| Board Office Use: **Legislative File Info.** | |
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| File ID Number | 22-0912 |
| Introduction Date | 4/27/22 |
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| Enactment Date | 4/27/2022 er |

# Board Cover Memorandum

**To**          Board of Education

**From**        Kyla Johnson-Trammell, Superintendent
                Preston Thomas, Chief Systems and Services Officer
                Susan Beltz, Chief Technology Officer, Technology Services

**Meeting Date**  April 27, 2022

**Subject**     Services Agreement with Scribbles Software

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**Ask of the Board**    ☐Approve Service Agreement
                        ☒Ratify Service Agreement

**Services**    *ScribOrder record request and fulfillment for current and former student record requests, and integrated electronic document archive repository for alumni/ legacy electronic student records.*

**Term**        Start Date: 4/1/2022                     End Date: 3/31/2027

**Not-To-Exceed Amount**    *$17,400*

**Competitively Bid**    No

If the Service Agreement was <u>not</u> competitively bid and the not-to-exceed amount is <u>more</u> than $96,700, list the exception(s) that applies (requires Legal review/approval and may require a resolution): [Exception]

**In-Kind Contributions**    *None*

**Funding Source(s)**    *010-0000-0-0000-7700-5826-986-9860-1110-0301-99999*
                         *General Purpose,Prof/Cont*

**Background**    *Scribbles provides an online archive of our student records which are made available through our website for current and prior students, employers and organizations to request copies. A fee for this services is subtracted from the*

*payments and the remainder of the funds are sent to the district monthly. Scribbles provides current students with five free transcripts and school registrars can override fees for additional transcripts upon request.*

**Attachment(s)**
- Service Agreement with Scribbles Software
- National Student Data Privacy Agreement

# SERVICES AGREEMENT 2021-2022

This Services Agreement ("Agreement") is a legally binding contract entered into between the Oakland Unified School District ("OUSD") and the below named entity or individual ("VENDOR," together with OUSD, "PARTIES"):

( Full Name of Vendor **Scribbles Software** )

The PARTIES hereby agree as follows:

1.  **Term**.
    a.  This Agreement shall start on the below date ("Start Date"):

    ( Start Date **April 1, 2022** )

    If no Start Date is entered, then the Start Date shall be the latest of the dates on which each of the PARTIES signed this Agreement.

    b.  The work shall be completed no later than the below date ("End Date"):

    ( End Date **March 31, 2025** )

    If no End Date is entered, then the End Date shall be the first June 30 after the Start Date. If the term set forth above would cause the Agreement to exceed the term limits set forth in Education Code section 17596, the Agreement shall instead automatically terminate upon reaching said term limit.

2.  **Services**. VENDOR shall provide the services ("Services") as described in #1A and #1B of **Exhibit A,** attached hereto and incorporated herein by reference. To the extent that there may be a school closure (e.g., due to poor air quality, planned loss of power, COVID-19) or similar event in which school sites and/or District offices may be closed or otherwise inaccessible, VENDOR shall describe in #1B of **Exhibit A** whether and how its services would be able to continue.

3.  **Alignment and Evaluation**.
    a.  VENDOR agrees to work and communicate with OUSD staff, both formally and informally, to ensure that the Services are aligned with OUSD's mission and are meeting the needs of students as determined by OUSD.

b.   OUSD may evaluate VENDOR in any manner which is permissible under the law. OUSD's evaluation may include, without limitation: (i) requesting that OUSD employee(s) evaluate the performance of VENDOR, each of VENDOR's employees, and each of VENDOR's subcontractors, and (ii) announced and unannounced observance of VENDOR, VENDOR's employee(s), and VENDOR's subcontractor(s).

4.   **Inspection and Approval.** VENDOR agrees that OUSD has the right and agrees to provide OUSD with the opportunity to inspect any and all aspects of the Services performed including, but not limited to, any materials (physical or electronic) produced, created, edited, modified, reviewed, or otherwise used in the preparation, performance, or evaluation of the Services. In accordance with Paragraph 8 (Compensation), the Services performed by VENDOR must meet the approval of OUSD, and OUSD reserves the right to direct VENDOR to redo the Services, in whole or in part, if OUSD, in its sole discretion, determines that the Services were not performed in accordance with this Agreement.

5.   **Data and Information Requests**. VENDOR shall timely provide OUSD with any data and information OUSD reasonably requests regarding students to whom the Services are provided. VENDOR shall register with and maintain current information within OUSD's Community Partner database unless OUSD communicates to VENDOR in writing otherwise, based on OUSD's determination that the Services are not related to community school outcomes. If and when VENDOR's programs and school site(s) change (either midyear or in subsequent years), VENDOR shall promptly update the information in the database.

6.   **Confidentiality and Data Privacy**.
a.   OUSD may share information with VENDOR pursuant to this Agreement in order to further the purposes thereof. VENDOR and all VENDOR's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services, provided such information is (i) marked or identified as "confidential" or "privileged," or (ii) reasonably understood to be confidential or privileged.

b. VENDOR understands that student data is confidential. If VENDOR will access or receive identifiable student data, other than directory information, in connection with this Agreement, VENDOR agrees to do so only after VENDOR and OUSD execute a separate data sharing agreement.

   (i) If VENDOR is a software vendor, it agrees to access or receive identifiable student data, other than directory information, only after executing a California Student Data Privacy Agreement ("CSDPA") or CSDPA Exhibit E (available here).

   (ii) If VENDOR is not a software vendor, it agrees to access or receive identifiable student data, other than directory information, only after executing the OUSD Data Sharing Agreement (available here).

   (iii) Notwithstanding Paragraph 28 (Indemnification), should VENDOR access or receive identifiable student data, other than directory information, without first executing a separate data sharing agreement, VENDOR shall be solely liable for any and all claims or losses resulting from its access or receipt of such data.

c. All confidentiality requirements, including those set forth in the separate data sharing agreement, extend beyond the termination of this Agreement.

7. **Copyright/Trademark/Patent/Ownership**. VENDOR understands and agrees that all matters produced under this Agreement, excluding any intellectual property that existed prior to execution of this Agreement, shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in those works are the property of OUSD. These matters include, without limitation, drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, or other documents prepared by VENDOR, its employees, or its subcontractors in connection with the Services performed under this Agreement. VENDOR cannot use, reproduce, distribute, publicly display, perform, alter, remix, or build upon matters produced under this Agreement without OUSD's express written permission. OUSD shall have all right, title and interest in said matters,

including the right to register the copyright, trademark, and/or patent of said matter in the name of OUSD. OUSD may, with VENDOR's prior written consent, use VENDOR's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

8. **Compensation**. OUSD agrees to pay VENDOR for satisfactorily performing Services in accordance with this Paragraph, Paragraph 10 (Invoicing), and #1C in **Exhibit A**.
   a. The compensation under this Agreement shall not exceed:

   $ Not-to-Exceed Amount (**17,400**).

