- Signatures and document uploads collected in SchoolMint will NOT be transferred to Aeries.

Notes: Customer will be responsible for installing a Windows Service before the SchoolMint mapping / integration process can occur. This installation is a prerequisite for syncing any data.

**Data formatting and limitations:** Supported data transformations for the above supported fields will be provided at no additional cost. SchoolMint can manage select transformations of your data including letter case (e.g. upper versus proper case), common phone number formats (e.g. (844)287-2466 versus 8442872466), relationship codes, race/ethnicity codes, Y/N and T/F, data cropping and trimming, and removing blank spaces. However, we canNOT manage the formatting of address data collected outside of the SchoolMint Family Profile. Any address data collected from families in your forms (e.g. emergency contacts) will be sent to Aeries in the format it was entered by families and cannot be guaranteed to comply with any specific address format.

**Infrastructure Requirements:** Customer will be responsible for installing a Windows Service before the SchoolMint mapping / integration process can occur. This installation is a prerequisite for syncing any data. In particular:


- Customer needs to set up a Windows server which has IIS and requires .Net 4.6.1 or greater to be installed (.net 4.5 or ASP.Net 4.5 as part of the IIS configuration).
- The Windows server should be able to connect to Customer's Aeries Database (i.e. the database user that Customer uses on the Windows service configuration should have the right permissions, and the network ports should be opened for the service to talk to the Database).
- The Windows server should be exposed to SchoolMint through a proper host address on https.
- If Customer has any issues exposing this service to SchoolMint (which is outside Customer's network), then SchoolMint can provide the SchoolMint IP addresses so that Customer can whitelist our IPs.

Accepted and agreed by the authorized representative of each party:

Oakland Unified School District

SchoolMint, Inc.

By: \_\_\_\_\_

By:  \_\_\_\_\_

Name: \_\_\_\_\_

Name: Bob Roepke

Title: \_\_\_\_\_

Title: Chief Financial Officer

Approved as to form by OUSD Staff Attorney Joanna Powell on \_\_\_\_\_, 2020.





**OAKLAND UNIFIED SCHOOL DISTRICT  
PUPIL RECORDS ADDENDUM FOR  
DIGITAL RECORDS STORAGE AND/OR  
DIGITAL EDUCATIONAL SOFTWARE AGREEMENTS**

Oakland Unified School District (“OUSD”) and SchoolMint, Inc. (“Contractor”) have entered into a Master Services Agreement, Addendum, and Order Form (together, “Agreement”) as of \_\_July 1\_\_\_\_, 2020. The Agreement includes (or may include) the digital storage, management and retrieval of pupil records and/or digital educational software through which Contractor accesses, stores and uses pupil records. This Pupil Records Addendum (“Addendum”), executed by OUSD and Contractor as of the date set forth below, is intended to supplement and amend the terms of the Agreement, as set forth below. This Addendum concerns pupil records, as that term is defined by Education Code section 49073.1 (“Pupil Records”) and covered information, which means personally identifiable information or materials as defined by Business and Professions Code section 22584 (“Covered Information”).

1. Pupil Records Property of OUSD. All Pupil Records are and will continue to be the property of and under the control of OUSD. The parties agree that as between them, all rights, including all intellectual property rights in and to Pupil Records shall remain the exclusive property of OUSD, and Contractor has a limited, nonexclusive license to such Pupil Records. The Agreement and Addendum do not give Contractor any rights, implied or otherwise, to Pupil Records, OUSD content, or intellectual property, except as expressly stated in the Agreement and this Addendum.
2. Pupil-Generated Content. Notwithstanding the provisions of section 1, pupils shall retain ownership and control of pupil-generated content, if any (as that term is defined by Education Code section 49073.1(d)(4)). Contractor shall make all pupil-generated content, if any, available to the pupil who created it and provide a process by which a pupil can transfer his or her pupil-generated content to a personal account. Within thirty (30) days of the execution of this Addendum, Contractor shall provide OUSD with a written description of the process it will provide to pupils in compliance with this section 2.
3. Use of Information in Pupil Records. Contractor may not and will not use any Pupil Record or information in a Pupil Record for any purpose other than those required or specifically permitted by the Agreement and this Addendum.
4. Personally Identifiable Information. Contractor shall provide a process by which a pupil’s parent, legal guardian, or the eligible pupil can review the personally identifiable information in an account created for the pupil’s academic-related records and correct erroneous information. Within thirty (30) days of the execution of this Addendum, Contractor shall provide OUSD with a written description of the process it will provide to pupils and their parents/legal guardians in compliance with this section 4.
5. Security and Confidentiality of Pupil Records. Contractor will access, store and use Pupil Records in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to

