

Board Office Use: Legislative File Info.	
File ID Number	19-0561
Introduction Date	4/24/19
Enactment Number	19-0562
Enactment Date	4/24/19 os



AMENDMENT NO. 1 TO
Professional Services Contract

This Amendment amends _____ Enactment No. 18-0935 _____ between Oakland Unified School District (OUSD) and Always Be Learning, Inc. (Contractor) entered into on 05/01/2018 (OUSD Enactment No. 18-0935). The parties agree to amend that Agreement as follows:

<p>1. Services:</p>	<p><input type="checkbox"/> The scope of work is <u>unchanged</u>. <input checked="" type="checkbox"/> The scope of work has <u>changed</u>.</p> <p>If the scope of work has changed: Provide brief description of revised scope of work including measurable description of expected final results, such as services, materials, products, and/or reports; attach additional pages as necessary.</p> <p><input type="checkbox"/> Revised scope of work attached. OR <input checked="" type="checkbox"/> CONTRACTOR agrees to provide the following amended services:</p> <p>Always Be Learning, Inc. (ABL) will provide technology and services to Oakland Unified School District for 8 schools which include: Madison Park, McClymonds, Oakland High School, Castlemont, Oakland Tech, Skyline, ECP/Alliance, and Fremont High School impacting 8,167 students. This work includes access to the ABL Master Scheduler platform, ongoing email support and online Help Desk for school staff as well as business hours phone support for District IT representatives. one-time set-up and on-boarding and coaching for each school.</p>	
<p>2. Term (duration):</p>	<p><input type="checkbox"/> The term of the contract is <u>unchanged</u>. <input checked="" type="checkbox"/> The term of the contract has <u>changed</u>.</p> <p>If the term has changed: The contract term began on <u>05/01/2018</u> and expires on <u>05/31/2018</u>. The parties agree to extend the contract through <u>09/15/2019</u>.</p>	
<p>3. Compensation:</p>	<p><input type="checkbox"/> The contract price is <u>unchanged</u>. <input checked="" type="checkbox"/> The contract price has <u>changed</u>.</p> <p>If the compensation has changed: The contract price is amended by</p> <p><input checked="" type="checkbox"/> Increase of \$ <u>\$19,292.00</u> to original contract amount.</p> <p><input type="checkbox"/> Decrease of \$ _____ to original contract amount.</p> <p>The new contract total is <u>Forty Three Thousand Nineteen</u> Dollars (<u>\$43,019.00</u>)</p>	

- 4. Remaining Provisions:** All other provisions of the Agreement, and prior Amendment(s) if any, shall remain unchanged and in full force and effect as originally stated.
- 5. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** CONTRACTOR 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/>).

Amendment

6. **Approval:** Approval requires signature by the Board of Education and/or the Superintendent as its designee. This Amendment shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

OAKLAND UNIFIED SCHOOL DISTRICT

Armine Eny 4/25/19
 _____ Date
 President, Board of Education
 Superintendent
 Chief or Deputy Chief
[Signature] 4/25/19
 _____ Date
 Secretary, Board of Education

CONTRACTOR

[Signature] 3/14/19
 _____ Date
 Contractor Signature
 Jonathan Hume, Head of Sales

 Print Name, Title

Form approved by OUSD General Counsel for 2018-19 FY

FOR OUSD PURPOSES ONLY – The following information is not part of the Contract.

OUSD Internal Routing			
Services above original contract cannot be provided before the amendment is fully approved and the PO amount is increased by Procurement.			
	Signature - Approved	Denied - Reason	Date
1. Administrator/Manager	[Signature]		3/23/19
2. Resource Manager (if restricted funds)	[Signature]		3/15/19
3. Network Superintendent/Executive Director	[Signature]		3/18/19
4. Chief/Deputy Chief	[Signature]		4/2/19
5. Legal (if increase takes contract above \$90,200)			
6. Superintendent, Board of Education	Signature on the legal contract		

Alignment with Single Plan for Student Achievement – SPSA (required if using State or Federal Funds)

Please select:

Action Item included in Board Approved SPSA (no additional documentation required)–Item Number: _____

Action Item added as modification to Board Approved SPSA – Submit the following documents to the Resource Manager either electronically via email of scanned documents, fax or drop off.

- Relevant page of SPSA with action item highlighted. Page must include header with the word “Modified”, modification date, school site name, both principal and school site council chair initials and date.
- Meeting announcement for meeting in which the SPSA modification was approved.
- Minutes for meeting in which the SPSA modification was approved indicating approval of the modification.
- Sign-in sheet for meeting in which the SPSA modification was approved.

EXHIBIT "A" SCOPE OF WORK

[IF A CONTRACTOR PROVIDES AN ACCEPTABLE DESCRIPTION OF SERVICES AS PART OF A PROPOSAL, THAT DESCRIPTION OF SERVICES MAY BE ATTACHED WITHOUT ANY TERMS, CONDITIONS, LIMITATIONS, ETC., FROM THAT PROPOSAL.]

1. **Description of Services to be Provided:** Provide a description of the service(s) the contractor will provide. Be specific about what service(s) OUSD is purchasing and what *this* Contractor will do.

Always Be Learning, Inc. (ABL) will provide technology and services to Oakland Unified School District for 8 schools which include: Madison Park, McClymonds, Oakland High School, Castlemont, Oakland Tech, Skyline, ECP/Alliance, and Fremont High School impacting 8,167 students. This work includes access to the ABL Master Scheduler platform, ongoing email support and online Help Desk for school staff as well as business hours phone support for District IT representatives. one-time set-up and on-boarding and coaching for each school.

Always be learning, Inc (Abl)
612 Howard St. Suite 400
San Francisco, CA 94118
678-849-0431
jon@ablschools.com

March 22, 2019

Dear Nancy,

This letter has been written to outline the revised Scope of Work (SOW) that impacts the Oakland USD and Abl Master Scheduling project.

Original SOW:

Always Be Learning, Inc. (ABL) will provide technology and services to Oakland Unified School District's for 5 schools which include: **Madison Park, McClymonds, Coliseum College Preparatory Academy, Oakland International, and Oakland High School** impacting **3,219 students**, which will include access to the ABL Master Scheduler platform, ongoing email support and online Help Desk for school staff as well as business hours phone support for District IT representatives, one-time set-up and onboarding for each school.

