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Board Cover Memorandum

To Board of Education

From Denise G. Saddler, Interim Superintendent
Sondra Aguilera, Chief Academic Officer
Jennifer Blake, Executive Director, Special Education
Stacey Lindsay, Special Education Director, Related Services: Psychological and Mental Health

Meeting Date September 10, 2025

Subject Software as a Service Agreement 2024-2025 - Jayne B. Company, DBA Marker Learning - Special Education Department

Ask of the Board Ratification by the Board of Education of a Software as a Service (SaaS) Agreement 2024-2025 by and between the District and Jayne B. Company, DBA Marker Learning, Hoboken, NJ, for the latter to provide software under the SaaS model to assist with the writing of psychological evaluations, including a training on its use and consultative support which is an essential and legally required document via the Special Education Department, for the period August 11, 2025 through June 30, 2026, in an amount not to exceed \$40,000.00.

Background The Special Education Department is required to conduct evaluations for special education services for students within 60 calendar days, excluding breaks longer than 5 days. School psychologists are an essential part of the team who conducts these evaluations, taking upwards of 20 or more hours for assessment and report writing, while also engaging in other required job duties, typically at more than one school site. As such, the use of a psychological report writing software will reduce the amount of time spent writing reports and increase the amount of time engaging in direct services with students.

Discussion The Special Education Department is required to conduct the evaluations for special education within the above noted 60 calendar days at an 100% compliance rate. It is anticipated that by providing a report writing software that the special education department would find improvement in our current compliance rate, and increase the amount of time school psychologists provide direct services, such as counseling and behavioral interventions.

Fiscal Impact Funding Source: Special Education: Resource 6500

Attachment(s)

- Software as a Service Agreement 2024-2025 with Jayne B. Company, DBA Marker Learning
- Marker SaaS Quote - OUSD 25-26 SY VS V3



SOFTWARE AS A SERVICE (SaaS) AGREEMENT 2024-2025

This Services Agreement (“AGREEMENT”) is a legally binding contract entered into between the Oakland Unified School District (“OUSD”) and the entity or individual (“SOFTWARE PROVIDER,” together with OUSD, “PARTIES”) named in **Exhibit A**, attached hereto and incorporated herein by reference. Unless otherwise stated herein, “SOFTWARE PROVIDER INDIVIDUAL” includes (to the extent they exist): SOFTWARE PROVIDER Board members, officers, trustees, and directors; SOFTWARE PROVIDER employees, agents, consultants, contractors and subcontractors, representatives, and other similar individuals; and volunteers and others unpaid persons under SOFTWARE PROVIDER’S direction, invitation, or control.

The PARTIES hereby agree as follows:

1. Services.

- a. SOFTWARE PROVIDER shall grant access to or otherwise 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, SOFTWARE PROVIDER shall describe in #1B of **Exhibit A** whether and how its services would be able to continue.
- b. SOFTWARE PROVIDER shall provide to Customer the necessary passwords and network links or connections to allow Customer to access the Services.
- c. SOFTWARE PROVIDER shall provide OUSD with support services to support teachers and staff with technical issues and troubleshooting throughout the course of the contract as requested by OUSD and as further outlined in **Exhibit A**.
- d. SOFTWARE PROVIDER grants such licenses and user permissions as the SOFTWARE PROVIDER offers in its end user license agreement (See **Exhibit B** if applicable) and terms of use and as OUSD may accept by Click-Wrap. If SOFTWARE PROVIDER provides an End User agreement for incorporation into this agreement, OUSD only agrees to the terms of the End User agreement as of (“Insert Date”) in the exact wording as they appear in Exhibit B. OUSD does not agree to any future iterations of SOFTWARE PROVIDER’S End User Agreement that occur on its website or elsewhere after (“Insert Date”).
- e. To the extent that any terms in License Provider’s End User agreement, Click-wrap other agreement or document, quote or invoice are in conflict with any of the following, OUSD DOES NOT agree to any of the following:
 - (i) Jurisdiction, venue, and governing law other than California.
 - (ii) Indemnification by OUSD of any person.

- (iii) Binding arbitration or any other binding extra-judicial dispute resolution process.
- (iv) Waiver of jury trial.
- (v) Use or ownership of OUSD Information other than as expressly permitted in this Agreement.
- (vi) Automatic renewal of licenses, end user license agreements, terms of use, or any other contractual rights and obligations
- (vii) Insurance, Confidentiality and Liability obligations other than those found in this agreement.

2. **Term.** The term ("TERM") of this AGREEMENT is established in **Exhibit A**.

