OAKLAND UNIFIED SCHOOL DISTRICT
Community Schools, Thriving Students

Board Cover Memorandum

To   Board of Education

From   Kyla Johnson-Trammell, Superintendent
                   Preston Thomas, Chief Systems and Services Officer
                   Susan Beltz, Chief Technology Information Officer
                   Sonali Murarka, Executive Director, Enrollment and Charter Schools

Meeting Date   June 23, 2021

Subject   Approval of Resolution No. 2021-0284 Authorizing Use of *Graydon* Exception to
                   Public Bidding; Approval by the Board of Education of Amendment No. 1 to Master
                   Subscription Licenses and Services Agreement dated June 24, 2020; Ratification of
                   California Student Data Privacy Agreement between Oakland Unified School
                   District and SchoolMint, Inc.
                   Contractor: SchoolMint, Inc.
                   Services For: July 1, 2021 - June 30, 2022

Ask of the Board   Approve Resolution No. 2021-0284 Authorizing Use of *Graydon* Exception to Public
                       Bidding; Approve Amendment No. 1 to Master Subscription Licenses and Services
                       Agreement dated June 24, 2020; Ratify Student Data Privacy Agreement between
                       Oakland Unified School District and SchoolMint, Inc., Lafayette, LA; SchoolMint, Inc.
                       will provide hosting, enhancements, maintenance, upgrades and associated
                       support for the SchoolMint enrollment system, for the period July 1, 2021 to June
                       30, 2022 for an amount not to exceed $455,684.25, consisting of $257,184.25 for
                       2021-22 in addition to the original 2020-21 contract amount of $198,500.

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

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and Ratification of California Student Data Privacy Agreement
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data, and view insights into applicant demographics. SchoolMint, Inc. integrates with the Aeries Student Information System (SIS) used by Oakland Unified to transfer data bidirectionally between the two systems.

Discussion

The Master Software as a Service Agreement includes hosting, maintenance, upgrades and associated support for these solutions. As noted above, the software has been successfully used by Oakland Unified since the 2017-18 school year. The current agreement renews the same services as provided under the original Agreement for the period July 1, 2021 through June 30, 2022 and also extends the application software to include Pre-K student enrollment. In addition, the SchoolFinder software is being rebuilt to align with the OUSD enrollment stabilization policy, including an updated guided search and removing charter schools..

Note that beginning in 2020-21, many registration functions were transferred into the Aeries Student Information System (SIS), and hence the current amendment represents a substantial cost reduction over years prior to 2020-21. Specifically, the 2019-20 agreement encapsulated $333,500 in annual fees whereas the current amendment is for $257,184.25, which includes $127,958.00 in one-time fees for SchoolFinder enhancements.

In order to provide these services, SchoolMint, Inc. requires access to certain District student data. Accordingly, the District and SchoolMint, Inc. executed the enclosed data sharing agreement on June 17, 2021, and now ask the Board to ratify this agreement. This data sharing agreement is the standard California Student Data Privacy Agreement (CSDPA), adopted by the California Student Privacy Alliance to meet the requirements of the Family Educational Rights and Privacy Act (FERPA) and Assembly Bill 1584 (which allows school districts to share data with software providers so long as the contracts include certain specified provisions). The standard terms of the CSDPA ensure that the vendor will take all precautions to safeguard our students' data. The term of the CSDPA is the same as the term of the underlying services contract. The CSDPA is a piggy-backable agreement. This means that a software vendor may enter the CSDPA with one school district and thereafter, by signing Exhibit E (which consists of a "general offer of terms") allow any other school district to countersign Exhibit E and be entitled to the same protections set forth in the underlying CSDPA.

Here, SchoolMint, Inc. has signed the CSDPA with Oakland Unified School District on June 17, 2021, and now asks the Board to ratify this agreement. The vendor has further signed Exhibit E, which, again, allows any other school district to likewise sign Exhibit E and share the same data with SchoolMint under the same terms.

Competitively Bid

$257,184.25 from 2021-22 Funding Resource 010-0000-0-0000-7700-5846-999-9860-9994-9999-99999: General Purpose (GP), Data Processing, License Agreements, Districtwide

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Fiscal Impact $257,184.25 from 2021-22 Funding Resource 010-0000-0-0000-7700-5846-999-9860-9994-9999-99999: General Purpose (GP), Data Processing, License Agreements, Districtwide

Attachment(s)
- Resolution No. 2021-0284 – Authorizing Use of Graydon Exception
- Amendment No. 1 to Master Services Agreement dated June 24, 2020
- Renewal ProForma Invoice
- California Student Data Privacy Agreement with Exhibit E
- Master Services Agreement dated June 24, 2020

RESOLUTION OF THE
BOARD OF EDUCATION
OAKLAND UNIFIED SCHOOL DISTRICT

RESOLUTION NO. 2021-0284

AUTHORIZING USE OF *GRAYDON* EXCEPTION TO PUBLIC BIDDING FOR
CONTRACT WITH SCHOOLMINT AND APPROVING AMENDMENT NO. 1 TO MASTER SUBSCRIPTION
LICENSES AND SERVICES AGREEMENT DATED JUNE 24, 2020

WHEREAS, the Oakland Unified School District ("District") has a need to contract with a vendor to provide hosting, enhancements, maintenance, upgrades and associated support for the SchoolMint enrollment system;

WHEREAS, the contemplated contract is in an amount of $257,184.25 for 2021-22 in addition to the original 2020-21 contract amount of $198,500;

WHEREAS, under Public Contracts Code section 20111, a contract in this amount would ordinarily require competitive bidding;

WHEREAS, one exception to this competitive bidding requirement is where "the nature of the subject of the contract is such that [bidding] would be unavailing or would not produce an advantage, and the advertisement for competitive bid would thus be undesirable, impractical, or impossible." (*Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631, 645.)

WHEREAS, under this exception, a contract need not be bid where bidding would not serve its intended purpose--namely, to protect taxpayers from possible waste and dissipation of public funds--because it would "substantially impair[]" the public entity's ability to operate, and/or would impose unnecessary additional costs (*Ibid.*);

WHEREAS, the District has been successfully utilizing software provided by SchoolMint since the 2017-18 school year, and relies on the software and services for student enrollment services throughout the District;

WHEREAS, the District's original agreement with SchoolMint, Inc. was approved by the Board of Education on May 10, 2017 as File ID 17-0834 with subsequent agreements approved by the Board of Education on October 11, 2017 as File ID 17-2023, June 26, 2019 as File ID 19-1474, and June 24, 2020 as File ID 20-1388;

WHEREAS, the initial selection of SchoolMint was based upon an original purchase of the School Finder software by Educate 78 and its ability to interoperate with the SchoolMint tools for application and enrollment processing;

WHEREAS, the District subsequently conducted a formal Request for Information to obtain proposals from competitors to compare features and pricing, the result of which was the selection of SchoolMint based upon optimal features and overall cost;

WHEREAS, the District has incurred approximately $87,125 in one-time professional services costs for configuration and customization of the SchoolMint platform from the original contract approved in 2017 and significant staff time to implement and train on the system;

WHEREAS, it would be cost-prohibitive, and would risk a gap in enrollment services, to discontinue use of this software in order to change to another vendor.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board finds and declares that going out to bid for the software and services provided by SchoolMint would not produce any advantage, would result in wasted taxpayer funds, and would substantially impair the District's ability to operate because it could result in time gaps in the management and reporting of student data, including the completion of mandated state reporting

2. Competitive bidding is therefore excused under the reasoning of *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631 and related case law, allowing the District to contract directly with SchoolMint.

3. The Amendment No. 1 for SchoolMint, for the period July 1, 2021 to June 30, 2022 for an amount not to exceed $455,684.25, consisting of $257,184.25 for 2021-22 in addition to the original 2020-21 contract amount of $198,500, is hereby approved.

PASSED AND ADOPTED on June 23, 2021, by the Governing Board of the Oakland Unified School District by the following vote:

PREFERENTIAL AYE:	None
PREFERENTIAL NOE:	None
PREFERENTIAL ABSTENTION:	None
PREFERENTIAL RECUSE:	None
AYES:	Mike Hutchinson, Gary Yee, VanCedric Williams, Aimee Eng, Clifford Thompson, Vice President Benjamin "Sam" Davis, President Shanthi Gonzales
NOES:	None
ABSTAINED:	None
RECUSED:	None
ABSENT:	Jessica Ramos (Student Director), Samantha Pal (Student Director)

CERTIFICATION

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Board of Education of the Oakland Unified School District held on June 30, 2021.

Legislative File	
File ID Number:	21-1531
Introduction Date:	6/23/21
Enactment Number:	21-1076
Enactment Date:	6/23/2021
By:	os

OAKLAND UNIFIED SCHOOL DISTRICT

_____
Shanthi Gonzales
President, Board of Education

_____
Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education

Approved as to form by OUSD Staff Attorney Joanna Powell on 6/3/2021.

OAKLAND UNIFIED SCHOOL DISTRICT
Community Schools, Thriving Students

AMENDMENT NO. 1
to
Master Services Agreement

This Amendment amends the attached legal agreement ("Original Agreement") and any prior amendments ("Prior Amendments," together with Original Agreement, "(Amended) Agreement"), incorporated herein by reference, which includes the following information:

- The (Amended) Agreement is between the Oakland Unified School District ("OUSD") and the below named entity or individual ("VENDOR," together with OUSD, "PARTIES"):
  SchoolMint
- The Parties entered into the Original Agreement on the below date:
  June 24, 2020
- The Enactment Number of the Original Agreement is below:
  20-0979

The PARTIES hereby agree to amend the (Amended) Agreement as stated herein.

