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

Board Cover Memorandum

To Board of Education

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

Meeting Date August 25, 2021

Subject Ratification of Software Services and Support Agreement between Oakland Unified School District and TalkingPoints, Inc.
Contractor: TalkingPoints, Inc.
Services For: August 1, 2021 - July 31, 2022

Ask of the Board Ratification of Software Services and Support Agreement between Oakland Unified School District and TalkingPoints, Inc., San Francisco, CA, for the latter to provide software licensing, data imports, upgrades, technical support and stakeholder engagement for the TalkingPoints platform for the period August 1, 2021 through July 31, 2022 for an amount not to exceed \$90,000.

Background The Oakland Unified School District has successfully used TalkingPoints for two-way multi-lingual texting for 2021-22 and is using this firm going forward for the same services as previously provided, with the exception that the per-student count will be decreased. Note that 2021-22 will be a transition year as we continue to transition OUSD to ParentSquare for districtwide communications.

Discussion The TalkingPoints application is used by Oakland Unified School District (OUSD) staff to support two-way multi-lingual texting between school site staff and families. Schools use a web application to send text messages to parents who receive them in their own languages as well as English. Parents can reply in their own languages, and receive both the English and the original version of the messages. Since TalkingPoints works via text messages, TalkingPoints is accessible for all parents who own a simple mobile phone. Analytics dashboards are also available to track engagement statistics of parents.

TalkingPoints was successfully used in 2020-21 and the per-student cost is being decreased in 2021-22. Note that 2021-22 will be a transition year as we continue to transition OUSD to ParentSquare for districtwide communications. Over six million messages between school site staff and families across all OUSD school sites were sent in 2020-21. Metrics show that the number of conversations increased by

a factor of three after the COVID-related school closures in March, 2020. Hence, it is important to continue to make the platform available during 2021-22 as students return to in-person learning and schools continue to adopt the ParentSquare platform.

In addition, while surveys were not conducted in 2019-20 and 2020-21 due to the pandemic, prior-year parent surveys yielded extremely positive results: 96% of parents said that they feel more informed about what is happening at their school, 88% of parents said they are having more conversations about school with their child, and 86% of parents said that text messages are their preferred method of communication from the school.

The Software Services and Support Agreement with TalkingPoints, Inc. includes software licensing, data imports, upgrades, technical support, and stakeholder engagement for the 2021-22 school year across OUSD school sites. Ratification of this Agreement will enable OUSD to continue using TalkingPoints to support text-based communications between school site staff and OUSD families.

Competitively Bid	No. Professional Services Agreement of less than \$96,700
Fiscal Impact	\$90,000 from Funding Resource 010-1100-0-0000-7700-5846-999-9860-1605-9999-99999: State Lottery, Data Processing, License Agreements, Districtwide
Attachment(s)	<ul style="list-style-type: none">• TalkingPoints-Oakland Unified School District Software Services and Support Agreement (2021-2022)• TalkingPoints Price Proposal

TalkingPoints-Oakland Unified School District Software Services and Support Agreement (2021/2022)

1. Overview

This Software Services and Support Agreement (“Agreement” or “Contract”) is entered into by and between TalkingPoints, a California corporation and Oakland Unified School District.

TalkingPoints product

TalkingPoints’ product is a two-way, multi-lingual texting platform that allows for fast, cheap and accessible communication between districts, schools and teachers with parents and students. Schools use a web application to send text messages to parents who receive them in their own languages as well as English. Parents can reply in their own languages, and receive both the English and the original version of the messages. Since TalkingPoints works via text messages, TalkingPoints is accessible for all parents who own a simple mobile phone.

TalkingPoints allows for instant translation (machine and human-driven) both outbound and inbound, opening up communication channel for parents who do not speak English. Schools can also send interactive messages drawn from pre-written text message programs, conduct surveys (with data visualization), send multiple-choice questions, send automatic follow up messages depending on how the parent replies. Analytics dashboards are also available to track engagement statistics of parents.

