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**OAKLAND UNIFIED  
SCHOOL DISTRICT**  
Community Schools, Thriving Students

# 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** October 23, 2019

**Subject** Ratification by the Board of Education of Software Licence Agreement between Certica Solutions, Inc. and Oakland Unified School District  
Contractor: Certica Solutions, Inc.  
Services For: August 28, 2019 - August 27, 2020

**Action Requested and Recommendation** Ratification by the Board of Education of Software License Agreement between Oakland Unified School District and Certica Solutions, Inc., Wakefield, MA for the latter to provide software licensing, hosting, upgrades and technical support for the Certify data quality application for the period August 28, 2019 to August 27, 2020 for an amount not to exceed \$40,176.40.

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

The Technology Services department has successfully used Certica Solutions, Inc. for 2018-19 and is using this firm going forward for the same services as previously provided.

The Certify software provided by Certica Solutions, Inc. is key in supporting student data governance at the Oakland Unified School District (OUSD). The web-based data quality application regularly validates data contained in our student information system (SIS) for data quality requirements and potential compliance issues. The automated solution enables OUSD to detect data problems quickly and allows data owners to take immediate action in resolving or correcting errors.

Data is synchronized nightly between the Aeries SIS and the Certify application. The data is automatically processed to identify data quality issues, and email alerts are sent to notify central office and school site staff about specific data issues that need to be reviewed, monitored or corrected. This process supports data quality improvements by enabling data quality issues to be corrected at the source before they affect

downstream systems and state reporting. In addition, timely notifications about data errors helps support OUSD staff by shortening and simplifying the cycle of data error detection, review and correction..

Data issues are flagged according to the Certify Rule Library, which organizes and identifies data validations and alerts. The Certify Rule Library contains data validations and alerts related to student demographics, enrollment, attendance, and other areas. In addition, the CALPADS state reporting submission rules are pre-validated based upon the most up-to-date data specifications published by the California Department of Education (CDE). This helps enable OUSD to submit complete and accurate information to the CDE in an efficient and timely manner, thereby helping OUSD to maximize LCFF funding and minimize audit findings.

The Software License Agreement includes hosting of the Certify application and related customer support.

**Competitively Bid**

No. Professional Services Agreement of less than \$92,600.

**Fiscal Impact**

\$40,176.40 from 2019-20 Funding Resource  
010-0000-0-0000-7700-5846-999-9860-9994-9999-99999: General Purpose (GP), Data Processing, License Agreements, Districtwide

**Attachments**

- Software License Agreement between Certica Solutions, Inc. and Oakland Unified School District.
  - Certify Subscription Renewal Notice
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**Certica Solutions, Inc. - Oakland Unified School District  
2019 Software License Agreement ("Agreement")**

This 2019 Agreement is a legal agreement between Certica Solutions, Inc. ("Certica") and the Oakland Unified School District (an entity) ("you" or "Licensee" or "OUSD") regarding a license from Certica to use the software (together with any updates or maintenance releases provided to you under the terms hereof, the "Certica Software") that you are about to use pursuant to the terms of (a) this Agreement and (b) the order documentation (which is our quotation and your purchase order in the absence of any other signed order documentation) accepted by an authorized officer of Certica that identifies the Certica Software that is licensed to Licensee, the license scope limitations applicable to the use of the Certica Software, the term of license, the Certica Software support services to be purchased, the implementation services to be purchased, if any, and the related fees to be paid by Licensee (hereinafter the "Order Form").

If you purchased this license for the Certica Software and do not agree with the terms and conditions of this Agreement and the Order Form, do not use the Certica Software. The use by Licensee of any services or content accessible through the Certica Software may be subject to one or more separate agreements with Certica or third parties. Do not use the Certica Software or any services or content accessible through the Certica Software until you have carefully read the following Agreement and any additional, relevant agreements.

**License and Restrictions**

**A. License Grant for Certica Software**

Subject to the terms and conditions of this Agreement, you are granted a limited, non-exclusive, non-transferable license for the number of users specified in the Order Form, or an unlimited number of users if not explicitly specified in the Order Form, to use the Certica Software for the term specified in the Order Form.

**B. Restrictions**

You agree not to: (1) make copies or attempt to make copies of the Certica Software; (2) enable others to use your registration code(s), license key(s) or serial number(s), if any; (3) give access to another person not authorized to use the Certica Software under the terms of this Agreement and the applicable Order Form; or (4) copy the printed materials or user documentation accompanying the Certica Software, if any. The Certica Software in its entirety is protected by copyright laws. The Certica Software also contains the trade secrets of Certica and its licensors, and you may not decompile, reverse engineer, disassemble, or otherwise reduce the Certica Software to human-perceivable form or disclose such trade secrets, or disable any functionality of the Certica Software. You may not attempt to modify, adapt, translate, rent, sublicense, assign, loan, resell for profit, or distribute the Certica Software, or related materials or create derivative works based upon the Certica Software or any part thereof.