Revised SOW

Always Be Learning, Inc. (ABL) will provide technology and services to Oakland Unified School District's for 8 schools which include: **Madison Park, McClymonds, Oakland High School, Castlemont, Oakland Tech, Skyline, ECP/Alliance, and Fremont High School** impacting **8,167 students**. This work includes access to the ABL Master Scheduler platform, ongoing email support and online Help Desk for school staff as well as business hours phone support for District IT representatives, one-time set-up and onboarding and coaching for each school.

Jonathan Hume
Head of Sales
Abl
jon@ablschools.com
678-849-0431



Service Order

Date
3/12/2019

Expiration
4/11/2019

Prepared For
Org Contact Name
Org Contact Title
Org Contact Phone
Term: 1 year

Preston Thomas
Oakland USD
High School Network, Superintendent
preston.thomas@ousd.org
6/1/19-9/15/19

Address:
1000 Broadway, Suite 680,
Oakland, CA 94607

ANNUAL LICENSE		YR1
Subscription Fees		\$28,585.00
Partnership Discount		\$12,293.00
Subscription Total		\$16,292.00

ANNUAL SERVICES		YR1
Services Fee		\$13,000.00
Partnership Discount		\$10,000.00
Services SubTotal		\$3,000.00

TOTAL FEES \$19,292.00

Description of Services, Term, and Fees

For the term of this agreement, Abl will provide the following technology and services to Oakland USD

Schools: Madison Park, McClymonds, Oakland HS, Castlemont, Oakland Tech, Skyline, ECP/Alliance, Fremont HS

- * Access to the Abl Master Scheduler platform
- * Strategic planning
- * Project management & ongoing check-ins
- * Virtual coaching for schedulers
- * Platform setup & on-boarding
- * Data exchange with SIS
- * Data mapping & validation
- * Email support for schedulers
- * Phone support for IT teams
- * Online knowledge base/documentation

Agreement

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

Authorization

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

Client Signature


Print Name, Title
Preston Thomas
High School Superintendent
Date
3/18/19

Abl Signature


Print Name, Title
Jonathan Hume, Head of Sales
Date
3/12/2019

Board Office Use: Legislative File Info.	
File ID Number	18-0757
Introduction Date	6/6/18
Enactment Number	18-0935
Enactment Date	6/6/18 os



Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent

Board Meeting Date June 6, 2018
(To be completed by Procurement)

Subject Service Order Agreement and Data Sharing Agreement - Always Be Learning, Inc. (contractor) - High School Linked Learning Office (site/department)

Action Requested Approval by the Board of Education of a Service Order Agreement and Data Sharing Agreement between the District and Always Be Learning, Inc. Services to be primarily provided to the High School Linked Learning Office for the period of May 1, 2018 through May 31, 2019.

Background
A one paragraph explanation of why the consultant's services are needed.

Always Be Learning, Inc. (ABL) will provide technology and services to Oakland Unified School District's Madison Park, McClymonds, Coliseum College Preparatory Academy, Oakland International and Oakland High Schools, which will include access to the ABL Master Scheduler platform, ongoing email support and online Help Desk for school staff as well as business hours phone support for District IT representatives, one-time set-up and onboarding for each school.

Discussion
One paragraph summary of the scope of work.

Approval by the Board of Education of a Service Order Agreement and Data Sharing Agreement between the District and Always Be Learning, Inc., Oakland, CA, for the latter to make the master scheduling process more responsive to students and teacher needs; identify how key scheduling tradeoffs impact school priorities, identify and resolve staffing needs earlier in the planning process and successfully transition from the school's existing scheduling tools and workflows to the ABL Mater Scheduler, as referenced in the Agreement, for the period of May 1, 2018 through May 31, 2019, in an amount not to exceed \$23,727.00.

Recommendation Approval by the Board of Education of a Service Order Agreement and Data Sharing Agreement between the District and Always Be Learning, Inc. Services to be primarily provided to the High School Linked Learning Office for the period of May 1, 2018 through May 31, 2019.

Fiscal Impact Funding resource name (please spell out): 9196/Atlantic Philanthropies in an amount not to exceed \$23,727.00.

Attachments

- Agreement
- Service Order Addendum
- Data Sharing Agreement



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

Legislative File ID No. 18-0757

Department: High School Linked Learning

Vendor Name: Always Be Learning Inc. (abl)

Contract Term: Start Date: May 1, 2018 End Date: May 31, 2019

Annual Cost: \$ 23,727.00

Approved by: Preston Thomas 

Is Vendor a local Oakland business? Yes No

Why was this Vendor selected?

To make the master scheduling process more efficient.

Summarize the services this Vendor will be providing.

Abi will make the master scheduling process more efficient for all stakeholders by building master schedules that are more responsive to students and teacher needs. Abi will identify how key scheduling trade offs impact school priorities, identify and resolve staffing needs earlier in the planning process and successfully transition from the school's existing scheduling tools & workflows to abi Master Scheduler.

Was this contract competitively bid? Yes No

If No, answer the following:

1) How did you determine the price is competitive?

As compared to other contractors

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 \$87,800 (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 \$87,800 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**


abl. Service Order

Primary Contact Information			
Client		Always Be Learning Inc. ("Abl")	
<i>Client Legal Name ("Client")</i>	Oakland Unified School District	<i>Company Name</i>	Always Be Learning, Inc.
<i>Primary Contact, Title</i>	Preston Thomas, High School Network Superintendent	<i>Primary Contact</i>	Jonathan Hume
<i>Billing / Payment Address</i>	1000 Broadway	<i>Billing Address</i>	612 Howard Street, 4 th Floor
<i>City / State / Zip</i>	Oakland, CA 94607	<i>City / State / Zip</i>	San Francisco, CA
<i>Email</i>	preston.thomas@ousd.org	<i>Email</i>	sales@ablschools.com
<i>Phone</i>	510.579.2022	<i>Phone</i>	678-849-0431

Description of Services, Term, and Fees

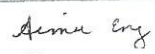


Services	Term & Fees	
<p>For the term of this agreement, Abl will provide the following technology and services to Oakland Unified School District (Madison Park, McClymonds, CCPA, Oakland International, Oakland High School):</p> <ul style="list-style-type: none"> • Access to the Abl Master Scheduler platform • Ongoing email support and online Help Desk for school staff • Business hours phone support for district IT representative • One-time setup & onboarding for each school <p>The annual subscription is based on the total student enrollment as the schools listed above. If the total enrollment at these schools exceeds the number at the right by 5%, an additional license fee of \$ <u>6.04</u> per student per year will apply.</p> <p>Thanks to a grant from the Bill & Melinda Gates Foundation, these schools qualify for discounts under Abl's Master Schedule Accelerator program (50% off subscription; free school setup, 50% off Add-on Services).</p>	Effective Date:	5/1/18
	Contract Term: (From Effective Date)	Annual: 5/1/2018-5/31/2019
	Total Student Enrollment:	3,219
	Annual Subscription Fee:	\$9,727 (50% discount off \$19,455)
	Set Up Fees:	\$0.00 (regular fee: \$25,000)
	Add-On Services Fees:	\$14,000 (regular fee: \$28,000)
	TOTAL:	\$23,727

Agreement

The agreement by and between the Client and Abl (this "Agreement") consists of this Service Order, Terms and Conditions, Services Order Addendum, and Data Sharing Agreement.