TalkingPoints organization

TalkingPoints is a non-profit organization with the mission to meaningfully connect teachers, parents and students across technological and language barriers to increase parent engagement. We believe that parent engagement is critical to student success, yet is often challenging. TalkingPoints helps change this to drive parent engagement through opening up communication channels that build relationships. TalkingPoints was born out of Startup Weekend Education Oakland that OUSD co-sponsored, and won the Teachers’ Pick Prize for Parent Engagement. Our product development has been heavily influenced by OUSD teachers. TalkingPoints was a top 10 finalist in the Google Impact Challenge: Bay Area in 2015. Our current philanthropic funders include Google.org, AT&T Aspire, Stanford University, Echoing Green and Walton Family Foundation.

2. Scope of work

TalkingPoints will license the use of its multi-lingual texting platform (“Software”) to Oakland Unified School District for the 2021-22 school year for 36,000 students.

This Agreement includes data import support, system maintenance, system support, and user support to Oakland Unified School District for the length of the Agreement. It also includes ongoing system upgrades at no additional cost to Oakland Unified School District.

3. Data import

TalkingPoints will import all Oakland Unified School District data for the purposes of text message communication for the participating schools. This data can be obtained from a variety of sources, which would include Oakland Unified School District Student Information System (“SIS”) or prepopulated data files. TalkingPoints will import Oakland Unified School District’s clean data at no additional cost, but Oakland Unified School District and its schools will have access to online import tools if it wishes to control its own data imports. TalkingPoints will charge for any data clean up required. If Oakland Unified School District opts to have TalkingPoints import its data, it will take a minimum of two (2) weeks and up to a maximum of six (6) weeks to import all data, provided that TalkingPoints has access to clean, high-quality data.

4. Fees and Payments

TalkingPoints’ fee breakdown for the 2021-22 school year is as follows:

2021-22 school year

For a minimum of 36,000 students

- \$2.50 per student for implementation and licensing the TalkingPoints software.

Total cost at \$90,000 (“Annual License Fee”) for the 2021-22 school year.

*Subsidized pricing for participation in research partnership.

Payment Schedule

The fees will be paid by Oakland Unified School District within 30 days of receipt of an invoice from TalkingPoints (but no sooner than 30 days after execution of this Agreement by the parties). Invoices will be generated within 14 days of signing this Agreement and to be paid upfront for the minimum number of students, in this case 36,000 students, with additional payment with regards to additional students due at the start of each quarter.

(a) **Failure to Make Payment.** In the event Oakland Unified School District fails to pay the Annual License Fee or other fees due hereunder when due it will constitute a material breach of this Agreement and, upon notice from TalkingPoints and a 30-day remediation period, Oakland Unified School District agrees to immediately cease, and to cause Oakland Unified School District Users to cease, using the Software and TalkingPoints will have no further obligation to provide any maintenance or support to Oakland Unified School District or Oakland Unified School District Users.

(b) **Taxes.** The fees in Statement of Work Section 4 do not include sales, use or similar taxes which may be applicable. District is solely responsible and liable for payment of all sales, use, excise, value added or similar taxes, duties or charges imposed by any federal, state or local government or jurisdiction with respect to any fees or other payments to be made by District to TalkingPoints under this Agreement, excluding taxes based on TalkingPoints’s overall net income.

(c) Additional cost If the recipient of the service incurs additional charges for receiving text messages, such as text message fees or data fees, then additional charges are payable by the recipient or District Users

5. Responsibilities

TalkingPoints is responsible for all development and provision of Software to Oakland Unified School District and its schools, and for maintenance and support for the Software.

Oakland Unified School District's responsibilities are

- Selection of schools to participate in the initiative
- Involvement in the stakeholder engagement process, including introduction of key stakeholders to TalkingPoints
- Providing access to contact information via SIS or otherwise for data import

6. Excluded Services

Other than the services outlined above, TalkingPoints is not responsible for any other activities, unless mutually agreed to in writing.