**C. Termination and Renewal**

This Agreement may be terminated by Certica immediately and without notice if you fail to comply with any term or condition of this Agreement. This Agreement shall remain in effect for the term specified in the Order Form ("Initial Term") and shall be eligible for renewal for an additional one-year term ("Renewal Term") at the end of the Initial Term and each Renewal Term (the "Ending Term") at your option, but should you choose not to renew this Agreement, then this Agreement will terminate at the end of the Ending Term. Further, OUSD may terminate this Agreement without cause upon 30 days' written notice to Certica. If OUSD so terminates this Agreement without cause, Certica will refund OUSD any prepaid fees for the then current term, limited to an amount equal to the lesser of (a) 3 months' worth of the unused fees or (b) the pro-rated amount

equivalent to the remainder of the unused portion of the term. Upon any termination of this Agreement and the license granted hereunder, OUSD's access to the Certica Software will be disabled. Certica shall have the right to change, discontinue or impose conditions on any feature or aspect of the Certica Software under this Agreement. Any such changes shall be effective upon thirty (30) days notification by any means reasonable to give you actual notice, and if you do not agree with the change to the changes, you may terminate this Agreement, provided you cease use of the Certica Software. Your continued use of the Certica Software after the thirty (30) day notice period will indicate your agreement to any such change. Sections B through L shall survive any termination or expiration of this Agreement.

#### D. Product Support Services

For each license of Certica Software specified in an accepted Order Form, Certica will provide product support services (in accordance with Certica's standard support services terms and conditions) to one (1) named support contact at the Licensee during the Initial Term and any Renewal Terms.

#### E. DISCLAIMER OF WARRANTIES

THE CERTICA SOFTWARE, RELATED MATERIALS, CONTENT AND/OR RELATED SERVICES ACCESSIBLE THROUGH THE CERTICA SOFTWARE, ARE PROVIDED "AS-IS," AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CERTICA AND ITS SUBSIDIARIES, AFFILIATES, LICENSORS, THIRD-PARTY CONTENT OR SERVICE PROVIDERS, ("REPRESENTATIVES") DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING THE CERTICA SOFTWARE, RELATED MATERIALS, CONTENT AND ANY SERVICES, INCLUDING THEIR FITNESS FOR A PARTICULAR PURPOSE, SECURITY, QUALITY, MERCHANTABILITY, OR THEIR NON-INFRINGEMENT. CERTICA DOES NOT WARRANT THAT THE CERTICA SOFTWARE OR ANY RELATED SERVICES OR CONTENT IS SECURE, OR IS FREE FROM BUGS, VIRUSES, ERRORS, OR OTHER PROGRAM LIMITATIONS, INCLUDING BUT NOT LIMITED TO ACCURATE OR UPDATED THIRD-PARTY CONTENT, NOR DOES CERTICA WARRANT ACCESS TO ANY SERVICE OR CONTENT THROUGH THE CERTICA SOFTWARE, OR CONTINUED ACCESS TO ANY TRIAL SOFTWARE PROVIDED OR TO THE DATA ENTERED INTO SUCH TRIAL SOFTWARE. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. IN THAT EVENT, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO SIXTY (60) DAYS FROM THE DATE OF PURCHASE OF THE LICENSE FOR THE SOFTWARE. HOWEVER, SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY HAVE OTHER RIGHTS AS WELL, WHICH VARY FROM STATE TO STATE.

#### F. LIMITATION OF LIABILITY AND DAMAGES

THE ENTIRE LIABILITY OF CERTICA AND ITS REPRESENTATIVES FOR ANY REASON SHALL BE LIMITED TO THE LESSER OF THE ACTUAL AMOUNT OF DIRECT DAMAGE OR THE AMOUNT PAID BY THE LICENSEE FOR THE CERTICA SOFTWARE, RELATED MATERIALS, CONTENT AND/OR RELATED SERVICES ACCESSIBLE THROUGH THE CERTICA SOFTWARE LICENSED HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CERTICA AND ITS REPRESENTATIVES ARE NOT LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO: DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS OR INVESTMENT, OR THE LIKE), WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF CERTICA OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME STATES DO NOT ALLOW THE LIMITATION AND/OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. THE LIMITATIONS OF THE DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN CERTICA AND YOU. CERTICA WOULD NOT HAVE BEEN ABLE TO PROVIDE THE CERTICA SOFTWARE, RELATED MATERIALS, CONTENT AND/OR RELATED SERVICES ACCESSIBLE THROUGH THE CERTICA SOFTWARE TO YOU WITHOUT SUCH LIMITATIONS. HOWEVER, CERTICA'S LIMITATION OF LIABILITY TO OUSD DOES NOT IMPACT IN ANY WAY OUSD'S RIGHTS TO DEFENSE AND INDEMNITY, AS SET FORTH BELOW.

