

Board Office Use: Legislative File Info.	
File ID Number	17-2132
Introduction Date	11-8-17
Enactment Number	17-1655
Enactment Date	11-8-17



OAKLAND UNIFIED SCHOOL DISTRICT
Community Schools, Thriving Students

Memo

To Board of Education
From Kyla Johnson-Trammell, Superintendent
Board Meeting Date 11-8-17
(To be completed by Procurement)
Subject Professional Services Contract - Emma, Inc.
- Communications (site/department)

Action Requested Approval of professional services contract between Oakland Unified School District and Emma, Inc.. Services to be primarily provided to Communications for the period of 7/01/17 through 7/31/18.

Background Emma is an online platform that provides templates, strategy and analytics for mass email distribution.
A one paragraph explanation of why the consultant's services are needed.

Discussion Emma will provide the District with custom email templates that are built specifically for District brand, usage and needs of the Communications department. The Communications department will also receive trainings, assistance with content strategy and robust analytics. In addition, the Communications department will be able to create sub accounts for schools to use for communications purposes.
One paragraph summary of the scope of work.

Recommendation Approval of professional services contract between Oakland Unified School District and Emma, Inc.. Services to be primarily provided to Communications for the period of 7/01/17 through 7/31/18.

Fiscal Impact Funding resource name (please spell out) Communications Unrestricted not to exceed \$ 13,362.00

- Attachments**
- Professional Services Contract including scope of work
 - Fingerprint/Background Check Certification
 - Insurance Certification
 - TB screening documentation
 - Statement of qualifications



CONTRACT JUSTIFICATION FORM

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

Legislative File ID No. 17-2132

Department: Communications

Vendor Name: Emma, Inc.

Contract Term: Start Date: 7/01/17 End Date: 7/31/18

Annual Cost: \$ 13,362.00

Approved by: Valerie Goode

Is Vendor a local Oakland business? Yes No

Why was this Vendor selected?

Emma is an online platform that provides templates, strategy and analytics for mass email distribution.

Summarize the services this Vendor will be providing.

Emma will provide the District with custom email templates that are built specifically for District brand, usage and needs of the Communications department. The Communications department will also receive trainings, assistance with content strategy and robust analytics. In addition, the Communications department will be able to create sub accounts for schools to use for communications purposes.

Was this contract competitively bid? Yes No

If No, answer the following:

1) How did you determine the price is competitive?

We received quotes from 2 other providers.

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**

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OAKLAND UNIFIED SCHOOL DISTRICT

Community Schools, Thriving Students

PROFESSIONAL SERVICES CONTRACT 2017-2018

This Agreement is entered into between Emma, Inc.

(CONTRACTOR) and Oakland Unified School District (OUSD). OUSD is authorized by Government Code Section 53060 to contract for the furnishing of special services and advice in financial, economic, accounting, engineering, legal, and administrative matters with persons specially trained, experienced, and competent to perform such services. CONTRACTOR warrants it is specially trained, experienced, and competent to provide such services. The parties agree as follows:

- Services:** CONTRACTOR shall provide the services ("Services" or "Work") as described in **Exhibit "A,"** attached hereto and incorporated herein by reference.
- Terms:** The term of this agreement shall be 7/01/17 (or the day immediately following approval by the Superintendent if the aggregate amount CONTRACTOR has contracted with the District is below \$ 88,300.00 in the current fiscal year; or, approval by the Board of Education if the total contract(s) exceed \$ 88,300.00, whichever is later) to 7/31/18. The work shall be completed no later than 7/31/18.
- Compensation:** OUSD agrees to pay CONTRACTOR for services satisfactorily rendered pursuant to this Agreement. The compensation under this Contract shall not exceed Thirteen thousand, three hundred sixty two Dollars (\$ 13,362.00) [per fiscal year], at an hourly billing rate not to exceed _____ per hour. This sum shall be for full performance of this Agreement and includes all fees, costs, and expenses incurred by Contractor including, but not limited to, labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs, and other costs.

If CONTRACTOR will be compensated hourly for services provided under this Contract, CONTRACTOR shall describe in Exhibit "A," attached hereto, the specific scope of services to be delivered on an hourly basis to OUSD.

OUSD shall not be liable to CONTRACTOR for any costs or expenses paid or incurred by CONTRACTOR in performing services for OUSD, except as follows: _____

Payment for Work shall be made for all undisputed amounts in monthly installment payments within forty-five (45) days after CONTRACTOR submits an invoice to OUSD for Work actually completed and after OUSD's written approval of the Work, or the portion of the Work for which payment is to be made.

The granting of any payment by OUSD, or the receipt thereof by CONTRACTOR, shall in no way lessen the liability of CONTRACTOR to correct unsatisfactory work, although the unsatisfactory character of that work may not have been apparent or detected at the time a payment was made. Work, which does not conform to the requirements of this Agreement, may be rejected by OUSD and in that case must be replaced by CONTRACTOR without delay.

- Equipment and Materials:** CONTRACTOR shall provide all equipment, materials, and supplies necessary for the performance of this Agreement *except:* _____ which shall not exceed a total cost of _____.

5. CONTRACTOR Qualifications / Performance of Services:

CONTRACTOR Qualifications: CONTRACTOR warrants it is specially trained, experienced, competent and fully licensed to provide the Services required by this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and/or regulations, as they may apply.

Standard of Care: CONTRACTOR warrants that CONTRACTOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of OUSD. CONTRACTOR's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.

- Invoicing:** Invoices furnished by CONTRACTOR under this Agreement must be in a form acceptable to OUSD. All amounts paid by OUSD shall be subject to audit by OUSD. Invoices shall include, but not be limited to: Contractor name, Contractor address, invoice date, invoice number, purchase order number, name of school or department service was provided to, period of service, name of the person performing the service, date service was rendered, brief description of services provided, number of hours of service, hourly rate, total payment requested.

- 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:

Professional Services Contract

OUSD Representative:

Name: Valerie Goode
Site /Dept.: Communications and Public Affairs
Address: 1000 Broadway, Suite 680
Oakland, California 94607
Phone: 510-879-3666
Email: Valerie.goode@ousd.org

CONTRACTOR:

Name: Karen Hodson
Title: VP of Operations
Address: 9 Lea Avenue
Nashville, Tennessee 37210
Phone: 800-595-4401
Email: khodson@myemma.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.