   This sum shall be for full performance of this Agreement and includes all fees, costs, and expenses incurred by VENDOR including, but not limited to, labor, materials, taxes, profit, overhead, travel, insurance, permitted subcontractor costs, and other costs.
   b. OUSD shall not pay and shall not be liable to VENDOR for any costs or expenses paid or incurred by VENDOR not described in **Exhibit A**.
   c. Payment for Services shall be made for all undisputed amounts no more frequently than in monthly installment payments within sixty (60) days after VENDOR submits an invoice to OUSD, in accordance with Paragraph 10 (Invoicing), for Services actually performed and after OUSD's written approval that Services were actually performed. The granting of any payment by OUSD, or the receipt thereof by VENDOR, shall in no way lessen the liability of VENDOR to correct unsatisfactory performance of Services, even if the unsatisfactory character of the performance was not apparent or detected at the time a payment was made. If OUSD determines that VENDOR's performance does not conform to the requirements of this Agreement, VENDOR agrees to correct its performance without delay.
   d. Compensation for any Services performed prior to the Start Date or after the End Date shall be at OUSD's sole discretion and in an amount solely determined by OUSD. VENDOR agrees that it shall not expect or demand payment for the performance of such services.
   e. VENDOR acknowledges and agrees not to expect or demand

payment for any Services performed prior to the PARTIES, particularly OUSD, validly and properly executing this Agreement until this Agreement 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 Agreement.

9. **Equipment and Materials**. VENDOR shall provide all equipment, materials, and supplies necessary for the performance of this Agreement.

10. **Invoicing**. Invoices furnished by VENDOR under this Agreement must be in a form acceptable to OUSD.
    a. All amounts paid by OUSD shall be subject to audit by OUSD. Invoices shall include, without limitation: VENDOR name, VENDOR address, invoice date, invoice number, purchase order number, name of school or department to which Services were provided, name(s) of the person(s) performing Services, date(s) Services were performed, brief description of Services provided on each date, the total invoice amount, and the basis for the total invoice amount (e.g., if hour rate, the number of hours on each date and the rate for those hours).
    b. If OUSD, at its sole discretion, determines an invoice fails to include the required elements, OUSD will not pay the invoice and will inform VENDOR of the missing items; VENDOR shall resubmit an invoice that includes the required elements before OUSD will pay the invoice.
    c. Invoices must be submitted monthly, and within 30 days of the conclusion of the applicable billing period, unless otherwise agreed. OUSD reserves the right to refuse to pay untimely invoices.
    d. OUSD reserves the right to add or change invoicing requirements. If OUSD does add or change invoicing requirements, it shall notify VENDOR in writing and the new or modified requirements shall be mandatory upon receipt by VENDOR of such notice.
    e. To the extent that VENDOR has described how the Services may be provided both in-person and not in-person, VENDOR's invoices shall—in addition to any invoice requirement added or

changed under subparagraph (c)—indicate whether the Services are provided in-person or not.

f.    All invoices furnished by VENDOR under this Agreement shall be delivered to OUSD via email unless OUSD requests, in writing, a different method of delivery.

11.   **Termination**.

a.    For Convenience by OUSD. OUSD may at any time terminate this Agreement upon thirty (30) days prior written notice to VENDOR. OUSD shall compensate VENDOR for Services satisfactorily provided through the date of termination. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or thirty (30) days after the notice was provided, whichever is later.

b.    Due to COVID-19. Notwithstanding Paragraph 19 (Coronavirus/ COVID-19) or any other language of this Agreement, if a shelter-in-place (or similar) order due to COVID-19 is issued or is in effect during the term of this Agreement that would prohibit or limit, at the sole discretion of OUSD, the ability of VENDOR to perform the Services, OUSD may terminate this Agreement upon seven (7) days prior written notice to VENDOR. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or seven (7) days after the notice was provided, whichever is later.

c.    For Cause. Either PARTY may terminate this Agreement by giving written notice of its intention to terminate for cause to the other PARTY. Written notice shall contain the reasons for such intention to terminate. Cause shall include (i) material violation of this Agreement or (ii) if either PARTY is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case

    this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or three (3) days after the notice was provided, whichever is later, unless the condition or violation ceases or satisfactory arrangements for the correction are made.

d.     Upon termination, VENDOR shall provide OUSD with all materials produced, maintained, or collected by VENDOR pursuant to this Agreement, whether or not such materials are complete or incomplete or are in final or draft form.

12. **Legal Notices**. All legal notices provided for under this Agreement shall be sent via email to the email address set forth below and shall be either (i) personally delivered during normal business hours or (ii) sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other PARTY at the address set forth below.

**OUSD**

Name:     Joshua R. Daniels

Site/Dept:     Office of General Counsel

Address:     1000 Broadway, Suite 300

City, ST Zip:     Oakland, CA 94607

Phone:     510-879-8535

Email:     ousdlegal@ousd.org

**VENDOR**

Name:     Name **Ron Christian**

Title:     Title **Partner**

Address:     Address **10617 Southern Loop Blvd**

City, ST Zip:     City, ST Zip **Pineville, NC 28134**

Phone:     Phone **704-998-6557**

Email:     Email **Ron.Christian@scribsoft.com**

Notice shall be effective when received if personally served or

emailed or, if mailed, three days after mailing. Either PARTY must give written notice of a change of mailing address or email.

13. **Status**.
   a. This is not an employment contract. VENDOR, in the performance of this Agreement, shall be and act as an independent contractor. VENDOR understands and agrees that it and any and all of its employees shall not be considered employees of OUSD, and are not entitled to benefits of any kind or nature normally provided employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. VENDOR shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to VENDOR's employees.
   b. If VENDOR is a natural person, VENDOR verifies all of the following:
      (i) VENDOR is free from the control and direction of OUSD in connection with VENDOR's work;
      (ii) VENDOR's work is outside the usual course of OUSD's business; and
      (iii) VENDOR is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed for OUSD.
   c. If VENDOR is a business entity, VENDOR verifies all of the following:
      (i) VENDOR is free from the control and direction of OUSD in connection with the performance of the work;
      (ii) VENDOR is providing services directly to OUSD rather than to customers of OUSD;
      (iii) the contract between OUSD and VENDOR is in writing;
      (iv) VENDOR has the required business license or business tax registration, if the work is performed in a jurisdiction that requires VENDOR to have a business license or business tax registration;
      (v) VENDOR maintains a business location that is separate from the business or work location of OUSD;
      (vi) VENDOR is customarily engaged in an independently established business of the same nature as that involved

in the work performed;

(vii)   VENDOR actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from OUSD;

(viii)  VENDOR advertises and holds itself out to the public as available to provide the same or similar services;

(ix)    VENDOR provides its own tools, vehicles, and equipment to perform the services;

(x)     VENDOR can negotiate its own rates;

(xi)    VENDOR can set its own hours and location of work; and

(xii)   VENDOR is not performing the type of work for which a license from the Contractor's State License Board is required, pursuant to Chapter 9 (commencing with section 7000) of Division 3 of the Business and Professions Code.