7. Client Obligations

In order to fulfill the scope of services described herein, TalkingPoints relies on Oakland Unified School District and its schools to provide timely, accurate and complete information, to cooperate reasonably with TalkingPoints and to timely complete all tasks assigned to Oakland Unified School District pursuant to the mutually agreed project plan developed at the outset of the project.

8. Product Maintenance and Support

TalkingPoints agrees to provide maintenance and support of the TalkingPoints Software. Maintenance and support of the Software is provided at no additional cost to Oakland Unified School District. However, TalkingPoints will not be responsible for, nor will it have any liability resulting from (a) modifications to or alterations of the Software or databases by Oakland Unified School District or Oakland Unified School District users, unless such modification or alteration is approved in writing by TalkingPoints, or (b) any failure of Oakland Unified School District's or Oakland Unified School District users' equipment or Software.

9. Term, Termination and Extension

The Term of this Agreement is from August 1, 2021 through July 31, 2022.

Either party may also terminate this Agreement at any time with written notice for any reason, provided that a pro-rata amount of fees are paid, based on time elapsed from signature of this Agreement until termination. In this event, TalkingPoints is not responsible for producing any of the deliverables under the Agreement. If Oakland Unified School District terminates this Agreement without cause as provided for in this paragraph, TalkingPoints will refund Oakland Unified School District any prepaid fees covering the remainder of the effective term of the Agreement after the effective date of termination, as calculated on a daily pro rata basis.

Either party may terminate this Agreement prior to the expiration of the Term, effective immediately upon written notice to the other party, in the event of a material breach of this Agreement by the other party hereto, if such breach remains uncured for more than thirty (30) days after written notice thereof. In addition, either party may terminate this Agreement upon ten (10) days written notice to the other party upon the occurrence of any one or more of the following: (i) the institution by or against the other party of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of the other party's debts; (ii) the other party making an assignment for the benefit of creditors; or (iii) the other party's dissolution. If Oakland Unified School District terminates this Agreement as provided for in this paragraph, TalkingPoints will refund Oakland Unified School District any prepaid fees covering the remainder of the effective term of the Agreement after the effective date of termination, as calculated on a daily pro rata basis.

In addition, TalkingPoints may terminate this Statement of Work immediately upon written notification, if Oakland Unified School District violates any of the Oakland Unified School District Responsibilities, listed above. However, if TalkingPoints terminates this Agreement as provided for in this paragraph, TalkingPoints will refund Oakland Unified School District any prepaid fees covering the remainder of the effective term of the Agreement after the effective date of termination, as calculated on a daily pro rata basis.

10. License of Software to District; Third Party Services.

(a) License. Subject to the terms of this Agreement, TalkingPoints hereby grants to Oakland Unified School District a limited, non-exclusive, non-sublicensable and non-transferrable license for Oakland Unified School District employees and staff, and their students or parents or guardians (collectively, "***District Users***") to use the Software during the Term. The Oakland Unified School District Users may not use the Software for other than Oakland Unified School District operations. Oakland Unified School District is responsible for the actions of all Oakland Unified School District Users, for ensuring that only authorized Oakland Unified School District Users are provided access to the Software, and that access of Oakland Unified School District Users authorized by Oakland Unified School District is limited to that portion of the Software and Oakland Unified School District Data (as defined below) as is reasonably necessary in order to fulfill the purposes of this Agreement. By agreeing to license the Software, Oakland Unified School District is also agreeing to comply with the Privacy Policy as outlined in the TalkingPoints website (www.talkingpts.org) incorporated as an attachment to this Agreement

11. Ownership of Software; Third Party Materials. TalkingPoints and its licensors are and will remain the exclusive owners of all right, title and interest in and to the Software and all derivative works, and in the materials licensed by TalkingPoints from third parties ("***Third Party***")