1. **Services**: ☐ The scope of work of the (Amended) Agreement is
   <u>unchanged</u>.
   ☒ The scope of work of the (Amended) Agreement has <u>changed</u>. If the scope of work has changed:

Provide brief description of revised scope of work including measurable description of expected final results, such as services, materials, products, and/or reports; select the appropriate option below:

☒ Revised scope of work <u>attached</u>

☒ VENDOR agrees to provide the <u>following</u> amended services:

In accordance with the attached renewal pro forma invoice, the SchoolMint enrollment application and lottery software is being renewed for 2021-22 and also being extended to support Pre-K enrollment. Furthermore, SchoolMint will implement an updated version of the SchoolFinder software to best meet the needs of OUSD's enrollment stabilization policy. The services will cost the following amounts: $127,958.00 for the updated school finder tool ($18,315 for the annual software licensing fee, $109,643.00 for professional services for the tool build-out), $125,000 for the application and lottery tool, and $4,226.25 for the Pre-K application enhancement.

2. **Term** (duration): ☐ The term of the (Amended) Agreement is <u>unchanged</u>

☒ The term of the (Amended) Agreement has <u>changed</u>. If the term has changed: The parties agree to amend the below original End Date of the (Amended) Agreement to the below new End Date:
Original End Date: **June 30, 2020**
New End Date: **June 30, 2021**

3. **Compensation**: ☐ The not-to-exceed amount in the (Amended) Agreement is <u>unchanged</u>

☒ The not-to-exceed amount in the (Amended) Agreement has <u>changed</u>. If the not-to-exceed amount has changed: The not-to-exceed amount in the (Amended) Agreement is amended as follows:

☒ Increase not-to-exceed amount by: $**257,184.25**.

☐ Decrease not-to-exceed amount by:
$Click or tap here to enter text..
The new not-to-exceed amount under the (Amended) Agreement, as herein amended, is
$Click or tap here to enter text..

4. **COVID-19**: To the extent that the Amendment did not contain the following guarantees, by signing this Amendment, VENDOR agrees that:
   a. Through its execution of this Amendment, VENDOR declares that it is able to meet its obligations and perform the Services required pursuant to this Amendment in accordance with any shelter-in-place (or similar) order or curfew (or similar) order ("Orders") issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.
   b. VENDOR agrees to notify OUSD within twelve (12) hours if VENDOR or any employee, subcontractor, agent, or representative of VENDOR tests positive for COVID-19, shows or reports symptoms consistent with COVID-19, or reports to VENDOR possible COVID-19 exposure.
   c. VENDOR agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD employees to VENDOR or any employee, subcontractor, agent, or representative of VENDOR and information necessary to perform contact tracing.
   d. VENDOR shall bear all costs of compliance with this Paragraph.

5. **Remaining Provisions**: All other provisions of the (Amended) Agreement remain unchanged and in full force and effect as originally stated.

6. **Amendment Publicly Posted**. This Amendment, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.

7. **Signature Authority**.
   a. Each PARTY has the full power and authority to enter into and perform this Amendment, and the person(s) signing this Amendment on behalf of each PARTY has been given the proper authority and empowered to enter into this Amendment.
   b. Notwithstanding subparagraph (a), only the Superintendent, Chiefs,

Deputy Chiefs, and the General Counsel has authority to sign contracts for OUSD and only under limited circumstances, which required ratification by the OUSD Governing Board. VENDOR agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this Amendment or as legally binding in any way.

8. **Amendment Contingent on Governing Board Approval**. OUSD shall not be bound by the terms of this Amendment unless and until it has been (i) formally approved by OUSD's Governing Board or (ii) validly and properly executed by the OUSD Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code or Board Policy, and no payment shall be owed or made to VENDOR absent such formal approval or valid and proper execution.

REST OF PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the PARTIES hereto agree and execute this Amendment and to be bound by its terms and conditions:

VENDOR

Name: Elizabeth Fischer

Signature: *Elizabeth Fischer*

Position: COO

Date: 6/2/2021

By its signature, VENDOR acknowledges and agrees not to expect or demand compensation pursuant to this Amendment prior to the PARTIES, particularly OUSD, validly and properly executing this Amendment until this Amendment is validly and properly executed and shall not rely on verbal or written communication from any individual, other than the President of the OUSD Governing Board, the OUSD Superintendent, or the OUSD General Counsel, stating that OUSD has validly and properly executed this Amendment. VENDOR specifically acknowledges and agrees to this term/condition on the above date.

OUSD

Name: Shanthi Gonzales

Signature: _____

Position: President, BOE

Date: 6/24/2021

☐ Board President
☐ Superintendent
☐ Chief/Deputy Chief

Name: Kyla Johnson-Trammell   Signature: _____

Position: Secretary, Board of Education   Date: 6/24/2021

Renewal Notice for
Oakland Unified School District

Created by:

SchoolMint, Inc.

Prepared for:

Oakland Unified School District

Renewal Proforma Invoice for Oakland Unified School District

We appreciate your loyalty as a SchoolMint customer and look forward to continuing to provide SchoolMint products and services to support your enrollment and behavior practices. Please review this notification for accuracy and notify us regarding any enrollment changes planned for the upcoming school year.

This Proforma Invoice is entered into by **SchoolMint, Inc.** ("SchoolMint") and Oakland Unified School District("Customer") as of   2021-07-01 pursuant to the terms of the initial Master Service Agreement (the "Agreement"). The terms of the Agreement are incorporated by reference, as modified and supplemented hereby the terms of this Proforma Invoice. Except as expressly amended and supplemented hereby, the terms of the Agreement shall remain in full effect.

This Order Form shall remain in effect until   2022-06-30   ("Subscription End Date") unless earlier terminated in accordance with the Agreement. By signing below, customer agrees to receive an invoice for the subscription period based on the details of this notification. Should there be specific invoice date or purchase order requirements, please notify us when signing this notification, otherwise you will receive an invoice immediately upon signing.

To avoid service interruption, please return this signed renewal notification before 2021-06-30
** If a purchase order is required, please submit a copy along with this signed notification. **

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

	Quantity
# of Students	38,203
# of Sites	83
Subscription Term	2021-07-01 - 2022-06-30

Name	Subtotal
SM District Choice - Application, Lottery, & Languages (3)	$125,000.00

Thank you for being a loyal SchoolMint, Inc. customer!
1100 Bertrand Drive, Suite B, Lafayette, LA 70506

Application Management for PreK Prorated: 2021-04-23 through 2022-06-30	$4,226.25
Student Index Custom Work 84 hrs of development remaining	$0.00
Enterprise Platinum Support	$0.00

Total   **$129,226.25**

Legacy Enterprise Platinum Support Package

The Legacy Enterprise Platinum Support Package is included complimentary with your paid subscription.

Enterprise Platinum Support services include:
- Complimentary registration to seasonal virtual training courses
- Year-round access to training videos, launch checklists & best practice tips
- Access to Zendesk Knowledge Base with articles to Prepare, Launch & Manage online enrollment
- Access to Walk-Thru tutorials built-in to the product
- Access to email, chat & phone support for up to 6 named contacts during standard business hours
- Access to email, chat & phone support for up to 1 named school-level admin per school during standard business hours
- Access to email & chat support for families during standard business hours

Enterprise Platinum Customer Success services include:
- Quarterly (1 hour) account reviews
- Up to 60 hours of virtual consulting with your dedicated Success Representative each year*.
- Bi-Annual Personalized Best Practice Training (Virtual)

These hours can be utilized towards consulting, training and configuration changes. Packs of additional Consulting hours can be purchased as needed. Consulting hours do not roll over year to year.

LICENSE LIMITATIONS AND FEES
*Text messaging sufficient to meet the needs of most organizations is included in your license, based on contract value. An allotment of voice calls is also included for customers purchasing a voice call license. If necessary for higher levels of usage, additional packages of messages or calls can be purchased through SchoolMint. See more details here: SchoolMint Text Messaging Terms

Rate Schedule:
The following is a schedule of rates for additional services.

Type	Description	Hourly Rate
Account Service	Account service from Customer Success Manager including project management, site configuration, solution consultation, preparation and delivery of training, etc.	**$150**
Data Entry	Basic data entry including creation of additional online forms, entry of language translations, etc.	**$100**
Professional Services Engineering	Data import/export work including polygon ingestion for catchment areas, creation of custom reports, generation of imports, additional SIS mapping work, etc.	**$150**
Engineering & Customization	Any custom request requiring product and/or engineering involvement; includes specification gathering, design, development & testing of custom work	**$250**

Accepted and agreed by the authorized representative of each party:

Oakland Unified School District

By: _____

Name: _____
      Shanthi Gonzales

Title: _____   Date: _____
    President, BOE   6/24/2021

Payment Options

Payments can also be made by bank transfer to: Please make all checks payable to
Bank Name: Webster Bank   SchoolMint, Inc.
Bank Holder: SchoolMint, Inc.   1100 Bertrand Drive, Suite B
Account No.: 23135570   Lafayette, LA 70506
ABA/Routing #: 211170101   **Terms:** Net 30 days

Credit Card Payments subject to 3.5% convenience fee
Please call 305-749-1891, Option 1

Thank you for being a loyal SchoolMint, Inc. customer!
1100 Bertrand Drive, Suite B, Lafayette, LA 70506

SchoolMint

Licensee Information Sheet

(Please submit a completed copy with the Contract)

Main Contact (Contract signer):

Name:

Phone:

Email address:

Invoicing Contact:

Bill to Company Name:

Email address:

Address:

Phone Number:

Customer Notes:

**If your organization is participant in a Co-Op, please let us know here!

California Student Data Privacy Agreement*

Oakland Unified School District

AND

SchoolMint, Inc.