3. **Compensation.**

- a. Over the TERM, OUSD agrees to pay SOFTWARE PROVIDER the amount of money stated in **Exhibit A** for satisfactorily performing the SERVICES. OUSD shall not pay and shall not be liable to SOFTWARE PROVIDER for any costs or expenses paid or incurred by SOFTWARE PROVIDER not described in **Exhibit A**.
- b. Compensation for SERVICES performed outside of the TERM (e.g., prior to execution of this AGREEMENT or after its termination) shall be at OUSD's sole discretion and in an amount solely determined by OUSD. SOFTWARE PROVIDER agrees that it shall not expect or demand compensation for the performance of such SERVICES.
- c. SOFTWARE PROVIDER acknowledges and agrees not to expect or demand compensation for any SERVICES performed prior to the PARTIES, particularly OUSD, validly and properly executing this AGREEMENT and SOFTWARE PROVIDER shall not rely on verbal or written communication from any individual, other than the OUSD Superintendent or the OUSD Legal Counsel, stating that OUSD has validly and properly executed this AGREEMENT.
- d. Payment for SERVICES shall be made for all undisputed amounts no more frequently than in monthly installment payments within sixty (60) days after SOFTWARE PROVIDER submits an invoice to OUSD, in accordance with Paragraph 4 (Invoicing), for the SERVICES actually performed and after OUSD's written approval that the SERVICES were actually performed. The granting of any payment by OUSD, or the receipt thereof by SOFTWARE PROVIDER, shall in no way lessen the liability of SOFTWARE PROVIDER 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 SOFTWARE PROVIDER's performance does not conform to the requirements of this AGREEMENT, SOFTWARE PROVIDER agrees to correct its performance without delay.

4. **Invoicing.** Invoices furnished by SOFTWARE PROVIDER 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: SOFTWARE PROVIDER name, SOFTWARE PROVIDER address, invoice date, invoice number, purchase order number, name of school or department to which the SERVICES were provided, name(s) of the person(s) performing the SERVICES, date(s) the SERVICES were performed, brief description of the SERVICES provided on each date, total invoice amount, and the basis for the total invoice amount (e.g., if hourly 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 SOFTWARE PROVIDER of the missing items; SOFTWARE PROVIDER shall resubmit an invoice that includes the required elements before OUSD will pay the invoice.
 - c. Invoices must be submitted no more frequently than monthly, and within 30 days of the conclusion of the applicable billing period. 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 SOFTWARE PROVIDER in writing and the new or modified requirements shall be mandatory upon receipt by SOFTWARE PROVIDER of such notice.
 - e. To the extent that SOFTWARE PROVIDER has described how the SERVICES may be provided both in-person and not in-person, SOFTWARE PROVIDER's invoices shall—in addition to any invoice requirement added or changed under subparagraph (d)—indicate whether the SERVICES were provided in-person or not.
 - f. All invoices furnished by SOFTWARE PROVIDER under this AGREEMENT shall be delivered to OUSD via email unless OUSD requests, in writing, a different method of delivery.
5. **Suspension.** If OUSD, at its sole discretion, develops health and safety concerns related to SOFTWARE PROVIDER's provision of SERVICES, then the OUSD Superintendent or an OUSD Chief may, upon approval by OUSD legal counsel, issue a notice to VENDOR to suspend this AGREEMENT, in which case SOFTWARE PROVIDER shall stop providing SERVICES under this AGREEMENT until further notice from OUSD. OUSD shall compensate SOFTWARE PROVIDER for the SERVICES satisfactorily provided through the date of suspension.
6. **Termination.** Upon termination consistent with this Paragraph (Termination), SOFTWARE PROVIDER shall provide OUSD with all materials produced, maintained, or collected by SOFTWARE PROVIDER pursuant to this AGREEMENT, whether or not such materials are complete or incomplete or are in final or draft form.
 - a. For Convenience by OUSD. OUSD may at any time terminate this AGREEMENT upon thirty (30) days prior written notice to SOFTWARE PROVIDER. OUSD shall

compensate SOFTWARE PROVIDER for SERVICES satisfactorily provided through the date of termination. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief may issue the termination notice without prior 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. SOFTWARE PROVIDER shall immediately stop providing SERVICES upon receipt of the termination notice from the OUSD Superintendent or OUSD Chief.