Authorization

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

Client Signature:  	Print Name, Title: Aimée Eng, President, Board of Education Kyla Johnson Trammell, Secretary, Board of Education	Date: 6/7/18
Abl Signature: 	Print Name, Title: Jonathan Hume Head of Sales	Date: 4/27/18

TERMS AND CONDITIONS

Always Be Learning, Inc. ("Abl") is an education technology company that provides a proprietary cloud-based software (platform-as-a-service) that enables schools and school districts ("Client") to create and manage master schedules, calendars, and related time-based activities for their schools (the "Platform").

1. RIGHT TO USE PLATFORM

- 1.1. **Platform.** Subject to the terms and conditions of this Agreement, Abl hereby grants Client the limited, nonexclusive, nontransferable, non-sublicenseable right to access and use the Platform via the Internet during the Term solely for Client's use, including use by Client's students, staff and parents, where applicable ("Authorized Users").
- 1.2. **Limitations.** The following limitations and restrictions will apply to the Platform:
- (a) Client will not provide access to the Platform to any person who is not an employee or contractor of Client or an Authorized User.
- (b) Except as expressly permitted hereunder, Client will not and will not permit or authorize any third party to: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Platform; (ii) modify, translate or create derivative works based on the Platform; (iii) copy, rent, lease, distribute, pledge, assign or otherwise transfer or allow any lien, security interest or other encumbrance on the Platform; (iv) use the Platform for timesharing or service bureau purposes or otherwise for the benefit of a third party; (v) interfere with or disrupt the integrity or performance of or otherwise attempt to gain unauthorized access to the Platform or its related systems, hardware or networks or any content or technology incorporated in any of the foregoing; (vi) disclose or publish, without Abl's express prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Platform; (vii) remove or obscure any proprietary notices or labels of Abl or its suppliers on the Platform or (viii) use the Platform, including the transmission of Client Data, in any manner that violates in any law, rule, regulation or any other legal or regulatory requirement imposed by any regulatory or government agency or political subdivision, whether federal, state, local, or foreign. Abl may filter or inspect data if Abl reasonably suspects or becomes aware of use of the Platform in contravention of the documentation. Abl reserves the right to block, without liability, any Client Data and Client account that violates the terms of this Section 1.

2. OWNERSHIP; RESERVATION OF RIGHTS

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

all intellectual property rights therein. Abl reserves any and all rights other than the rights expressly granted to Client under this Agreement with respect to the Platform.

- 2.3. **Feedback.** Client may from time to time provide suggestions, comments for enhancements or functionality or other feedback ("Feedback") to Abl with respect to the Platform. Abl has full discretion to determine whether to proceed with development of the requested enhancements, features or functionality. Client hereby grants Abl a royalty-free, fully paid-up, worldwide, transferable, sublicenseable, irrevocable, perpetual license to (a) copy, distribute, transmit, display, perform, and create derivative works of the Feedback in whole or in part; and (b) use the Feedback in whole or in part, including without limitation, the right to develop, manufacture, have manufactured, market, promote, sell, have sold, offer for sale, have offered for sale, import, have imported, rent, provide and lease products or services that practice or embody, or are configured for use in practicing, the Feedback in whole or in part.
- 2.4. **Client Responsibilities.** Client will (a) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Platform and notify Abl promptly of any such unauthorized access or use, and (b) use the Platform only in accordance with the documentation and applicable laws and regulations.
- 2.5. **Data Security.** Abl will implement and maintain reasonable administrative, physical and technical safeguards ("Safeguards") designed to prevent any collection, use or disclosure of, or access to Client Data that this Agreement does not expressly authorize.
- 2.6. **Privacy Policy.** Abl will comply with the Privacy Policy at <https://www.ablschools.com/privacy> and terms of the California Student Data Privacy Agreement.
- 2.7. **Right to Data Destruction.** If requested by the Client in writing, during or after the term of this agreement, Abl will make reasonable efforts to destroy or otherwise render Client Data (but not Aggregated Data) inaccessible.

3. FEES; PAYMENT TERMS

- 3.1. **Fees; Payment Terms.** Unless otherwise agreed to by the parties, Client will pay all fees within thirty (30) days of the invoice date. If payment of any fee is not made when due and payable, a late fee will accrue at the rate of the lesser of one and one-half percent (1.5%) per month or the highest legal rate permitted by law and Client will pay all reasonable expenses of collection. In addition, if any past due payment has not been received by Abl within thirty (30) days from the time such payment is due, Abl may suspend access to the Platform until such payment is made. Fees are non-refundable.
- 3.2. **Net of Taxes.** All amounts payable by Client to Abl hereunder are exclusive of any sales, use and other taxes or duties, however designated, including without limitation, withholding taxes, royalties, know-how payments, customs, privilege, excise, sales, use, value-added and property taxes (collectively "Taxes"). Client will be solely responsible for payment of any Taxes, except for those taxes based on the income of Abl. Client will not withhold any Taxes from any amounts due Abl.

4. TERM, TERMINATION

- 4.1. **Term.** The term of this Agreement will commence on the Effective Date and, unless earlier terminated in accordance with this Section 4, will continue through the date set forth on the Abl Service Order (the "Term").
- 4.2. **Termination; Effect of Termination.** In addition to any other remedies it may have, either party may terminate this Agreement if the other party breaches any of the terms or conditions of this Agreement and fails to cure such breach within thirty (30) days' notice (or ten (10) days in the case of nonpayment) after receiving notice thereof. Upon any termination of this Agreement for any reason, Abl may, but is not obligated to, in its sole discretion and without delivery of any notice to Client, delete any Client Data stored or otherwise archived on the Platform or on Abl's network.

TERMS AND CONDITIONS

Upon termination of this Agreement, all rights granted hereunder and all obligations of Abl to provide the Platform will immediately terminate and Client will (a) cease use of the Platform; and (b) return or destroy all other copies or other embodiments of Abl's Confidential Information.