Date: June 8, 2021

*Agreement modified from the California Student Data Privacy Template

This California Student Data Privacy Agreement ("DPA") is entered into by and between the Oakland Unified School District (hereinafter referred to as "LEA") and SchoolMint, Inc. (hereinafter referred to as "Provider") on June 8, 2021. The Parties agree to the terms as stated herein.

RECITALS

WHEREAS, the Provider has agreed to provide the Local Education Agency ("LEA") with certain digital educational services ("Services") pursuant to a contract dated of 2021 ("Service Agreement"); and

WHEREAS, in order to provide the Services described in the Service Agreement, the Provider may receive or create, and the LEA may provide documents or data that are covered by several federal statutes, among them, the Family Educational Rights and Privacy Act ("FERPA") at 20 U.S.C. 1232g and 34 CFR Part 99, Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. 6501-6506; Protection of Pupil Rights Amendment ("PPRA") 20 U.S.C. 1232h; and

WHEREAS, the documents and data transferred from LEAs and created by the Provider's Services are also subject to California state student privacy laws; and

WHEREAS, for the purposes of this DPA, Provider is a school district official with legitimate educational interests in accessing educational records pursuant to the Service Agreement; and

WHEREAS, the Parties wish to enter into this DPA to ensure that the Service Agreement conforms to the requirements of the privacy laws referred to above and to establish implementing procedures and duties; and

WHEREAS, the Provider may, by signing the "General Offer of Privacy Terms" ("Exhibit E"), agree to allow other LEAs in California the opportunity to accept and enjoy the benefits of this DPA for the Services described herein, without the need to negotiate terms in a separate DPA.

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

ARTICLE I: PURPOSE AND SCOPE

1.   **Purpose of DPA**. The purpose of this DPA is to describe the duties and responsibilities to protect student data transmitted to Provider from LEA pursuant to the Service Agreement, including compliance with all applicable statutes, including the FERPA, PPRA, COPPA, and applicable California law, all as may be amended from time to time. In performing these services, the Provider shall be considered a School District Official with a legitimate educational interest, and performing services otherwise provided by the LEA. With respect to the use and maintenance of Student Data, Provider shall be under the direct control and supervision of the LEA.

2. **Nature of Services Provided**. The Provider has agreed to provide the following digital educational products and services described below and as may be further outlined in "Exhibit A" hereto:

Assessment & Data Visualization Platform and professional services (that do not involve any contact with students) related thereto

3. Student Data to Be Provided. The Parties shall indicate the categories of student data to be provided in the Schedule of Data, attached hereto as "Exhibit B". The LEA shall provide the categories of data described in "Exhibit B", which LEA shall be solely responsible for adhering thereto.

4. DPA Definitions. The definition of terms used in this DPA is found in "Exhibit C". In the event of a conflict, definitions used in this DPA shall prevail over term used in the Service Agreement.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Student Data Property of LEA**. All Student Data transmitted to the Provider pursuant to the Service Agreement is and will continue to be the property of and under the control of the LEA. The Provider further acknowledges and agrees that all copies of such Student Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this Agreement in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the Service Agreement shall remain the exclusive property of the LEA. For the purposes of FERPA, the Provider shall be considered a School District Official, under the control and direction of the LEAs as it pertains to the use of Student Data notwithstanding the above. Provider may transfer pupil-generated content to a separate account, according to the procedures set forth below.

2. **Parent Access**. LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review or view Student Data in the pupil's records, request an amendment to information, and procedures for the transfer of pupil-generated content to a personal account, consistent with the functionality of services. Throughout the term of the contract and 30 days after, the LEA will be able to gain access, download, and amend all student data. In the event that a parent of a pupil or other individual contacts the Provider to review any of the Student Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information.

3. **Third Party Request**. Should a Third Party, including law enforcement and government entities, contact Provider with a request for data held by the Provider pursuant to the Services, the Provider shall redirect the Third Party to request the data directly from the LEA. Provider shall notify the LEA as soon as possible in advance of a compelled disclosure to a Third Party (e.g., a subpoena), unless prohibited by a legal authority, if permissible under the circumstances.

4.   **Subprocessors**. Provider shall enter into written agreements with all Subprocessors performing functions pursuant to the Service Agreement, whereby the Subprocessors agree to protect Student Data in manner consistent with the terms of this DPA, as well as state and federal law.

ARTICLE III: DUTIES OF LEA

1.   **Privacy Compliance**. LEA shall provide data for the purposes of the Service Agreement in compliance with FERPA, COPPA, PPRA, and applicable California law.

2.   **Annual Notification of Rights**. The LEA shall include a specification of criteria under FERPA for determining who constitutes a school official and what constitutes a legitimate educational interest in its Annual notification of rights.

3.   **Reasonable Precautions**. LEA shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted data.

4.   **Unauthorized Access Notification**. LEA shall notify Provider promptly of any known or suspected unauthorized access. LEA will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

ARTICLE IV: DUTIES OF PROVIDER

1.   **Privacy Compliance**. The Provider shall comply with all applicable state and federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRA, and applicable California law.

2.   **Authorized Use**. The data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services stated in the Service Agreement and/or otherwise authorized under the statutes referred to in subsection (1), above. Provider also acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion thereof, including without limitation, meta data, user content or other non-public information and/or personally identifiable information contained in the Student Data, without the express written consent of the LEA.

3.   **Employee Obligation**. Provider shall require all employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the data shared under the Service Agreement. De-identified information, as defined in "Exhibit C", may be used by the Provider for the purposes of development, research, and improvement of educational sites, services, or applications, as any other member of the public or party would be able to use de-identified data pursuant to 34 CFR 99.31(b). Provider agrees not to attempt to re-identify de-identified Student Data and not to transfer de-identified Student Data to any party unless that party agrees in writing not to attempt re-identification (b) prior written notice has been given to the LEA who has provided prior written consent for such transfer.

4.   No Disclosure. Provider shall not copy, reproduce or transmit any data obtained under the Service Agreement and/or any portion thereof, except as necessary to fulfill the Service Agreement.

       a.   Disposition of Data. Upon written request or upon termination of the Service Agreement, Provider shall dispose of or delete all Student Data obtained under the Service Agreement and in accordance with the applicable terms below. Provider shall dispose of or delete all Student Data obtained under the Service Agreement when it is no longer needed for the purpose for which it was obtained. Disposition shall include (1) the shredding of any hard copies of any student data; (2) erasing; or (3) otherwise modifying the personal information in those records to make it unreadable or indecipherable by human or digital means. Nothing in the Service Agreement authorizes Provider to maintain Student Data obtained under the Service Agreement beyond the time period reasonably needed to complete the disposition. Provider shall dispose of all data 30 days after the termination of the Service Agreement, and shall notify LEA once it has done so. The duty to dispose of Student Data shall not extend to data that has been de-identified pursuant to the other terms of the DPA. The LEA may employ a "Request for Return or Deletion of Student Data" form, a copy of which is attached hereto as Exhibit "D". Upon receipt of a request from the LEA, the Provider will immediately provide the LEA with confirmation of the deletion of any specified portion of the Student Data within ten (10) calendar days of receipt of said request."Exhibit D".

6.   Advertising Prohibition. Provider is prohibited from using or selling Student Data to (a) market or for targeted advertising to students or families/guardians; (b) inform, influence, or enable marketing, advertising, or other commercial efforts by a Provider; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to LEA; or (d) use the Student Data for the development of commercial products or services, other than as necessary to provide the Service to LEA. This section does not prohibit Provider from using Student Data for adaptive learning or customized student learning purposes.

ARTICLE V: DATA PROVISIONS

1.   Data Security. The Provider agrees to abide by and maintain adequate data security measures, consistent with industry standards and technology standard practices, to protect Student Data from unauthorized disclosure or acquisition by an unauthorized person. The general security duties of Provider are set forth below. Provider may further detail its security programs and measures in "Exhibit F" hereto. These measures shall include, but are not limited to:

       a. Passwords and Employee Access. Provider shall secure Provider issued usernames and passwords, employee usernames and passwords, and any other means of gaining access to the Services or to Student Data. Provider shall only provide access to Student Data to employees or contractors that are performing the Services. Employees with access to Student Data shall have signed confidentiality agreements regarding said Student Data.

