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# Memo

<b>To</b>	Board of Education
<b>From</b>	Kyla Johnson-Trammell, Superintendent Preston Thomas, Chief Systems and Services Officer Susan Beltz, Chief Technology Officer
<b>Board Meeting Date</b>	September 23, 2020
<b>Subject</b>	Ratification by the Board of Education of Hosted Software License Agreement and Schedule A between Be A Mentor and Oakland Unified School District Contractor: Be A Mentor, Inc. Services For: July 1, 2020 - June 30, 2021
<b>Action Requested and Recommendation</b>	Ratification by the Board of Education of Hosted Software License Agreement and Schedule A between Oakland Unified School District and Be a Mentor, Inc., Hayward, CA for the latter to provide hosting of the Vendor Management System (VMS), along with background clearances and subsequent arrest notifications for up to 120 vendors, for the period July 1, 2020 to June 30, 2021 for an amount not to exceed \$9,900.
<b>Background</b> <i>(Why do we need these services? Why have you selected this vendor)</i>	<p>The Oakland Unified School District has successfully used Be A Mentor for 2019-20 and is using this firm going forward for the same services as previously provided.</p> <p>Be A Mentor ensures safety at all school sites by ensuring that professional services contractors are fingerprinted and cleared by the Department of Justice (DOJ) and Federal Bureau of Investigation (FBI). Vendors are automatically transferred to the Vendor Management System (VMS) hosted by Be A Mentor. VMS is an online application residing on Be a Mentor's servers which supports application processing, background screening and clearances, and the tracking of subsequent arrest records. Vendor clearances are automatically transferred back to the Oakland Unified School District (OUSD) so that contract processing may proceed. Be A Mentor conducts background clearances and subsequent arrest notification processing of District professional services contractors who are transferred to the VMS database automatically via a web services integration with the ContractsOnline system hosted by the District.</p>

Schedule A includes hosting of the VMS application, background clearances and subsequent arrest notification processing for up to 120 vendors, and related customer support.

**Competitively Bid**

No. Professional Services Agreement of less than \$92,600.

**Fiscal Impact**

\$9,900 from 2020-21 Funding Resource 010-1100-0-0000-7700-5846-999-9860-1605-9999-99999: State Lottery, Data Processing, License Agreements, Districtwide

**Attachments**

- Hosted Software License Agreement
  - Schedule A to Hosted Software License Agreement
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# Hosted Software License Agreement

THIS HOSTED SOFTWARE LICENSE AGREEMENT is between BE A MENTOR, INC., a California corporation (the "Licensor"), located at 22693 Hesperian Blvd and Oakland Unified School District at 1000 Broadway, Oakland CA 94607 (Licensee). As used in this Agreement, "Software" means, collectively, any and all applications and modules of Licensor, including without limitation the Volunteer Management System (VMS) software, with any and all enhancements, upgrades, and updates thereto that may be provided to Licensee in the future by Licensor. The Agreement effective date is July 1, 2020

## 1. OWNERSHIP

In this Agreement, Licensor is licensing its web-based software application products on a non-exclusive basis for use only on a web server hosted and controlled by Licensor. Licensor is at all times the owner of the Software and, except as specifically licensed hereby and to third parties pursuant to non-exclusive license agreements, Licensor retains all rights to the Software. Rights not specifically granted in this Agreement, including without limitation Federal and International Copyrights, are expressly reserved by Licensor.

Licensee will not receive a copy of the Software. Licensee will not receive or have access to the software code. The license granted herein is entirely contingent upon Licensor hosting the Software and not releasing any copies of the Software; Licensee will not host the Software itself and may not install the Software on any of its computers. Licensee, however, owns and has exclusive rights to all data entered into the program's database via the Software by the licensee and/or on behalf of the licensee, and to all graphics and web page content given to Licensor to place into the Software, on behalf of Licensee. In no event does the License or this Agreement entitle Licensee to any rights of ownership in any of the work flow design, process flow design, or the code in the underlying page, program, database, software, or any other code used to draw or render the elements on the web page, all of which is owned by Licensor. Licensor will automate a SQL backup of Licensee's data each weekday, Monday through Friday.

If this license agreement is not renewed, or is terminated for any reason, Licensee will not receive a copy of the Software. In such circumstances, so long as Licensee is not in default of its obligations under this Agreement, Licensor, upon request, will provide a copy of all data within 30 days, in a standard machine readable format, owned by Licensee that has been entered into the database.

## 2. GRANT OF LICENSE; LICENSOR SERVICES

Licensor grants to Licensee, pursuant and subject to the terms and conditions of this Agreement, a limited, nonexclusive, non-transferable, non-assignable, revocable right to use the Software ("License"), solely and strictly in accordance with the terms, conditions and restrictions applicable to the License, as described herein.