OTHER THAN AS PROVIDED IN THIS AGREEMENT, OUSD'S FINANCIAL OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED IN THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL OUSD BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUE, ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT FOR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

#### G. U.S. Government

The Certica Software is a "commercial item," as that term is defined at 48 C.F.R. 2.101 (OCT 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (SEPT 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227-7202-1 through 227-7202-4 (JUNE 1995), all U.S. Government End Users acquire the Certica Software (or Licensed Product) with only those rights set forth herein.

#### H. Confidentiality

"Confidential Information" means any business or technical information of Certica or Licensee, including but not limited to any information relating to Certica's product plans, designs, costs, product prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how, which is either designated by the disclosing party as proprietary or confidential information (either in written, oral or electronic format) or information which, by its nature or context, would reasonably be known to be confidential without specific designation. Confidential Information does not include information that: (a) is or becomes public through no fault or breach by the receiving party; (b) is known to the receiving party at the time of disclosure without an obligation of confidentiality; (c) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (d) the receiving party rightfully obtains from a third party without restriction on use or disclosure; or (e) is disclosed with the prior written approval of the disclosing party. Neither party will use the other party's Confidential Information except as permitted herein, and will not, at any time, disclose such Confidential Information to any third party except to employees and consultants as is reasonably required in connection with the exercise of its rights and obligations under this Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein executed in writing by such employees and consultants). However, each party may disclose Confidential Information of the other party: (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the disclosing party gives reasonable notice to the other party to contest such order or requirement; and (b) on a confidential basis to legal or financial advisors.

#### I. Data Privacy

Certica acknowledges that in the course of providing Certica Software to you, student data may be disclosed to Certica. Certica therefore further agrees that it will comply with the requirements in the:

- Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g and 34 CFR Part 99, concerning the confidentiality and release of student records and data;
- Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. § 1232h and 34 CFR Part 98, concerning the need to obtain written consent of the parent prior to subjecting a student to a certain manner of survey, analysis, or evaluation, and concerning the provision of psychological services;
- California Education Code § 49073.1 (AB 1584), concerning the provision to a local educational agency by a third party of (i) services for the digital storage, management, and retrieval of student records; and/or (ii) digital educational software;



- California Education Code § 49073.6 (AB 1442), concerning collecting or maintaining information about students from social media;
- California Business and Professions Code § 22584 (SB 1177), concerning the prohibition an operator of an Internet Web site, online service, online application, or mobile application from knowingly engaging in targeted advertising to students or their parents or legal guardians, using covered information to amass a profile about a K-12 student, selling a student's information, or disclosing covered information; and
- New York State Education Code § 2-d, concerning the confidentiality and release of student records and data.

Certica acknowledges that under applicable law, regulation and policy, officers, employees, and agents who access student records and data may use such data only for the purposes for which the Certica Software has been made available; that Certica is prohibited from re-disclosing such records or data to third parties and will use reasonable methods to ensure to the greatest extent practicable that such records and data are protected from further disclosure; and that Certica will destroy any such records or data when this Agreement is terminated.

#### J. Export Restrictions

You acknowledge and agree that the Certica Software is subject to restrictions and controls imposed by the Export Administration Act and the Export Administration Regulations ("the Export Acts"). You agree and certify that neither the Certica Software nor any direct product thereof is being or will be used for any purpose prohibited by the Export Acts. You agree and certify that you are not a citizen or permanent resident of the following countries: Cuba, Iran, Iraq, North Korea, Libya, Sudan or Syria.

#### K. General Provisions

This Agreement sets forth each party's entire liability and their exclusive remedy with respect to the Certica Software services. The Parties acknowledge that this Agreement and the Order Form is a complete statement of the agreement between OUSD and Certica with respect to the Certica Software, and that there are no other prior or contemporaneous understandings, promises, representations, or descriptions regarding the Certica Software, its content or any related services.

This Agreement shall govern any services or content related to the Certica Software, unless such services or content are subject to a separate agreement between OUSD and Certica. However, the limitations of liability and disclaimer of warranties in this Agreement shall apply to Certica, OUSD and their respective representatives with respect to such content or services except to the extent provided otherwise in a separate agreement approved by the Parties between OUSD and Certica.

This Agreement does not limit any rights that Certica or OUSD may have under trade secret, copyright, patent, trademark or other laws. The representatives of Certica and OUSD are not authorized to make modifications to this Agreement, or to make any additional representations, commitments, or warranties binding on Certica or OUSD, other than in writing signed by an officer of Certica and OUSD's governing Board. Accordingly, such additional statements are not binding on the Parties and they should not rely upon such statements.