All employees with access to Student Records shall be subject to criminal background checks in compliance with state and local ordinances.

b. **Destruction of Data**. Provider shall destroy or delete all Student Data obtained under the Service Agreement when it is no longer needed for the purpose for which it was obtained. Nothing in the Service Agreement authorizes Provider to maintain Student Data beyond the time period reasonably needed to complete the disposition.

c. **Security Protocols**. Both parties agree to maintain security protocols that meet industry standards in the transfer or transmission of any data, including ensuring that data may only be viewed or accessed by parties legally allowed to do so. Provider shall maintain all data obtained or generated pursuant to the Service Agreement in a secure digital environment and not copy, reproduce, or transmit data obtained pursuant to the Service Agreement, except as necessary to fulfill the purpose of data requests by LEA.

d. **Employee Training**. The Provider shall provide periodic security training to those of its employees who operate or have access to the system. Further, Provider shall provide LEA with contact information of an employee who LEA may contact if there are any security concerns or questions.

e. **Security Technology**. When the service is accessed using a supported web browser, Provider shall employ industry standard measures to protect data from unauthorized access. The service security measures shall include server authentication, data back-ups, and data encryption. Provider shall host data pursuant to the Service Agreement in an environment using a firewall that is updated according to industry standards.

f. **Security Coordinator**. If different from the designated representative identified in Article VII, section 5, Provider shall provide the name and contact information of Provider's Security Coordinator for the Student Data received pursuant to the Service Agreement.

g. **Subprocessors Bound**. Provider shall enter into written agreements whereby Subprocessors agree to secure and protect Student Data in a manner consistent with the terms of this Article V.

h. **Periodic Risk Assessments**. Provider further acknowledges to remediate any identified material security and privacy vulnerabilities in a timely manner that are identified through internal risk assessments (digital and physical).

i. **Audits**. Upon receipt of a request from the LEA, the Provider will allow the LEA to audit non-confidential documentation pertaining to security and privacy measures that are in place to ensure protection of the Student Record or any portion thereof to the extent available to Provider. The provider will also acknowledge and work with any state or

federal organization or agency who has authority over student data or the LEA has contracted with to review said non-confidential documentation pertaining to security and privacy measures.

2.   **<u>Data Breach</u>**. In the event that Student Data is accessed, Provider shall provide prompt notification to LEA within a reasonable amount of time of the incident, and not exceeding seventy-two(72) hours of confirmation of a data breach. Provider shall provide the following at the time of notification:

    a.   The security breach notification shall include, at a minimum, the following information:

        i.   The name and contact information of the reporting LEA subject to this section.

        ii.   A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.

        iii. If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.

        iv. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.

        v.   Whether the notification was delayed because of a law enforcement investigation, if that information is possible to determine at the time the notice is provided.

        vi. Provider agrees to adhere to all requirements in applicable state law and federal law with respect to a data breach related to the Student Data, including,   when   appropriate   or   required.

    b.   Provider further acknowledges and agrees to, upon request at reasonable times, to answer questions on non-confidential information regarding security protocols and/or safeguards.

    c.   Provider further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Student Data or any portion thereof, including personally identifiable information. Provider agrees to answer non-confidential questions about said incident response plan.

d.   Provider is prohibited from directly contacting parent, legal guardian or eligible pupil unless expressly requested by LEA.

e.   In the event of a breach originating from LEA's use of the Service, Provider shall cooperate with LEA to the extent necessary to expeditiously secure Student Data.

ARTICLE VI- GENERAL OFFER OF PRIVACY TERMS

Provider may, by signing the attached Form of General Offer of Privacy Terms (General Offer, attached hereto as "Exhibit E"), be bound by the terms of this DPA to any other LEA who signs the acceptance in said Exhibit. The Form is limited by the terms and conditions described therein.

ARTICLE VII: MISCELLANEOUS

1.   **Term**. The Provider shall be bound by this DPA for the duration of the Service Agreement or so long as the Provider maintains any Student Data.

2.   **Termination**. In the event that either party seeks to terminate this DPA, they may do so by mutual written consent so long as the Service Agreement has lapsed or has been terminated. LEA shall have the right to terminate the DPA and Service Agreement in the event of a material breach of the terms of this DPA.

3.   **Effect of Termination Survival**. If the Service Agreement is terminated, the Provider shall destroy all of LEA's data pursuant to Article V, section 1(b), and Article II, section 3, above.

4.   **Priority of Agreements**. This DPA shall govern the treatment of student data in order to comply with privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the DPA and the Service Agreement, the DPA shall apply and take precedence. Except as described in this paragraph herein, all other provisions of the Service Agreement shall remain in effect.

5.   **Notice**. All notices or other communication required or permitted to be given hereunder must be in writing and given by personal delivery, or e-mail transmission (if contact information is provided for the specific mode of delivery), or first-class mail, postage prepaid, sent to the designated representatives before:

a. Designated Representatives

The designated representative for the LEA for this Agreement is:

Name: <u>Susan Beltz</u>
Title: <u>Chief Technology Officer</u>

Contact Information:

susan.beltz@ousd.org

510-879-8873

_____

The designated representative for the Provider for this Agreement is:

Name: _____

Title: Chief Revenue Officer

Contact Information:
info@schoolmint.com

_____

        b. Notification of Acceptance of General Offer of Privacy Terms. Upon execution of "Exhibit E", General Offer of Privacy Terms, Subscribing LEA shall provide notice of such acceptance in writing and given by personal delivery, or e-mail transmission (if contact information is provided for the specific mode of delivery), or first-class mail, postage prepaid, to the designated representative below.

The designated representative for notice of acceptance of the General Offer of Privacy Terms is:

Name: Max Calamari

Title: Sr. Information Systems Security Specialist

Contact Information:
max.calamari@schoolmint.com

_____

6. **Entire Agreement**. This DPA constitutes the entire agreement of the parties relating to the handling of Student Data and supersedes all prior communications, representations, or agreements, oral or written, by the parties relating thereto. This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both parties. Neither failure nor delay on the part of any party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.

7. **Severability**. Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more

narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.

8. **Governing Law; Venue and Jurisdiction**. THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR ALAMEDA COUNTY, CALIFORNIA AND/OR THE STATE OF CALIFORNIA FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY.

9. **Authority.** Provider represents that it is authorized to bind to the terms of this Agreement, including confidentiality and destruction of Student Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Student Data and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Student Data and portion thereof stored, maintained or used in any way. Provider agrees that any purchaser of the Provider shall also be bound to the Agreement.

10. **Waiver**. No delay or omission of the LEA to exercise any right hereunder shall be construed as a waiver of any such right and the LEA reserves the right to exercise any such right from time to time, as often as may be deemed expedient.

11. **Successors Bound**. This DPA is and shall be binding upon the respective successors in interest to Provider in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business.

IN WITNESS WHEREOF, the parties have executed this California Student Data Privacy Agreement as of the last day noted below.

Provider:

BY: _____ Date: 6.17.21

Printed Name: __Tim Waldron__ Title/Position: Chief Revenue Officer

Local Education Agency:

BY: _____ Date: __6/24/2021_____

Printed Name: _Shanthi Gonzales_ Title/Position:_President, Board of Education_

 Approved as to form by OUSD Staff Attorney Joanna Powell on 6/15/2021.

"**EXHIBIT A**"

DESCRIPTION OF SERVICES

SchoolMint provides solutions for enrollment management, application and lottery. SchoolMint also offers the Hero suite of behavior tools used by schools and districts to streamline behavior programs and promote a positive school climate.

The Oakland Unified School District uses SchoolMint for enrollment management, application and lottery. Pursuant to BP 3312, the agreement between Provider and Oakland Unified submitted as Legistar File ID 21-1531 and any subsequent renewals, constitute the Service Agreement between Subscribing LEA and Provider.

SCHEDULE OF DATA

Category of Data	Elements	Check if used by your system	Category of Data	Elements	Check if used by your system
Application Technology Meta Data	IP Addresses of users, Use of cookies etc.	x		Gender	x
				Ethnicity or race	x
	Other application technology meta data- Please specify:			Language information (native, preferred or primary language spoken by student)	x
Application Use Statistics	Meta data on user interaction with application	x		Other demographic information- Please specify:	Additional CALPADS and Local School District Information.
			Enrollment	Student school enrollment	x
Assessment	Standardized test scores			Student grade level	x
	Observation data			Homeroom	x
	Other assessment data Please specify:			Guidance counselor	x
					x

Attendance	Student school (daily) attendance data	
	Student class attendance data	
Communications	Online communications that are captured (emails, blog entries)	x
Conduct	Conduct or behavioral data	
Demographics	Date of Birth	x
	Place of Birth	x

	Specific curriculum programs	
	Year of graduation	x
	Other enrollment information - Please specify:	Additional CALPADS and Local School District Information
Parent/Guardian Contact Information	Address	x
	Email	x
	Phone	x
Parent/Guardian ID	Parent ID number (created to link parents to students)	x

Category of Data	Elements	Check if used by your system	Category of Data	Elements	Check if used by your system
				Vendor/App assigned student ID number	x
Parent/Guardian Name	First and/or Last	x		Student app username	
				Student app passwords	
Schedule	Student scheduled courses	x			
	Teacher names	x	Student Name	First and/or Last	x
Special Indicator	English language learner information	x	Student In App Performance	Program/applica tion performance (typing program-student types 60 wpm, reading program-student reads below grade level)	
	Low income status	x			
	Medical alerts /health data	x			
	Student disability information	x			
	Specialized education services (IEP or 504)	x	Student		x

Category of Data	Elements	Check if used by your system
	Living situations (homeless/foster care)	x
	Other indicator information- Please specify:	
Student Contact Information	Address	x
	Email	x
	Phone	x
Student Identifiers	Local (School district) ID number	x
	State ID number	x

Program Membership	Academic or extracurricular activities a student may belong to or participate in	
Student Survey Responses	Student responses to surveys or questionnaires	
Student work	Student generated content; writing, pictures etc.	
	Other student work data Please specify:	

Transcript	Student course grades	
	Student course data	x
	Student course grades/performance scores	
	Other transcript data -Please specify:	
Transportation	Student bus assignment	x
	Student pick up and/or drop off location	x
	Student bus card ID number	x
	Other transportation data -Please specify:	
Other	Please list each additional data element used, stored or collected by your application	

OTHER: Use this box, if more space needed

DEFINITIONS

De-Identifiable Information (DII): De-Identification refers to the process by which the Provider removes or obscures any Personally Identifiable Information ("PII") from student records in a way that removes or minimizes the risk of disclosure of the identity of the individual and information about them.