During the term of the License, Licensor shall host the dedicated servers needed for Licensee's use of the Software. This Agreement includes all future bug fixes, error corrections, new releases, updates and program improvements to the Software during the

term of the License. Any other services to be provided by Licensor, such as customizations or program modifications and additions, shall be pursuant to separate written agreement of the parties, but otherwise on the terms of this Agreement.

### **3. ACCESS TO SITE**

Licensor will use commercially reasonable efforts to make the Site and the Licensed Programs accessible by Licensee 24-hours per day, seven (7) days per week, excluding down time for maintenance and repair, Licensor will provide advance notice to Licensee for scheduled down time for repair or maintenance and Licensor will use commercially reasonable efforts to timely provide notice to Licensee for unplanned down time for repair or maintenance.

### **4. CONFIDENTIAL INFORMATION**

Licensor shall not disclose any Confidential Information (defined below) of Licensee that Licensor has been or hereafter becomes privy to by hosting data that is the property of the Licensee. Licensee shall take all reasonable steps to protect the Software and related documentation from unauthorized copying or use. The Software source code represents and embodies the trade secrets of Licensor and/or its licensors. The Software source code, pricing, interfaces, data mappings, and embodied trade secrets are not licensed to Licensee, and Licensee shall take all reasonable measures to avoid any unauthorized disclosure of the same.

Licensee and Licensor each agree (a) that it will not disclose to any third party or use any Confidential Information disclosed to it by the other except as necessary to perform its obligations under written agreement with the disclosing party or otherwise as expressly permitted in this Agreement, and (b) that it will take all reasonable measures to maintain the confidentiality of all Confidential Information of the other party in its possession or control. For the purposes of this Agreement, "Confidential Information" means information about the disclosing party's business or activities that is proprietary and confidential, which shall include all business, financial, technical and other information of a party (I) disclosed in writing and either (a) is marked or designated by such party as "confidential" or "proprietary" or (b) by the nature of the circumstances surrounding the disclosure, shall in good faith be treated as confidential. Upon expiration or termination of this Agreement, each party will immediately cease all use of the other party's Confidential Information.

### **5. INDEMNIFICATION**

#### **a. Infringement**

Licensor warrants that it owns or has obtained all proprietary and intellectual property rights necessary to grant the License herein and shall indemnify and hold harmless Licensee from any and all claims, demands, and causes of action asserted by third parties alleging that Licensee's use of the Software as contemplated herein violates such third party's proprietary or intellectual property rights.

**b. Security**

All online data systems have a certain amount of vulnerability to intrusion attacks. Licensor uses reasonable methods to protect the privacy of data. Methods employed are: 1) 256-bit layered encryption is employed on all user input pages.; 2) Internet Information Services (IIS) encrypts all URL addresses that move variables from page-to-page within the hosted system; 3) all user pages accessible via a browser have trap fields, not visible to the user, to identify potential computer generated access, and traps and discards any such unauthorized entry; Continuous running of commercial grade anti-virus software for detection and destruction of malware, spyware and other data attacking viruses; and 5) financial information and tax identification are not requested of users and are not stored in the hosted system.

Licensee accepts any and all liability for Licensee's loss due to a data breach, and agrees to indemnify and hold harmless Licensor and the Licensor Parties from and against, any and all costs, expenses, liabilities, damages and other obligations in connection with any Licensee loss caused by a data breach, except in the case of licensor's negligence.

For instances of Licensor negligence, Licensee is named as additional insured on Licensor's liability insurance policy

**6. COMPLIANCE WITH APPLICABLE LAW**

Licensee shall comply with all applicable laws, rules and regulations in its use of the Software, including without limitation the federal "CANSPAM ACT OF 2003". Licensee agrees to indemnify Licensor and its owners, officers, directors, employees, representatives, agents, licensors, successors and assigns (collectively, the "Licensor Parties"), and hold Licensor and each of the Licensor Parties harmless, from and against any and all claims, damages, charges, costs, expenses, causes of action, liabilities and other obligations resulting from Licensee's failure to so comply.

**7. STANDARDS FOR ACCEPTING CLIENT EMAIL LISTS**

Licensee shall send emails on an "Opt-In" basis only; no email sends shall be made unless they are "Opt-In" and are in compliance with all applicable laws. In no event shall any Software be used to send SPAM. As used herein, "Spam" shall mean (a) unsolicited commercial email sent to a recipient who has not provided his/her/its email address directly to the sender or sent to a recipient who would not have a reasonable expectation of receiving email from the sender, or (b) any email advertising illicit or illegal activities, or (c) any electronic message sent to email addresses provided by a third party. Licensee agrees that its data and lists loaded into the Software will not be used to send Spam, or otherwise constitute Spam, and that all emails sent by or on behalf of Licensee will comply with the CANSPAM Act of 2003 and other applicable laws, and the Acceptable Use Policies of Licensor's hosting and bandwidth providers. Licensee accepts any and all liability for, and agrees to indemnify and hold harmless Licensor and the Licensor Parties

from and against, any and all costs, expenses, liabilities, damages and other obligations in connection with any and all complaints, fines, and/or other services required as a result of supplying Licensor with addresses and/or sending electronic mail that do not comply with the foregoing.