14.   **Qualifications and Training**.

a.   VENDOR represents and warrants that VENDOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of OUSD. VENDOR will performed the Services in accordance with generally and currently accepted principles and practices of its profession for services to California school districts and in accordance with applicable laws, codes, rules, regulations, and/or ordinances. All VENDOR employees and agents shall have sufficient skill and experience to perform the work assigned to them.

b.   VENDOR represents and warrants that its employees and agents are specially trained, experienced, competent and fully licensed to provide the Services identified in this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and/or regulations, as they may apply, if VENDOR was selected, at least in part, on such representations and warrants.

15.   **Certificates/Permits/Licenses/Registration**. VENDOR's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this Agreement.

16. **Insurance**.
    a.  Commercial General Liability Insurance. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR shall maintain Commercial General Liability Insurance, including automobile coverage, with limits of at least one million dollars ($1,000,000) per occurrence for corporal punishment, sexual misconduct, harassment, bodily injury and property damage. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured with the additional insured endorsement provided to OUSD within 15 days of effective date of this Agreement (and within 15 days of each new policy year thereafter during the term of this Agreement). Evidence of insurance shall be attached to this Agreement or otherwise provided to OUSD upon request. Endorsement of OUSD as an additional insured shall not affect OUSD's rights to any claim, demand, suit or judgment made, brought or recovered against VENDOR. The policy shall protect VENDOR and OUSD in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.

    b.  Workers' Compensation Insurance. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California (including, but not limited to, Labor Code section 3700) and Federal laws when applicable. Employers' Liability Insurance shall not be less than one million dollars ($1,000,000) per accident or disease.

17. **Testing and Screening**.
    a.  Tuberculosis Screening. Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR is required to screen employees who will be working at OUSD sites for more than six hours. VENDOR agents who work with students must submit to a tuberculosis risk assessment as required by Education Code section 49406 within the prior 60 days. If tuberculosis risk factors are identified, VENDOR agents must submit to an intradermal or other approved tuberculosis examination to determine that

he/she is free of infectious tuberculosis. If the results of the examination are positive, VENDOR shall obtain an x-ray of the lungs. VENDOR, at its discretion, may choose to submit the agent to the examination instead of the risk assessment.

b.    Fingerprinting/Criminal Background Investigation. Unless specifically waived by OUSD as noted in **Exhibit A**, for all VENDOR employees, subcontractors, volunteers, and agents providing the Services, VENDOR shall ensure completion of fingerprinting and criminal background investigation, and shall request and regularly review subsequent arrest records. VENDOR confirms that no employee, subcontractor, volunteer, or agent providing the Services has been convicted of a felony, as that term is defined in Education Code section 45122.1. VENDOR shall provide the results of the investigations and subsequent arrest notifications to OUSD.

Waivers are not available for VENDORS whose employees, subcontractors, volunteers, and agents will have any contact with OUSD students.

c.    VENDOR shall use either California Department of Justice or Be A Mentor, Inc. (http://beamentor.org/OUSDPartner) finger-printing and subsequent arrest notification services.

d.    VENDOR agrees to immediately remove or cause the removal of any employee, representative, agent, or person under VENDOR's control person from OUSD property upon receiving notice from OUSD of such desire. OUSD is not required to provide VENDOR with a basis or explanation for the removal request.

18.    **Incident/Accident/Mandated Reporting**.
a.    VENDOR shall notify OUSD, via email pursuant to Paragraph 12 (Legal Notices), within twelve (12) hours of learning of any significant accident or incident. Examples of a significant accident or incident include, without limitation, an accident or incident that involves law enforcement, possible or alleged criminal activity, or possible or actual exposure to a communicable disease such as COVID-19. VENDOR shall properly submit required accident or incident reports within one business day pursuant to the procedures specified by OUSD.

VENDOR shall bear all costs of compliance with this Paragraph.

b.    To the extent that an employee, subcontractor, agent, or representative of VENDOR is included on the list of mandated reporters found in Penal Code section 11165.7, VENDOR agrees to inform the individual, in writing that they are a mandated reporter, and describing the associated obligations to report suspected cases of abuse and neglect pursuant to Penal Code section 11166.5.

19. **Coronavirus/COVID-19**.
   a.    Through its execution of this Agreement, VENDOR declares that it is able to meet its obligations and perform the Services required pursuant to this Agreement 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.    To the extent that VENDOR provides Services in person and consistent with the requirements of Paragraph 10 (Invoicing), VENDOR agrees to include additional information in its invoices as required by OUSD if any Orders are issued by local or state authorities that would prevent VENDOR from providing Services in person.
   c.    Consistent with the requirements of Paragraph 18 (Incident/Accident/Mandated Reporting), VENDOR agrees to notify OUSD, via email pursuant to Paragraph 12 (Legal Notices), 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.
   d.    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, as well as complying with any OUSD testing and vaccination requirements.
   e.    VENDOR shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.

20.  **Assignment**. The obligations of VENDOR under this Agreement shall not be assigned by VENDOR without the express prior written consent of OUSD and any assignment without the express prior written consent of OUSD shall be null and void.

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

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

23.  **Waiver**. No delay or omission by either PARTY in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a subsequent act from constituting a violation of this Agreement.

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

25.  **Conflict of Interest**.
     a.  VENDOR shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest. VENDOR shall not hire any officer or employee of OUSD to perform any service by this Agreement without the prior approval of OUSD Human Resources.

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

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

26.    **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**. Through its execution of this Agreement, VENDOR certifies to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (https://www.sam.gov/).

27.    **Limitation of OUSD Liability**. Other than as provided in this Agreement, OUSD's financial obligations under this Agreement shall be limited to the payment of the compensation described in Paragraph 8 (Compensation). Notwithstanding any other provision of this Agreement, in no event shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the Services performed in connection with this Agreement.

28.    **Indemnification**.

a.    To the furthest extent permitted by California law, VENDOR shall indemnify, defend and hold harmless OUSD, its Governing Board, agents, representatives, officers, consultants,

employees, trustees, and volunteers ("OUSD Indemnified Parties") from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of VENDOR's performance of this Agreement. VENDOR also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by any supplier, VENDOR, or subcontractor furnishing work, services, or materials to VENDOR arising out of the performance of this Agreement. VENDOR shall, to the fullest extent permitted by California law, defend OUSD Indemnified Parties at VENDOR's own expense, including attorneys' fees and costs, and OUSD shall have the right to accept or reject any legal representation that VENDOR proposes to defend OUSD Indemnified Parties.

b.    To the furthest extent permitted by California law, OUSD shall indemnify, defend, and hold harmless VENDOR, its Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("VENDOR Indemnified Parties") from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of OUSD's performance of this Agreement. OUSD shall, to the fullest extent permitted by California law, defend VENDOR Indemnified Parties at OUSD's own expense, including attorneys' fees and costs.

