

Board Office Use: Legislative File Info.	
File ID Number	19-2099
Introduction Date	11/13/19
Enactment Number	19-1660
Enactment Date	11/13/19 lf



Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Sondra Aguilera, Chief Academic Officer
Preston Thomas, Network Superintendent, High Schools

Board Meeting Date November 13, 2019

Subject Master Subscription and Professional Services Agreement
Contractor: Lingk, Inc., Danville, CA
Services For: Community Schools and Student Services Department

Action Requested and Recommendation Approval by the Board of Education of a Master Subscription and Professional Services Agreement between the District and Lingk, Inc., Danville, CA, for the latter to provide professional services to support the Aeries and Salesforce Education Data Architecture (EDA) integration for the period of October 10, 2019 through October 9, 2020, in an amount not to exceed \$10,000.00.

Background

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

Salesforce.org is working with OUSD to leverage Salesforce technology to assist the Community Schools and Student Services Department to prepare students for success in K-12 and beyond with comprehensive, real-time student information, and tools for staff and parents to communicate and collaborate.

Approximately six OUSD schools will participate in a year-long pilot of a Salesforce solution for managing the Coordination of Services Team (COST) process at their school site. The primary users of this solution are school-based Community School Managers, school-based COST teams, school staff responsible for submitting COST referrals, and District office staff responsible for the student support experience. Specifically: 1) School staff will use the solution to submit COST referrals, 2) CSMs will use the solution to bundle, agenda, cancel, and prepare COST referrals and meetings, 3) School site COST teams will use the solution to create and track intervention/success plans from COST referrals, and 4) District Office Student Support managers will use the solution to obtain reports and student-level visibility to ensure that COST referrals are being processed in a timely manner and with efficacy.

Competitively Bid

Was this contract competitively bid? No.
If no, exception: Professional Services Agreement of less than \$92,600.00.

Fiscal Impact

Funding resource(s): 9225/Kaiser Health & Wellness Grant, in the amount of \$10,000.00.
010-92258-0-1110-1000-5825-922-9220-1211-0501-99999

Attachments

- Master Subscription and Professional Services Agreement
- Service Order

Lingk, Inc.
Master Subscription & Professional Services Agreement

1. Introduction

This is a Master Subscription and Professional Services Agreement (“Agreement”) between Lingk Inc. (“Lingk”), a Delaware Corporation and Oakland Unified School District (“Customer”), in which Lingk shall make the Lingk Platform and related products (“Services”) available to Customer as set forth in the attached Service Order(s).

2. Platform Subscription and Professional Services Terms

Terms of the Platform Subscription including the time period, financial considerations, and other terms are set forth in attached Service Order(s), Attachments and Exhibits, all of which are part of this Agreement. The terms of Professional Services work to be performed (if any) and other terms are set forth in attached Service Order(s) and will also include a Statement of Work (SOW). Additional Service Orders or Statements of Work may be added from time to time as the Parties agree. All Service Orders, Statements of Work Attachments and Exhibits shall be considered legally binding attachments to this Agreement.

3. Non-Disclosure of Confidential Materials

Each party will treat confidential information disclosed by the other party as confidential information, held in strict confidence and only disclosed internally to employees who have a need to know (hereinafter “Confidential Information”). Confidential Information includes education records as defined by FERPA, (hereinafter “Student Information”), and in addition to the requirements of this Section 3, Student Information is subject to the additional protections as required by law and as set forth in this Agreement. Confidential information does not include information which is now or hereafter becomes available to the public through no fault of the receiving party, was known by receiving party prior to business relationship, was independently developed by receiving party, or was acquired through a third party which has no obligation of confidentiality to the disclosing party. Any violation of confidentiality shall be considered a material breach of this Agreement.

4. Customer Data and Ownership

Customer retains all rights in Customer’s data (“Customer Data”). Customer warrants that it has the legal right to provide Lingk access to Customer Data and that such access to Customer Data doesn’t violate the laws of any jurisdiction. Customer will indemnify Lingk with respect to third party or government claims regarding the ownership or legality of its Customer Data.

Lingk and Customer agree to operate in compliance with the Family Educational Rights and Privacy Act (“FERPA”), and any other state or federal privacy laws or Customer policies which may apply to Customer Data. We provide the Services as an outsourced institutional function under FERPA 34 CFR Part 99.31(a)(1). Lingk shall ensure that any subcontractors or agents to whom Lingk may release Student Information complies with the provisions of this Section 4. Lingk agrees that prior to releasing any Student Information to any subcontractor or agent, Lingk will require such subcontractor or agent to acknowledge its obligations to comply with the FERPA requirements articulated in this section. Improper redisclosure of Student Information can result in Lingk being denied access to such information for at least 5 years. Lingk shall return or certify destruction of all

Student Information (including that provided to or obtained by its subcontractor or agents) upon termination of this Agreement. Link will provide access to Customer Data only to those Link employees, subcontractor and agents who need to access the data to fulfill Link's obligations under this Agreement. Link may use Customer data without individual identifying information to troubleshoot, improve or otherwise verify that the services provided hereunder are operating properly.