- b. 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, which 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 may issue the termination notice without prior 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 its correction are made. SOFTWARE PROVIDER shall immediately stop providing SERVICES upon receipt of the termination notice from the OUSD Superintendent or OUSD Chief.
- c. Due to Unforeseen Emergency or Acts of God. Notwithstanding any other language of this AGREEMENT, if there is an unforeseen emergency or an Act of God during the TERM that would prohibit or limit, at the sole discretion of OUSD, the ability of SOFTWARE PROVIDER to perform the SERVICES, OUSD may terminate this AGREEMENT upon seven (7) days prior written notice to VENDOR. The OUSD Governing Board may issue this type of termination notice or the OUSD Superintendent, upon approval by OUSD legal counsel, may issue this type of the termination notice without the need for approval or ratification by the OUSD Governing Board. SOFTWARE PROVIDER shall immediately stop providing SERVICES upon receipt of the termination notice from the OUSD Superintendent.
- d. Due to Failure to Ratify by OUSD Board. If, consistent with Paragraph 41 (Signature Authority), this AGREEMENT is executed on behalf of OUSD by the signature of the Superintendent, a Chief, a Deputy Chief, or an Executive Director, and the Board thereafter declines to ratify this AGREEMENT, this AGREEMENT shall automatically terminate on the date that the Board declines to ratify it. OUSD shall compensate SOFTWARE PROVIDER for the SERVICES satisfactorily provided through the date of termination.
- e. Destruction or Return of Confidential Information. Upon expiration or termination of this Agreement for any reason, SOFTWARE PROVIDER shall promptly return to the District, or destroy, as the parties agree, all copies of OUSD students and staff Confidential Information. All copies, notes or other derivative material relating to the Confidential Information shall be promptly

retrieved or destroyed, as agreed, and no such material shall be retained or used by the receiving party in any form or for any reason

7. Data and Information Requests.

- a. SOFTWARE PROVIDER shall timely provide OUSD with any data and information OUSD reasonably requests related to the provision of the SERVICES.
- b. SOFTWARE PROVIDER shall register with and maintain current information within OUSD's Community Partner database unless OUSD communicates to SOFTWARE PROVIDER in writing otherwise, based on OUSD's determination that the SERVICES are not related to community school outcomes. If and when SOFTWARE PROVIDER's programs and school site(s) change (either midyear or in subsequent years), SOFTWARE PROVIDER shall promptly update the information in the database.
- c. Sub-Processors SOFTWARE PROVIDER shall obtain written consent from OUSD prior to engaging any Sub-Processors or other third parties to process, or otherwise access OUSD Data on Customer's behalf. Where SOFTWARE PROVIDER engages Sub-Processors or other third parties, SOFTWARE PROVIDER will impose data protection terms on the Sub-Processors that provide at least the same level of protection for OUSD Data as those in this agreement. SOFTWARE PROVIDER will remain responsible for each Sub-Processor's or third party's compliance with the obligations of this agreement.
- d. Data breach In the case of a data breach that includes OUSD data, SERVICE PROVIDER shall notify OUSD of such breach within 48 hours after having become aware of it. The notice shall describe the measures taken or proposed to be taken by the SOFTWARE PROVIDER to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.

8. Confidentiality and Data Privacy.

- a. OUSD may share information with SOFTWARE PROVIDER pursuant to this AGREEMENT in order to further the purposes thereof. SOFTWARE PROVIDER and SOFTWARE PROVIDER INDIVIDUALS 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. SOFTWARE PROVIDER understands that student data is confidential. SOFTWARE PROVIDER or SOFTWARE PROVIDER INDIVIDUALS may only access or receive identifiable student data, other than directory information, in connection with this AGREEMENT only after SOFTWARE PROVIDER and OUSD execute (i) a California Student Data Privacy Agreement ("CSDPA") or CSDPA Exhibit E, if SOFTWARE PROVIDER is a software vendor, or (ii) the OUSD Data Sharing Agreement, if SOFTWARE PROVIDER is not a software vendor. Notwithstanding Paragraph 24 (Indemnification), should SOFTWARE PROVIDER or SOFTWARE PROVIDER INDIVIDUALS access or receive identifiable student data, other than directory information, without first executing such an agreement, SOFTWARE

PROVIDER shall be solely liable for any and all claims or losses resulting from its access or receipt of such data.

- (i) Student Records. With respect to any access by SOFTWARE PROVIDER to any "education records" (as such term is defined in the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232 et seq. ("FERPA")) held by Customer under or in connection with this Agreement, SOFTWARE PROVIDER shall be acting as a legal agent ("school official") of Customer. As between the Parties, any information protected by FERPA submitted to SOFTWARE PROVIDER by Customer in connection with this Agreement shall be deemed the Confidential Information of Customer. SOFTWARE PROVIDER agrees to comply with FERPA and agrees not to share or disclose any FERPA protected information with any third party except as permitted by FERPA or as authorized or permitted by Customer
- c. SOFTWARE PROVIDER will use reasonable security safeguards, including but not limited to encryption and other electronic and technological measures, to prevent the use or disclosure of District Data other than as provided by this Agreement.
- d. All confidentiality requirements, including those set forth in the separate data sharing agreement, extend beyond the termination of this AGREEMENT.