Materials”), including but not limited to copyrights, patent rights, and trade secrets and all other intellectual property rights as may exist now and/or hereafter come into existence, subject only to the rights of third parties in open source components and the limited license granted under this Agreement. In addition, TalkingPoints shall own any and all other ideas, concepts, themes, technology, algorithms, programming codes, documentation or other intellectual property or copyrightable material conceived, developed, created, written or contributed by TalkingPoints pursuant to this Agreement (“**Specific Developments**”). Oakland Unified School District will have no rights in the Software, any derivative works, the Specific Developments or Third Party Materials, except the license and related rights expressly set forth in this Agreement. Oakland Unified School District agrees not to (i) alter, merge, modify, adapt or translate the Software or Third Party Materials, or decompile, reverse-engineer, disassemble, or otherwise reduce the Software or Third Party Materials to a human-perceivable form, (ii) sell, rent, lease or sublicense the Software or Third Party Materials or (iii) create derivative works based upon the Software or Third Party Materials.

12. Software Implementation, Data Conversion, Hosting and Training Services.

TalkingPoints agrees to provide the services associated with the implementation of the Software, data conversion, hosting and training of Oakland Unified School District employees on the use of the Software as follows:

- (a) **Task List.** A preliminary list of tasks and associated targeted completion dates are set forth on **Exhibit A** attached hereto, and incorporated as if fully set forth herein.
- (b) **Hosting.** The Software and Oakland Unified School District’s data will be hosted on TalkingPoints’s servers (included in the Annual License Fee).
- (c) **Importing of Data.** TalkingPoints will assist Oakland Unified School District with importing Oakland Unified School District’s data into the Software within 45 business days after TalkingPoints is provided reasonable access to usable Oakland Unified School District Data.
- (d) **Initial Training.** TalkingPoints will provide up to five (5) days of initial training to Oakland Unified School District in the basic use of the Software to be presented as both parties mutually agree.

13. Ownership and Control of Oakland Unified School District Data. Oakland Unified School District will retain ownership of, and the ability to control, all Oakland Unified School District data imported into the Software (“***Oakland Unified School District Data***”). Oakland Unified School District Data includes pupil records, as defined in California Education Code §49073.1(d)(5) (“***Pupil Records***”). TalkingPoints may, however, internally use Oakland Unified School District Data that has been de-identified in order to improve its educational products. Upon the expiration or termination of this Agreement, to the extent Oakland Unified School District Data resides on TalkingPoints servers, TalkingPoints agrees to assist in the transfer all Oakland Unified School District Data back to Oakland Unified School District in an industry standard open format, such as CSV, at no charge.

14. Responsibilities of Oakland Unified School District. Oakland Unified School District

agrees to prepare and furnish to TalkingPoints upon request such information as is reasonably requested by TalkingPoints in order for TalkingPoints to perform its obligations under this Agreement.

15. TalkingPoints Software Maintenance and Support. TalkingPoints agrees to provide maintenance and support of the Software. Such maintenance and support will include coverage in the form of bug fixes and other corrections to the Software; telephone and e-mail support for questions regarding operations of the Software; change the Software as necessary to incorporate upgrades and new features; support to Oakland Unified School District in resolving problems/errors resulting from misuse or hardware/software failure; and telephone or web conferences with Oakland Unified School District to address future growth or modifications to the Software. Maintenance and support of the Software is provided at no additional cost to Oakland Unified School District. TalkingPoints' maintenance of the Software will be at complete discretion of TalkingPoints other than bug fixes. TalkingPoints is not responsible for, nor will it have any liability resulting from, (a) modifications to or alterations of the Software or databases by Oakland Unified School District or Oakland Unified School District Users, unless such modification or alteration is approved in writing by TalkingPoints, or (b) any failure of Oakland Unified School District or Oakland Unified School District Users equipment or software or (c) quality of the translation services as provided by the Software.