secure Contractor's own data of a similar type. Without limiting the foregoing, Contractor warrants that all Pupil Records will be encrypted in transmission via web interface using SSL (Secure Socket Layer) or for file transfers, a Secure FTP site.

In addition, Contractor will use industry-standards and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing services under the Agreement and/or this Addendum.

Contractor will designate employees or agents it holds and will hold primarily responsible for meeting the Contractor's duties to securely maintain and protect Pupil Records. Contractor will ensure that the designated persons have or will receive all training and information necessary to meet the Contractor's duties to securely protect and maintain Pupil Records. The designation of employees or agents required under this section does not relieve the Contractor of any of its duties under the law or the Agreement and/or this Addendum, nor relieve the Contractor of any liability for any breach thereof.

6. Unauthorized Disclosure. Immediately upon becoming aware of an unauthorized disclosure of Pupil Records, or of circumstances that could have resulted in unauthorized access to or disclosure or use of Pupil Records, Contractor will notify OUSD, fully investigate the incident, and cooperate fully with OUSD's investigation of and response to the incident. Except as otherwise required by law, Contractor will not provide notice of the incident directly to parents, legal guardians, or pupils whose personally identifiable information was involved, to regulatory agencies, or to other entities, without prior written permission from OUSD.

7. Retention of Pupil Records. The Contractor hereby certifies that Pupil Records shall not be retained or available to the Contractor, including any subcontractors, partners, or associated entities of the Contractor, upon completion of the terms of the Contractor and this Addendum. Notwithstanding the foregoing, Contractor may maintain pupil-generated content (as that term is defined by Education Code section 49073.1(d)(4)), if any, upon completion of the term of the Agreement and this Addendum if, and only if, the parent, legal guardian, or eligible pupil chooses to establish or maintain an account with the Contractor for the purpose of storing the pupil-generated content and the Contractor receives the written permission of a pupil's parent or legal guardian to establish or maintain the pupil's account.

In furtherance of the foregoing, upon termination or expiration of the Agreement and this Addendum, Contractor will ensure that all Pupil Records are securely returned or destroyed as directed by OUSD. Transfer to OUSD or a third party designated by OUSD shall occur within a reasonable period of time, and without significant interruption in service. Contractor shall ensure that such transfer/migration uses facilities and methods that are compatible with the relevant systems of OUSD or its transferee, and to the extent technologically feasible, that OUSD will have reasonable access to Pupil Records during the transition. In the event that OUSD requests destruction of any Pupil Records, Contractor agrees to securely destroy all Pupil Records in its possession and in the possession of any subcontractors or agents to which the Contractor might have transferred Pupil Records. The Contractor agrees to provide documentation of data destruction to OUSD.

8. Federal Educational Rights and Privacy Act. Contractor agrees to assist OUSD in maintaining the privacy of Pupil Records as may be required by State and Federal law, including but not limited to the Protection of Pupil Rights Amendment (PPRA), the Children's Online Privacy Protection Act (COPPA), the Family Educational Rights and Privacy Act (FERPA), and the Student Online Personal Information Protection Act (SOPIPA).