- 4.3. **Survival.** Upon expiration or termination of this Agreement, all obligations in this Agreement will terminate, provided that Sections 2 (Ownership; Reservation of Rights), 3 (Fees; Payment Terms), 4.2 (Termination; Effect of Termination), 4.3 (Survival), 5 (Confidentiality), 6.2 (Disclaimer), 7 (Limitations of Liability), and 9 (General) will survive.

5. CONFIDENTIALITY

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

6. REPRESENTATIONS, WARRANTIES AND DISCLAIMER

- 6.1. **Representations and Warranties.** Each party represents and warrants to the other party that (a) such party has the required power and authority to enter into this Agreement and to perform its obligations hereunder, (b) the execution of this Agreement and performance of its obligations thereunder do not and will not violate any other agreement to which it is a party, and (c) this Agreement constitutes a legal, valid and binding obligation when signed by both parties. Client represents and warrants that it has the right to provide the Client Identifying Data and Client Content for the purposes contemplated by this Agreement.
- 6.2. **Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PLATFORM IS PROVIDED ON AN "AS-IS" BASIS AND ABL DISCLAIMS ANY AND ALL WARRANTIES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. ALL OTHER EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. EACH PARTY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. NEITHER PARTY WARRANTS AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE PRODUCTS OR SERVICES PROVIDED BY SUCH PARTY OR AGAINST INFRINGEMENT. NEITHER PARTY WARRANTS THAT THE PRODUCTS OR SERVICES PROVIDED BY SUCH PARTY ARE ERROR-FREE OR THAT OPERATION OF SUCH PARTY'S PRODUCTS OR SERVICES WILL BE SECURE OR UNINTERRUPTED. NEITHER PARTY WILL HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF THE OTHER PARTY TO ANY THIRD PARTY.

7. LIMITATIONS OF LIABILITY

- 7.1. **Disclaimer of Consequential Damages.** THE PARTIES HERETO AGREE THAT, NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, EXCEPT FOR (A) CLIENT'S USE OF THE PLATFORM OTHER THAN EXPRESSLY PERMITTED BY SECTION 1 (RIGHT TO USE PLATFORM) ABOVE, (B) EITHER PARTY'S BREACH OF SECTION 5 (CONFIDENTIALITY) ABOVE, AND (C) LIABILITY ARISING FROM A PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 8.1 AND 8.2 BELOW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, RELIANCE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, LOST OR DAMAGED DATA, LOST PROFITS OR LOST REVENUE, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF A PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY THEREOF.
- 7.2. **General Cap on Liability.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EXCEPT FOR (A) CLIENT'S USE OF THE PLATFORM OTHER THAN EXPRESSLY PERMITTED BY SECTION 1 (RIGHT TO USE PLATFORM) ABOVE, (B) EITHER PARTY'S BREACH OF SECTION 5 (CONFIDENTIALITY) ABOVE, AND (C) LIABILITY ARISING FROM A PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 8.1 AND 8.2 BELOW, AS APPLICABLE, UNDER NO CIRCUMSTANCES WILL EITHER PARTY'S LIABILITY FOR ALL CLAIMS ARISING UNDER OR RELATING TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE AGGREGATE FEES PAID OR PAYABLE BY CLIENT TO ABL UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

TERMS AND CONDITIONS

- 7.3. Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF THEY HAVE FAILED OF THEIR ESSENTIAL PURPOSE.
8. **INDEMNIFICATION**
- 8.1. Indemnification by Abl. Except for liability for which Client is responsible under Section 8.2, Abl will indemnify, defend and hold Client and the officers, directors, agents, and employees of Client ("Client Indemnified Parties") harmless from settlement amounts and third party damages, liabilities, penalties, costs and expenses ("Liabilities") that are payable to any third party or incurred by the Client Indemnified Parties (including reasonable attorneys' fees) arising from any third party claim, demand or allegation that the use of the Platform in accordance with the terms and conditions of this Agreement infringes such third party's copyright or results in a misappropriation of such third party's trade secrets. Abl will have no liability or obligation under this Section 8.1 if such Liability is caused in whole or in part by (a) modification of the Platform by any party other than Abl without Abl's express consent; (b) the combination, operation, or use of the Platform with other product(s), data or services not provided by Abl where the Platform would not by itself be infringing; or (c) unauthorized or improper use of the Platform. If the use of the Platform by Client has become, or in Abl's opinion is likely to become, the subject of any claim of infringement, Abl may at its option and expense (i) procure for Client the right to continue using the Platform as set forth hereunder; (ii) replace or modify the Platform to make it non-infringing so long as the Platform has at least equivalent functionality; (iii) substitute an equivalent for the Platform or (iv) if options (i)-(iii) are not available on commercially reasonable terms, terminate this Agreement. This Section 8.1 states Abl's entire obligation and Client's sole remedies in connection with any claim regarding the intellectual property rights of any third party.
- 8.2. Indemnification by Client. Client will indemnify, defend and hold Abl and the officers, directors, agents, and employees of Abl ("Abl Indemnified Parties") harmless from Liabilities that are payable to any third party or incurred by the Abl Indemnified Parties (including reasonable attorneys' fees) arising from any third party claim, demand or allegation arising from or related to (a) any use by Client or Authorized Users of the Platform in violation of this Agreement or (b) the Client Data.
- 8.3. Indemnification Procedure. If a Client Indemnified Party or a Abl Indemnified Party (each, an "Indemnified Party") becomes aware of any matter it believes it should be indemnified under Section 8.1 or Section 8.2, as applicable, involving any claim, action, suit, investigation, arbitration or other proceeding against the Indemnified Party by any third party (each an "Action"), the Indemnified Party will give the other party (the "Indemnifying Party") prompt written notice of such Action. The Indemnified Party will cooperate, at the expense of the Indemnifying Party, with the Indemnifying Party and its counsel in the defense and the Indemnified Party will have the right to participate fully, at its own expense, in the defense of such Action. Any compromise or settlement of an Action will require the prior written consent of both parties hereunder, such consent not to be unreasonably withheld or delayed.
9. **GENERAL**
- 9.1. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.
- 9.2. Neither party may assign this Agreement by operation of law or otherwise or assign or delegate its rights or obligations under the Agreement without the other party's prior written consent; provided however, that either party may assign this Agreement to an acquirer of or successor to all or substantially all of its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. Any assignment or attempted assignment by either party otherwise than in accordance with this Section 9 will be null and void.
- 9.3. No agency, partnership, joint venture, or employment is created as a result of this Agreement and a party does not have any authority of any kind to bind the other party in any respect whatsoever.
- 9.4. Client may not remove or export from, or use from outside, the United States or allow the export or re-export of the Platform or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority.
- 9.5. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. Client acknowledges that any unauthorized use of the Platform will cause irreparable harm and injury to Abl for which there is no adequate remedy at law. In addition to all other remedies available under this Agreement, at law or in equity, Client further agrees that Abl will be entitled to injunctive relief in the event Client uses the Platform in violation of the limited license granted herein or uses the Platform in any way not expressly permitted by this Agreement.
- 9.6. All notices under this Agreement will be in writing and sent to the recipient's address set forth in the Abl Service Order and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.
- 9.7. Each party agrees that it will not, without prior written consent of the other, issue a press release regarding their business relationship. Notwithstanding anything herein to the contrary, Abl may identify Client and the relationship between Abl and Client in Abl's marketing collateral, website, and other promotional and marketing materials.
- 9.8. Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service, in whole or in part, as a result of a cause beyond its reasonable control including, but not limited to, acts of God, acts of war, epidemics, fire, communication line failures, power failures, earthquakes, floods, blizzard, or other natural disasters (but excluding failure caused by a party's financial condition or any internal labor problems (including strikes, lockouts, work stoppages or slowdowns, or the threat thereof)) (a "Force Majeure Event"). Delays in performing obligations due to a Force Majeure Event will automatically extend the deadline for performing such obligations for a period equal to the duration of such Force Majeure Event. Except as otherwise agreed upon by the parties in writing, in the event such non-performance continues for a period of thirty (30) days or more, either party may terminate this Agreement by giving written notice thereof to the other party. Upon the occurrence of any Force Majeure Event, the affected party will give the other party written notice thereof as soon as reasonably practicable of its failure of performance, describing the cause and effect of such failure, and the anticipated duration of its inability to perform.
- 9.9. This Agreement will be governed by the laws of the State of California without regard to its conflict of laws provisions. For all disputes relating to this Agreement, each party submits to the exclusive jurisdiction of the state and federal courts located in City and County of San Francisco, California and waives any jurisdictional, venue, or inconvenient forum objections to such courts.
- 9.10. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous and contemporaneous written and oral agreements, communications and other understandings relating to the subject