8. **Status of Contractor:** 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.

9. **Insurance:**

1. 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.

Check one of the boxes below:

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 Agreement.

CONTRACTOR does not employ anyone in the manner subject to the workers' compensation laws of California.

ii. CONTRACTOR 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 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.

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

OR

iv. CONTRACTOR is not required to maintain any insurance under this Agreement. (Completed and approved Waiver of Insurance Form is required from OUSD's Risk Management.) Waiver of insurance does not release CONTRACTOR from responsibility for any claim or demand.

10. **Licenses and Permits:** CONTRACTOR shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this Agreement.

11. **Assignment:** The obligations of CONTRACTOR under this Agreement shall not be assigned by CONTRACTOR without the express prior written consent of OUSD; except that a party may assign this Agreement without consent to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise.

12. **Non-Discrimination:** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, 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, 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,

Professional Services Contract

religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation, or other legally protected class.

13. **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 controlled substances, alcohol or tobacco on these sites.
14. **Indemnification:** CONTRACTOR agrees to hold harmless, indemnify, and defend OUSD and its officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement. CONTRACTOR also agrees to hold harmless, indemnify, and defend OUSD and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to CONTRACTOR in connection with the performance of this Agreement. This provision survives termination of this Agreement.
15. **Waiver:** No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Agreement.
16. **Termination:** OUSD may terminate this Agreement for cause should CONTRACTOR fail to perform any part of this Agreement and not cure such failure within 15 days. In the event of termination for cause, OUSD may secure the required services from another contractor.
17. **Conduct of CONTRACTOR:** In the event that OUSD, in its sole discretion, at any time during the term of this Agreement, desires the removal of any CONTRACTOR related persons, employee, representative or agent from an OUSD school site and, or property, CONTRACTOR shall immediately, upon receiving notice from OUSD of such desire, cause the removal of such person or persons.
18. **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.
19. **OUSD's Evaluation of CONTRACTOR and CONTRACTOR's Employees and/or Subcontractors.** OUSD may evaluate CONTRACTOR's work in any way that OUSD is entitled to do so pursuant to applicable law.
20. **Limitation of OUSD Liability:** Other than as provided in this Agreement, OUSD's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the services performed in connection with this Agreement.
21. **Confidentiality:** CONTRACTOR and all CONTRACTOR's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services.
22. **Conflict of Interest:** CONTRACTOR shall abide by and be subject to all applicable, regulations, statutes or other laws regarding conflict of interest. CONTRACTOR shall not hire any officer or employee of OUSD to perform any service by this Agreement without the prior approval of OUSD Human Resources.

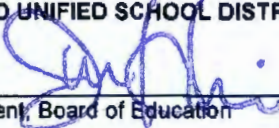
CONTRACTOR affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between CONTRACTOR's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing.

Through its execution of this Agreement, CONTRACTOR acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event CONTRACTOR receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, CONTRACTOR agrees it shall notify OUSD in writing.

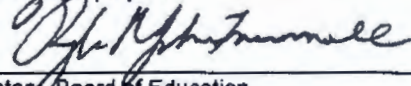
23. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:** CONTRACTOR certifies to the best of his/her/its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this Agreement, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).
24. **Litigation:** 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.
25. **Incorporation of Recitals and Exhibits:** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference. CONTRACTOR agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Professional Services Contract, the terms and provisions of this Professional Services Contract shall govern.
26. **Integration/Entire Agreement of Parties:** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
27. **Counterparts:** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
28. **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.

- 29. **Contract Contingent on Governing Board Approval:** OUSD shall not be bound by the terms of this Agreement until it has been formally approved by OUSD's Governing Board, and no payment shall be owed or made to CONTRACTOR absent that formal approval. This Agreement shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.
- 30. **W-9 Form:** If CONTRACTOR is doing business with OUSD for the first time, complete and return with the signed Contract the W-9 form.
- 31. **Contract Publicly Posted:** This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.

OAKLAND UNIFIED SCHOOL DISTRICT



- President, Board of Education
- Superintendent
- Chief or Deputy Chief



Secretary, Board of Education

CONTRACTOR

DocuSigned by:

Contractor Signature

Karen Hodson, VP of Operations
Print Name, Title

Form approved by OUSD General Counsel for 2017-18 FY

File ID Number: 17-2132
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By:

Professional Services Contract

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.

See the attached Emma Customer Order Form, Terms, and Addendum.

Professional Services Contract

2. **Specific Outcomes:** What are the expected outcomes from the services of this Contract? Be specific. For example, as a result of the service(s): 1) How many more Oakland children are graduating from high school? 2) How many more Oakland children are attending school 95% or more? 3) How many more students have meaningful internships and/or paying jobs? 4) How many more Oakland children have access to, and use, the health services they need? Provide details of program participation (Students will...) and measurable outcomes (Participants will be able to...). NOT THE GOALS OF THE SITE OR DEPARTMENT.

3. **Alignment with District Strategic Plan:** Indicate the goals and visions supported by the services of this contract:
(Check all that apply.)

- | | |
|--|--|
| <input type="checkbox"/> Ensure a high quality instructional core | <input type="checkbox"/> Prepare students for success in college and careers |
| <input type="checkbox"/> Develop social, emotional and physical health | <input type="checkbox"/> Safe, healthy and supportive schools |
| <input type="checkbox"/> Create equitable opportunities for learning | <input type="checkbox"/> Accountable for quality |
| <input type="checkbox"/> High quality and effective instruction | <input type="checkbox"/> Full service community district |

4. **Alignment with Community School Strategic Site Plan – CSSSP (required if using State or Federal Funds):**

Please select:

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

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

1. Relevant page of CSSSP 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.
2. Meeting announcement for meeting in which the CSSSP modification was approved.
3. Minutes for meeting in which the CSSSP modification was approved indicating approval of the modification.
4. Sign-in sheet for meeting in which the CSSSP modification was approved.