Link agrees to adhere to all requirements in applicable state and in federal law with respect to a data breach related to the Student Information, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach. Link shall provide notification to Customer within a reasonable amount of time of the incident, and not exceeding forty-eight (48) hours. The security breach notification shall be written in plain language, shall be titled "Notice of Data Breach," and shall present the information described herein under the following headings: "What Happened," "What Information Was Involved," "What We Are Doing," "What You Can Do," and "For More Information." Additional information may be provided as a supplement to the notice.

Customer shall have the right during the term of the Agreement for any reason whatsoever in Customer's sole discretion, to access, copy and/or remove any Customer data and information from Link. Notwithstanding the foregoing, Customer understands that Link does not store Customer data and instead passes the Customer data to Customer's data store. Accordingly, Link may not be able to, independent of Customer's data store, supply Customer access to Customer data.

Any use or access to the Service by anyone under 13 is strictly prohibited and in violation of this Agreement.

The parties agree that as between them, all rights including all intellectual property rights in and to data and information provided by Customer or on behalf of Customer in the performance of services hereunder shall remain the exclusive property of Customer. Link has a limited, nonexclusive license to use such data and information solely for the purpose of performing its obligations under this Agreement. This Agreement does not give Link any rights, implied or otherwise, data, information, or intellectual property, except as expressly stated in this Agreement.

Notwithstanding any other part of this Agreement, Link shall not sell or lease Customer Data, either singularly or in the aggregate, regardless of whether it contains personally identifiable information without written permission from Customer in each instance. Such permission is not provided in this Agreement and must be provided outside this Agreement.

5. Delivery

Link shall issue to Customer login credentials to the Link Platform within three days of the effective date of this Agreement. Link shall deliver Services as set forth in the applicable Service Order which shall contain the description of services, schedule and prices and payment schedule for such Services.

6. Warranties

Lingk warrants that it has the legal right to enter into this Agreement. Due to the unreliable nature of the Internet as well as operating systems and Internet browsers, LINGK MAKES NO WARRANTIES AS TO PERFORMANCE OR FITNESS FOR A PARTICULAR PURPOSE. LINGK SPECIFICALLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS.

7. Mutual Indemnification

Each Party ("Indemnifying Party") agrees to indemnify the other Party ("Indemnified Party") for any and all costs, judgments and fees arising out of any third party claim that the Indemnifying Party infringed any patent, copyright, trade secret, or other proprietary right of a third party, provided that the Indemnifying Party is notified promptly and given assistance and cooperation by the Indemnified Party. The Indemnifying Party will defend the other Indemnified Party and hold it harmless from any damages or costs associated with such suit. In any event, the Parties agree that the maximum damages each may pay to the other pursuant to this Section 7 shall not exceed the Indemnifying Party's insurance limits. Neither Party shall be liable for any indirect, special or incidental damages or loss of business, loss of profits, cost of, production downtime or similar consequential damages.

8. No Transfer of Intellectual Property.

Nothing in this License shall be construed to transfer any intellectual property of one Party to the other Party including any trademark, trade secret, copyright, patent or other right except the right to use Lingk under the terms of this Agreement.

9. Insurance:

LINGK 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.

LINGK shall maintain Commercial General Liability insurance, including automobile coverage, with limits of at least One Million Dollars (\$1,000,000) per occurrence for corporal punishment, sexual misconduct, harassment, bodily injury and property damage.

The coverage shall be primary as to Customer and shall name Customer as an additional insured. Evidence of insurance must be attached. Endorsement of Customer as an additional insured shall not affect Customer's rights to any claim, demand, suit or judgment made, brought or recovered against LINGK. The policy shall protect LINGK and Customer 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.

If LINGK is offering Customer professional advice under this Contract, LINGK shall maintain Errors and Omissions insurance or Professional Liability insurance with coverage limits of One Million Dollars (\$1,000,000) per claim.

10. Miscellaneous Terms

The parties agree that; jurisdiction governing this Agreement shall be California; this agreement is personal to and not assignable by Customer; notices shall be via email with the receiving party agreeing to acknowledge receipt of such notice within 2 business days; the waiver of any term of this agreement shall not vitiate any other parts of the agreement; that this and the accompanying attachments are the entire Agreement; the parties are operating only as Service Provider and Customer; Lingk is a subcontractor, not an employee of Customer and is solely responsible for all Lingk employee benefits, taxes and any other requirements; there shall not be any third party beneficiaries to this Agreement; Customer shall within 5 days of Lingk' request and no more often than twice per year send Lingk a letter containing the statement, "Customer is in compliance with the Agreement between Customer and Lingk dated --/--/--." Failure to comply with this condition shall be a material breach under this Agreement, Lingk may reference Customer name on Lingk website.