## **8. LICENSE FEES**

The fees to be paid by Licensee to Licensor for the Hosted Software License and other services shall be as described in Schedule A, and billed annually unless special arrangements are made, and noted on Schedule A, for billing monthly, quarterly or other regular invoices. Invoices are payable on or before the first day of the month of the respective billing cycle, or such other due date as agreed upon. Schedule A are an integral part of this agreement.

## **9. SERVICE FEES**

This Agreement does not include program customizations or integrations. Any programming services requested by Licensee are subject to prior agreement of Licensor; fees for programming services will be billed at the rates described in Schedule A unless agreed otherwise by Licensor in writing. Hours will be approved by Licensee in advance. On-site and/or web-based training of Licensee's employees will be available at the rate(s) described in Schedule A. Additional services shall be available by Licensor upon mutual agreement between Licensor and Licensee.

## **10. ARBITRATION**

Any controversy or claim arising out of or relating to this Agreement or the use of the Software shall be settled by arbitration before a single arbitrator in Northern California in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The provisions of California Code of Civil Procedure Sections 1282.6, 1283 and 1283.05 shall apply to the arbitration. If any arbitration is commenced between the parties to this Agreement, the substantially prevailing party shall be entitled to reimbursement of its costs and expenses, including without limitation attorney's fees, as determined by the arbitrator.

## **11. DEFAULT; CURE; SUSPENSION; TERM; TERMINATION**

In the event Licensee fails to make any payment when due hereunder, Licensor shall give Licensee written notice of such failure. If such payment is not received by Licensor within five (5) days after such written notice is sent by Licensor, Licensor may immediately either (a) terminate the License and this Agreement without further notice, or (b) suspend the License and performance of services under this Agreement. In the event of a suspension, the License and this Agreement and any agreed upon services will be restored upon Licensor's receipt of payment in full hereunder plus a late fee of ten percent (10%) of the amount of the late payment.

Other than Licensee's payment default, in the event that either party believes the other has failed to substantially perform in accordance with the terms of the Agreement, the complaining/non-defaulting party shall submit written notice to the defaulting party describing in detail the alleged deficiencies. The defaulting party shall have 15 days from the date notice was received to cure such deficiencies. If the deficiencies remain uncured after such 15 day period, the non-defaulting party may terminate this Agreement. In the event of disagreement regarding the alleged deficiencies, arbitration will be enacted as described in section 10 above.

In the event of any suspension or termination, Licensor shall have no liability whatsoever to the Licensee for delay or damage caused the Licensee due to such suspension or termination. Any notices to be delivered to Licensor hereunder shall be sent to the address of Licensor and/or the electronic email address of record. Any notices to be delivered to Licensee hereunder shall be sent to the last known address of Licensee and/or the electronic email address of record. Upon termination of this Agreement, the terms, rights and obligations under this Agreement, which by their nature should survive termination, shall survive.

Unless otherwise stated in Schedule A, the term of this agreement is one year.

Either party may terminate this Agreement without cause and for its convenience upon providing to the other thirty (30) calendar days prior written notice thereof. Upon such termination Licensee shall immediately pay any and all fees owing to Licensor that have not been paid as of the time of termination. Upon license termination, Licensor will refund unused full months to the Licensee. Unused partial months will not be refunded.

## **12. GOVERNING LAW**

This Agreement shall be governed by the laws of the State of California.

## **13. ASSIGNMENT AND TRANSFER**

Licensee shall have no right whatsoever to transfer or assign this Agreement or the License. Licensor shall not assign this Agreement without the written consent of Licensee. Subject to the foregoing, this Agreement shall be binding on the heirs, executors, administrator's successors and assigns of the respective parties.

## **14. PERSONNEL HIRING POLICY; HIRING FEES**

Licensee acknowledges and agrees that Licensor has invested substantial time, money and other resources in building its professional staff. This staff constitutes a substantial company resource and valuable asset of Licensor. During the term of this Agreement or within one year after termination of this Agreement, Licensee agrees to and shall pay to Licensor a fee if Licensee hires or contracts the services of an employee of Licensor, whose employment is in good standing and whose job description entails Volunteer Management System (VMS) support. The fee will be an amount equal to 30% of the first annual compensation paid by licensee to licensor's former employee.