20180911



Emma Customer Order Form

Order Presented Date: July 10, 2017

Customer: Oakland Unified School District
Primary Contact Name: Valerie Goode
Address: 1000 Broadway FL 4, Oakland, California, 94607-4099
Email: valerie.goode@ousd.org

Account Executive: Katie Rhode
Account Executive Phone: 615-296-0871
Email: krhode@myemma.com

Account ID:

Order Valid If Signed By: 7/21/17

Billing Contact
Name: valerie.goode@ousd.org
Email: Valerie Goode

SUBSCRIPTIONS

Plan	Active Aggregate Contacts	Yearly Prepaid Rate	Annual Contact Overage Rate
Enterprise Plus	100,000	\$10,263.00	\$0.022

PROFESSIONAL SERVICES

Services SKU	Monthly/Unit Price	Quantity	Recurring Months	Total Price
Custom Template	\$749.00	1	0	\$749.00
Sub Account Set Up	\$599.00	1	0	\$599.00
Enterprise Advanced Team Training	\$375.00	1	0	\$375.00
Content Strategy	\$249.00	1	0	\$249.00
Advanced Sub Account Training	\$319	1	0	\$319
Template Versions	\$199	3	0	\$597
Basic Email Creation	\$211	1	0	\$211

SUMMARY:

TOTAL ANNUAL SOFTWARE SUBSCRIPTION:	\$10,263.00
TOTAL PROFESSIONAL SERVICES:	\$3,099.00
TOTAL PREPAY/ANNUAL INVOICE AMOUNT:	\$13,362.00

BILLING DETAILS

Subscription Contract-Months	12	Billing Start Date	8/1/2017
Subscription Start Date	Upon acceptance	Payment Method	Invoice
Subscription Renewal Date	8/1/2018	Invoice Timing	Yearly

GENERAL TERMS OF SERVICE AND BILLING

Upon signature by Customer, this Order Form shall become legally binding.

- Subscriptions provided under this Order Form are governed by the Emma Services Agreement ("ESA") between the parties and is available at myemma.com/legal/services-agreement, the terms of which are incorporated into this Order Form, unless Customer has a written services agreement executed by both parties and attached hereto. Your signature below constitutes your agreement to be bound by the terms.
- Professional Services provided under this Order Form are governed by the Emma Professional Services Agreement ("EPSA") between the parties and is available at myemma.com/legal/professional-services-agreement, the terms of which are incorporated into this Order Form, unless Customer has a written professional services agreement executed by both parties and attached hereto. Your signature below constitutes your agreement to be bound by the terms.
- Except as provided in the ESA or EPSA, Subscriptions and Services purchased under this Order Form are non-cancelable and non-refundable.
- Future orders will be at list price (including any applicable volume based discounts) at the time of purchase.
- Add-on orders must co-term with the originating order.
- The capabilities and features associated with the different types of Users (or Licenses) for which Customer is purchasing Subscriptions hereunder are specified and described at myemma.com/pricing.

I hereby represent that I am an authorized signatory and have read and agreed to the terms of this Order Form.

Oakland Unified School District

Emma, Inc.

Signature: _____

Signature: DocuSigned by: Karen M. Hodson

Title:

Title:
VP of operations

Name (Printed):

Name (Printed):
Karen M. Hodson

Date: _____

Date: 10/18/2017

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE
By Amy Brandt
Amy Brandt, Attorney at Law

Professional Services

Emma agrees to provide to Customer the goods and/or services ("Services") listed on the Order Form and described below.

Includes the following:

Enterprise Advanced Training

Take a deep dive with our Emma experts to get the absolute best results from your Emma account. In addition to a Basic Training, we'll cover advanced topics in automation, segmentation, dynamic content, A/B testing and tips for using our drag-and-drop email editor.

- 15-minute kickoff call
- 2-hour training (can be broken into 2 sessions)
- Can be recorded if requested

Advanced Sub-Account Training

Take a deep dive with our Emma experts to get the absolute best results from your Emma account. In addition to a Basic Training, we'll cover advanced topics in automation, segmentation, dynamic content, A/B testing and tips for using our drag-and-drop email editor.

- 15-minute kickoff call
- 2-hour training (can be broken into 2 sessions)
- Can be recorded if requested

Content Strategy

Learn the latest email best practices and how to create engaging emails using Emma's editor.

- 15-minute kickoff call

- 1-hour consultation
- Can be recorded if requested

Custom Template

An Emma designer will create a ready-to-send mailing based upon your brand and will incorporate your content. He or she will also create up to two (2) custom graphics (not including animation). Includes template frame and designed content layout.

- Initial creative direction questionnaire provided
- 20-minute design consultation call
- 1 image proof based on consultation feedback
- 1 hour of revision time available
- Coding the finalized design for use in the drag-and-drop editor
- Installation into Emma account
- Email client rendering testing through Litmus
- HTML and final flattened image assets available upon request

3 Template Versions

We will iterate on your Custom Template for the 3 other newsletter types you send.

Enterprise Create Subaccounts (US accounts only)

Send us an Excel file with account details, and we'll create all of your sub-accounts and users for you. **\$599** for up to 100 accounts. \$99 per additional 100 accounts.

Basic Email Creation

Our email and design specialists will use best practices to create an effective, stylish and easy-to-read email.

We'll style your content (copy and graphics) into a send-ready email. No graphic creation included.