16. Confidentiality.

(a) Confidential Information Defined. Each party (the "**Disclosing Party**") may from time to time during the Term disclose to the other party (the "**Receiving Party**") certain information regarding the Disclosing Party's business, including technical, marketing, financial, employee, planning, and other confidential or proprietary information ("**Confidential Information**"). The Software, Third Party Materials and related know-how, technology, system designs, layouts, software, concepts, techniques, data and files will be considered Confidential Information of TalkingPoints. Oakland Unified School District Data will be considered Confidential Information of Oakland Unified School District.

(b) Protection of Confidential Information. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care. Oakland Unified School District acknowledges that the Software is maintained as a trade secret by TalkingPoints, and agrees to use reasonable care in preserving such secrecy, including making such information available only to those Oakland Unified School District Users required to have access in order to fulfill the purposes of this Agreement.

(c) Exceptions. The Receiving Party's obligations under this section with respect to any Confidential Information of the Disclosing Party will terminate if the Receiving Party can demonstrate that such information: (i) was already known to the Receiving Party at the time of disclosure by the Disclosing Party; (ii) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (iii) is, or through no fault of the Receiving Party has become, generally available to the public; or (iv) is independently developed by the Receiving Party without access to, or use of, the Disclosing

Party's Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

(d) Return of Confidential Information. In addition to TalkingPoints's obligations under Section 13, promptly upon the written request of the Disclosing Party following termination of this Agreement, the Receiving Party will either, at Disclosing Party's option, return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and certify in writing that it has fully complied with its obligations under this Section.

(e) Use of Confidential Information. The Receiving Party will not use Confidential Information of the Disclosing Party for any purpose prohibited by law or other than as required or specifically permitted by this Agreement. TalkingPoints further agrees it will not use any personally identifiable information in Oakland Unified School District Data to engage in or facilitate targeted advertising.

(f) Injunctive Relief. Because monetary damages may not be sufficient to remedy a violation of the provisions of this section, a Disclosing Party shall be entitled, upon becoming aware of any such violation and without waiving any other rights or remedies it may have, to seek injunctive or other equitable relief it may deem appropriate.

(g) Non-Retention Certification. TalkingPoints certifies that, in accordance with this Agreement, Pupil Records shall not be retained or available to TalkingPoints or its employees or agents upon completion of the terms of this Agreement. This certification may be enforced by any lawful means, including, without limitation, through civil action.

17. Privacy and Collection of District Data.

(a) Compliance with Law. TalkingPoints and Oakland Unified School District each represents and warrants that it, and its officials, agents, employees and subcontractors have and will continue to receive training so as to be familiar with the provisions of the Family Educational Rights and Privacy Act ("**FERPA**") and equivalent state provisions, and each party agrees that it will comply with such provisions and take all reasonable measures necessary to protect student education records from unauthorized acquisition or release. In the event that any unauthorized acquisition or release of student education records occurs, each party agrees to advise the other promptly upon discovery of such unauthorized acquisition or release and, if required by law, Oakland Unified School District will notify the affected parent, legal guardian or student (if at least 18 years of age), as applicable, in writing of such unauthorized acquisition or unauthorized release. TalkingPoints acknowledges that Pupil Records must be protected and will take all legally required actions, including the designation and training of responsible individuals, to ensure the security and confidentiality of Pupil Records. TalkingPoints will identify those employees and subcontractors who will have access to Pupil Records and ensure such individuals receive

appropriate instructions as to how to comply with the security and confidentiality requirements of this Agreement with respect to Pupil Records. TalkingPoints warrants that all Pupil Records will be encrypted in transmission using a minimum of 128 bit AES encryption. In addition, TalkingPoints will use industry-standard and up -to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing services under this Agreement. The parties agree that the commitments agreed to in this section are to ensure compliance with California Education Code Section 49073.1. If TalkingPoints experiences an unauthorized acquisition or release of Oakland Unified School District's student education records, other than through the fault of Oakland Unified School District, TalkingPoints shall take reasonable steps to immediately limit and mitigate such breach, including immediately notifying Oakland Unified School District.