TERMS AND CONDITIONS

matter of this Agreement; all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein.



Directions

- Services beyond the original contract cannot be provided until the amendment is fully approved and PO is increased by Procurement.
- To be eligible for an amendment, term end date of the contract cannot not be expired. If expired, a new contract is necessary.
 - Insert the amendment number (i.e. if this is the first amendment enter "1," second enter "2," etc.) at the top of the amendment.
 - If contract total amount has increased, the scope of work must change.
 - OUSD contract originator creates new requisition with the original PO number referenced in the item description.
- When the contract amendment is approved, Procurement will add additional funds to the original Purchase Order.

Attachment Checklist	<ul style="list-style-type: none"> Contract amendment packet including Board Memo and Amendment Form Board approved copy of the original contract and any prior Amendments.
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Contractor Information

Contractor Name	Always Be Learning, Inc.	Contractor's Contact	Jonathan Hume		
OUSD Vendor ID #	004953	Title	Head of State		
Street Address	612 Howard Street, Suite 400	City, State	San Francisco, CA	Zip Code	94118
Telephone	(678) 849-0431	Email (required)	jan@ablschools.com		

Compensation and Terms

Current Contract Amount	\$23,727.00	OUSD Vendor ID #	004953	Start Date of Original Contract	05/1/2018
Amount of Increase	\$19,292.00	Original PO #	P1809338	Current Term End Date	05/31/2019
Amount of Decrease		New Requisition #	VR19-09559	New Term End Date*	09/15/2019
New Total Contract Amount	\$43,019.00	% Change		*Must be no more than five years from the start date	

Budget Information (If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition)

Requisition No.	Budget Number	Resource Name	Amount
VR19-09559	010-9333-0-3800-2110-5825-912-9120-1414-0101-99999	Measure N	\$23,727.00

Contract History

Agreement	OUSD Enactment #	Exact Name of Contract	Contract Amount
	18-0935	Always Be Learning, Inc.	\$23,727.00
Amend #	OUSD Enactment #	General Description of Reason for Amendment	Increase/Decrease Amount
1		Always Be Learning, Inc. (ABL), will provide technology and services from 5 to 8 OUSD schools, impacting a total of 8,167 students	\$19,292.00

OUSD Contract Originator Information

Name of OUSD Contact	Preston Thomas	Email	PRESTON.THOMAS @ousd.org		
Site/Dept. Name	High School Linked Learning Office	Site #	912	Phone	879-4118

Approval and Routing (in order of approval steps)

Services above original contract cannot be provided before the amendment is fully approved and the PO amount is increased by Procurement.

	Signature - Approved	Denied - Reason	Date
1. Administrator/Manager			3/23/19
2. Resource Manager (if restricted funds)			3/22/19
3. Network Superintendent/Executive Director			3/23/19
4. Chief/Deputy Chief			4/2/19
5. Legal (if increase takes contract above \$92,600)			
6. Superintendent, Board of Education	Signature on the legal contract		

Board Office Use: Legislative File Info.	
File ID Number	18-0757
Introduction Date	6/6/18
Enactment Number	18-0935
Enactment Date	6/6/18 os



OAKLAND UNIFIED SCHOOL DISTRICT
Community Schools, Thriving Students

SERVICES ORDER ADDENDUM

10. Additional Terms

A. Conduct of VENDOR/CONTRACTOR. VENDOR will adhere to the following staff requirements and provide OUSD with evidence of staff qualifications:

1. **Tuberculosis Screening** AGENCY agents who work with students must submit to a tuberculosis risk assessment as required by Education Code 49406 within the prior 60 days. If tuberculosis risk factors are identified, AGENCY agents must submit to an intradermal or other approved tuberculosis examination to determine that he/she is free of infectious tuberculosis. If the results of the examination are positive, the AGENCY agent shall obtain an x-ray of the lungs. At his/her discretion, AGENCY agent may choose to submit to the examination instead of the risk assessment.
2. **Fingerprinting of Employees and Agents.** The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to CONTRACTOR's services under this Agreement and CONTRACTOR certifies its compliance with these provisions as follows:
"CONTRACTOR certifies that CONTRACTOR has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all CONTRACTOR's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by OUSD, or acting as independent contractors of CONTRACTOR, who may have contact with OUSD pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. Contractor further certifies that it has received and reviewed fingerprint results for each of its Employees and Contractor has requested and reviews subsequent arrest records for all Employees who may come into contract with OUSD pupils in providing services to the District under this Agreement.