2 revision rounds available

One Time Cost: \$3,099

***Billed upon acceptance of agreement**



SERVICES AGREEMENT

This Services Agreement ("Agreement") is dated as of the last signature on the Order Form ("Effective Date") and entered into between Emma, Inc. ("Emma") and Oakland Unified School District ("Customer"). Emma is a Web-based service that enables organizations to upload, store and manage customer and member lists, create and send email campaigns to those lists, and track and archive the results of those campaigns. For the purposes of this Agreement, we will refer to ourselves as "Emma" and to you as the "Customer." Any use of the pronoun "you" or "your" in this Agreement refers to you as Customer, and any uses of the pronouns "we" or "us" refer to Emma. The parties agree as follows:

1. DEFINITIONS.

- 1.1 "Customer Content" means the Customer content, information and data that you enter into the Software in connection with your use of the Emma Services.
- 1.2 "Emma Account" means the Web-based email-marketing account provided by Emma to you for use by your Users and which is accessible to your Users via usernames and passwords created and assigned by you.
- 1.3 "Emma Services" means services as described in the Order for which you have paid the applicable fees, which include our provision of access to the Emma Software over a computer network and related technical support.
- 1.4 "Documentation" means any manuals, documentation and supporting materials as may be made available to you by us for the Emma Services.
- 1.5 "Order" means the agreed upon order identifying the Emma Services and setting forth any additional terms and conditions relating to the Emma Services. Each agreed upon Order will (a) reference this Agreement, (b) be incorporated by reference into this Agreement, and (c) be subject to the terms and conditions of this Agreement.
- 1.6 "Software" means the machine-readable object code only version of the software program that Emma makes available to its customers via the Internet as part of the Emma Services.
- 1.7 "User" means any of your employees, representatives, partners and customers for whom access to the Emma Services is authorized by you.
- 1.8 "Effective Date" means the date first written above and the start of the terms of this Agreement.

2. EMMA SERVICES.

- 2.1 **Provision of Services by Emma.** You hereby engage Emma to provide the Emma Services for you. Subject to the terms and conditions of this Agreement, Emma shall provide the Emma Services as described in the applicable Order and this Agreement.
- 2.2 **Rights.** Emma hereby grants you a non-exclusive right to access and use the Emma Software through the Emma Account solely for your internal business purposes and in accordance with the Order, Documentation and the terms and conditions in this Agreement. You shall not, and shall not permit any User to, use the Emma Service, Software, or Documentation except as expressly permitted in this Agreement.
- 2.3 **Restrictions.** Except as expressly permitted in this Agreement, you shall not provide or permit use of or access to the Emma Service or Software to any third party without the prior written approval of Emma in each instance. You shall not use, reproduce, translate, rearrange, modify, enhance, display, sell, lease, sublicense or otherwise distribute, transfer or dispose of the Software. You shall not reverse engineer, decompile or disassemble the Software. Nothing in this Agreement entitles Customer to access or use the source code of the Software.
- 2.4 **Customer Content License Grant.** Subject to the terms and conditions of this Agreement, you hereby grant to Emma, during the Term, a non-exclusive, non-transferable (except as permitted by Section 15.1), non-sublicensable license to use the Customer Content solely for the limited purpose of performing the Emma Services for you under this Agreement.

3. PRICING AND PAYMENT FOR SERVICES.

- 3.1 **Fees.** The fees for the Emma Services are charged according to the pricing specified for your Emma Account and set forth in the applicable Order ("Fees"). You shall pay the Fees in accordance with the terms of this Agreement and the applicable Order. Fees do not include any taxes, fees, duties, and other governmental charges arising from the payment of any fees or any amounts owed to Emma under this Agreement (excluding any taxes arising from Emma's income or any employment taxes). Prices for any Services

requested by you that are not set forth in an Order shall be charged as mutually agreed to by the parties in a writing executed by representatives of each party. Unless otherwise expressly provided herein, all payment obligations are non-cancelable and all amounts paid are non-refundable.

3.2 Payment. Unless the applicable Order provides otherwise, you shall pay correctly invoiced Fees and expenses within 30 days after the invoice date for the applicable invoice for such Emma Services. All payments will be made in United States dollars. By entering credit card and billing information into the Emma system, you are authorizing us to charge that card for all Fees. All credit card transactions are handled through a secure HTTPS connection with a trusted third-party credit card processor. Emma may suspend your Emma Account in the event you fail to pay the appropriate account Fees on time, until such time as proper payment is received. In the event that your Emma Account is frozen for improper usage or non-payment, Emma may continue to charge you for the usage of the Emma Account, such usage includes storage of information, monthly activities and automatic updates that occur inside the Emma Account. Any dispute to a charge on your invoice must be made within 60 days after the date of the invoice that initially contained the disputed charge.

4. TERM AND TERMINATION.

4.1 Term. The initial term of this Agreement begins on the Effective Date and continues for the initial term as set forth in the Order ("Initial Term"). Thereafter, this Agreement may be renewed for additional terms equal to the Initial Term, unless otherwise set forth in the Order (each, a "Renewal Term"). The Initial Term and each Renewal Term are collectively referred to as the "Term." The pricing during any Renewal Term may increase to the current list price at time of Renewal.

4.2 Suspension and Termination. We may suspend the Emma Service and your right to send emails upon notification if you violate a material provision of this Agreement; however, should there be any such violation, Emma shall provide you with 15 days' notice of our intent to terminate this Agreement and give you an opportunity to cure such material breach within such 15-day period. You may terminate this Agreement if Emma violates a material provision of this Agreement; however, should there be any such violation, you shall provide Emma with 15 days' notice of your intent to terminate this Agreement and give Emma an opportunity to cure such material breach within such 15-day period. Emma shall have the right to terminate this Agreement, if you violate a material provision of this Agreement.

4.3 Cancellation or Termination. Inactivity does not constitute automatic cancellation or termination of this Agreement, and unless canceled pursuant to this Section, you will continue to be charged the Fees for the subscription to the Emma Services. Any request by you to cancel the Agreement will take effect at the end of the month in which such request was made, and you will be responsible for payment for any Emma Services through the end of your Term. Emma will not prorate Fees to the date of cancellation and you will not receive a refund or credit for any unused Emma Services. If you have paid in advance for a certain period of time for the Emma Service or any portion thereof and cancel prior to the completion of that period, that payment is non-refundable.

4.4 Effect of Termination. Upon termination of this Agreement by you for any reason that is not an uncured material breach by us, you shall be responsible for paying all outstanding amounts owed to Emma and you shall not be refunded any payments already made to Emma. If you terminate this Agreement and all Orders for our uncured material breach by Emma in accordance with Section 4.2, we will refund a pro-rated amount of the fees that you have pre-paid for the Emma Services for the period of time after the effective date of such termination. If this Agreement or your Emma Account is terminated, Emma shall allow you to obtain a copy of all Customer Content stored on Emma's servers within 30 days of termination. After such 30 days, Emma makes no guarantees regarding the availability of your data, and Emma shall not be liable for the availability of your data for more than 30 days following the date of termination by either party.