11. Termination and Renewals

Either Party may terminate this agreement for cause due to a material breach by the other party if such breach goes uncured for more than 30 days after notification by the non-breaching party.

At the end of the term of this Agreement, Lingk shall de-identify any Customer Data in our possession within 30 days of the end of the term of this Agreement. Upon expiration or

Lingk Inc. Master Subscription Agreement

termination of Services, Link will deliver to Customer all work performed under this Agreement and return to Customer in a readily usable format, remove, or securely delete or destroy, as directed by Customer, all Customer Data.

This Agreement will remain in effect unless terminated by either Party with ninety days' notice to the other Party. Such termination shall be effective at the end of the then current service period.

LINGK:

By: Paul Roberge

Name: Paul Roberge

Title: President

Date: 09-17-19

CUSTOMER:

By: Sara JE

Name: Sandra Aguilera

Title: Chief Academic Officer

Date: 10/7/2019

OAKLAND UNIFIED SCHOOL DISTRICT

Office of the General Counsel

APPROVED FOR FORM & SUBSTANCE

By: [Signature] 10/2/19

Joshua R. Daniels, General Counsel

Sara JE 10/9/19

SERVICE ORDER A.

<p>This is a Service Order A. to the Master Subscription & Professional Services Agreement between Lingk and Customer.</p>	
Effective Date	Upon authorized signature dated below
<p>Lingk Inc Contact Information:</p> <p>Paul Roberge President Lingk, Inc. 4115 Blackhawk Plaza Circle, Ste. 100 Danville, CA 94506 Email: paul@lingk.io Ph: 925.648.7462</p>	<p>Customer Contact Information:</p> <p>Name: Title: Oakland Unified School District (OUSD) Address 1: Address 2: Email: Ph:</p> <p>Billing Contact (if different than above)</p> <p>Name: Title: Address 1: Address 2: Email: Ph:</p>
Customer PO # (if required to invoice)	
Initial License Term	12 months Auto renews as an annual license term.
<p>Subscription Licenses:</p> <ul style="list-style-type: none"> • Lingk Team Plan • Included: • Users – unlimited • Workspaces – unlimited • Recipes Deployed – 5 pack • Standard Connectors – all • Premium Connectors – all • 10M Data Processing Rows per month 	<p>\$5,000 annual subscription license fee (\$5,000 paid with customer PO19-09719 and requisition VR19-11495 covering the initial license term 4-4-2019 to 4-4-2020)</p>

<p>Professional Services:</p> <p>Integration services to support the Aeries and Salesforce EDA integration - Phase 1, includes:</p> <ul style="list-style-type: none"> • Discovery, building, testing, deployment of integration recipes using customer's Link platform license: <ul style="list-style-type: none"> ○ Implementation services required for project management, mapping, batch recipe building, testing and production deployment using the customer Link platform account. ○ Scope: Build two batch recipes to extract and transform data from the Aeries source REST APIs and write to the mapped Salesforce target EDA (Education Data Architecture) objects. • Includes up to 40 hours services for the Phase 1 project. <p>Integration Managed Services Option: Link can provide ongoing maintenance of customer's recipes and integrations in leu of customer self-service for an additional annual service fee.</p> <p>Additional services block of hours to be quoted upon request at \$250 per hour.</p>	<p>\$10,000 one-time professional services fee</p>
<p>Total Fees this order:</p>	<p>\$10,000</p>

<p>Support</p>	<p>Standard Support.</p>
<p>Payment Terms</p>	<p>Billed Annually. Due on signing and invoice. Nonrefundable.</p>
<p>Special Terms</p>	<p>Customer agrees to assist in Link's marketing campaigns (i.e., case study, use of customer logo on Link's web site and documentation).</p>
<p>Pricing Expiration</p>	<p>09/20/2019</p>

LINGK:

By: Paul Roberge

Name: Paul Roberge

Title: President

Date: 09-17-19

319-5/4553666.2

CUSTOMER:

By: Sondra Aguilera

Name: Sondra Aguilera

Title: Chief Academic Officer

Date: 10/7/2019

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

By: Joshua R. Daniels 10/2
Joshua R. Daniels, General Counsel

Sondra Aguilera 10/9/19

Sondra Aguilera
Chief Academic Officer

Aimee Eng 11/14/19

Aimee Eng
President, Board of Education

Kyla Johnson Trammel 11/14/19

Kyla Johnson Trammel
Secretary, Board of Education

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