Contractor will provide access to Pupil Records, including deidentified information, only to its employees and subcontractors who need to access the data to fulfill Contractor obligations under the Agreement and/or this Addendum. Contractor will ensure that employees and subcontractors who perform work under the Agreement and/or this Addendum have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of this Addendum. Contractor will use the education records only for the purpose of fulfilling its duties under the Agreement and/or this Addendum for OUSD's and its pupil's benefit, and will not share such data with or disclose it to any third party except as provided for in this Addendum, required by law, or authorized in writing by OUSD.

9. No Targeted Advertising. Contractor will not use Pupil Records for advertising or marketing purposes unless such use is specifically authorized by this Agreement or otherwise authorized in writing by OUSD. Contractor will not use Pupil Records to engage in targeted advertising. Contractor is prohibited from mining Pupil Records for any purposes other than those agreed to by the parties.

10. Covered Information. To the extent Contractor is an operator of an Internet Web site, online service, online application, or mobile application, with actual knowledge that the site, service, or application is used primarily for K-12 school purposes and was designed and marketed for K-12 school purposes, Contractor agrees to comply with all of the requirements of Business and Professions Code section 22584. Contractor agrees not to engage in targeted advertising as described in section 22584. Contractor agrees not to use information, including persistent unique identifiers, created or gathered by the Contractor's site, service, or application, to amass a profile about a student except in furtherance of OUSD's purposes. Contractor further agrees to that it will not sell, disclose, or otherwise use Covered Information without the prior written consent of OUSD. Contractor will implement and maintain reasonable security procedures to protect Covered Information and fulfill all other requirements of Business and Professions Code section 22584.

11. Compliance with Law. In the event of a conflict between this Addendum and the Agreement, the terms of this Addendum shall govern. This Addendum is intended to comply with Education Code section 49073.1 and Business and Professions Code section 22584. In addition to any other penalties, if the Agreement and this Addendum, taken together, fail to comply with Education Code section 49073.1 and Business and Professions Code section 22584, the Agreement shall be rendered void if, upon notice and a reasonable opportunity to cure, the noncompliant party fails to come into compliance and cure any defect. Written notice of noncompliance may be provided by any party to the Agreement. All parties subject to an Agreement voided in accordance with this paragraph and Education Code section 49073.1 or Business and Professions Code section 22584 shall return all Pupil Records and Covered

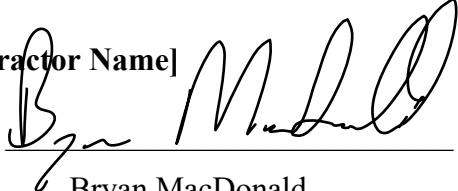
Information in their possession to OUSD. The term of this Addendum is coextensive with the term of the Agreement.

**IN WITNESS WHEREOF**, the parties have, by their duly authorized representatives, executed this Addendum, in duplicate, as of the day and year first above written.

**Oakland Unified School District**

**[Contractor Name]**

By: \_\_\_\_\_

By:  \_\_\_\_\_

Name: \_\_\_\_\_

Name: Bryan MacDonald

Title: \_\_\_\_\_

Title: CEO

Date: \_\_\_\_\_

Date: 6/20/2019

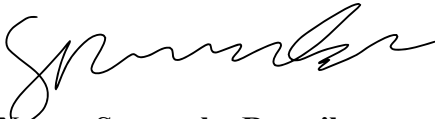
Approved as to form by OUSD Staff Attorney Joanna Powell on 6/11/2020.