5. OWNERSHIP.

5.1 Customer. As between the parties, you own all right, title and interest in the Customer Content and any reports produced by the Emma Services with respect thereto, including all intellectual property rights therein. Any rights not expressly granted to Emma hereunder are reserved by Customer, its licensors and suppliers.

5.2 Emma. The Software, Documentation, Emma Services, and all intellectual property and proprietary technology utilized by Emma to perform its obligations under this Agreement, and all intellectual property rights in and to the foregoing, are the exclusive property of Emma, its licensors and suppliers. Any rights not expressly granted to you hereunder are reserved by Emma, its licensors and suppliers. Your access and use of the Emma Service is non-exclusive.

6. GENERAL USAGE GUIDELINES AND REQUIREMENTS.

6.1 Following the rules of permission marketing. The Emma Service is a permission marketing and communication service, designed to facilitate email communication and interaction between your organization and people who have expressed interest in receiving email correspondence from you. Your use of the Emma Service carries a necessarily high standard of ethics and strict set of rules in order for both you and Emma to be compliant with the local, state, federal and international laws - as well as all pertinent

guidelines and industry best practices - pertaining to use of email as a marketing and communication tool. With that in mind, you shall send emails using the Emma Service only to those recipients who have a clear relationship with you and/or your organization or who have expressly indicated their desire to receive emails from you. To receive emails from you, a recipient must meet one of the following criteria:

(a) the recipient has opted in to receive your emails, using a form that clearly indicates that by submitting his or her email address he or she will receive emails from you; or

(b) the recipient has a clear relationship with you, as (i) a member who pays dues to belong to your organization, (ii) a subscriber who pays a subscription fee to gain access to your organization's services, or (iii) a customer who has purchased a good or service from you within the past eighteen months, in the course of which you have obtained that customer's email address.

6.2 Evidence of permission. By using the Emma Service to send emails to a recipient, you are representing to Emma that you have obtained direct permission, explicit or implied, to email that recipient. You must be able to provide evidence as to the origin of any email address with respect to how it was acquired and how permission was obtained. You agree to fulfill any requests for permission evidence by Emma to the best of your ability and in a timely manner, and you understand that any addresses for which you are unable to provide adequate information in a timely manner will be disallowed, along with the rest of the list(s) in which that address resides, should we deem it necessary and appropriate to disallow the entire list.

6.3 No rented, purchased or harvested addresses allowed. You may not use the Emma Service in conjunction with email lists or addresses that have been purchased, rented or otherwise obtained from a third party, or which have been collected using a script or other harvesting method, or which have been obtained without the email address owner's knowledge. Sending emails to any address or list obtained using one or more of these methods will result in the termination of your Emma Account, immediately and without notice. We may also restrict access to your Emma Account, immediately and without notice, should we have reason to suspect that email addresses being added or imported into your Emma Account fail to meet the permission criteria set forth in this Agreement. Should any mailing sent through your Emma Account receive an unreasonable number of complaints from Internet Service Providers or email watchdog groups (with Emma having the right to determine what qualifies as unreasonable), we reserve the right to suspend or terminate your Emma Account immediately. Furthermore, you will be responsible for paying all charges for use of the Emma Service and any fines incurred by Emma as a direct result of one of your mailings, in cases where clear and direct evidence is presented to Emma by the fining organization.

6.4 Clearly identifying the origin of your email, and its content. You also agree to ensure that email messages sent through your Emma Account are truthful and accurately identify the source of the message. In all emails, you agree to use subject lines that are in no way false or misleading as to the identity of the sending organization or the nature of the content contained in the email. You also agree to include your organization's physical address in all campaigns, as required by the Can-Spam Act of 2003, 15 U.S.C. 7701, et seq.

6.5 Using our-opt out process. If any recipient, regardless of his or her prior opt-in status or relationship to you, has indicated a desire not to receive emails from you - either during or prior to your use of the Emma Services - you may not use the Emma Service to email that recipient. Allowing recipients of your emails to choose to stop receiving those emails is required by law. In order to ensure strict compliance, we require that you use the opt-out link and process provided with your email account and templates. You will in no way attempt to circumvent Emma's opt-out process. Furthermore, you understand that some recipients may choose to ask you to opt them out instead of using the opt-out link provided. In such cases, you agree to unsubscribe any such recipient manually, by changing the member's mailing status to "opt-out" using the tools provided inside your Emma Account, and to make sure any such subscriber has been opted out prior to your next mailing being sent, and within ten (10) business days from the opt-out request, in lieu of any mailings being sent, as required by law.

6.6 Emma's API. Emma provides API Calls ("Calls") to facilitate certain Emma Account activities without relying on the Emma application interface. These Calls are governed by the same policies set forth herein. The Customer shall not use the API to circumvent Emma's efforts to facilitate permission-based, commercial bulk email in the application. It is Emma's sole discretion to determine permissible use of the API and Calls. Any improper use of the API, as safely determined by Emma, will be grounds for immediate termination of Customer's Emma Account.

6.7 Things you may not do. The following list outlines many things, in addition to those already mentioned in this Agreement, which you may not do while using the Emma Service. Doing any one of these things may result in the suspension or termination of your Emma Account, immediately and without warning. By using the Emma Service, you explicitly agree not to:

(a) use the Emma Service to break any local, state, Federal or international laws or regulations, including but not limited to those related to spamming, e-commerce, obscenity, defamation or privacy;

(b) use the Emma Service to encourage or facilitate any illegal activities;

(c) use the Emma Service to harass, threaten or embarrass any person or organization;

(d) use the Emma Service to promote MLM (multi-level marketing) or Ponzi schemes;

(e) use the Emma Service to distribute illegal, pornographic or potentially harmful or offensive information, photos, software or materials, or include links to Web pages containing any such items (We reserve the right to use our own judgment in determining what is offensive); or

(f) use the Emma Service in conjunction with email addresses or lists that have been obtained in any way other than those outlined as permissible in this Agreement.