9. **Copyright/Trademark/Patent/Ownership.** Except for any intellectual property owned by SOFTWARE PROVIDER that existed prior to execution of this AGREEMENT, SOFTWARE PROVIDER understands and agrees that all other matters produced under 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 SOFTWARE PROVIDER in connection with the SERVICES performed under this AGREEMENT. SOFTWARE PROVIDER 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 SOFTWARE PROVIDER's prior written consent, use SOFTWARE PROVIDER's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.
- a. SOFTWARE PROVIDER. As between SOFTWARE PROVIDER and Customer, all right, title and interest in the software and any other SOFTWARE PROVIDER materials furnished or made available hereunder, including all copyright rights, patent rights and other intellectual property rights in the software and materials

provided by SOFTWARE PROVIDER, belong to and are retained solely by SOFTWARE PROVIDER.

- b. OUSD Data. As between SOFTWARE PROVIDER and Customer, all right, title and interest in (i) the OUSD Data, (ii) other information input into SaaS Tool by Customer (collectively, "Other Information") and (iii) all intellectual property rights in each of the foregoing, belong to and are retained solely by Customer.
10. **Alignment and Evaluation.**
- a. SOFTWARE PROVIDER 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 SOFTWARE PROVIDER or SOFTWARE PROVIDER INDIVIDUALS in any reasonable manner which is permissible under the law. OUSD's evaluation may include, without limitation: (i) requesting that OUSD employee(s) evaluate the performance of SOFTWARE PROVIDER or SOFTWARE PROVIDER INDIVIDUALS, and (ii) announced and unannounced observance of SOFTWARE PROVIDER or SOFTWARE PROVIDER INDIVIDUALS.
11. **Inspection and Approval.** SOFTWARE PROVIDER 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 3 (Compensation), the SERVICES performed by SOFTWARE PROVIDER must meet the approval of OUSD, and OUSD reserves the right to direct SOFTWARE PROVIDER 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.
12. **Equipment and Materials.** SOFTWARE PROVIDER shall provide all equipment, materials, and supplies necessary for the performance of this AGREEMENT.
13. **Legal Notices.** Based on contact information set forth in **Exhibit A**, all legal notices provided for under this AGREEMENT shall be sent: (i) via email, (ii) personally delivered during normal business hours, or (iii) sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other PARTY. 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.
14. **Status.**
- a. This is not an employment contract. SOFTWARE PROVIDER, in the performance of this AGREEMENT, shall be and act as an independent contractor.
 - b. If SOFTWARE PROVIDER is a natural person, SOFTWARE PROVIDER verifies all of the following:

- (i) SOFTWARE PROVIDER is free from the control and direction of OUSD in connection with SOFTWARE PROVIDER's work;
 - (ii) SOFTWARE PROVIDER's work is outside the usual course of OUSD's business; and
 - (iii) SOFTWARE PROVIDER 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 SOFTWARE PROVIDER is a business entity, SOFTWARE PROVIDER understands and agrees that it and any and all VENDOR INDIVIDUALS 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. SOFTWARE PROVIDER 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 INDIVIDUALS. SOFTWARE PROVIDER verifies all of the following:
- (i) SOFTWARE PROVIDER is free from the control and direction of OUSD in connection with the performance of the work;
 - (ii) SOFTWARE PROVIDER is providing the SERVICES directly to OUSD rather than to customers of OUSD;
 - (iii) the contract between OUSD and SOFTWARE PROVIDER is in writing;
 - (iv) SOFTWARE PROVIDER has the required business license or business tax registration, if the work is performed in a jurisdiction that requires SOFTWARE PROVIDER to have a business license or business tax registration;
 - (v) SOFTWARE PROVIDER maintains a business location that is separate from the business or work location of OUSD;
 - (vi) SOFTWARE PROVIDER is customarily engaged in an independently established business of the same nature as that involved in the work performed;
 - (vii) SOFTWARE PROVIDER actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from OUSD;
 - (viii) SOFTWARE PROVIDER advertises and holds itself out to the public as available to provide the same or similar services;
 - (ix) SOFTWARE PROVIDER provides its own tools, vehicles, and equipment to perform the SERVICES;
 - (x) SOFTWARE PROVIDER can negotiate its own rates;
 - (xi) SOFTWARE PROVIDER can set its own hours and location of work; and
 - (xii) SOFTWARE PROVIDER 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.