(b) Sharing of Oakland Unified School District Data. TalkingPoints will not share Oakland Unified School District Data with, or disclose it to, any third party except (i) as directed by Oakland Unified School District or Oakland Unified School District Users, (ii) to Oakland Unified School District Users as contemplated by this Agreement, (iii) to TalkingPoints's subcontractors who need access to fulfill TalkingPoints's obligations under this Agreement and who have agreed to maintain the confidentiality of such information or (iv) as required by applicable law. When TalkingPoints believes that any disclosure is required by applicable law, it shall promptly notify Oakland Unified School District prior to the disclosure and give Oakland Unified School District a reasonable opportunity to object to the disclosure.

(c) Storage and Process. TalkingPoints will store and process Oakland Unified School District Data in accordance with commercially reasonable practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use.

(d) Right to Correct. A parent, legal guardian, or student who has reached 18 years of age may review personally identifiable information in the student's education records and correct erroneous information by serving a written request for access or description of the erroneous information and written request for correction upon Oakland Unified School District and furnishing Oakland Unified School District, upon request, such information as is reasonably requested to respond to the request. Oakland Unified School District is responsible for correcting all such erroneous information and TalkingPoints agrees to fully cooperate with Oakland Unified School District to make such corrections.

(e) Social Security Numbers. Oakland Unified School District agrees that it will not collect or store as part of Oakland Unified School District Data or otherwise any social security numbers.

18. TalkingPoints Warranty.

(a) Software Warranty. TalkingPoints warrants to Oakland Unified School District that the Software as delivered, will materially comply with the published specifications of TalkingPoints for such Software. TalkingPoints's obligations under this warranty are limited to providing Oakland Unified School District with a copy of corrected Software. TalkingPoints does not warrant that the operation of the Software will be uninterrupted or error-free. IN PARTICULAR, FOR PURPOSES OF THE FOREGOING WARRANTY, TALKINGPOINTS AND Oakland Unified School District ACKNOWLEDGE THAT THE SOFTWARE IS NOT AND CANNOT

BE MADE TO BE 100% ACCURATE, AND THAT ANY ERRORS OR FAILURE TO PERFORM SHALL NOT BE DEEMED A BREACH OF SUCH WARRANTY UNLESS THEY ARE SIGNIFICANT AND NOT TO BE EXPECTED IN LIGHT OF THE LIMITATIONS OF SOFTWARE OF THIS TYPE.

(b) No Other Warranty. EXCEPT AS EXPRESSLY SET FORTH ABOVE, TALKINGPOINTS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO ALL TECHNOLOGY, THIRD PARTY MATERIALS, SOFTWARE OR DERIVATIVE WORKS PROVIDED OR OTHERWISE LICENSED TO Oakland Unified School District IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NON-INFRINGEMENT.

19. Rights in Law and Equity Remain.

The foregoing rights to terminate as set forth in Section 9, above, are in addition to, not in lieu of, all other rights and remedies which may be available to either party under this Agreement, at law and/or in equity.

20. Miscellaneous.

(a) Governing Law & Venue. This Agreement will be governed by, and construed and enforced in accordance with, the substantive laws of the State of California, without regard to its principles of conflicts of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.

(b) Relationship of the Parties. Nothing contained in this Agreement will be construed as creating any agency, partnership, or other form of joint enterprise between the parties. The relationship between the parties will at all times be that of independent contractors. Neither party will have authority to contract for or bind the other in any manner whatsoever. This Agreement confers no rights upon either party except those expressly granted herein.

(c) Interpretation. This Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement.