Educational Records: See definition of Pupil Records herein.

NIST: Draft National Institute of Standards and Technology ("NIST") Special Publication Digital Authentication Guideline.

Operator: The term "Operator" means the operator of an Internet Website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for K–12 school purposes and was designed and marketed for K–12 school purposes. For the purpose of the Service Agreement, the term "Operator" is replaced by the term "Provider." This term shall encompass the term "Third Party," as it is found in applicable state statutes.

Personally Identifiable Information (PII): The terms "Personally Identifiable Information" or "PII" shall include, but are not limited to, student data, metadata, and user or pupil-generated content obtained by reason of the use of Provider's software, website, service, or app, including mobile apps, whether gathered by Provider or provided by LEA or its users, students, or students' parents/guardians. PII includes Indirect Identifiers, which is any information that, either alone or in aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty. For purposes of this DPA, Personally Identifiable Information shall include the categories of information listed in the definition of Student Data.

Provider: For purposes of the Service Agreement, the term "Provider" means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records. Within the DPA the term "Provider" includes the term "Third Party" and the term "Operator" as used in applicable state statutes.

Pupil Generated Content: The term "pupil-generated content" means materials or content created by a pupil during and for the purpose of education including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of pupil content.

Pupil Records: Means all of the following: (1) Any information that directly relates to a pupil that is maintained by LEA; and (2) any information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other LEA employee.

For the purposes of this Agreement, Pupil Records shall be the same as Educational Records including Personally Identifiable Information(PII), all of which are deemed Student Data for the purposes of this Agreement.

Service Agreement: Refers to the Contract or Purchase Order to which this DPA supplements and modifies.

School District Official: For the purposes of this Agreement and pursuant to 34 CFR 99.31 (B), a School District Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and (3) is subject to 34 CFR 99.33(a) governing the use and re-disclosure of personally identifiable information from student records.

Student Data: Student Data includes any data, whether gathered by Provider or provided by LEA or its users, students, or students 'parents/guardians, including personally identifiable information that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, home address, telephone number, email address, or other information allowing online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information text messages, documents, student identifies, search activity, photos, voice recordings or geolocation information. Student Data shall constitute Pupil Records for the purposes of this Agreement, and for the purposes of State of California and federal laws and regulations. Student Data as specified in "Exhibit B" is confirmed to be collected or processed by the Provider pursuant to the Services. Student Data shall not constitute that information that has been anonymized or deidentified, or anonymous usage data regarding a student's use of Provider's services.

Student Personal Information: "Student Personal Information" means information collected through a school service that personally identifies an individual student or other information collected and maintained about an individual student that is linked to information that identifies an individual student. For purposes of this DPA, Student Personal Information is referred to as Student Data.

Subscribing LEA: An LEA that was not party to the original Services Agreement and who accepts the Provider's General Offer of Privacy Terms.

Subprocessor: For the purposes of this Agreement, the term "Subprocessor" (sometimes referred to as the "Subcontractor") means a party other than LEA or Provider, who Provider uses for data collection, analytics, storage, or other service to operate and/or improve its software, and who has access to PII.

Targeted Advertising: Targeted advertising means presenting an advertisement to a student where the selection of the advertisement is based on student information, student records or student

generated content or inferred over time from the usage of the Provider's website, online service or mobile application by such student or the retention of such student's online activities or requests over time.

Third Party: The term "Third Party" means a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records. However, for the purpose of this Agreement, the term "Third Party" when used to indicate the provider of digital educational software or services is replaced by the term "Provider."

" **EXHIBIT D**"

DIRECTIVE FOR DISPOSITION OF DATA

Oakland Unified School District directs to dispose of data obtained by Provider pursuant to the terms of the Service Agreement between LEA and Provider. The terms of the Disposition are set forth below:

Extent of Disposition Disposition shall be:	Complete. Disposition extends to all categories of data.
	Destruction or deletion of data.
Nature of Disposition Disposition shall be by:	
Timing of Disposition Data shall be disposed of by the following date:	As soon as commercially practicable By (Insert Date) _____

_____
Authorized Representative of LEA

_____
Verification of Disposition of Data
by Authorized Representative of Provider

<p style="text-align:center">**"EXHIBIT E"**</p>

<p style="text-align:center">**GENERAL OFFER OF PRIVACY TERMS OAKLAND UNIFIED SCHOOL DISTRICT**</p>

1. Offer of Terms

Provider offers the same privacy protections found in this DPA between it and Oakland Unified School District and which is dated to any other LEA ("Subscribing LEA") who accepts this General Offer though its signature below. This General Offer shall extend only to privacy protections and Provider's signature shall not necessarily bind Provider to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Provider and the other LEA may also agree to change the data provided by LEA to the Provider in Exhibit "B" to suit the unique needs of the LEA. The Provider may withdraw the General Offer in the event of: (1) a material change in the applicable privacy statutes; (2) a material change in the services and products subject listed in the Originating Service Agreement; or three (3) years after the date of Provider's signature to this Form.

Provider:

BY:_____   Date:6.17.21_____

Printed Name:Tim Waldron_____   Title/Position:Chief Revenue Officer_____

2. Subscribing LEA

A Subscribing LEA, by signing a separate Service Agreement with Provider, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing LEA and the Provider shall therefore be bound by the same terms of this DPA.

Subscribing LEA:

BY:_____   Date:_____

Printed Name:_____   Title/Position:_____

TO ACCEPT THE GENERAL OFFER, THE SUBSCRIBING LEA MUST DELIVER THIS SIGNED EXHIBIT TO THE PERSON AND EMAIL ADDRESS LISTED BELOW

Name: _____

Title: _____

Email: _____

"EXHIBIT F"

DATA SECURITY REQUIREMENTS

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

Memo

To	Board of Education
From	Kyla Johnson-Trammell, Superintendent Preston Thomas, Chief Systems and Services Officer Susan Beltz, Chief Technology Officer
Board Meeting Date	June 24, 2020
Subject	Approval by the Board of Education of Master Software as a Service Agreement between Oakland Unified School District and SchoolMint. Contractor: SchoolMint Services For: July 1, 2020 - June 30, 2021
Action Requested and Recommendation	Approval by the Board of Education of Master Software as a Service Agreement between Oakland Unified School District and SchoolMint, San Francisco, CA, for the latter to provide hosting, maintenance, upgrades and associated support for the School Finder District Choice (Apply and Lottery) and Registration products including a two-way data exchange between Aeries and SchoolMint, for the period July 1, 2020 to June 30, 2021, for an amount not to exceed $198,500.
Background *(Why do we need these services? Why have you selected this vendor)*	The Oakland Unified School District has successfully used SchoolMint to support the Enrollment Improvements program since 2017-18 and is using this firm going forward for similar services as previously provided. The School Finder is a web-based tool available on computers and mobile devices that helps families locate and learn about Oakland Unified schools. Searches can be filtered by school type, grades offered, ranking and other valuable criteria. The District Choice (Application and Lottery) applications are web-based tools available on computers and mobile devices that provide an end to end student application and enrollment solution for families and schools. With a single account, families can submit applications for multiple students to multiple schools, rank their preferences, track application status, respond to offers and complete student registration forms. Through a robust portal, schools and Enrollment staff can view all submitted applications, manage lotteries and placements, assign schools to students, manage applicant data, and view insights into applicant demographics. SchoolMint

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

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

Competitively Bid

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

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

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

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

Fiscal Impact

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

Attachments

- Master Software as a Service Agreement
- Pupil Records Rider

Contract for Oakland Unified School District

Prepared for:

Susan Beltz
Chief Technology Officer
Oakland Unified School District

Created by:

Samantha Remeika
VP Customer Success
SchoolMint, Inc.

Master Services Agreement

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

1. Definitions.

   a. **"Services**" means the services and Software described in the applicable Order Form that references this Agreement ("Order Form") and any Documentation related thereto.

   b. **"Documentation"** means technical materials provided by SchoolMint to Client in hard copy or electronic form describing the use and operation of the Software, which does not include any sales and/or marketing materials that SchoolMint may provide Client to describe functionality intended for sales and/or marketing purposes.

   c. **"Software"** means the SchoolMint software products and solutions described in the Order Form.

   d. **"Subscription Term"** means the subscription term for the Software as set forth in the Order Form unless terminated earlier in accordance with Section 14 ("**Termination**").