15. Qualifications, Training, and Removal.

- a. SOFTWARE PROVIDER represents and warrants that SOFTWARE PROVIDER and all SOFTWARE PROVIDER INDIVIDUALS have the necessary and sufficient experience, qualifications, and ability to perform the SERVICES in a professional manner, without the advice, control or supervision of OUSD. SOFTWARE PROVIDER will perform 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.
- b. SOFTWARE PROVIDER represents and warrants that all VENDOR INDIVIDUALS 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.
- c. SOFTWARE PROVIDER agrees to immediately remove or cause the removal of any VENDOR INDIVIDUAL from OUSD property upon receiving notice from OUSD of such desire. OUSD is not required to provide SOFTWARE PROVIDER with a basis or explanation for the removal request.

- 16. Certificates/Permits/Licenses/Registration.** SOFTWARE PROVIDER shall ensure that all SOFTWARE PROVIDER INDIVIDUALS secure and maintain in force such certificates, permits, licenses, and registration as are required by law in connection with the furnishing of the SERVICES pursuant to this AGREEMENT. SOFTWARE PROVIDER warrants that it has the right to provide access to the Software Application to OUSD pursuant to this Agreement, that Service Provider has obtained any and all necessary permissions from third parties to provide the Software Application, and that use of the Software Application by Authorized Users in accordance with the terms of this Agreement shall not infringe the copyright of any third party.

17. Insurance.

- a. **Commercial General Liability Insurance.** SOFTWARE PROVIDER shall maintain Commercial General Liability Insurance, including automobile coverage, with limits of at least one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) aggregate, sexual misconduct, harassment, bodily injury and property damage. Coverage for corporal punishment, sexual misconduct, and harassment may either be provided through General Liability Insurance or Professional Liability Insurance. 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). 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 SOFTWARE PROVIDER. The policy shall protect SOFTWARE PROVIDER 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. The requirements of this subparagraph may be specifically waived as noted in **Exhibit A**.

- b. Workers' Compensation Insurance. SOFTWARE PROVIDER shall procure and maintain, at all times during the TERM of this AGREEMENT, 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. The requirements of this subparagraph may be specifically waived as noted in **Exhibit A**.

18. **Testing and Screening.**

- a. Tuberculosis Screening. SOFTWARE PROVIDER shall ensure that all SOFTWARE PROVIDER INDIVIDUALS who will be working at OUSD sites for more than six hours in total during the TERM or who work with students (regardless of the length of time) have submitted to a tuberculosis risk assessment as required by Education Code section 49406 within the prior 60 days. If tuberculosis risk factors were identified for a SOFTWARE PROVIDER INDIVIDUAL, that SOFTWARE PROVIDER INDIVIDUAL must submit to an intradermal or other approved tuberculosis examination to determine if that SOFTWARE PROVIDER INDIVIDUAL is free of infectious tuberculosis. If the results of the examination are positive, SOFTWARE PROVIDER shall obtain an x-ray of the lungs. SOFTWARE PROVIDER, at its discretion, may choose to submit a SOFTWARE PROVIDER INDIVIDUAL to the examination instead of the risk assessment. The requirements of this subparagraph may be specifically waived as noted in **Exhibit A**.
- b. Fingerprinting/Criminal Background Investigation. For all SOFTWARE PROVIDER INDIVIDUALS providing the SERVICES, SOFTWARE PROVIDER shall ensure completion of fingerprinting and criminal background investigation and shall request and regularly review subsequent arrest records. SOFTWARE PROVIDER confirms that no SOFTWARE PROVIDER INDIVIDUAL providing the SERVICES has been convicted of a felony, as that term is defined in Education Code section 45122.1. SOFTWARE PROVIDER shall provide the results of the investigations and subsequent arrest notifications to OUSD. For purposes of this subparagraph, SOFTWARE PROVIDER shall use either California Department of Justice or Be A Mentor, Inc. (<http://beamentor.org/OUSDPartner>) finger-printing and subsequent arrest notification services. The requirements of this subparagraph may be specifically waived as noted in **Exhibit A**.

19. **Incident/Accident/Mandated Reporting.**

- a. SOFTWARE PROVIDER shall notify OUSD, via email pursuant to Paragraph 13 (Legal Notices), within twelve (12) hours of learning of any significant accident or incident in connection with the provision of the SERVICES. Examples of a significant accident or incident include, without limitation, an accident or incident that involves law enforcement, or possible or alleged criminal activity, or possible or actual exposure to a communicable disease such as COVID-19. SOFTWARE PROVIDER shall properly submit required accident or incident reports within one business day pursuant to the procedures specified by OUSD. SOFTWARE PROVIDER shall bear all costs of compliance with this Paragraph.
- b. To the extent that a SOFTWARE PROVIDER INDIVIDUAL is included on the list of mandated reporters found in Penal Code section 11165.7, SOFTWARE PROVIDER agrees to inform that SOFTWARE PROVIDER 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.