29.    **Audit**. VENDOR shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of VENDOR transacted under this Agreement. VENDOR shall retain these books, records, and systems of account during the term of this Agreement and for three (3) years after the End Date. VENDOR shall permit OUSD, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to Services covered by this Agreement. Audit(s) may be performed at any time, provided that OUSD shall give reasonable prior notice to VENDOR and shall conduct audit(s) during VENDOR'S normal business hours, unless VENDOR otherwise consents.

30.    **Litigation**. This Agreement shall be deemed to be performed in

Oakland, California and is governed by the laws of the State of California, but without resort to California's principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.

31. **Incorporation of Recitals and Exhibits**. Any recitals and exhibits attached to this Agreement are incorporated herein by reference. VENDOR agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Agreement, the terms and provisions of this Agreement shall govern.

32. **Integration/Entire Agreement of Parties**. This Agreement constitutes the entire agreement between the PARTIES and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both PARTIES.

33. **Severability**. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

34. **Provisions Required By Law Deemed Inserted**. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.

35. **Captions and Interpretations**. Section and paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a PARTY because that PARTY or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the PARTIES.

36. **Calculation of Time**. For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified and "hours" refers to hours regardless of whether it is a work day, weekend, or holiday.

37. **Counterparts and Electronic Signature**. This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either PARTY and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing PARTY and the receiving PARTY may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received. Through its execution of this Agreement, each PARTY waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.

38. **W-9 Form**. If VENDOR is doing business with OUSD for the first time, VENDOR acknowledges that it must complete and return a signed W-9 form to OUSD.

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

40. **Signature Authority**.
    a. Each PARTY has the full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each PARTY has been given the proper authority and empowered to enter into this Agreement.
    b. Notwithstanding subparagraph (a), only the Superintendent, Chiefs, Deputy Chiefs, and the General Counsel have been delegated the authority to sign contracts for OUSD, and only under limited circumstances, which require 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 Agreement or as legally binding in any way.
    c. Notwithstanding Paragraph 11, if this Agreement is executed by the signature of the Superintendent, Chiefs, Deputy Chiefs, or

General Counsel under their delegated authority, and the Board thereafter declines to ratify the Agreement, the Agreement shall automatically terminate on the date that the Board declines to ratify it. OUSD shall compensate VENDOR for Services satisfactorily provided through the date of termination. Upon termination, VENDOR shall provide OUSD with all materials produced, maintained, or collected by VENDOR pursuant to this Agreement, whether or not such materials are complete or incomplete or are in final or draft form.

41. **Contract Contingent on Governing Board Approval**. OUSD shall not be bound by the terms of this Agreement 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 Agreement and to be bound by its terms and conditions:

**VENDOR**

Name: Enter Vendor signatory name   Signature:_____

Position: Enter Vendor signatory position    Date: Enter date of signature

*One of the terms and conditions to which VENDOR agrees by its signature is subparagraph (e) of Paragraph 8 (Compensation), which states that VENDOR acknowledges and agrees not to expect or demand payment for any Services performed prior to the PARTIES, particularly OUSD, validly and properly executing this Agreement until this Agreement 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 Agreement. VENDOR specifically acknowledges and agrees to this term/condition on the above date.*

**OUSD**

Name: Susan Beltz                    Signature: _____

Position: Enter OUSD signatory position    Date: Enter date of signature

☐ Board President

☐ Superintendent

☒ Chief/Deputy Chief/Executive Director

Name: Kyla Johnson-Trammell         Signature: _____

Position: Secretary, Board of Education    Date: Enter date of signature

**Template approved as to form by OUSD Office of the General Counsel.**

# EXHIBIT A

1A. **General Description of Services to be Provided**: *Provide a description of the service(s) VENDOR will provide.*

`Add General Description of Services` Scribbles will deliver to Client, ScribOrder, an online records request system for student records, with the $4.00 convenience fee charged to the requester. The statements will be delivered by the 25th of each month for the previous months collection minus the convenience fee and appropriate credit card fees. At the discretion of the Client, Scribbles will make monthly payments to the Client via ACH or check.

• ScribOnline, document archive application for the secure archival access of Student Records invoiced monthly at $450 using ScribOrder funds.

• ScribTransfer, school to school secure transfer of records billed at $1,000 per month, not invoiced until the district staff are trained and the software is deployed.

• Conversion services, billed per project using CCPA (Charlotte Cooperative Purchasing Alliance) fees.

1B. **Description of Services to be Provided During School Closure or Similar Event**: *If there is a school closure (e.g., due to poor air quality, planned loss of power, COVID-19) or similar event in which school sites and/or District offices may be closed or otherwise inaccessible, would services be able to continue?*

☐ No, services would not be able to continue.

☒ Yes, services would be able to continue as described in 1A.

☐ Yes, but services would be different than described in 1A. Please briefly describe how the services would be different.
`Add Description of Different Services` (Click or tap here to enter text.)

1C. **Rate of Compensation**: *Please describe the basis by which compensation will be paid to VENDOR:*

☐ Hourly Rate: $ `Hourly Rate` (Click or tap here to enter text.) per hour

☐ Daily Rate: $ `Daily Rate` (Click or tap here to enter text.) per day

☐ Weekly Rate: $ `Weekly Rate` (Click or tap here to enter text.) per week

☐ Monthly Rate: $ `Monthly Rate` (Click or tap here to enter text.) per month

☒ Per Student Served Rate: **$4** per student served

☐ Performance/Deliverable Payments: Describe the performance and/or deliverable(s) as well as the associated rate(s) below:

Performance/Deliverables Click or tap here to enter text.

2. **Specific Outcomes**: *(A) What are the expected outcomes from the services of this Agreement? Please be specific. For example, as a result of the service(s): How many more OUSD students will graduate from high school? How many more OUSD students will attend school 95% or more? How many more OUSD students will have meaningful internships and/or paying jobs? How many more OUSD students will have access to, and use, the health services they need? (B) Please describe the measurable outcomes specific to the services. Please complete the sentence prompt: "Participants will be able to…" C. If applicable, please provide details of program participation. Please complete the sentence prompt: "Students will…"*

Specific Outcomes **As a result of ScribOrder and ScribOnline the district can provide realtime access and fulfillment of student record requests for your current and former student requests. Additionally, by using ScribTransfer, the district will have a secure record exchange for students transferring from one district to another. This will also provide the district with data showing where their students have transferred to and to verify the student should be classified as a transfer student which is data that the district needs to report to CALPADS.**

3. **Alignment with School Plan for Student Achievement – SPSA (required if using State or Federal Funds):** *Please select the appropriate option below:*

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

Item Number Click or tap here to enter text.

☐ Action Item added as modification to Board Approved SPSA – School site must submit the following documents to the Strategic Resource Planning for approval through the Escape workflow

process:
- Meeting announcement for meeting in which the SPSA modification was approved.
- Minutes for meeting in which the SPSA modification was approved indicating approval of the modification.
- Sign-in sheet for meeting in which the SPSA modification was approved.