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

3. License.

   a. **License Grant.** Subject to the terms and conditions of this Agreement and SchoolMint's Privacy Policy, available upon request, and fully incorporated by reference herein, SchoolMint grants to Client a non-exclusive, non-transferable license during the Subscription Term, to access the Software through the User IDs and to operate the features of the Software according to the Documentation under normal circumstances.

   b. **User IDs.** SchoolMint will issue unique User IDs to each of the Client Personnel (as defined below) specified by Client from time to time to access and use the Software. Client Personnel will access and use the Software only through the User IDs issued by SchoolMint for such Client Personnel. Each User ID may be used only to access the Software during one (1) concurrent login session. Client will not allow Client Personnel to share User IDs with any third parties, which require prior written approval for access by SchoolMint. "**Client Personnel**" means those personnel of Client who have been provided with authorized administrative access to the Software. Client is responsible for all activity occurring under its User IDs. Client is responsible for all use of the Services by Client Personnel and for maintaining the confidentiality of all User IDs and will promptly notify SchoolMint of any actual or suspected unauthorized use of the Services. SchoolMint reserves the right to suspend or terminate any User ID which it determines may have been used for an unauthorized purpose.

   c. **Limitations.** Client agrees that it will not and will not permit any Client Personnel or other party to: (i) to access or use the Services other than Client Personnel explicitly authorized by SchoolMint; (ii) modify, adapt, alter or translate the Software or Documentation, except as expressly allowed hereunder; (iii) sublicense, lease, rent, loan, distribute, or otherwise transfer the Services to any third party; (iv) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or algorithms, structure or organization) of the Software; (v) use or copy the Software or Documentation except as expressly allowed hereunder; (vi) disclose or transmit any data contained in the Software to any individual other than Client Personnel. Client shall hold SchoolMint harmless from any and all claims relating to Client's misuse of Software and/or Services rendered by SchoolMint to Client, including SchoolMint's intellectual property.

   d. **Harmful Content.** In using the Software, Client agrees to the following: (i) Client shall not incorporate into or otherwise transmit through the Software any content that violates or infringes the rights of others, including without limitation any material that: (A) may be abusive, indecent, threatening, obscene, harassing, violent, defamatory, libelous, fraudulent, or otherwise objectionable; (B) encourages or otherwise promotes conduct that would constitute a criminal offense or give rise to civil liability; (C) impersonates any person or entity or that otherwise misrepresents Client's affiliation with a person or entity; (D)

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

e. **Client Responsibility.** Client shall perform the responsibilities necessary to establish Client's use of the Services, including (a) providing Client Personnel lists to setup User IDs, (b) properly maintaining all associated equipment, software and environmental conditions in accordance with applicable industry standards and/or specifications SchoolMint provides Client, and (c) designating Client Personnel to participate in training.

f. **Client Authorization; Enforceability.** Client represents and warrants that (i) it has obtained all necessary authorizations to enter into this Agreement and the Order Form, (ii) the person signing and/or consenting on behalf of Client is a duly authorized representative of the Client, and (iii) this Agreement is a duly authorized binding and enforceable obligation of Client.

g. **Hosting Services**. SchoolMint will provide the hosting services **("Hosting Services")** for the Software through a third party hosting facility (such as AWS) and may update the content, functionality and user interface of the Hosting Services from time to time in its sole discretion and in accordance with this Agreement. In order to use the Software, Client must have or obtain access to the internet. Client agrees that SchoolMint is not providing Client with access to the internet in order to use the Software and that Client is solely responsible for obtaining and maintaining such internet access and for providing all equipment necessary to obtain and maintain such internet access. SchoolMint does not and cannot control the flow of data to or from SchoolMint's network, designated hosting facility and/or other portions of the internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Client's connections to the internet (or portions thereof). SchoolMint agrees to use commercially reasonable efforts to take any actions it deems appropriate to remedy and avoid such events. However, SchoolMint cannot guarantee that such events will not occur. Accordingly, SchoolMint disclaims any and all liability resulting from or related to such event.

h. **Equipment**. If Client has purchased any equipment from SchoolMint as set forth in the Order Form, then such equipment is provided "AS-IS" from the manufacturer and SchoolMint makes no warranties, express or implied, with respect to such equipment. To the extent permitted by the manufacturer, all manufacturer's warranties are hereby passed through to Client.

4. Reservation of Rights.

  a. **SchoolMint.** SchoolMint expressly reserves all rights in the Services, Software, Documentation, and all other materials provided by SchoolMint hereunder not specifically granted to Client. It is acknowledged that all right, title and interest in the Services, Software, Documentation, and all other materials provided by SchoolMint hereunder, any update, adaptation, translation, customization or derivative work thereof, and all intellectual property rights therein will remain with SchoolMint (or third party suppliers, if applicable) and that the Services, Software, Documentation, and all other materials provided by SchoolMint hereunder are licensed on a subscription basis and not transferred to Client apart from the temporary license discussed herein.

  b. **Client**. Client expressly reserves all rights in any data that Client (or Client Personnel) uploads through the Services and all results from processing such data, including compilations, derivative works thereof, and aggregated and/or de-identified data (the "**Client Data**"), except that Client grants SchoolMint a non-exclusive, royalty-free, license to use, reproduce, and create derivative works of the Client Data in operating the Service features for Client's benefit, and, notwithstanding the foregoing, SchoolMint may use and distribute aggregated and/or de-identified data that is derived from the Client Data for any lawful purpose with Client's permission. Client represents and warrants that Client has all rights under applicable law to provide the Client Data, including any personal information of any of the students and or other persons included therein.

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

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

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

  a. **Web Support.** Client's designated representative shall have access to SchoolMint's technical support web site and may use the website to submit service requests. SchoolMint will use reasonable efforts to respond in a timely manner under the given circumstances.

  b. **Client's Responsibilities**. To receive support, Client shall: (i) report errors or suspected errors for which support is needed, and supply SchoolMint with sufficient information and data to reproduce the error; (ii) procure, install, operate and maintain hardware, operating systems and other software that are compatible with the most current supported version of Software and otherwise in conformity with SchoolMint's minimum requirements as made available to Client; and (iii) maintain an operating environment free of any modifications or other programming that might interfere with the functioning of Software. Client acknowledges that fixes and new versions may be made available electronically, and that, in some cases, SchoolMint may maintain e-mail distribution lists that are used to notify customers of the availability of fixes and new versions and to provide other information to customers that are eligible for support. Client shall be responsible for including the appropriate Client Personnel on any such e-mail distribution lists of SchoolMint so that Client receives such notifications and other information.

  c. **Service Upgrades and Scheduled Downtime.** Client shall receive access to upgraded versions of the Services as made available by SchoolMint from time to time, and at no additional charge. SchoolMint may from time to time schedule downtime for maintenance and upgrades. SchoolMint shall provide Client notice of any scheduled downtime, including any scheduled user disruption, if the circumstances permit such notice. SchoolMint will strive to perform updates during non-peak hours.

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

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

9. Fees and Payment.

    a.   **Subscription Fees.** Subscription Fees (set forth in each Order Form) are payable in advance pursuant to subsection 9(b) below. SchoolMint will issue an invoice for each payment annually.

    b.   **Fees**. The Subscription Fees and all other fees and expenses set forth in each Order Form (all such fees are collectively "**Fees**") will be invoiced and are payable net thirty (30) days after the invoice date.

    c.   **Late Payment.** Client may not withhold or "setoff" any amounts due hereunder. SchoolMint reserves the right to suspend access to the Services until all undisputed past due amounts are paid in full after giving Client advance written notice and an opportunity to cure as specified in this Agreement.

    d.   **Certain Taxes.** Fees quoted do not include and Client shall pay, indemnify and hold SchoolMint harmless from all gross receipts, value-added, GST, personal property or other taxes, and all applicable duties, tariffs, assessments, export and import fees or similar charges (including interest and penalties imposed thereon) on the transaction contemplated herein, other than taxes based on the net income or profits of SchoolMint. If Client is exempt from federal, state, sales, and use taxes the Client will not be charged the same upon providing SchoolMint with sufficient evidence of said exemption.

10. Confidential Information.

a. **Definitions.** For purposes of this section, a Party receiving Confidential Information (as defined below) shall be the "**Recipient**" and the Party disclosing such information shall be the "**Discloser**" and "**Confidential Information**" means all information disclosed by Discloser to Recipient during the Term and marked as "confidential" or "proprietary". Client hereby acknowledges that the Services (including any Documentation, Software, and any translations, compilations, partial copies and derivative works thereof) will be considered Confidential Information belonging exclusively to SchoolMint (or its designated third party supplier), and SchoolMint hereby acknowledges that Client Data will be considered Confidential Information belonging to Client, in each case regardless of whether or not marked as "confidential" or "proprietary".

b. **Covenant.** To the extent permitted by law, the Recipient hereby agrees that during the Term and at all times thereafter it shall not (i) disclose such Confidential Information of the Discloser to any person or entity, except to its own personnel having a "need to know" (and who themselves are bound by similar nondisclosure restrictions), and to such other recipients as the Discloser may approve in writing; provided that all such recipients shall have first executed a confidentiality agreement in a form acceptable to Discloser; (ii) use Confidential Information of the Discloser except to exercise its license rights or perform its obligations under this Agreement; or (iii) alter or remove from any Confidential Information of the Discloser any proprietary legend. Recipient shall use at least the same degree of care in safeguarding the Confidential Information of the Discloser as it uses in safeguarding its own confidential information of a similar nature, but in no event shall less than due diligence and reasonable care be exercised. Upon the earlier of Discloser's written request or termination or expiration of this Agreement, and regardless of whether a dispute may exist, Recipient shall return or destroy (as instructed by Discloser) all Confidential Information of Discloser in its possession or control and cease all further use thereof. Notwithstanding the foregoing, Recipient may disclose Discloser's Confidential Information to the extent that such disclosure is necessary for the Recipient to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that the Recipient promptly notifies the Discloser in writing of such required disclosure and cooperates with the Discloser to seek an appropriate protective order.

c. **Injunctive Relief.** Recipient acknowledges that violation of the provisions of this section would cause irreparable harm to Discloser not adequately compensated by monetary damages. In addition to other relief, it is agreed that injunctive relief shall be available without necessity of posting bond to prevent any actual or threatened violation of such provisions.