(d) No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(e) Limitation of Liability. In no event will either party be liable to the other party or to any third party for any incidental, special, indirect, exemplary, punitive or consequential damages arising out of or relating to this Agreement, including any damages for business interruption, loss of use, or lost or damaged data, whether arising out of breach of contract, tort (including negligence) or otherwise, even if such party or any of its authorized representatives has been advised of the possibility of such damages. Each party's aggregate liability arising out of or relating to this

Agreement for any damages, costs, judgments, expenses or loss resulting from any claims, demands, or actions arising out of or relating to this Agreement will not exceed the fees paid or due payable by Oakland Unified School District to TalkingPoints during the preceding twelve (12) months pursuant to this Agreement. Oakland Unified School District also agrees that the TalkingPoints Software is not intended or designed for use in high-risk activities or highly-sensitive information, or in any situation where failure of delivery or limited performance (including translational quality of the Software) or any error in the Software could lead to death, damage to property, personal injury or where other damages could result if an error occurred. Notwithstanding the foregoing, this Limitation of Liability Section 21(e) shall have no effect on or applicability to the indemnification obligations as set forth in Section 21(f), below.

(f) Indemnification: TalkingPoints agrees to hold harmless, indemnify, and defend Oakland Unified School District and its officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement. TalkingPoints also agrees to hold harmless, indemnify, and defend Oakland Unified School District and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to TalkingPoints in connection with the performance of this Agreement. This provision survives termination of this Agreement.

(g) Force Majeure: Neither party will be liable to the other for any delay or failure to perform due to causes beyond its reasonable control. Performance times will be considered extended for a period of time equivalent to time lost because of any such delay by providing prompt written notice of such expected delay to the other party.

(h) Assignment: The obligations of TalkingPoints under this Agreement shall not be assigned by TalkingPoints without the express prior written consent of Oakland Unified School District.

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

(j) Incorporation of Recitals and Exhibits: The Recitals and each exhibit attached hereto are hereby incorporated herein by reference. TalkingPoints 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.

(k) 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.

(l) Counterparts: This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

(m) Due Authority of Signatories. Each individual signing this Agreement on behalf of a party represents and warrants that he or she has been duly authorized by appropriate action of such party to execute, and thereby bind such party to, this Agreement.

(n) Contract Contingent on Governing Board Approval: Oakland Unified School District shall not be bound by the terms of this Agreement until it has been formally approved by Oakland Unified School District's Governing Board, and no payment shall be owed or made to TalkingPoints absent that formal approval. This Agreement shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

(o) Agreement Publicly Posted: This Agreement, its contents, and all incorporated documents are public documents and will be made available by Oakland Unified School District to the public online via the Internet.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

TalkingPoints

Nancy Lee Bromberger

Name: Nancy Lee Bromberger

Title: Head of Partnerships

Date: June 23, 2021

Oakland Unified School District

Preston Thomas

Name: Preston Thomas

Title: Chief Systems and Services Officer

Date: 6/25/21

Approved as to form by OUSD Staff Attorney
Joanna Powell on 6/24/21.

Joanna L. Powell

Date: June 23, 2021

Prepared By:

Nancy Lee Bromberger
nancy@talkingpts.org

Prepared For:

Susan Beltz, Preston Thomas
Oakland Unified School District

TalkingPoints is a nonprofit organization on a mission to connect teachers and families for student success. It offers a centralized parent engagement platform with translation in 100+ languages for schools and districts to build stronger communication, community, and engagement between staff, parents, and students. Oakland Unified School District is interested in utilizing TalkingPoints in the 2021-2022 school year to engage with all parents in their home languages and involve them in their children's education.

Duration:

Term: SY 2021-22

Product Purchased: TalkingPoints for Districts

Pricing

Number of Students	Cost per Student	Title I Discount	Setup Cost	Total
36,000	\$2.50	Yes	\$0	\$90,000

Additional Details:

- TalkingPoints will import data from Oakland Unified School District's Student Information System through Clever to set up the school accounts.
- Subsidized pricing based on research partnership.

Payment Schedule:

- The fees will be paid by the School/District within 30 days of receipt of an invoice from TalkingPoints (but no sooner than 30 days after execution of this agreement by the parties).

Terms:

- Subject to general terms of service as detailed at www.talkingpts.org under Terms of Service.

Additional notes:

- Total cost is inclusive of TalkingPoints support and implementation assistance.
- This proposal is confidential between TalkingPoints and Oakland Unified School District (June 23, 2021).