4.    **Waivers**: *OUSD has waived the following. Confirmation of the waiver is attached herewith:*

☒ Commercial General Liability Insurance (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and agents will have no contact (in-person *or virtual*) with OUSD students, and the compensation not-to-exceed amount is $25,000 or less.)

☐ Workers' Compensation Insurance (Waiver only available, at OUSD's sole discretion, if VENDOR has no employees.)

☒ Tuberculosis Screening (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and agents will have no in-person contact with OUSD students.)

☒ Fingerprinting/Criminal Background Investigation (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and agents will have no contact (in-person ***or virtual***) with OUSD students.)

**STANDARD STUDENT DATA PRIVACY AGREEMENT**


**CA-NDPA Standard**
**Version 1.0 (10.25.20)**


OAKLAND UNIFIED SCHOOL DISTRICT

**and**

SCRIBBLES SOFTWARE

3/31/2022

This Student Data Privacy Agreement ("**DPA**") is entered into on the date of full execution (the "**Effective Date**") and is entered into by and between:

OAKLAND UNIFIED SCHOOL DISTRICT , located at 1000 BROADWAY, OAKLAND, CA 94607

(the "**Local Education Agency**" or "**LEA**") and

SCRIBBLES SOFTWARE , located at 0617 Southern Loop Blvd, Pineville, NC 28134

(the "**Provider**").

**WHEREAS**, the Provider is providing educational or digital services to LEA.

**WHEREAS**, the Provider and LEA recognize the need to protect personally identifiable student information and other regulated data exchanged between them as required by applicable laws and regulations, such as the Family Educational Rights and Privacy Act ("**FERPA**") at 20 U.S.C. § 1232g (34 CFR Part 99);

the Children's Online Privacy Protection Act ("**COPPA**") at 15 U.S.C. § 6501-6506 (16 CFR Part 312), applicable state privacy laws and regulations

and

**WHEREAS**, the Provider and LEA desire to enter into this DPA for the purpose of establishing their respective obligations and duties in order to comply with applicable laws and regulations.

**NOW THEREFORE**, for good and valuable consideration, LEA and Provider agree as follows:

1. A description of the Services to be provided, the categories of Student Data that may be provided by LEA to Provider, and other information specific to this DPA are contained in the Standard Clauses hereto.

2. **Special Provisions.** *Check if Required*

    ✓ If checked, the Supplemental State Terms and attached hereto as **Exhibit "G"** are hereby incorporated by reference into this DPA in their entirety.

    ☐ If Checked, the Provider, has signed **Exhibit "E"** to the Standard Clauses, otherwise known as General Offer of Privacy Terms

3. In the event of a conflict between the SDPC Standard Clauses, the State or Special Provisions will control. In the event there is conflict between the terms of the DPA and any other writing, including, but not limited to the Service Agreement and Provider Terms of Service or Privacy Policy the terms of this DPA shall control.

4. This DPA shall stay in effect for three years. Exhibit E will expire 3 years from the date the original DPA was signed.

5. The services to be provided by Provider to LEA pursuant to this DPA are detailed in **Exhibit "A"** (the "**Services**").

6. **Notices**. All notices or other communication required or permitted to be given hereunder may be given via e-mail transmission, or first-class mail, sent to the designated representatives below.

The designated representative for the LEA for this DPA is:

Name: ___SUSAN BELTZ___ Title: ___CHIEF TECHNOLOGY OFFICER___

Address: ___1011 UNION ST, OAKLAND, CA 94607___

Phone: ___510-879-8178___ Email: ___COLLEEN.CALVANO@OUSD.ORG___

The designated representative for the Provider for this DPA is:

Name: ___RON CHRISTIAN___ Title: ___PRESIDENT___

Address: ___10617 Southern Loop Blvd, Pineville, NC 28134___

Phone: ___562-298-2619___ Email: ___ron.christian@scribsoft.com___

**IN WITNESS WHEREOF**, LEA and Provider execute this DPA as of the Effective Date.

**LEA:** OAKLAND UNIFIED SCHOOL DISTRICT

By: _Susan Beltz_ Date: ___3/31/2022___

Printed Name: ___SUSAN BELTZ___ Title/Position: ___CTO___

**PROVIDER:** SCRIBBLES SOFTWARE

By: ___(signature)___ Date: ___3/31/2022___

Printed Name: ___RON CHRISTIAN___ Title/Position: ___PRESIDENT___

Approved as to form by OUSD attorney Carrie Rasmussen on 4/12/22.

_Carrie M. Rasmussen_

_85.0.4e_

Gary D. Yee, President, Board of Education  4/28/2022

_(signature)_

Kyla Johnson Trammell, Secretary, Board of Education 4/28/2022

## 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 including compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time. In performing these services, the Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the LEA. Provider shall be under the direct control and supervision of the LEA, with respect to its use of Student Data

2. **Student Data to Be Provided**. In order to perform the Services described above, LEA shall provide Student Data as identified in the Schedule of Data, attached hereto as **Exhibit "B"**.

3. **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 terms used in any other writing, including, but not limited to the Service Agreement, Terms of Service, Privacy Policies etc.

## 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 DPA 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 Official, under the control and direction of the LEA as it pertains to the use of Student Data, notwithstanding the above.

2. **Parent Access**. To the extent required by law the LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Education Records and/or Student Data correct erroneous information, and procedures for the transfer of student-generated content to a personal account, consistent with the functionality of services. Provider shall respond in a reasonably timely manner (and no later than forty five (45) days from the date of the request or pursuant to the time frame required under state law for an LEA to respond to a parent or student, whichever is sooner) to the LEA's request for Student Data in a student's records held by the Provider to view or correct as necessary. In the event that a parent of a student 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. **Separate Account**. If Student-Generated Content is stored or maintained by the Provider, Provider shall, at the request of the LEA, transfer, or provide a mechanism for the LEA to transfer, said Student-Generated Content to a separate account created by the student.

4. **Law Enforcement Requests**. Should law enforcement or other government entities ("Requesting Party(ies)") contact Provider with a request for Student Data held by the Provider pursuant to the Services, the Provider shall notify the LEA in advance of a compelled disclosure to the Requesting Party, unless lawfully directed by the Requesting Party not to inform the LEA of the request.

5. **Subprocessors**. Provider shall enter into written agreements with all Subprocessors performing functions for the Provider in order for the Provider to provide the Services pursuant to the Service Agreement, whereby the Subprocessors agree to protect Student Data in a manner no less stringent than the terms of this DPA.

## ARTICLE III: DUTIES OF LEA

1. **Provide Data in Compliance with Applicable Laws**. LEA shall provide Student Data for the purposes of obtaining the Services in compliance with all applicable federal, state, and local privacy laws, rules, and regulations, all as may be amended from time to time.

2. **Annual Notification of Rights**. If the LEA has a policy of disclosing Education Rrecords and/or Student Data under FERPA (34 CFR § 99.31(a)(1)), LEA shall include a specification of criteria 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 Student Data.