11. Disclaimers.

a. **DISCLAIMER OF OTHER WARRANTIES. SOFTWARE AND SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND (UNLESS EXPLICITLY PROVIDED FOR HEREIN), AND SCHOOLMINT AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND POTENTIAL IMPLEMENTATION DELAYS. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, SCHOOLMINT DOES NOT WARRANT THAT THE FUNCTIONALITY CONTAINED IN THE SOFTWARE WILL MEET CLIENT'S REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE OR HOSTING SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE LICENSED PRODUCT WILL BE CORRECTED. FURTHERMORE, SCHOOLMINT DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE OR SERVICES IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, SECURITY OR OTHERWISE. CLIENT AGREES THAT THE USE OF SOFTWARE AND SERVICES IS AT CLIENT'S OWN RISK. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SCHOOLMINT OR AN SCHOOLMINT REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT FULLY APPLY TO CLIENT.**

b. **Limited Non-Infringement Warranty.** SchoolMint warrants that it has the right to license to Client the Software and provide the Services as contemplated by this Agreement. SchoolMint represents and warrants that as of the date the Software and Services, when properly used in accordance with the Documentation and this Agreement, will not misappropriate or infringe any third party's intellectual property rights recognized under any trade secret law, any U.S. copyright, or U.S. patent issued as of the Effective Date.

c. **Limited Privacy Warranty.** SchoolMint hereby recognizes that the Client Data which Client provides to SchoolMint may include personal information of students. In order for SchoolMint to carry out its obligations under this Agreement, it is necessary for SchoolMint to use the Client Data. SchoolMint agrees to use the Client Data, some of which may contain personal information of students, only for the purpose of fulfilling its obligations under this Agreement. SchoolMint agrees all

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

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

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

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

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

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

15. General Provisions.

   a. **Assignment.** Client may not assign this Agreement to any third party without SchoolMint's prior written consent. SchoolMint may assign this Agreement to any purchaser of all or substantially all of its assets or capital stock. Any assignment in violation of this section shall be void. The terms of this Agreement shall be binding upon permitted assignees.

   b. **Choice of Law; Attorney's Fees.** This Agreement and any action related thereto shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of law principles. Each of the Parties hereto agrees to be subject to the exclusive jurisdiction, and venue shall reside, in the state and federal courts located in San Francisco, California for the purpose of adjudicating any dispute relating to or arising out of this Agreement. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any claim against SchoolMint must be brought within one (1) year after it arose, or be barred. The prevailing Party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

   c. **Compliance with Export Regulations.** Client has or shall obtain in a timely manner all necessary or appropriate licenses, permits or other governmental authorizations or approvals; shall indemnify and hold SchoolMint harmless from, and bear all expense of, complying with all foreign or domestic laws, regulations or requirements pertaining to the importation, exportation, or use of the technology to be developed or provided herein. Client shall not directly or indirectly export or re-export (including by transmission) any regulated technology to any country to which such activity is restricted by regulation or statute, without the prior written consent, if required, of the administrator of export laws (e.g., in the U.S., the Bureau of Export Administration of the U.S. Department of Commerce).

   d. **Construction.** Except as otherwise provided herein, the Parties rights and remedies under this Agreement are cumulative. The term "including" means "including without limitation."

   e. **Force Majeure**. Neither Party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events which occur after the signing of this Agreement and which are beyond the reasonable control of such Party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency.

   f. **Severable.** Any provision hereof found by a tribunal of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect. Without limiting the generality of the foregoing, Client agrees that the section titled Limitation of Liabilities will remain in effect notwithstanding the enforceability of any other provision herein.

   g. **Waiver**. Waiver of any provision hereof in one instance shall not preclude enforcement thereof on future occasions.

   h. **Counterparts; Facsimile Signature**. This Agreement, and may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument

   i. **Independent Contractors.** Client's relationship to SchoolMint is that of an independent contractor, and neither Party is an agent or partner of the other. Client will not have, and will not represent to any third party that it has, any authority to act on behalf of SchoolMint.

   j. **Entire Agreement.** This Agreement, the Order Form, and Client's Purchase Order (if any) incorporated by reference constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all other communications, whether written or oral. This Agreement may be amended only by a written document signed by both Parties. In the event of any conflicts between this Agreement and the Order Form, the terms of the Order From shall prevail. The headings of sections of this Agreement are for reference purposes only and have no substantive effect.

Accepted and agreed by the authorized representative of each Party:

Oakland Unified School District   SchoolMint, Inc.

By:_____   By: _____

Name: _____   Name: Bob Roepke

Title: _____   Title: Chief Financial Officer

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

Addendum: SchoolMint SIS Integration Guidelines & Policies

Aeries

Addendum to the Master Service Agreement

Provider: SchoolMint Inc.

Customer: Oakland Unified School District

Date:

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

TERMS OF INTEGRATION

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

https://docs.google.com/spreadsheets/d/1hwIbzDwHivmFRiAM2OOZRZWU7nNUUOBoL0FTYii_Lus/edit#gid=0

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

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

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

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

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

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

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

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

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

Accepted and agreed by the authorized representative of each party:

Oakland Unified School District   SchoolMint, Inc.

By:_____   By: _____

Name:_____   Name: Bob Roepke

Title:_____   Title: Chief Financial Officer

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

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

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

1.   Pupil Records Property of OUSD. All Pupil Records are and will continue to be the property of and under the control of OUSD. The parties agree that as between them, all rights, including all intellectual property rights in and to Pupil Records shall remain the exclusive property of OUSD, and Contractor has a limited, nonexclusive license to such Pupil Records. The Agreement and Addendum do not give Contractor any rights, implied or otherwise, to Pupil Records, OUSD content, or intellectual property, except as expressly stated in the Agreement and this Addendum.

2.   Pupil-Generated Content. Notwithstanding the provisions of section 1, pupils shall retain ownership and control of pupil-generated content, if any (as that term is defined by Education Code section 49073.1(d)(4)). Contractor shall make all pupil-generated content, if any, available to the pupil who created it and provide a process by which a pupil can transfer his or her pupil-generated content to a personal account. Within thirty (30) days of the execution of this Addendum, Contractor shall provide OUSD with a written description of the process it will provide to pupils in compliance with this section 2.

3.   Use of Information in Pupil Records. Contractor may not and will not use any Pupil Record or information in a Pupil Record for any purpose other than those required or specifically permitted by the Agreement and this Addendum.

4.   Personally Identifiable Information. Contractor shall provide a process by which a pupil's parent, legal guardian, or the eligible pupil can review the personally identifiable information in an account created for the pupil's academic-related records and correct erroneous information. Within thirty (30) days of the execution of this Addendum, Contractor shall provide OUSD with a written description of the process it will provide to pupils and their parents/legal guardians in compliance with this section 4.

5.   Security and Confidentiality of Pupil Records. Contractor will access, store and use Pupil Records in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to

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

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

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

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

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

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

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

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

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

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

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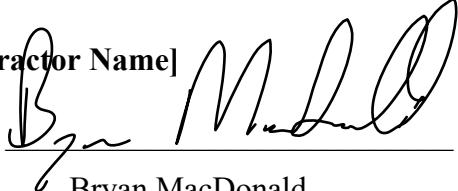
Information in their possession to OUSD. The term of this Addendum is coextensive with the term of the Agreement.

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

Oakland Unified School District   **[Contractor Name]**

By: _____   By: _____

Name: _____   Name: __Bryan MacDonald_____
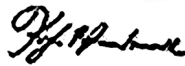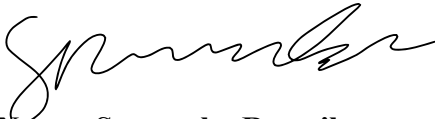
Title: _____   Title: __CEO_____

Date: _____   Date: ___6/20/2019_____

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

_____   6/25/2020
Jody London
President, Board of Education

Approved changes by Contractor

_____   6/25/2020
Kyla Johnson Trammell
Secretary, Board of Education

Name: Samantha Remeika
Title: Vice President Customer Success
Date: 6/18/2020

ORDER FORM

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

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

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

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

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

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

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

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

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

Rate Schedule

The following is a schedule of rates for additional services.

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

Payment Terms

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

Please make all checks payable to:

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

Payments can also be made by bank transfer to:

Bank Name: Webster Bank
Bank Holder: SchoolMint, Inc.
Account No.: 23135570
ABA/Routing #: 211170101
Terms: Net 30 days after subscription date or as otherwise set forth in the MSA

Accepted and agreed by the authorized representative of each party:

Oakland Unified School District   SchoolMint, Inc.