20. Health and Safety Orders and Requirements; Site Closures.

- a. SOFTWARE PROVIDER shall adhere to any health or safety orders or requirements issued at the time of the execution of this AGREEMENT or in the future by OUSD or other public entities ("Orders").
- b. Except as possibly stated otherwise in **Exhibit A**, SOFTWARE PROVIDER is able to meet its obligations and perform the SERVICES required pursuant to this AGREEMENT in accordance with any Order; to the extent that SOFTWARE PROVIDER becomes unable to do so, SOFTWARE PROVIDER shall immediately inform OUSD in writing.
- c. Except as possibly stated otherwise in **Exhibit A**, to the extent that there may be a site closure (e.g., due to poor air quality, planned loss of power, strike) or similar event in which school sites and/or District offices may be closed or otherwise inaccessible, SOFTWARE PROVIDER is able to meet its obligations and perform the SERVICES required pursuant to this AGREEMENT; to the extent that SOFTWARE PROVIDER becomes unable to do so, SOFTWARE PROVIDER shall immediately inform OUSD in writing.
- d. SOFTWARE PROVIDER shall bear all costs of compliance with this Paragraph, including but not limited to lost compensation for failure to provide SERVICES.

21. Conflict of Interest.

- a. SOFTWARE PROVIDER and all SOFTWARE PROVIDER INDIVIDUALS shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest. VENDOR shall not hire, contract with, or employ any officer or employee of OUSD during the TERM without the prior approval of OUSD Legal Counsel.
- b. SOFTWARE PROVIDER affirms, to the best of his/her/its knowledge, that there exists no actual or potential conflict of interest between SOFTWARE PROVIDER's family, business, or financial interest and the SERVICES provided under this AGREEMENT, and in the event of any change in either private interest or the

SERVICES under this AGREEMENT, any question regarding a possible conflict of interest which may arise as a result of such change will be immediately brought to OUSD's attention in writing.

- c. Through its execution of this AGREEMENT, SOFTWARE PROVIDER 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 SOFTWARE PROVIDER receives any information subsequent to execution of this AGREEMENT which might constitute a violation of said provisions, SOFTWARE PROVIDER agrees it shall immediately notify OUSD in writing.

22. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.**

SOFTWARE PROVIDER 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 AGREEMENT, certifies that neither it nor its principals appear on the Excluded Parties List (<https://www.sam.gov/>).

23. **Limitation of OUSD Liability.** Other than as provided in this AGREEMENT, OUSD's financial obligations under this AGREEMENT shall be limited to the compensation described in Paragraph 3 (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.

24. **Indemnification.**

- a. To the furthest extent permitted by California law, SOFTWARE PROVIDER 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 SOFTWARE PROVIDER's performance of this AGREEMENT. SOFTWARE PROVIDER also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by any supplier or subcontractor furnishing work, services, or materials to SOFTWARE PROVIDER arising out of the performance of this AGREEMENT. SOFTWARE PROVIDER shall, to the fullest extent permitted by California law, defend OUSD Indemnified Parties at SOFTWARE PROVIDER's own expense, including attorneys' fees and costs, and OUSD shall have the right to accept or reject any legal representation that SOFTWARE PROVIDER proposes to defend OUSD Indemnified Parties.
- b. To the furthest extent permitted by California law, OUSD shall indemnify, defend, and hold harmless SOFTWARE PROVIDER and SOFTWARE PROVIDER INDIVIDUALS

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 SOFTWARE PROVIDER and SOFTWARE PROVIDER INDIVIDUALS at OUSD's own expense, including attorneys' fees and costs.

25. **Audit.** SOFTWARE PROVIDER shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of SOFTWARE PROVIDER transacted under this AGREEMENT. SOFTWARE PROVIDER shall retain these books, records, and systems of account during the TERM and for three (3) years after the earlier of (i) the TERM or (ii) the date of termination. SOFTWARE PROVIDER 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 the SERVICES covered by this AGREEMENT. Audit(s) may be performed at any time, provided that OUSD shall give reasonable prior notice to SOFTWARE PROVIDER and shall conduct audit(s) during SOFTWARE PROVIDER'S normal business hours, unless SOFTWARE PROVIDER otherwise consents.
26. **Non-Discrimination.** It is the policy of OUSD that, in connection with all work performed under legally binding agreements, 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, SOFTWARE PROVIDER 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, SOFTWARE PROVIDER agrees to require like compliance by all its subcontractor (s). SOFTWARE PROVIDER 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.
27. **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, SOFTWARE PROVIDER, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.
28. **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.
29. **Assignment.** The obligations of SOFTWARE PROVIDER under this AGREEMENT shall not be assigned by SOFTWARE PROVIDER without the express prior written consent of OUSD

and any assignment without the express prior written consent of OUSD shall be null and void.