4. **Unauthorized Access Notification**. LEA shall notify Provider promptly of any known 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 federal, state, and local laws, rules, and regulations pertaining to Student Data privacy and security, all as may be amended from time to time.

2. **Authorized Use**. The Student Data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services outlined in Exhibit A or stated in the Service Agreement and/or otherwise authorized under the statutes referred to herein this DPA.

3. **Provider Employee Obligation**. Provider shall require all of Provider's employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the Student Data shared under the Service Agreement. Provider agrees to require and maintain an appropriate confidentiality agreement from each employee or agent with access to Student Data pursuant to the Service Agreement.

4. **No Disclosure**.  Provider acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion thereof, including without limitation, user content or other non-public information and/or personally identifiable information contained in the Student Data other than as directed or

permitted by the LEA or this DPA. This prohibition against disclosure shall not apply to aggregate summaries of De-Identified information, Student Data disclosed pursuant to a lawfully issued subpoena or other legal process, or to subprocessors performing services on behalf of the Provider pursuant to this DPA. Provider will not Sell Student Data to any third party.

5. **De-Identified Data**: Provider agrees not to attempt to re-identify de-identified Student Data. De-Identified Data may be used by the Provider for those purposes allowed under FERPA and the following purposes: (1) assisting the LEA or other governmental agencies in conducting research and other studies; and (2) research and development of the Provider's educational sites, services, or applications, and to demonstrate the effectiveness of the Services; and (3) for adaptive learning purpose and for customized student learning. Provider's use of De-Identified Data shall survive termination of this DPA or any request by LEA to return or destroy Student Data. Except for Subprocessors, Provider agrees not to transfer de-identified Student Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to the LEA who has provided prior written consent for such transfer. Prior to publishing any document that names the LEA explicitly or indirectly, the Provider shall obtain the LEA's written approval of the manner in which de-identified data is presented.

6. **Disposition of Data**. Upon written request from the LEA, Provider shall dispose of or provide a mechanism for the LEA to transfer Student Data obtained under the Service Agreement, within sixty (60) days of the date of said request and according to a schedule and procedure as the Parties may reasonably agree. Upon termination of this DPA, if no written request from the LEA is received, Provider shall dispose of all Student Data after providing the LEA with reasonable prior notice. The duty to dispose of Student Data shall not extend to Student Data that had been De-Identified or placed in a separate student account pursuant to section II 3. The LEA may employ a "Directive for Disposition of Data" form, a copy of which is attached hereto as **Exhibit "D"**. If the LEA and Provider employ Exhibit "D," no further written request or notice is required on the part of either party prior to the disposition of Student Data described in Exhibit "D.

7. **Advertising Limitations.** Provider is prohibited from using, disclosing, or selling Student Data to (a) inform, influence, or enable Targeted Advertising; or (b) develop a profile of a student, family member/guardian or group, for any purpose other than providing the Service to LEA. This section does not prohibit Provider from using Student Data (i) for adaptive learning or customized student learning (including generating personalized learning recommendations); or (ii) to make product recommendations to teachers or LEA employees; or (iii) to notify account holders about new education product updates, features, or services or from otherwise using Student Data as permitted in this DPA and its accompanying exhibits

## ARTICLE V: DATA PROVISIONS

1. **Data Storage**. Where required by applicable law, Student Data shall be stored within the United States. Upon request of the LEA, Provider will provide a list of the locations where Student Data is stored.

2. **Audits.** No more than once a year, or following unauthorized access, upon receipt of a written request from the LEA with at least ten (10) business days' notice and upon the execution of an appropriate confidentiality agreement, the Provider will allow the LEA to audit the security and privacy measures that are in place to ensure protection of Student Data or any portion thereof as it pertains to the delivery of services to the LEA . The Provider will cooperate reasonably with the LEA and any local, state, or federal

agency with oversight authority or jurisdiction in connection with any audit or investigation of the Provider and/or delivery of Services to students and/or LEA, and shall provide reasonable access to the Provider's facilities, staff, agents and LEA's Student Data and all records pertaining to the Provider, LEA and delivery of Services to the LEA. Failure to reasonably cooperate shall be deemed a material breach of the DPA.

3. **Data Security**. The Provider agrees to utilize administrative, physical, and technical safeguards designed to protect Student Data from unauthorized access, disclosure, acquisition, destruction, use, or modification. The Provider shall adhere to any applicable law relating to data security. The provider shall implement an adequate Cybersecurity Framework based on one of the nationally recognized standards set forth set forth in **Exhibit "F"**. Exclusions, variations, or exemptions to the identified Cybersecurity Framework must be detailed in an attachment to **Exhibit "H"**.  Additionally, Provider may choose to further detail its security programs and measures that augment or are in addition to the Cybersecurity Framework in **Exhibit "F"**. Provider shall provide, in the Standard Schedule to the DPA, contact information of an employee who LEA may contact if there are any data security concerns or questions.

4. **Data Breach**. In the event of an unauthorized release, disclosure or acquisition of Student Data that compromises the security, confidentiality or integrity of the Student Data maintained by the Provider the Provider shall provide notification to LEA within seventy-two (72) hours of confirmation of the incident, unless notification within this time limit would disrupt investigation of the incident by law enforcement. In such an event, notification shall be made within a reasonable time after the incident. Provider shall follow the following process:

    (1) The security breach notification described above shall include, at a minimum, the following information to the extent known by the Provider and as it becomes available:

        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.  Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided; and
        v.   A general description of the breach incident, if that information is possible to determine at the time the notice is provided.

    (2) Provider agrees to adhere to all federal and state requirements with respect to a data breach related to the Student Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.

    (3) 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 and agrees to provide LEA, upon request, with a summary of said written incident response plan.

(4) LEA shall provide notice and facts surrounding the breach to the affected students, parents or guardians.

(5) 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 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 **Exhibit "E"** to any other LEA who signs the acceptance on said Exhibit. The form is limited by the terms and conditions described therein.

## ARTICLE VII: MISCELLANEOUS

1. **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. Either party may terminate this DPA and any service agreement or contract if the other party breaches any terms of this DPA.

2. **Effect of Termination Survival**. If the Service Agreement is terminated, the Provider shall destroy all of LEA's Student Data pursuant to Article IV, section 6.

3. **Priority of Agreements**. This DPA shall govern the treatment of Student Data in order to comply with the privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the terms of the DPA and the Service Agreement, Terms of Service, Privacy Policies, or with any other bid/RFP, license agreement, or writing, the terms of this DPA shall apply and take precedence. In the event of a conflict between Exhibit H, the SDPC Standard Clauses, and/or the Supplemental State Terms, Exhibit H will control, followed by the Supplemental State Terms. Except as described in this paragraph herein, all other provisions of the Service Agreement shall remain in effect.

4. **Entire Agreement**. This DPA and the Service Agreement constitute the entire agreement of the Parties relating to the subject matter hereof 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.