7. RESPONSIBILITY FOR ACCOUNT USE AND CONTENT. You are responsible for everything that happens in your Emma Account, including the email addresses that are added, imported and stored, as well as the content published, distributed or linked to from your email campaigns. You agree to take full responsibility for any and all content distributed through your Emma Account, and to abide by all pertinent copyright laws. Should we find reason to believe you have violated any laws in the course of your use of the Emma Service, or plan to violate any law using the Emma Service, we may suspend or cancel your Emma Account immediately and without warning.

8. THIRD PARTY SERVICES. If Customer decides to enable, access or use Other Services, be advised that Customer's access and use of such Other Services are governed solely by the terms and conditions of such Other Services, and Emma does not endorse, is not responsible or liable for, and makes no representations as to any aspect of such Other Services, including, without limitation, their content or the manner in which they handle, protect, manage or Process data (including Customer Content) or any interaction between Customer and the provider of such Other Services. We cannot guarantee the continued availability of such Other Service features, and may cease enabling access to them without entitling Customer to any refund, credit, or other compensation, if, for example and without limitation, the provider of an Other Service ceases to make the Other Service available for interoperation with the corresponding Service in a manner acceptable to Emma. Customer irrevocably waives any claim against Emma with respect to such Other Services. Emma is not liable for any damage or loss caused or alleged to be caused by or in connection with Customer's enablement, access or use of any such Other Services, or Customer's reliance on the privacy practices, data security processes or other policies of such Other Services. Customer may be required to register for or log into such Other Services on their respective websites. By enabling any Other Services, Customer is expressly permitting Emma to disclose Customer's Login, as well as Customer Content as necessary to facilitate the use or enablement of such Other Services.

9. CONFIDENTIALITY.

9.1 Definition. "Confidential Information" means all information disclosed by one party ("Discloser") to the other party ("Recipient") relating to or disclosed in the course of the performance of this Agreement. Confidential Information includes information that is marked or identified as confidential and, if not marked or identified as confidential, information that should reasonably have been understood by Recipient to be proprietary and confidential to Discloser or to a third party, because of legends or other markings, the circumstances of disclosure or the nature of the information itself. The Emma Software and Documentation shall be considered Emma's Confidential Information, notwithstanding any failure to mark or identify it as such. All Customer Content shall be considered your Confidential Information, notwithstanding any failure to mark or identify it as such.

9.2 Protection. Recipient will not use any Confidential Information of the Discloser for any purpose not expressly permitted by this Agreement, and will disclose Confidential Information only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

9.3 Exceptions. Recipient's obligations under Section 9.2 above with respect to any Confidential Information of Discloser will terminate if and when Recipient can document that such information: (a) was already lawfully known to Recipient at the time of disclosure by Discloser; (b) is disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) is independently developed by Recipient without access to or use of the Confidential Information. In addition, Recipient may disclose Confidential Information to the extent that such disclosure is required by law, such as a public information act, or by the order of a court or similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure in writing prior to making such disclosure and cooperates with Discloser, at Discloser's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

9.4 Protection of Customer Content. Without limiting the above, Emma will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Customer Content. Emma will not (a) modify the Customer Content, (b) disclose the Customer Content except as compelled by law in accordance with Section 9.3 or as expressly permitted in writing by you, or (c) access the Customer Content except to provide the Emma Services or prevent or address service or technical problems, or at your request in connection with support matters.

9.5 Protecting your data and your privacy. All data stored and collected is shared only with trusted third party service providers who, like Emma, are listed on the U.S. Department of Commerce's Privacy Shield List, and then only for the purpose of providing service or support to you as a customer (e.g. cloud infrastructure, CRM, secure billing). It is not shared, rented or sold to any third party for their own use. The only other time Emma will ever share ANY information related to your Emma Account with an outside organization is if (a) the outside organization is the federal government or other agency empowered to require us to divulge your personal or Emma Account information pursuant to lawfully issued subpoena, court order or other lawful process/requirement, (b) Emma is highlighting examples of your templates, campaigns or case studies and has obtained your permission prior to the divulging of such information, or (c) Emma is reporting on our overall customer base and activity, in which case we will only divulge general, aggregate (non-personally identifiable) information. In creating your Emma Account, you will create a username and a password that controls access to your Emma Account and all of the data stored within that Emma Account. The Emma Service stores an encrypted version of your password for added security, but you understand and acknowledge that you are ultimately responsible for maintaining control of that username and password and ensuring its proper use by authorized personnel only.

10. ADHERING TO THE EU-US AND SWISS-US PRIVACY SHIELD FRAMEWORKS. Emma adheres to the EU-US and Swiss-US Privacy Shield Frameworks, designed by the U.S. Department of Commerce, and the European Commission and Swiss Administration, respectively, to provide companies on both sides of the Atlantic with a mechanism to comply with data protection requirements when transferring personal data from the European Union and Switzerland to the United States in support of transatlantic commerce. Emma is listed in the United States Department of Commerce's Privacy Shield directory of self-certifying companies, available [here](#). You can read more about Emma's commitment to the Privacy Shield and read our full Privacy Statement at myemma.com/privacy. Direct any Privacy Shield inquiries or requests to: Emma, 9 Lea Avenue, Nashville, TN 37210, or privacy@myemma.com.

11. RIGHT TO INSPECT. For the purposes of providing you service and support, and to ensure that the terms of this Agreement are being followed, we reserve the right to inspect and monitor your Emma Account and data at any time, without notice, and to limit access to your Emma Account at any time should we have reason to believe that you have already, or may at some point in the future, violate any terms set forth in this Agreement.

12. WARRANTIES AND DISCLAIMERS

12.1 Mutual Warranties. Each party represents and warrants that: (a) it has the full right, power and authority to enter into, execute, and perform its obligations under this Agreement; (b) it shall comply with those local, state, federal and international laws, as well as all pertinent guidelines and industry best practices, pertaining to use of email as a marketing and communication tool; and (c) it will not transmit to the other party any Malicious Code. "Malicious Code" means software viruses, worms, Trojan horses, time bombs, cancelbots or other harmful computer code, files, scripts, agents, programs or programming routines, and that (d) it shall comply with those laws and regulations applicable to such party.