B. Non-Discrimination. It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the CONTRACTOR agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy. In addition, the CONTRACTOR agrees to require like compliance by all its subcontractor(s). Contractor shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex or sexual orientation.

C. Indemnification. CONTRACTOR agrees to hold harmless, indemnify, and defend the District and its officers, agents and employees from any and all third party claims or losses resulting from injury, damage, or death of any person arising out of or in any way related to the performance of this Agreement. The District agrees to hold harmless, indemnify and defend, the CONTRACTOR its officers, agents and employees from any

and all third party claims or losses resulting from injury, damage, or death of any person arising out of or in any way related to the performance of this Agreement.

D. Drug-Free / Smoke Free Policy. No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, CONTRACTORS, or subcontractors are to use drugs on these sites.

E. Notices: All notices and invoices provided for under this Agreement shall be in writing and either personally delivered during normal business hours or sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other party at the address set forth below:

OUSD Representative:

Name: Preston Thomas
Site /Dept: High School Linked Learning
Address: 1000 Broadway, Suite 440
Oakland, CA 94607
Phone: (510) 879-4118
Email: Preston.Thomas@ousd.org

CONTRACTOR:

Name: Jonathan Hume
Title: Head of Sales
Address: 612 Howard Street, 4th Floor
San Francisco, CA 94105-3944
Phone: (678) 849-0431
Email: sales@ablschools.com

Notice shall be effective when received if personally served or, if mailed, three days after mailing. Either party must give written notice of a change of address. CONTRACTOR shall submit invoices in a form that includes the name of the person providing the service, the service performed, the date service was rendered, and the hours spent on the work.

This is not an employment contract. CONTRACTOR, in the performance of this Agreement, shall be and act as an independent contractor. CONTRACTOR understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of OUSD, and are not entitled to benefits of any kind or nature normally provided employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONTRACTOR shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to CONTRACTOR's employees. In the performance of the work herein contemplated, CONTRACTOR is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, OUSD being interested only in the results obtained.

F. Insurance:

1. Commercial General Liability Insurance: Unless specifically waived by OUSD, the following insurance is required:

- i. If CONTRACTOR employs any person to perform work in connection with this Agreement, CONTRACTOR shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease. CONTRACTOR is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the Work of this Contract.

- ii. CONTRACTOR shall maintain Commercial General Liability insurance, including automobile coverage with limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured. Evidence of insurance must be attached.

Endorsement of OUSD as an additional insured shall not affect OUSD's rights to any claim, demand, suit or judgment made, brought or recovered against CONTRACTOR. The policy shall protect CONTRACTOR and OUSD in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.

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

H. 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.

I. Signature Authority. Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been given the proper authority and empowered to enter into this Agreement.

J. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: The District certifies to the best of its knowledge and belief, that it and its officials: 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/portal/public/SAM>

OAKLAND UNIFIED SCHOOL DISTRICT

ALWAYS BE LEARNING INC.

Aimee Long
President, Board of Education

6/7/18
Date

Jonathan Hume 4/27/2018
Date

J. Hume
Superintendent and Secretary,
Board of Education

6/7/18
Date

Jonathan Hume, Head of Sales
Print Name, Title

Approved as to Form

Maile O'Brien
General Counsel

OUSD or the District verifies that the Contractor does not appear on the Excluded Parties List at <https://www.sam.gov/>

**DATA SHARING AGREEMENT
BY AND BETWEEN ALWAYS BE LEARNING, INC
AND OAKLAND UNIFIED SCHOOL DISTRICT**

I. PARTIES

This Data Sharing Agreement ("Agreement") establishes the terms by which data will be shared between Always Be Learning, Inc. ("RECIPIENT") and Oakland Unified School District ("OUSD" or "DISTRICT") (collectively referred herein as "the Parties").

This Agreement is further to the Service Agreement entered into by the Parties effective 5/1/18.

II. PURPOSE

Recipient is a software service provider enabling the creation and maintenance of a master schedule.

III. TERM

The term of this Agreement shall be from 5/1/18 to 5/31/19. The term may be extended with the written consent of both Parties.

IV. CONTENT/SCOPE OF SERVICE

Subject to the conditions stated herein, the Parties agree to share the following data:

Information related to student and teacher scheduling

V. FERPA – PERSONALLY IDENTIFIABLE INFORMATION

*Check/Initial
all that apply*

_____ The data to be shared under this Agreement does **not** include personally identifiable information of students as defined under the Family Education Records Privacy Act of 1974 ("FERPA") (see 20 U.S.C. § 1232g).

_____ The data to be shared under this Agreement **does** include personally identifiable information of students as defined under the Family Education Records Privacy Act of 1974 ("FERPA") (see 20 U.S.C. § 1232g). Disclosure is permitted based on the following exemption (check all that apply):

_____ RECIPIENT is a contractor, consultant, volunteer, or other party to whom the DISTRICT has outsourced institutional services or functions and:

DATA SHARING AGREEMENT

OAKLAND UNIFIED SCHOOL DISTRICT/Always Be Learning, Inc

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- (1) Performs an institutional service or function for which the DISTRICT would otherwise use employees;
- (2) Is under the direct control of DISTRICT with respect to the use and maintenance of education records; and
- (3) Is subject to the requirements of 34 C.F.R. § 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

-
- RECIPIENT receives personally identifiable student information in connection with financial aid for which the student has applied or which the student has received, and the information is necessary for such purposes as to:

- (A) Determine eligibility for the aid;
- (B) Determine the amount of the aid;
- (C) Determine the conditions for the aid; or
- (D) Enforce the terms and conditions of the aid.

-
- RECIPIENT is an organization conducting studies for, or on behalf of the DISTRICT to:

- (A) Develop, validate, or administer predictive tests;
- (B) Administer student aid programs; or
- (C) Improve instruction.

AND

RECIPIENT further agrees:

- (A) The study shall be conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the RECIPIENT who have legitimate interests in the information;
- (B) The information shall be destroyed when no longer needed for the purposes for which the study was conducted; and
- (C) The RECIPIENT shall use personally identifiable information from education records only to meet the purpose or purposes of the study as stated in this Agreement.