5. **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.

6. **Governing Law; Venue and Jurisdiction**. THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF THE LEA, 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 THE COUNTY OF THE LEA FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS DPA OR THE TRANSACTIONS CONTEMPLATED HEREBY.

7. **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 the event that the Provider sells, merges, or otherwise disposes of its business to a successor during the term of this DPA, the Provider shall provide written notice to the LEA no later than sixty (60) days after the closing date of sale, merger, or disposal. Such notice shall include a written, signed assurance that the successor will assume the obligations of the DPA and any obligations with respect to Student Data within the Service Agreement. The LEA has the authority to terminate the DPA if it disapproves of the successor to whom the Provider is selling, merging, or otherwise disposing of its business.

8. **Authority.** Each party represents that it is authorized to bind to the terms of this DPA, 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.

9. **Waiver**. No delay or omission by either party to exercise any right hereunder shall be construed as a waiver of any such right and both parties reserve the right to exercise any such right from time to time, as often as may be deemed expedient.

<div align="center">

**EXHIBIT "A"**
**DESCRIPTION OF SERVICES**

</div>

Scribbles will deliver to Client, ScribOrder, an Online records request system for student records, with the $4.00 convenience fee charged to the requester.  The statements will be delivered by the 25th of each month for the previous months collection minus the convenience fee and appropriate credit card fees.  At the discretion of the Client, Scribbles will make monthly payments to the Client via ACH or check.

• ScribOnline, document archive application for the secure archival access of Student Records invoiced monthly at $450 using ScribOrder funds.

• ScribTransfer, school to school secure transfer of records billed at $1,000 per month, not invoiced until the district staff are trained and the software is deployed.

• Conversion services, billed per project using CCPA (Charlotte Cooperative Purchasing Alliance) fees.
E]

Pursuant to BP 3312, the agreement between Provider and Oakland Unified submitted as Legistar File ID 22-0912 and any subsequent renewals, constitute the separate Service Agreement between Subscribing LEA and Provider.

**EXHIBIT "B"**
**SCHEDULE OF DATA**

| Category of Data | Elements | Check if Used by Your System |
|---|---|---|
| Application Technology Meta Data | IP Addresses of users, Use of cookies, etc. | ✔ |
| | Other application technology meta data-Please specify: | |
| Application Use Statistics | Meta data on user interaction with application | ☐ |
| Assessment | Standardized test scores | ☐ |
| | Observation data | ☐ |
| | Other assessment data-Please specify: | |
| Attendance | Student school (daily) attendance data | ☐ |
| | Student class attendance data | ✔ |
| Communications | Online communications captured (emails, blog entries) | ☐ |
| Conduct | Conduct or behavioral data | ☐ |
| Demographics | Date of Birth | ✔ |
| | Place of Birth | ✔ |
| | Gender | ✔ |
| | Ethnicity or race | ✔ |
| | Language information (native, or primary language spoken by student) | ✔ |
| | Other demographic information-Please specify: | |
| Enrollment | Student school enrollment | ✔ |
| | Student grade level | ✔ |
| | Homeroom | ☐ |
| | Guidance counselor | ☐ |
| | Specific curriculum programs | ☐ |
| | Year of graduation | ✔ |
| | Other enrollment information-Please specify: | |
| Parent/Guardian Contact Information | Address | ✔ |
| | Email | ✔ |
| | Phone | ✔ |

| Category of Data | Elements | Check if Used by Your System |
|---|---|---|
| Parent/Guardian ID | Parent ID number (created to link parents to students) | ✔ |
| Parent/Guardian Name | First and/or Last | ✔ |
| Schedule | Student scheduled courses | |
| | Teacher names | |
| Special Indicator | English language learner information | ✔ |
| | Low income status | ✔ |
| | Medical alerts/ health data | ✔ |
| | Student disability information | ✔ |
| | Specialized education services (IEP or 504) | ✔ |
| | Living situations (homeless/foster care) | ✔ |
| | Other indicator information-Please specify: | |
| Student Contact Information | Address | ✔ |
| | Email | ✔ |
| | Phone | ✔ |
| Student Identifiers | Local (School district) ID number | ✔ |
| | State ID number | ✔ |
| | Provider/App assigned student ID number | |
| | Student app username | |
| | Student app passwords | |
| Student Name | First and/or Last | ✔ |
| Student In App Performance | Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level) | |
| Student 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 | ✔ |
| | Student course grades/ performance scores | ✔ |

| Category of Data | Elements | Check if Used by Your System |
|---|---|---|
| | Other transcript data - Please specify: | |
| Transportation | Student bus assignment | ✔ |
| | Student pick up and/or drop off location | ✔ |
| | Student bus card ID number | ☐ |
| | Other transportation data – Please specify: | |
| Other | Please list each additional data element used, stored, or collected by your application: | |
| None | No Student Data collected at this time. Provider will immediately notify LEA if this designation is no longer applicable. | ☐ |

# EXHIBIT "C"
# DEFINITIONS

**De-Identified Data and De-Identification**: Records and information are considered to be de-identified when all personally identifiable information has been removed or obscured, such that the remaining information does not reasonably identify a specific individual, including, but not limited to, any information that, alone or in combination is linkable to a specific student and provided that the educational agency, or other party, has made a reasonable determination that a student's identity is not personally identifiable, taking into account reasonable available information.

**Educational Records**: Educational Records are records, files, documents, and other materials directly related to a student and maintained by the school or local education agency, or by a person acting for such school or local education agency, including but not limited to, records encompassing all the material kept in the student's cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs.

**Metadata**: means information that provides meaning and context to other data being collected; including, but not limited to: date and time records and purpose of creation Metadata that have been stripped of all direct and indirect identifiers are not considered Personally Identifiable Information.

**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 for K–12 school purposes. Any entity that operates an internet website, online service, online application, or mobile application that has entered into a signed, written agreement with an LEA to provide a service to that LEA shall be considered an "operator" for the purposes of this section.

**Originating** LEA: An LEA who originally executes the DPA in its entirety with the Provider.

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

**Student Generated Content**: The term "student-generated content" means materials or content created by a student in the services 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 student content.

**School Official**: For the purposes of this DPA and pursuant to 34 CFR § 99.31(b), a School 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 Student Data including Education Records; and (3) Is subject to 34 CFR § 99.33(a) governing the use and re-disclosure of personally identifiable information from Education Records.

**Service Agreement**: Refers to the Contract, Purchase Order or Terms of Service or Terms of Use.

**Student Data**: Student Data includes any data, whether gathered by Provider or provided by LEA or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to,

information in the student's educational record or email, first and last name, birthdate, home or other physical address, telephone number, email address, or other information allowing physical or 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, individual purchasing behavior or preferences, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, geolocation information, parents' names, or any other information or identification number that would provide information about a specific student. Student Data includes Meta Data. Student Data further includes "personally identifiable information (PII)," as defined in 34 C.F.R. § 99.3 and as defined under any applicable state law. Student Data shall constitute Education Records for the purposes of this DPA, and for the purposes of federal, state, and local 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 de-identified, or anonymous usage data regarding a student's use of Provider's services.