\_\_\_\_\_  
Jody London  
President, Board of Education

6/25/2020

**Approved changes by Contractor**



\_\_\_\_\_  
Kyla Johnson Trammell  
Secretary, Board of Education

6/25/2020

**Name: Samantha Remeika**

**Title: Vice President Customer Success**

**Date: 6/18/2020**

# ORDER FORM

This Order Form (this “Order Form”) is entered into as of July, 1, 2020 (the “Effective Date”), by and between Oakland Unified School District (“Client”), and SchoolMint, Inc., a Delaware corporation (“SchoolMint”). This Order Form is for a subscription to one or more of SchoolMint’s software as a service programs, related software, documentation and/or services related thereto as set forth below (collectively, the “Services”). This Order Form is subject to the terms set forth in the Master Services Agreement entered into as of July 1, 2020 (the “MSA”) by and between SchoolMint and Client, and the terms of the MSA are incorporated and made a part of this Order Form.

Initial Subscription Term. Access to the Services described below shall remain in effect from July 1, 2020 until 6/30/2021 (“Initial Subscription Term”) unless earlier terminated in accordance with the MSA. The Initial Subscription Term will renew for additional annual periods at the end of the Initial Subscription Term, for a maximum of five years as set forth in Education Code section 17596, unless Client provides SchoolMint with at least 60 day advance written notice prior to the expiration of the existing Subscription Term.

License Limitations and Fees. Access to the Services is subject to the following restrictions and payment of the following fees:

Type of License	Quantity
# of Students	36,703
# of Sites	83
Subscription Term	12

Product Name	Contract Term (Months)	Sales Price	Quantity	Discount	Subtotal
District Choice: App & Lottery (includes transfers)	12	\$125,000	1	0%	\$125,000.00
SchoolFinder (Full Package)	12	\$13,500	1	0%	\$13,500.00
Supported Languages - Standard	12	\$1000	3	100%	\$0.00
Consulting Fees (Per hour consulting fees for work on software customization)	12	\$250	240	0%	\$60,000

Product Name	Contract Term (Months)	Sales Price	Quantity	Discount	Subtotal
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**Total                    \$198,500**

At the end of each the initial Subscription Term and each Subscription Term thereafter, SchoolMint shall have the right to increase its prices for the Services by up to 5% and will notify Client of such increase prior to each renewal.

Unless listed above, no SIS integration or data mapping support is included in the Services.

Text messaging sufficient to meet the needs of most organizations is included in your license, based on contract value. An allotment of voice calls is also included for customers purchasing a voice call license. If necessary for higher levels of usage, additional packages of messages or calls can be purchased through SchoolMint. See more details here: <https://www.schoolmint.com/text-messaging-terms/>

## Rate Schedule

The following is a schedule of rates for additional services.

Type	Description	Hourly Rate
<b>Account Service</b>	Account service from Customer Success Manager including project management, site configuration, solution consultation, preparation and delivery of training, etc.	<b>\$150.00</b>
<b>Data Entry</b>	Basic data entry including creation of additional online forms, entry of language translations, etc.	<b>\$100.00</b>
<b>Professional Services Engineering</b>	Data import/export work including polygon ingestion for catchment areas, creation of custom reports, generation of imports, additional SIS mapping work, etc.	<b>\$150.00</b>
<b>Engineering &amp; Customization</b>	Any custom request requiring product and/or engineering involvement; includes specification gathering, design, development & testing of custom work	<b>\$250.00</b>

## Payment Terms

Invoice Date	Payment Amount
July 1, 2020	\$198,500

Please make all checks payable to:

SchoolMint, Inc.  
18520 NW 67 Ave., #227  
Miami, FL 33015

Payments can also be made by bank transfer to:

**Bank Name:** Webster Bank

**Bank Holder:** SchoolMint, Inc.

**Account No.:** 23135570

**ABA/Routing #:** 211170101

**Terms:** Net 30 days after subscription date or as otherwise set forth in the MSA

Accepted and agreed by the authorized representative of each party:



Oakland Unified School District

SchoolMint, Inc.

By: \_\_\_\_\_

By:  \_\_\_\_\_

Name: \_\_\_\_\_

Name: Bob Roepke

Title: \_\_\_\_\_

Title: Chief Financial Officer

Approved as to form by OUSD Staff Attorney Joanna Powell on \_\_\_\_\_, 2020.