30. **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.
31. **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.
32. **Incorporation of Recitals and Exhibits.** Any recitals and exhibits attached to this AGREEMENT are incorporated herein by reference. SOFTWARE PROVIDER 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.
33. **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.
34. **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.
35. **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.
36. **Captions and Interpretations.** 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.
37. **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.
38. **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.

39. **W-9 Form.** If SOFTWARE PROVIDER is doing business with OUSD for the first time, VENDOR acknowledges that it must complete and return a signed W-9 form to OUSD.
40. **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.
41. **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), SOFTWARE PROVIDER acknowledges, agrees, and understands (i) that only the Superintendent, and the Chiefs, Deputy Chiefs, and Executive Directors who have been delegated such authority, may validly sign contracts for OUSD and only under limited circumstances, and (ii) that all such contract still require ratification by the OUSD Governing Board. SOFTWARE PROVIDER agrees not to accept the signature of another other individual as having the proper authority to enter into this AGREEMENT on behalf of OUSD.
42. **Contract Contingent on Governing Board Approval.** The PARTIES acknowledge, agree, and understand that 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, a Chief, or a Deputy Chief authorized by the Education Code or Board Policy, and no compensation shall be owed or made to SOFTWARE PROVIDER absent such formal approval or valid and proper execution.

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

SOFTWARE PROVIDER

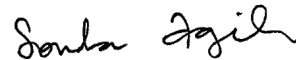


Name: Stefan Bauer Signature: _____

Position: Co-Founder and CEO Date: 7/16/2025

One of the terms and conditions to which VENDOR specifically agrees by its signature is subparagraph (c) of Paragraph 3 (Compensation), which states that VENDOR acknowledges and agrees not to expect or demand compensation for any SERVICES performed prior to the PARTIES, particularly OUSD, validly and properly executing this AGREEMENT and shall not rely on verbal or written communication from any individual, other than the OUSD Superintendent or OUSD Legal Counsel, stating that OUSD has validly and properly executed this AGREEMENT.

OUSD

Name: Sondra Aguilera Signature: 


Position: Chief Academic Officer Date: 8/14/2025

- ☐ Board President (for approvals)
☒ Chief/Deputy Chief/Executive Director (for ratifications)

Name: Denise Saddler Signature: _____

Position: Interim Superintendent Date: _____

Approved as to form by OUSD Legal Department

Name: Shalini Anadkat Signature:  Date: 8/1/2025

**SERVICES AGREEMENT
EXHIBIT A**

(Paragraph numbers in Exhibit A corresponds to the applicable Paragraph number in this Agreement.)

VENDOR: Marker Learning

1A. Services. Describe the SERVICES VENDOR will provide: OUSD school psychologists with licenses to access online software with AI functions to write and generate psychoeducational evaluation reports using evaluation documentation uploaded by OUSD school psychologists, such as referral packets, Individualized Education Programs ("IEPs"), and assessment score reports; and fulfill other case management purposes and related purposes, as may be permitted from time to time by the features and functionality of the SaaS Tool.

1B. General Description of Support Services to be Provided: *This includes the protocol for OUSD to request support services.* OUSD school psychologists will be provided with one training associated with the SaaS Tool's use. Online technical support will be provided to all users through the platform. OUSD will be notified of updates to the SaaS Tool, and the Lead contact(s) may receive direct electronic mail or telephone support and notifications regarding usage of the platform.

1. Term.

- a. This AGREEMENT shall start on the below Start Date. If no date is entered, then this AGREEMENT shall start on the latest of the dates on which each of the PARTIES signed this AGREEMENT.

Start Date: August 11, 2025

- b. Unless terminated earlier, this AGREEMENT shall end on the below End Date. If no date is entered, then this AGREEMENT shall end on the first June 30 after start date listed in subparagraph (a). If the dates set forth in this subparagraph and subparagraph (a) would cause this AGREEMENT to exceed the limits set forth in state law (e.g., Education Code section 17596), this AGREEMENT shall instead automatically end upon reaching said limit.