## 15. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between Licensee and Licensor, and supersedes all prior negotiations and/or representations.. This Agreement may be amended or superseded only by written instrument signed by both the Licensee and the Licensor.

## 16. SEVERABILITY

In the event that any part of this agreement becomes void or unenforceable under applicable law, the remaining parts of the agreement shall remain intact.

## 17. LIMITATIONS ON DAMAGES

In no event will Licensor or any of the Licensor Parties be liable to Licensee for any consequential, indirect, special, incidental or consequential damages (including damages for loss of business profits, business interruption, loss of business information, and the like) arising out of the use or inability to use the Software, or based on breach of contract, tort (including negligence), product liability or otherwise, even if Licensor or any of the Licensor Parties have been advised of the possibility of such damages and even if a remedy set forth herein is found to have failed of its essential purpose.

Except with respect to its obligations pursuant to Section 5 above, the liability of Licensor, or any Licensor Party, to Licensee for actual damages from any cause whatsoever, and regardless of the form of the action (whether in contract, tort including negligence, product liability or otherwise), shall in no event exceed \$100.

Licensor makes no representations or warranties, express or implied, including without limitation the fitness for a particular purpose, regarding the Software or any services provided by Licensor. Risk as to the results and performance of the Software is assumed by Licensee.

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Licensee or Licensor.

**BE A MENTOR, INC.**

**OAKLAND  
UNIFIED SCHOOL DISTRICT**


  
By: \_\_\_\_\_  
Robert Goetsch, President  
(510) 342-7171  
[goetsch@beamentor.org](mailto:goetsch@beamentor.org)

  
By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: 8/26/2020

Approved as to form by OUSD Staff Attorney Joanna Powell on 7/30/2020.



Hosted Agreement

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## SCHEDULE A

### School Year 2020 - 2021

Schedule A is an integral part of the Hosted Software Agreement between Be A Mentor, Inc, (BAM) and Oakland Unified School District (Customer) signed and dated on July 1, 2020 and includes services related to the use of the hosted software

<b><u>Hosted Software License Agreement</u></b>	<b><u>Cost</u></b>
Use of VMS as an online application residing on a Be A Mentor, Inc servers for the purposes of application processing, conducting background screening and clearances, and tracking ongoing arrest records.	\$ 3,000 Annual

### B. Services for Vendor Contracting

<b><u>Background Clearance Services</u></b>	
Be A Mentor conducts background clearances on your Vendor applicants who are transferred to BAM database via web services. \$ 50 per vendor application up to 120 applicants	\$50 * 120 = \$ 6,000
Subsequent Arrest Notification Processing	Included
Customer support regarding applicant clearance matters – 10 hrs @ \$90 / hr.	\$90 * 10 = \$ 900

<b><u>Optional Services</u></b>	
Ongoing technical support to trained licensee/Customer Site Coordinator(s)	Included in license fee
Custom Queries and reports	\$ 300 - \$ 600
Custom Application Programming	\$ 150 per hour

# SCHEDULE A

## School Year 2020 - 2021

### Summary of Charges

1. Hosted Software Agreement Annual License Fee	\$ 3,000
2. Background Clearance for up to 120 vendors (invoiced monthly)	Not to exceed \$ 6,000
	\$ 900
3. Customer support regarding applicant clearance matters	
<b>Total</b>	<b>Not to exceed \$ 9,900</b> =====

### Indemnification

BAM, acting on behalf of Customer agrees to implement the Services for Vendor Contracting described above with the intent of conducting a background clearance investigation on vendor applicants. BAM relies on key information provided by applicants to be correct and accurate for conducting such background investigations.

BAM and Customer each indemnify, and hold harmless the other, including their respective officers, agents, and employees, from and against any actions, losses, costs, penalties, obligations, claims, judgments, attorneys' fees, attachments errors, omissions, or liabilities, including legal costs, attorney fees, and expert witness fees, whether or not suit is actually filed, and/or any judgment rendered against either, arising from or growing out of the Services for Vendor Contracting described above under this agreement or in any way connected with the performance of responsibilities under this Schedule A.

This document replaces the Schedule A for period of 2019 – 2020 School year and is agreed upon for the period of July 1, 2020 through June 30, 2021

**Be A Mentor, Inc.**

**Oakland Unified School District**



Robert Goetsch  
President



Jody London, President,  
BOE



Susan Beltz  
Chief Technology Officer

Date: July 1, 2020

Kyla Johnson-Trammell,  
Secretary, BOE

Date: 8/26/2020

Approved as to form by OUSD Staff Attorney Joanna Powell on 7/30/2020.