**Subprocessor:** For the purposes of this DPA, 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 service, and who has access to Student Data.

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

**Targeted Advertising:** means presenting an advertisement to a student where the selection of the advertisement is based on Student Data or inferred over time from the usage of the operator's Internet web site, online service or mobile application by such student or the retention of such student's online activities or requests over time for the purpose of targeting subsequent advertisements. "Targeted advertising" does not include any advertising to a student on an Internet web site based on the content of the web page or in response to a student's response or request for information or feedback.

**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 Education Records and/or Student Data, as that term is used in some state statutes. However, for the purpose of this DPA, 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        Provider 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:

1. Extent of Disposition

    ☐ Disposition is partial. The categories of data to be disposed of are set forth below or are found in an attachment to this Directive:

        **[Insert categories of data here]**

    ☑ Disposition is Complete. Disposition extends to all categories of data.

2. Nature of Disposition

    ☑ Disposition shall be by destruction or deletion of data.

    ☐ Disposition shall be by a transfer of data. The data shall be transferred to the following site as follows:

        **[Insert or attach special instructions]**

3. Schedule of Disposition

Data shall be disposed of by the following date:

    ☑ As soon as commercially practicable.

    ☐ By

4. Signature

_____      3/31/2022
Authorized Representative of LEA        Date

5. Verification of Disposition of Data
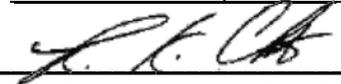
_____      3/31/2022
Authorized Representative of Company      Date

EXHIBIT E – NOT AVAILABLE

**EXHIBIT "F"**
**DATA SECURITY REQUIREMENTS**

**Adequate Cybersecurity Frameworks**
**2/24/2020**

The Education Security and Privacy Exchange ("Edspex") works in partnership with the Student Data Privacy Consortium and industry leaders to maintain a list of known and credible cybersecurity frameworks which can protect digital learning ecosystems chosen based on a set of guiding cybersecurity principles* ("Cybersecurity Frameworks") that may be utilized by Provider .

Cybersecurity Frameworks

| | MAINTAINING ORGANIZATION/GROUP | FRAMEWORK(S) |
|---|---|---|
| ☐ | National Institute of Standards and Technology | NIST Cybersecurity Framework Version 1.1 |
| ☐ | National Institute of Standards and Technology | NIST SP 800-53, Cybersecurity Framework for Improving Critical Infrastructure Cybersecurity (CSF), Special Publication 800-171 |
| ☐ | International Standards Organization | Information technology — Security techniques — Information security management systems (ISO 27000 series) |
| ☐ | Secure Controls Framework Council, LLC | Security Controls Framework (SCF) |
| ☐ | Center for Internet Security | CIS Critical Security Controls (CSC, CIS Top 20) |
| ☐ | Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)) | Cybersecurity Maturity Model Certification (CMMC, ~FAR/DFAR) |

*Please visit [http://www.edspex.org](http://www.edspex.org) for further details about the noted frameworks.*
　　　　*Cybersecurity Principles used to choose the Cybersecurity Frameworks are located here

## Supplemental SDPC State Terms for California

### Version 1.0

This Amendment for SDPC State Terms for California ("**Amendment**") is entered into on the date of full execution (the "**Effective Date**") and is incorporated into and made a part of the Student Data Privacy Agreement ("**DPA**") by and between:

OAKLAND UNIFIED SCHOOL DISTRICT , located at     1000 BROADWAY, OAKLAND, CA 94607

(the "**Local Education Agency**" or "**LEA**") and

SCRIBBLES SOFTWARE          , located at     0617 Southern Loop Blvd, Pineville, NC 28134

(the "**Provide**r").

All capitalized terms not otherwise defined herein shall have the meaning set forth in the DPA.

      **WHEREAS**, the Provider is providing educational or digital services to LEA, which services include: (a) cloud-based services for the digital storage, management, and retrieval of pupil records; and/or (b) digital educational software that authorizes Provider to access, store, and use pupil records; and

      **WHEREAS**, the Provider and LEA recognize the need to protect personally identifiable student information and other regulated data exchanged between them as required by applicable laws and regulations, such as the Family Educational Rights and Privacy Act ("**FERPA**") at 20 U.S.C. § 1232g (34 C.F.R. Part 99); the Protection of Pupil Rights Amendment ("**PPRA**") at 20 U.S.C. §1232h; and the Children's Online Privacy Protection Act ("**COPPA**") at 15 U.S.C. § 6501-6506 (16 C.F.R. Part 312), accordingly, the Provider and LEA have executed the DPA, which establishes their respective obligations and duties in order to comply with such applicable laws; and

      **WHEREAS**, the Provider will provide the services to LEA within the State of California and the Parties recognizes the need to protect personally identifiable student information and other regulated data exchanged between them as required by applicable California laws and regulations, such as the Student Online Personal Information Protection Act ("**SOPIPA**") at California Bus. & Prof. Code § 22584; California Assembly Bill 1584 ("**AB 1584**") at California Education Code section 49073.1; and other applicable state privacy laws and regulations; and

      **WHEREAS**, the Provider and LEA desire to enter into this Amendment for the purpose of clarifying their respective obligations and duties in order to comply with applicable California state laws and regulations.

**NOW, THEREFORE**, for good and valuable consideration, LEA and Provider agree as follows:

1. **Term**. The term of this Amendment shall expire on the same date as the DPA, <u>unless otherwise terminated by the Parties.</u>

2. **Modification to Article IV, Section 7 of the DPA**. Article IV, Section 7 of the DPA (Advertising Limitations) is amended by deleting the stricken text as follows:

Provider is prohibited from using, disclosing, or selling Student Data to (a) inform, influence, or enable Targeted Advertising; or (b) develop a profile of a student, family member/guardian or group, for any purpose other than providing the Service to LEA. This section does not prohibit Provider from using Student Data (i) for adaptive learning or customized student learning (including generating personalized learning recommendations); or (ii) to make product recommendations to teachers or LEA employees; or (iii) to notify account holders about new education product updates, features, or services or from otherwise using Student Data as permitted in this DPA and its accompanying exhibits.

**[SIGNATURES BELOW]**

**IN WITNESS WHEREOF**, LEA and Provider execute this Amendment as of the Effective Date.

**LEA:**          OAKLAND UNIFIED SCHOOL DISTRICT

By: *Susan Beltz*                                              Date:   3/31/2022

Printed Name:                SUSAN BELTZ                Title/Position:            CTO

**Provider:**                SCRIBBLES SOFTWARE

By:                                                                        Date:          3/31/2022

Printed Name:                RON CHRISTIAN                Title/Position:          PRESIDENT

Gary D. Yee, President, Board of Education  4/28/2022

Kyla Johnson Trammell, Secretary, Board of Education 4/28/2022