By:_____   By: _____

Name:_____   Name: Bob Roepke

Title:_____   Title: Chief Financial Officer

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

RESOLUTION OF THE
BOARD OF EDUCATION
OAKLAND UNIFIED SCHOOL DISTRICT

RESOLUTION NO. 2021-0284

AUTHORIZING USE OF *GRAYDON* EXCEPTION TO PUBLIC BIDDING FOR
CONTRACT WITH SCHOOLMINT AND APPROVING AMENDMENT NO. 1 TO MASTER SUBSCRIPTION
LICENSES AND SERVICES AGREEMENT DATED JUNE 24, 2020

WHEREAS, the Oakland Unified School District ("District") has a need to contract with a vendor to provide hosting, enhancements, maintenance, upgrades and associated support for the SchoolMint enrollment system;

WHEREAS, the contemplated contract is in an amount of $257,184.25 for 2021-22 in addition to the original 2020-21 contract amount of $198,500;

WHEREAS, under Public Contracts Code section 20111, a contract in this amount would ordinarily require competitive bidding;

WHEREAS, one exception to this competitive bidding requirement is where "the nature of the subject of the contract is such that [bidding] would be unavailing or would not produce an advantage, and the advertisement for competitive bid would thus be undesirable, impractical, or impossible." (*Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631, 645.)

WHEREAS, under this exception, a contract need not be bid where bidding would not serve its intended purpose--namely, to protect taxpayers from possible waste and dissipation of public funds--because it would "substantially impair[]" the public entity's ability to operate, and/or would impose unnecessary additional costs (*Ibid.*);

WHEREAS, the District has been successfully utilizing software provided by SchoolMint since the 2017-18 school year, and relies on the software and services for student enrollment services throughout the District;

WHEREAS, the District's original agreement with SchoolMint, Inc. was approved by the Board of Education on May 10, 2017 as File ID 17-0834 with subsequent agreements approved by the Board of Education on October 11, 2017 as File ID 17-2023, June 26, 2019 as File ID 19-1474, and June 24, 2020 as File ID 20-1388;

WHEREAS, the initial selection of SchoolMint was based upon an original purchase of the School Finder software by Educate 78 and its ability to interoperate with the SchoolMint tools for application and enrollment processing;

WHEREAS, the District subsequently conducted a formal Request for Information to obtain proposals from competitors to compare features and pricing, the result of which was the selection of SchoolMint based upon optimal features and overall cost;

WHEREAS, the District has incurred approximately $87,125 in one-time professional services costs for configuration and customization of the SchoolMint platform from the original contract approved in 2017 and significant staff time to implement and train on the system;

WHEREAS, it would be cost-prohibitive, and would risk a gap in enrollment services, to discontinue use of this software in order to change to another vendor.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board finds and declares that going out to bid for the software and services provided by SchoolMint would not produce any advantage, would result in wasted taxpayer funds, and would substantially impair the District's ability to operate because it could result in time gaps in the management and reporting of student data, including the completion of mandated state reporting

2. Competitive bidding is therefore excused under the reasoning of *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631 and related case law, allowing the District to contract directly with SchoolMint.

3. The Amendment No. 1 for SchoolMint, for the period July 1, 2021 to June 30, 2022 for an amount not to exceed $455,684.25, consisting of $257,184.25 for 2021-22 in addition to the original 2020-21 contract amount of $198,500, is hereby approved.

PASSED AND ADOPTED on June 23, 2021, by the Governing Board of the Oakland Unified School District by the following vote:

PREFERENTIAL AYE:

PREFERENTIAL NOE:

PREFERENTIAL ABSTENTION:

PREFERENTIAL RECUSE:

AYES:

NOES:

ABSTAINED:

RECUSED:

ABSENT:

CERTIFICATION

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Board of Education of the Oakland Unified School District held on June 30, 2021.

Legislative File	
File ID Number:	21-1531
Introduction Date:	6/23/21
Enactment Number:	
Enactment Date:	
By:	

OAKLAND UNIFIED SCHOOL DISTRICT

_____
Shanthi Gonzales
President, Board of Education

_____
Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education

Approved as to form by OUSD Staff Attorney Joanna Powell on 6/3/2021.

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

AMENDMENT NO. 1
to
Master Services Agreement

This Amendment amends the attached legal agreement ("Original Agreement") and any prior amendments ("Prior Amendments," together with Original Agreement, "(Amended) Agreement"), incorporated herein by reference, which includes the following information:
- The (Amended) Agreement is between the Oakland Unified School District ("OUSD") and the below named entity or individual ("VENDOR," together with OUSD, "PARTIES"):
  SchoolMint
- The Parties entered into the Original Agreement on the below date:
  June 24, 2020
- The Enactment Number of the Original Agreement is below:
  20-0979

The PARTIES hereby agree to amend the (Amended) Agreement as stated herein.

1. **Services**: ☐ The scope of work of the (Amended) Agreement is

    unchanged.

    ☒ The scope of work of the (Amended) Agreement has changed. If the scope of work has changed:

Provide brief description of revised scope of work including measurable description of expected final results, such as services, materials, products, and/or reports; select the appropriate option below:

☒ Revised scope of work <u>attached</u>

☒ VENDOR agrees to provide the <u>following</u> amended services:

In accordance with the attached renewal pro forma invoice, the SchoolMint enrollment application and lottery software is being renewed for 2021-22 and also being extended to support Pre-K enrollment. Furthermore, SchoolMint will implement an updated version of the SchoolFinder software to best meet the needs of OUSD's enrollment stabilization policy. The services will cost the following amounts: $127,958.00 for the updated school finder tool ($18,315 for the annual software licensing fee, $109,643.00 for professional services for the tool build-out), $125,000 for the application and lottery tool, and $4,226.25 for the Pre-K application enhancement.

2.   **Term** (duration): ☐ The term of the (Amended) Agreement is <u>unchanged</u>

☒ The term of the (Amended) Agreement has <u>changed</u>. If the term has changed: The parties agree to amend the below original End Date of the (Amended) Agreement to the below new End Date:
Original End Date: **June 30, 2020**
New End Date: **June 30, 2021**

3. **Compensation**:   ☐ The not-to-exceed amount in the (Amended) Agreement is <u>unchanged</u>

☒ The not-to-exceed amount in the (Amended) Agreement has <u>changed</u>. If the not-to-exceed amount has changed: The not-to-exceed amount in the (Amended) Agreement is amended as follows:

☒ Increase not-to-exceed amount by: $**257,184.25**.

☐ Decrease not-to-exceed amount by:
$Click or tap here to enter text..
The new not-to-exceed amount under the (Amended) Agreement, as herein amended, is
$Click or tap here to enter text..

4. **COVID-19**: To the extent that the Amendment did not contain the following guarantees, by signing this Amendment, VENDOR agrees that:
   a. Through its execution of this Amendment, VENDOR declares that it is able to meet its obligations and perform the Services required pursuant to this Amendment in accordance with any shelter-in-place (or similar) order or curfew (or similar) order ("Orders") issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.
   b. VENDOR agrees to notify OUSD within twelve (12) hours if VENDOR or any employee, subcontractor, agent, or representative of VENDOR tests positive for COVID-19, shows or reports symptoms consistent with COVID-19, or reports to VENDOR possible COVID-19 exposure.
   c. VENDOR agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD employees to VENDOR or any employee, subcontractor, agent, or representative of VENDOR and information necessary to perform contact tracing.
   d. VENDOR shall bear all costs of compliance with this Paragraph.

5. **Remaining Provisions**: All other provisions of the (Amended) Agreement remain unchanged and in full force and effect as originally stated.

6. **Amendment Publicly Posted**. This Amendment, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.

7. **Signature Authority**.
   a. Each PARTY has the full power and authority to enter into and perform this Amendment, and the person(s) signing this Amendment on behalf of each PARTY has been given the proper authority and empowered to enter into this Amendment.
   b. Notwithstanding subparagraph (a), only the Superintendent, Chiefs,

Deputy Chiefs, and the General Counsel has authority to sign contracts for OUSD and only under limited circumstances, which required ratification by the OUSD Governing Board. VENDOR agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this Amendment or as legally binding in any way.

8. **Amendment Contingent on Governing Board Approval**. OUSD shall not be bound by the terms of this Amendment unless and until it has been (i) formally approved by OUSD's Governing Board or (ii) validly and properly executed by the OUSD Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code or Board Policy, and no payment shall be owed or made to VENDOR absent such formal approval or valid and proper execution.

REST OF PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the PARTIES hereto agree and execute this Amendment and to be bound by its terms and conditions:

VENDOR

Name: _Elizabeth Fischer_____

      Signature: *Elizabeth Fischer*_____

Position: _COO_____

                 Date: _6/2/2021_____

By its signature, VENDOR acknowledges and agrees not to expect or demand compensation pursuant to this Amendment prior to the PARTIES, particularly OUSD, validly and properly executing this Amendment until this Amendment is validly and properly executed and shall not rely on verbal or written communication from any individual, other than the President of the OUSD Governing Board, the OUSD Superintendent, or the OUSD General Counsel, stating that OUSD has validly and properly executed this Amendment. VENDOR specifically acknowledges and agrees to this term/condition on the above date.

OUSD

Name: _____

      Signature: _____

Position: _____
_____ Date: _____
      ☐ Board President
      ☐ Superintendent
      ☐ Chief/Deputy Chief

Name: <u>Kyla Johnson-Trammell</u>_____   Signature: _____
_____

Position: <u>Secretary, Board of Education</u>_____   Date:
_____