If any provision of this Agreement is invalid or unenforceable under applicable law, then it is, to that extent, deemed omitted and the remaining provisions will continue in full force and effect.

No delay or failure on the part of Certica and/or OUSD in the exercise of any right granted under this Agreement, or available at law or in equity, shall be construed as a waiver of such right.

The validity and performance of this Agreement shall be governed by California law (without reference to choice of law principles), except as to copyright, patent and trademark matters, which are covered by federal laws. The Parties agree to submit to the jurisdiction of the federal and state courts of Alameda County, California and waive any objection to venue in such courts. This Agreement is deemed entered into in Oakland, California, and shall be construed as to its fair meaning and not strictly for or against either party.

Certica 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. Certica 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 Certica in connection with the performance of this Agreement. This provision survives termination of this Agreement.

**Assignment:** The obligations of Certica under this Agreement shall not be assigned by Certica without the express prior written consent of OUSD.

**No Rights in Third Parties:** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** Certica 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 agreement, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).

**Incorporation of Recitals and Exhibits:** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference. Certica 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.

**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 Certica 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.

**Contract 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.

L. Trademarks

Certica Solutions, the Certica Logo, Certify, and TestWiz are trademarks, registered trademarks and/or registered service marks of Certica Solutions, Inc. in the United States.

Oakland Unified School District

Certica Solutions, Inc.

BY: *Jusan EB*  
PRINT Name: Susan Beltz  
PRINT TITLE: Chief Tech officer  
DATE: 9/25/19

BY: *Rodney Green*  
PRINT NAME: Rodney Green  
PRINT TITLE: VP of Business Operations  
DATE: September 5, 2019

BY: *Aimee Eng*  
PRINT Name: Aimee Eng  
PRINT TITLE: President, BOE  
DATE: 10/24/19

*Kyla Johnson-Trammell*  
Kyla Johnson-Trammell, Superintendent & Secretary, BOE

OAKLAND UNIFIED SCHOOL DISTRICT  
Office of the General Counsel  
APPROVED FOR FORM & SUBSTANCE  
By: *JR Daniels* 9/24/19  
Joshua R. Daniels, General Counsel





Certica Solutions, Inc.  
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Wakefield, MA 01880

phone: 877.255.4515  
fax: 781.245.4132  
www.certicasolutions.com

June 13, 2019

## SUBSCRIPTION RENEWAL NOTICE

<b>Customer:</b>	Oakland Unified School District
<b>Customer Contact Information:</b>	<b>Name:</b> Susan Beltz <b>Email:</b> susan.beltz@ousd.org <b>Phone:</b> (510) 879-8873
Is Customer Contact Information correct?  <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>If No:</b> Please update information below:  Contact Name: _____  E-Mail: _____  Phone: _____

### SUBSCRIPTION RENEWAL INFORMATION:

<b>Current Subscription End Date:</b>	<b>8/27/2019</b>
<b>Product(s) Subscribed:</b>	<b>Certify Application Edition (Annual Subscription)</b>
<b>Configuration Subscribed:</b>	<ul style="list-style-type: none"> <li>• Number of Distinct Student Records<sup>1</sup> – 36,524</li> <li>• Number of Users: Unlimited</li> <li>• Includes: Certify Rule Library; CertifyCALPADS Rule Library; CertifySEIS Rule Library</li> </ul>
<b>Renewal Period:</b>	<b>8/28/2019 through 8/27/2020</b>
<b>Renewal Subscription Fee<sup>2</sup>:</b>	<b>\$40,176.40</b> <small>California sales tax is <u>not</u> payable on this subscription fee, as the software is delivered as a hosted service.</small>

<b>RENEWAL INSTRUCTIONS:</b>	<ul style="list-style-type: none"> <li>• Please complete and return via email or fax at least 30 days prior to the Current Subscription End Date:  <b>Email:</b> orders@certicasolutions.com <b>Fax:</b> (781) 240-0420</li> <li>• For questions, contact Wendy Aldrich at (877) 456-8949 x5103</li> </ul>
Is a Purchase Order Required to Invoice?  <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>If Yes:</b> Forward Purchase Order together <u>or</u> separately from this form per the Renewal Instructions.  <b>If No:</b> Please sign below authorizing issuance of invoice to contact person based on information above:  Name: _____  Title: _____

<sup>1</sup> The Number of Distinct Student Records for a district is defined as the official enrollment most recently published by the state education agency in the district's state at the time renewal notice was issued.

<sup>2</sup> The current list price for the product being purchased is \$1.10 per student, per year.