12.2 Right to Customer Content. You represent and warrant that you have all right to use the Customer Content as contemplated by this Agreement, and/or direct Emma to use the Customer Content as part of the Emma Services provided to you under this Agreement.

12.3 Service Access. During the Term, Emma warrants that the Emma Service will perform in accordance with the Order and the Documentation. Emma does not warrant that the System will be completely error-free or uninterrupted. Emma will, at its own expense and as its sole obligation and your exclusive remedy for any breach of this warranty, use commercially reasonable efforts to correct or provide a workaround for any reproducible error in the Emma Service reported to Emma by you in writing within 30 days after the Emma Services were performed or provided ("Error"). If, however, Emma is unable to provide a correction or workaround for any such Error within 30 days after receiving notice of an Error from you, you may terminate this Agreement upon notice to Emma. The warranties set forth in this Section 12.3 do not cover or apply to (a) any Error caused by you or any of your Users, or (b) any Error or unavailability of the Emma Service caused by use of the Emma Service in any manner inconsistent with its intended purpose.

12.4 Outage Policy. You acknowledge and understand that Emma does not warrant that the Emma Software or Emma Services will be uninterrupted or error free and that Emma may occasionally experience "hard outages" due to disruptions that are not within Emma's control. Any such hard outage shall not be considered a breach of this Agreement by Emma. In the case of anticipated or planned outages or system-wide issues affecting the basic use of the Emma Software, Emma will provide you with reasonable advance notice. In the case of unexpected outages, Emma will provide you with updates and information in a timely and thorough manner as such information is made available to Emma.

12.5 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 12, THE EMMA SERVICES ARE PROVIDED "AS IS," AND WE EXPRESSLY DISCLAIM ALL OTHER WARRANTIES OR CONDITIONS OF ANY KIND (EXPRESS, IMPLIED OR STATUTORY), INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN SHORT, WE CAN NOT AND DO NOT GUARANTEE THAT THE EMMA SERVICE WILL WORK IN ANY PARTICULAR WAY, NOR CAN WE GUARANTEE THAT IT WILL PROVIDE YOU WITH ANY PARTICULAR RESULT, LIKE MAKING YOU MORE

MONEY OR INCREASING YOUR CUSTOMER BASE. YOU AGREE NOT TO HOLD US LIABLE, FINANCIALLY OR OTHERWISE, SHOULD THE EMMA SERVICE FAIL TO PERFORM THESE THINGS THAT WE CANNOT GUARANTEE IN THE FIRST PLACE.

13. LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, OR FOR ANY LOST DATA, LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING FROM OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL WE BE LIABLE TO YOU FOR ANY AMOUNT GREATER THAN THE FEES YOU HAVE PAID TO US FOR YOUR USE OF THE EMMA SERVICE OVER THE PREVIOUS TWELVE MONTHS.

14. INDEMNIFICATION. Emma shall defend Customer against any claim, suit or action brought by a third party to the extent that such claim, suit or action is based upon any allegation that the Software infringes any intellectual property rights of such third party ("Customer Claim"), and Emma shall indemnify and hold Customer harmless from and against those losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) attributable to such Customer Claim or those costs and damages agreed to in a monetary settlement of such Customer Claim. The foregoing obligations are conditioned on Customer: (a) promptly notifying Emma in writing of such Customer Claim; (b) giving Emma sole control of the defense thereof and any related settlement negotiations; and (c) cooperating and, at Emma's request and expense, assisting in such defense. Notwithstanding the foregoing, Emma will have no obligation under this Section 14 or otherwise with respect to any Customer Claim to the extent based upon any use of the Emma Content by Customer in violation of this Agreement. This Section 14 states Emma's entire liability and Customer's sole and exclusive remedy for infringement claims or actions.

15. MISCELLANEOUS

15.1 Assignment. Neither party may assign or transfer, by operation of law or otherwise, this Agreement or any of its rights under this Agreement to any third party without the other party's prior written consent, such consent shall not be unreasonably withheld or delayed; except that a party may assign this Agreement without consent to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. Any attempted assignment or transfer in violation of the foregoing will be null and void. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, and shall not confer any rights or remedies upon any person or entity not a party hereto.

15.2 Force Majeure. A party's performance of any part of this Agreement will be excused to the extent that it is unable to perform due to natural disasters, terrorism, riots, insurrection, war, extraordinary governmental action, material labor strikes (excluding strikes by the party's own workforce), or any other cause which is beyond the reasonable control of such party (the "Affected Party"), not avoidable by reasonable due diligence, and not caused by the Affected Party (a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the Affected Party will promptly notify the other party of the Force Majeure Event, including an estimate of its expected duration and probable impact on the performance of the Affected Party's obligations under this Agreement. In addition, the Affected Party will (i) exercise commercially reasonable efforts to mitigate damages to the other party and to overcome the Force Majeure Event and (ii) continue to perform its obligations under this Agreement to the extent it is able.

15.3 Notices. All notices, consents, and approvals under this Agreement must be delivered in writing by electronic mail, courier, or certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address for each party first set forth on the signature page, and will be effective upon receipt.

15.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State for which the Customer is governed, without reference to any jurisdiction's conflict of laws principles.

15.5 Remedies. Except as otherwise expressly provided in this Agreement, the parties' rights and remedies under this Agreement are cumulative. Each party acknowledges and agrees that any actual or threatened breach of Section 8 will constitute immediate, irreparable harm to the non-breaching party for which monetary damages would be an inadequate remedy, that injunctive relief is an appropriate remedy for such breach, and that if granted, the breaching party agrees to waive any bond that would otherwise be required.

15.6 Relationship of the Parties. The parties acknowledge that Emma is an independent contractor of Customer, and its employees are not employees of Customer. Nothing in this Agreement or any Order will be construed as creating a partnership, joint venture, or agency relationship between the parties, or as authorizing either party to act as an agent for the other or to enter contracts on behalf of the other. Nothing in this Agreement is intended to confer any rights or remedies on any other person or entity, which is not a party to this Agreement.

15.7 Anti-Corruption. Customer agrees that Customer has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Emma's employees or agents in connection with this Agreement. Reasonable gifts and

entertainment provided in the ordinary course of business do not violate the above restriction. If Customer hears of any violation of the above restriction, Customer will use reasonable efforts to promptly notify Emma's Legal Department at legal@myemma.com.