-
- RECIPIENT is, subject to the requirements of 34 C.F.R. § 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled and the disclosure is for purposes related to the student's enrollment or transfer.

_____ RECIPIENT is, subject to the requirements of 34 C.F.R. § 99.35, an authorized representative of:

- (i) The Comptroller General of the United States;
- (ii) The Attorney General of the United States;
- (iii) The Secretary; or
- (iv) State and local educational authorities.

_____ RECIPIENT will first obtain written consent from the student's parent/legal guardian (or the student if s/he is no longer a minor) and provide copies to the DISTRICT. The consent form will identify with specificity the information to be disclosed.

VI. DIRECTORY INFORMATION

_____ The data to be shared under this Agreement includes identifiable "directory information" as defined under 20 U.S. Code § 1232g (a)(5). Such information may include the student's:

- name,
- address,
- telephone listing,
- date and place of birth,
- major field of study,
- participation in officially recognized activities and sports,
- weight and height of members of athletic teams,
- dates of attendance,
- degrees and awards received, and/or
- the most recent previous educational agency or institution attended by the student.

a. The Parties understand that the following information is not "directory information" and cannot be disclosed as identifiable information unless an exemption applies under Section IV above:

- ethnicity or race
- gender
- nationality
- social security number
- religious affiliation
- grades or grade point average (GPA)

b. **Public Notice.** Prior to disclosure of directory information, the District shall give public notice on an annual basis which identifies the categories of such information and the RECIPIENT. Parents shall have a reasonable period of time after such notice has been given for to inform the DISTRICT that any or all of the information designated should not be released without the parent's prior consent. (20 U.S. Code § 1232g (a)(5); see also California Education Code sections 49061, 49073.)

DATA SHARING AGREEMENT

OAKLAND UNIFIED SCHOOL DISTRICT/Always Be Learning, Inc

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- c. **McKinney-Veto Homeless Assistance Act.** RECIPIENT shall not receive identifiable information (directory or otherwise) regarding students who are regarded as “homeless children and youths” under the McKinney-Veto Homeless Assistance Act (see 42 U.S. Code § 11434a) unless RECIPIENT obtains express written consent from the student’s parent/legal guardian (or the student if s/he is not a minor). Students covered under this requirement shall include:
- i. children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals;
 - ii. children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of 42 U.S. Code § 11302(a)(2)(C));
 - iii. children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
 - iv. migratory children (as such term is defined in 20 U.S. Code § 6399) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii) above.

VII. COPPA

- a. To the extent RECIPIENT shall be obtaining data directly from students (and not pursuant to the Services Agreement), RECIPIENT agrees to comply with all obligations (if applicable) of the Children’s Online Privacy Protection Act (15 U.S.C. §§ 6501–6506).

VIII. RECIPIENT’S RESPONSIBILITIES

- a. **Scope of Access.** Recipient shall obtain access to only those education records in which they have legitimate educational interests.
- b. **Compliance.** All RECIPIENT employees, contractors and agents of any kind shall comply with all applicable provisions of this Agreement, FERPA and any other state or federal laws with respect to the data shared under this Agreement. RECIPIENT agrees to require and maintain an appropriate confidentiality agreement from each employee, contractor or agent with access to data pursuant to this Agreement. Nothing in this paragraph authorizes sharing data provided under this Agreement with any other entity for any purpose other than completing the RECIPIENT’S work under this Agreement (provided RECIPIENT may anonymize and aggregate data provided such use in accordance with applicable law).

DATA SHARING AGREEMENT

OAKLAND UNIFIED SCHOOL DISTRICT/Always Be Learning, Inc

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- c. **Storage.** RECIPIENT shall maintain all data obtained pursuant to this Agreement in a secure computer environment and not copy, reproduce or transmit data obtained pursuant to this Agreement except as necessary to fulfill the purpose of the original request. All copies of data of any type, including any modifications or additions to data from any source that contains information regarding individual students, are subject to the provisions of this Agreement in the same manner as the original data. The ability to access or maintain data under this Agreement shall not under any circumstances transfer from the RECIPIENT to any other institution or entity or unauthorized individual or agent. Any cloud storage or processing will require the express written consent of DISTRICT. Data from DISTRICT shall not be taken outside the United States.
- d. **Publication.** RECIPIENT shall not to disclose any data obtained under this Agreement in a manner that could identify an individual student, except as authorized by FERPA, to any other entity. RECIPIENT may publish results of general information (e.g., scope of participation), but specifically agrees to delete any data items that include identifiable student information, and to require all employees, contractors and agents of any kind to also abide by this paragraph.
- e. **Data Transfer.** Data provided under this Agreement shall be transferred via a secure and private channel.
- f. **Prohibited Disclosure.** RECIPIENT shall not provide any data obtained under this Agreement to any party ineligible to receive data protected by FERPA or prohibited from receiving data from any entity by virtue of a finding under Sections 99.67(c), (d), or (e) of Title 34, Code of Federal Regulations.
- g. **Destruction of Data.** RECIPIENT shall destroy all data and provided verification in writing of the destruction of all copies of the data obtained under this Agreement to the DISTRICT within six (6) months if this Agreement is terminated for any reason. All data no longer needed shall be destroyed or returned to the DISTRICT in compliance with 34 CFR Section 99.35(b)(2). RECIPIENT agrees to require all employees, contractors, or agents of any kind to comply with this provision.
- h. **Data Requests.** The DISTRICT may decline to comply with a request if it determines that providing the data requested would not be in the best interest of the DISTRICT. All requests shall include a written statement of the purpose for which it is requested and an estimation of the time needed to complete the project for which the data is requested. Data requests may be submitted in writing by post, electronic mail or facsimile.
- i. **Assignment/Subcontractors.** RECIPIENT shall not assign or subcontract this Agreement to any other entity without the express written consent of the DISTRICT.

DATA SHARING AGREEMENT

OAKLAND UNIFIED SCHOOL DISTRICT/Always Be Learning, Inc

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- j. **Authorized Representative.** The authorized representatives shall be responsible for transmitting all data requests and maintaining a log or other record of all data requested and received pursuant to this Agreement, including confirmation of the completion of any projects and the return or destruction data as required by this Agreement. The DISTRICT or its agents may upon request review the records required to be kept under this section.