End date: June 30, 2025

2. Compensation.

- a. The basis for payment to VENDOR shall be:
- ☐ Hourly Rate: _____ per hour

- ☐ Daily Rate: _____ per day
- ☐ Weekly Rate: _____ per week
- ☐ Monthly Rate: _____ per month
- ☐ Per Student Served Rate: _____ per student served
- ☒ Performance/Deliverable Payments: Describe below the performance and/or deliverable(s) as well as the associated rate(s): \$120/month per license (35) for a total of \$42000 plus an applied -\$2000 discount offered by Vendor, and with waived training fee offered by Vender. Paid out at the following intervals
\$10,000 on or before September 1, 2025
\$10,000 on or before November 1, 2025
\$10,000 on or before February 1, 2026
\$10,000 on or before April 1, 2026

- b. Over the TERM, the total compensation under this AGREEMENT shall not exceed the below amount. This sum includes (but is not limited to) compensation for the full performance of this AGREEMENT and 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.

Not-To-Exceed Amount: \$40,000

13. **Legal Notices.**

OUSD

Site/Dept: Legal Department

Address: 1011 Union Street, Site 946

City, ST Zip: Oakland, CA 94607

Phone: 510-879-5060

Email: ousdlegal@ousd.org

VENDOR

Name/Dept: Jayne B. Company, DBA Marker Learning

Address: 1500 Hudson Street

City, ST Zip: Hoboken, NJ 07030

Phone: (201) 566-4613

Email: stefan@markerlearning.com

17. **Insurance.** OUSD has waived the following insurance requirements. Written confirmation of a waiver (e.g., email from OUSD Risk Management Officer) is attached hereto. Failure to attach such written confirmation voids any such waiver even if otherwise properly given.

- ☐ *Commercial General Liability Insurance.* Waiver typically available by OUSD if no VENDOR INDIVIDUAL interacts or has contact with OUSD students (in-person or virtual) and the not-to-exceed amount is \$25,000 or less.
- ☐ *Workers' Compensation Insurance.* Waiver typically available by OUSD if VENDOR has no employees.

18. **Testing and Screening.** OUSD has waived the following testing and screening requirements. Written confirmation of a waiver (e.g., email from OUSD Risk Management Officer) is attached hereto. Failure to include such written confirmation voids any such waiver even if otherwise properly given.
- ☒ *Tuberculosis Screening.* Waiver typically available by OUSD if VENDOR INDIVIDUALS will have no in-person contact with OUSD students.
 - ☒ *Fingerprinting/Criminal Background Investigation.* Waiver typically available by OUSD if no VENDOR INDIVIDUAL interacts or has contact with OUSD students (in-person or virtual).
20. **Health and Safety Orders and Requirements; Site Closures.** If there is an Order or event in which school sites and/or District offices may be closed or otherwise inaccessible, would the SERVICES be able to continue?
- ☒ Yes, the SERVICES would be able to continue as described herein.
 - ☐ No, the SERVICES would not be able to continue.



Quote

Product

Prepared by: Stefan Bauer	District: Oakland Unified School District
Marker Email: stefan@markerlearning.com	Billing Address: OUSD Special Education Office 915 54th Street Oakland, CA 94608
Marker Address: 1500 Hudson Street Hoboken, NJ 07030	

Product	Service Term	Total Fees				
Marker SaaS Tool	September 1 2025 through June 30, 2026					
		Item	Rate	User count	Months	Total
		SaaS platform access	\$120/month	35	10	\$42,000
		Training	\$1000	35	1	\$0
		Additional discount				\$-2000
		Total cost				\$40,000
Service Fees: Total program cost of \$40,000 for up to 35 school psychologists employed by the district during the Service Term.						

Payment Terms

Total Service Fees of \$40,000.00 are payable as follows: (i) \$10,000.00 due on or before September 1, 2025; (ii) \$10,000 due on or before November 1, 2025; (iii) \$10,000.00 due on or before February 1, 2026 and (iv) \$10,000.00 due on or before April 1, 2026. Notwithstanding anything to the contrary contained in this Order or Terms, Customer may terminate this agreement and have no further obligation for payments due after the date of termination if not reasonably satisfied with the performance of the SaaS Tool. Reasonable satisfaction is defined as achievement of time savings by users of at least 30% and positive user satisfaction as measured by Marker surveys. Customer may elect to terminate this agreement by providing written notice to Marker at least ten (10) days prior to either November 1, 2025, February 1, 2026 or April 1, 2026.

Signatures

Marker Learning
Signature: _____
Name: Stefan Bauer
Title: CEO
Date: _____

Client
Signature: _____
Name: _____
Title: _____
Date: _____