

Aeries® Student Information Software Maintenance and Support Agreement.

1. Introduction.

This is an Agreement between Aeries Software, Inc., located at 770 The City Drive South, Suite 6500, Orange, CA 92868 (hereinafter "AERIES SOFTWARE") and its customer Alameda Unified School District, a public agency, ("hereinafter "DISTRICT"), under the terms and conditions of which AERIES SOFTWARE and DISTRICT are hereby contracting for maintenance and support of previously Licensed Aeries Student Information Software. The effective date for purposes of the interpretation of the Agreement shall be July 1, 2020.

Recitals

WHEREAS, AERIES SOFTWARE and DISTRICT previously entered into a business relationship in 2009, as outlined in Exhibit A – Agreement for Acquisition of License for Aeries Software, and DISTRICT requests to update said agreement, AERIES SOFTWARE and DISTRICT agree as follows:

2. Term of Agreement.

The License Term of this Agreement shall commence on July 1, 2020 through June 30, 2021, unless terminated by the parties hereto. The renewal of subsequent years shall cover the twelve (12) calendar month period from July 1st through the following June 30th annually.

On condition that DISTRICT has been in compliance with the terms and conditions of this Agreement for the duration of the preceding License Term, the license, including maintenance and support services provided by AERIES SOFTWARE, may be extended by DISTRICT'S payment to AERIES SOFTWARE of the then current AERIES SOFTWARE annual licensing fee for the Aeries® software within thirty (30) days following expiration of the preceding license period. Said license, support, and maintenance may be renewed annually thereafter by subsequent payments on a subscription basis.

3. Software Licensing and Related Fees.

(a) Licensing Fee.

In consideration of the subscription use license granted under this Agreement, as well as the maintenance and support provided by AERIES SOFTWARE relative to said license, DISTRICT shall pay AERIES SOFTWARE the annual sum of \$3.03 per student based on each Prior Year Calpads Enrollment (9,730) plus any applicable sales tax in accordance with the attached *Invoice M&S 7232* for a total of \$29,481.90. As indicated elsewhere herein, said license, maintenance, and support shall be provided for the License Term only, unless extended by agreement and payment of additional subscription fees.

On condition that DISTRICT has been in compliance with the terms and conditions of this Agreement for the duration of the preceding License Term, the license, including maintenance and support services provided by AERIES SOFTWARE, may be extended by DISTRICT's payment to AERIES SOFTWARE of the then current AERIES SOFTWARE annual licensing fee for the Aeries® software within thirty (30) days following expiration of the preceding license period. Said license, support, and maintenance may be renewed annually thereafter by subsequent payments on a subscription basis subject to approval by AERIES SOFTWARE.

(b) Related Fees.

In addition to the licensing fee, DISTRICT shall pay related fees as follows:

- (i) **Aeries Analytics.** In addition to the payment of the license fee, DISTRICT shall pay AERIES SOFTWARE the annual sum of \$1.10 per student based on each Prior Year Calpads Enrollment (9,730) plus any applicable sales tax in accordance with the attached *Invoice M&S 7232* for a total of \$10,703.00 for use of the Aeries Analytics product.
- (ii) **Aeries Online Enrollment.** In addition to the payment of the license fee, DISTRICT shall pay AERIES SOFTWARE the annual sum of \$2.00 per student based on each Prior Year Calpads Enrollment (9,730) plus any applicable sales tax in accordance with the attached *Invoice M&S 7232* for a total of \$19,460.00 for use of the Aeries Communication product.
- (iii) **Aeries Communications.** In addition to the payment of the license fee, DISTRICT shall pay AERIES SOFTWARE the annual sum of \$2.65 per student based on each Prior Year Calpads Enrollment (9,730) plus any applicable sales tax in accordance with the attached *Invoice M&S 7232* for a total of \$25,784.50 for use of the Aeries Communication product.

(c) Other Services. At a future date, DISTRICT may negotiate a schedule for additional services (i.e., customized programming, training, etc.) based upon AERIES SOFTWARE's fee for any requested services at the time of the request and the availability of AERIES SOFTWARE's Staff.

4. Maintenance and Support Responsibilities.

In exchange for payment by DISTRICT under the terms and conditions of the Agreement, AERIES SOFTWARE will provide DISTRICT with support and maintenance services for the Licensed Software for the length of time specified below. Under the terms and conditions set forth below, AERIES SOFTWARE will make reasonable consulting services, technical advice, and support available to DISTRICT. Such services will be provided by phone or by electronic mail. Further, AERIES SOFTWARE

will use reasonable efforts to make the Licensed Software or any module thereof perform substantially in accordance with the product description set forth in the documentation that accompanies the Licensed Software, as it may exist from time to time. AERIES SOFTWARE shall correct any failure of the Licensed Software or any Module including without limitation, defect repair, programming corrections, and remedial programming, and provide such services and repairs required to maintain the Licensed Software so that it operates properly.