OUSD Representative:

Name: Preston Thomas
Site /Dept: High School Linked Learning
Address: 1000 Broadway, Suite 440
Oakland, CA 94607
Phone: (510) 879-4118
Email: Preston.Thomas@ousd.org

CONTRACTOR:

Name: Jonathan Hume
Title: Head of Sales
Address: 612 Howard Street, 4th Floor
San Francisco, CA 94105-3944
Phone: (678) 849-0431
Email: sales@ablschools.com

- k. **Termination.** This Agreement takes effect upon signature by the authorized representative of each party and will remain in effect until termination of this agreement (see Term above). The parties further understand that the DISTRICT may cancel this Agreement at any time, upon thirty (30) days' notice. The DISTRICT specifically reserves the right to cancel this Agreement should the DISTRICT, in its sole discretion, determine that student information has been released in a manner inconsistent with this Agreement, has not been maintained in a secure manner, or that substantially similar data access has become generally available through any other mechanism approved by the DISTRICT.
- l. **Ownership.** RECIPIENT understands that this Agreement does not convey ownership of data to the RECIPIENT. The DISTRICT shall remain owner of the data at all times.
- m. **Intellectual Property.** RECIPIENT shall not publish any work based on the unaggregated or non-anonymous data obtained through this Agreement without the prior written consent of the DISTRICT. In order to protect the confidentiality of previously identified directory information disclosed to the RECIPIENT, the authorized representatives agree to provide to the DISTRICT any proposed publications or presentations which are to make public any findings, data, or results based on the data obtained through this Agreement for the DISTRICT's review at least thirty (30) days prior to submission of said publication or the date of the presentation. The DISTRICT reserves the right to withdraw consent at any time.
- n. **Distribution.** RECIPIENT will provide the DISTRICT with an electronic copy of the final versions of any and all reports or other documents based on the data obtained through this Agreement (if applicable). The DISTRICT, as the owner of the data, reserves the right to distribute and otherwise use the final report and associated documents in its discretion, in sum or in part. The RECIPIENT or its agents retain the right to publish findings in other publications, provided that prior

DATA SHARING AGREEMENT


OAKLAND UNIFIED SCHOOL DISTRICT/Always Be Learning, Inc

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notice of report is first shared with the DISTRICT and the DISTRICT's approval is first obtained.

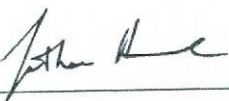
- o. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regards to data sharing and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- p. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been given the proper authority and empowered to enter into this Agreement.
- q. **Applicable Law.** This Agreement shall be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement. Should any litigation be commenced between the parties hereto relating to the construction, effect, breach or enforcement of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

OAKLAND UNIFIED SCHOOL DISTRICT

By: 
Kyla Johnson-Trammell, Superintendent
Oakland Unified School District


Date: 6/7/18

ALWAYS BE LEARNING, INC.

By: 
Jonathan Hume, Head of Sales
Print Name, Title

Date: 4/27/2018

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE

By: 
Marion McWilliams, General Counsel

PROFESSIONAL SERVICES CONTRACT ROUTING FORM 2017-2018

Basic Directions

Additional directions and related documents are in the Knowledge Center on the Intranet and Contracts Online 2.0 Tool

Services cannot be provided until the contract is fully approved and a Purchase Order has been issued.

- Contractor and OUSD contract originator (principal or manager) reach agreement about scope of work and compensation.
- Ensure contractor meets the consultant requirements (including the Excluded Party List, Insurance and Talent Consultant Verification)
- Contractor and OUSD contract originator complete the contract packet together and attach required attachments.
- Within 2 weeks of creating the requisition, the OUSD contract originator submits **complete** contract packet for approval to Procurement.

Attachment Checklist

- For All Consultants: Authorization to Work, which indicates vendor has cleared the registration and background check
- For All Consultants: Results page of the Excluded Party List (<https://www.sam.gov/>)
- For All Consultants: Statement of qualifications (organization); or resume (individual consultant).

OUSD Staff Contact Emails about this contract should be sent to: (required) Preston.thomas@ousd.org

Contractor Information

Contractor Name	Always Be Learning Inc. (abl)	Agency's Contact	Jonathan Hume		
OUSD Vendor ID #	I007614	Title	Head of Sales		
Street Address	612 Howard Street, 4th Floor	City	San Francisco	State	CA Zip 94105-3944
Telephone	1-678-849-0431	Email (required)	sales@ablschools.com		
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Worked as an OUSD employee?	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

Compensation and Terms – Must be within the OUSD Billing Guidelines

Anticipated start date	May 1, 2018	Date work will end	May 31, 2019	Other Expenses	
Pay Rate Per Hour (required)		Number of Hours (required)			

Budget Information

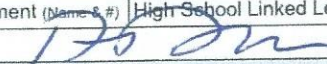
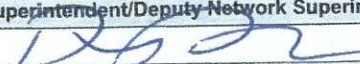
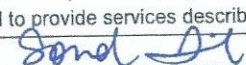
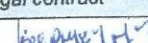
If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.

Resource #	Resource Name	Org Key	Object Code	Amount
9196	Atlantic Philanthropie	9121215202	5825	\$ 23,727.00
			5825	\$ 0.00
			5825	\$ 0.00
Requisition No. (required) R0183823			Total Contract Amount \$ 23,727.00	

Approval and Routing (in order of approval steps)

Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.

OUSD Administrator verifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>)

1.	Administrator / Manager (Originator)	Name	Preston Thomas	Phone	510 879-4118
	Site/Department (Name & #)	High School Linked Learning		Fax	510 879-4112
	Signature			Date Approved	5/3/18
2.	Resource Manager , if using funds managed by: <input type="checkbox"/> State and Federal <input type="checkbox"/> Quality, Community, School Development <input type="checkbox"/> Community Schools & Student Services <input type="checkbox"/> Risk Mgmt				
	<input type="checkbox"/> Scope of work indicates compliant use of restricted resource and is in alignment with school site plan (CSSSP)				
	Signature			Date Approved	
3.	Network Superintendent/Deputy Network Superintendent				
	Signature			Date Approved	5/3/18
4.	Chiefs / Deputy Chiefs Consultant Aggregate <input type="checkbox"/> Under <input type="checkbox"/> Over \$ _____				
	<input type="checkbox"/> Services described in the scope of work align with needs of department or school site				
	<input type="checkbox"/> Consultant is qualified to provide services described in the scope of work				
	Signature			Date Approved	5/8/18
5.	Superintendent, Board of Education Signature on the legal contract				
Legal	Required if not using standard contract	Approved		Denied - Reason	Date
Procurement	Date Received	PO Number			

SAM Search Results
List of records matching your search for :

Search Term : always* be learning* inc.*
Record Status: Active

No Search Results