15.8 Non-Solicitation. During the Term, and for a period of one year thereafter, neither party shall solicit for hire, on behalf of Customer or any other organization, any personnel of the other party with whom such party has had any contact pursuant to the relationship established under this Agreement, except for any person responding to a general solicitation of employment.

15.9 Waivers. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Any waiver must be in writing and signed by the party entitled to the benefit of the right being waived. Unless otherwise stated in the waiver, any waiver applies only to the specific circumstance for which the waiver is given and not to any subsequent circumstance involving the same or any other right.

15.10 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

15.11 Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.

15.12 Electronic Signatures. Each party agrees that the electronic "signatures", whether digital or encrypted, of the parties included in this Agreement, including secured through the Emma electronic acceptance process, are intended to authenticate this writing and to have the same force and effect as manual signatures.

15.13 Purchase Orders. Emma may receive and sign or otherwise execute purchase orders or similar documents from Customer contemporaneously with or after the execution of this Agreement (including subsequent such documents provided in connection with accepting a Renewal Term), and the parties agree that the sole purpose of such documents is for Customer's internal payment processes and that such execution by Emma does not constitute an acceptance of any of the terms or conditions of such document. Customer further represents, warrants and agrees that (i) such documents are solely for compliance with its internal purchasing policies, (ii) such document is not intended to and shall not add any new terms or conditions or supersede any conflicting terms and conditions in this Agreement, and (iii) Customer shall not assert any terms or conditions contained in such documents against Emma.

15.14 Entire Agreement. This Agreement, including any Order and any exhibits or attachments thereto, constitute the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement sets forth the general terms and conditions applicable to all services provided by Emma to Customer under the specific terms and conditions set forth in the applicable Order. By executing this Agreement, the parties agree that the provision and receipt of Emma Services are expressly conditioned on the acceptance of the agreed upon terms in this Agreement. No other terms apply. No terms and conditions proposed by either party shall be binding on the other party unless accepted in writing by both parties, and each party hereby objects to and rejects all terms and conditions not so accepted. To the extent of any conflict between the provisions of this Agreement and the provisions of any Order, the provisions of the Order shall govern. In addition, to the extent of any conflict or inconsistency between the terms and conditions of this Agreement and Customer's purchase order, the terms and conditions of this Agreement and its Order will control. This Agreement will not be modified except by a subsequently dated written amendment signed on behalf of Emma and Customer by their duly authorized representatives.

Delivery Addendum

This Delivery Addendum (the "Addendum") is between **Emma, Inc.** ("Supplier") and Oakland Unified School District (Client). This document serves as an addendum to the Master Software as a Service Agreement (the "Agreement") attached hereto, and takes effect on the effective date of that Agreement.


Client understands that for external email campaigns and messages, wherein Client is using the Emma Services to communicate with their customers, the Agreement requires OPT-OUT links in emails sent using the Emma Services. For the purpose of Client's use of the Emma Services wherein Client will be communicating with "Individuals" (defined as clients, employees, members and customers) for transactional purposes only, Supplier will allow Client to remove the OPT-OUT link from campaigns for Client's customers.

This Addendum will use the FTC's CAN-SPAM definition for transactional messages. The primary purpose of these messages must be to:

1. facilitate or confirm a commercial transaction that the recipient already has agreed to;
2. give warranty, recall, safety, or security information about a product or service;
3. give information about a change in terms of features or account balance information regarding a membership, subscription, account, loan or other ongoing commercial relationship;
4. provide information about an employment relationship or employee benefits; or
5. deliver goods or services as part of a transaction that the recipient already has agreed to.

Agreed and Signed:

on behalf of Emma, Inc.

DocuSigned by:

Signature
3A06CFAB62B94DB...
Karen M. Hodson
Print Name
VP of operations
Title

on behalf of Oakland Unified School District

Signature

Print Name

Title

Save Form	Print Form
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**OAKLAND UNIFIED
SCHOOL DISTRICT**

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.					
1. Contractor and OUSD contract originator (principal or manager) reach agreement about scope of work and compensation.					
2. Ensure contractor meets the <u>consultant requirements</u> (including the Excluded Party List, Insurance and Talent Consultant Verification)					
3. Contractor and OUSD contract originator complete the contract packet together and attach required attachments.					
4. Within 2 weeks of creating the requisition, the OUSD contract originator submits complete contract packet for approval to Procurement.					
Attachment Checklist	<input type="checkbox"/> For All Consultants: Authorization to Work, which indicates vendor has cleared the registration and background check <input type="checkbox"/> For All Consultants: Results page of the Excluded Party List (https://www.sam.gov) <input type="checkbox"/> For All Consultants: Statement of qualifications (organization); or resume (individual consultant).				
OUSD Staff Contact Emails about this contract should be sent to: (required) valerie.goode@ousd.org					
Contractor Information					
Contractor Name	Emma, Inc.	Agency's Contact	Karen Hodson		
OUSD Vendor ID #	1007492	Title	Vice President of Operations		
Street Address	9 Lea Avenue	City	Nashville	State	TN Zip 37210
Telephone	800-595-4401	Email (required)	khodson@myemma.com		
Contractor History	Previously been an OUSD contractor? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Compensation and Terms – Must be within the OUSD Billing Guidelines					
Anticipated start date	7/6/17	Date work will end	8/31/18	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	
00-0958	Communications	9589030701	5825	\$ 13,362.00	
			5825	\$ 0.00	
			5825	\$ 0.00	
Requisition No. (required)	R0181401	Total Contract Amount		\$ 13,362.00	
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.					
<input type="checkbox"/> OUSD Administrator verifies that this vendor does not appear on the Excluded Parties List (https://www.sam.gov)					
1.	Administrator / Manager (Originator)	Name	Valerie Goode	Phone	510-879-3666
	Site/Department (Name & #)	Communications		Fax	
	Signature			Date Approved	
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	
	Signature (if using multiple restricted resources)			Date Approved	
3.	Network Superintendent/Deputy Network Superintendent				
	Signature			Date Approved	
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.	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		