Further, AERIES SOFTWARE shall provide support as follows:

(a) All requests for support shall be made during normal business hours (7:30 a.m. to 4:30 p.m. Pacific Time, Monday through Friday, other than legal holidays and days designated by AERIES SOFTWARE as non-workdays). A complete list of legal holidays and days designated by AERIES SOFTWARE as non-workdays is posted on AERIES SOFTWARE's Web site. No further notice will be provided.

(b) During the term of this Agreement, AERIES SOFTWARE shall make available to DISTRICT via the AERIES SOFTWARE Website Corrections, Updates, Enhancements, Improvements, and Releases to the Licensed Software, as they are made generally available to other AERIES SOFTWARE clients.

(c) Notwithstanding the provisions of this Section, AERIES SOFTWARE may terminate support with regard to the Licensed Software upon thirty (30) days written notice if (i) DISTRICT fails to remain within at least ninety (90) calendar days of AERIES SOFTWARE's most then-current production release of the Licensed Software and the failure to remain within ninety (90) calendar days of AERIES SOFTWARE's most then-current production release of the Licensed Software is not disputed by DISTRICT, or (ii) DISTRICT fails to pay undisputed invoices for support.

(d) Notwithstanding the provisions of this Section, AERIES SOFTWARE may terminate support with regard to the Licensed Software upon thirty (30) days written notice if DISTRICT fails or refuses to (i) fully cooperate with AERIES SOFTWARE, (ii) act in reasonable accordance with AERIES SOFTWARE's requests and requirements, (iii) respond in a reasonable time and manner to AERIES SOFTWARE's written notice or inquiry, or (iv) otherwise act in good faith in furtherance of the material terms and conditions of this Agreement.

(e) AERIES SOFTWARE is aware that the DISTRICT is obligated to know, understand, and comply with various State and Federal statutes, programs, and protocols, including but not limited to the California Longitudinal Pupil Achievement Data System (CALPADS) and the California state reporting requirements for Local Education Agencies (LEA), and, while AERIES SOFTWARE does not receive direct communication from all State and Federal agencies about all said requirements, AERIES SOFTWARE is committed to taking reasonable steps and using its best efforts to assist DISTRICT in complying therewith based upon information as it is provided to AERIES SOFTWARE by its customers.

5. Termination.

In addition to any other provision in this Agreement allowing a party to terminate this Agreement in whole or in part, and without limiting any other remedies available at law, in equity, or under this Agreement, if either party materially or repeatedly defaults in the performance of any of its duties or obligations under this Agreement, and: (1) within thirty (30) days after written notice is given to the defaulting party specifying the default, it is not cured to the reasonable satisfaction of the party giving the notice of default, or (2) with respect to those defaults that cannot reasonably be cured within thirty (30) days, if the defaulting party fails to commence curing the default within fifteen (15) days after receipt of the notice of default, and to continue proceeding with all due diligence to cure the default, then the party not in default may terminate this Agreement by giving written notice of termination to the defaulting party, which termination shall be effective immediately upon receipt of the notice of termination. If the default is incapable of being cured, then the thirty (30) day cure period shall not apply, and notice of termination may be given directly by the party not in default. If termination of this Agreement for any reason results in the DISTRICT'S need for services from AERIES SOFTWARE of any type, AERIES SOFTWARE shall be paid at its then current rates for such services. AERIES SOFTWARE may terminate support with regard to the Licensed Software upon ninety (90) days written notice if (i) DISTRICT fails to pay undisputed invoices for support. Notwithstanding the provisions of this Section, AERIES SOFTWARE may terminate support with regard to the Licensed Software upon thirty (30) days written notice if DISTRICT fails or refuses to (ii) fully cooperate with AERIES SOFTWARE, (iii) act in reasonable accordance with AERIES SOFTWARE'S requests and requirements, (iv) respond in a reasonable time and manner to AERIES SOFTWARE'S written notice or inquiry, or (v) otherwise act in good faith in furtherance of the material terms and conditions of this Agreement.

6. General Provisions

Modification. The terms and conditions of the Agreement may not be altered, amended, or modified unless set forth in writing and the writing has been signed by AERIES SOFTWARE and DISTRICT.

Waiver. All waivers under this Agreement shall be in writing in order to be effective. No waiver by a party of any breach of this Agreement or waiver of any warranty, representation, or other provision hereunder shall be deemed to be a waiver of any other breach, warranty, representation, or provision (whether preceding or succeeding, and whether or not of the same or similar nature), and no acceptance of performance by a party after any breach by the other party shall be deemed to be a waiver of any breach of this Agreement or of any representation, warranty, or other provision, whether or not the party accepting performance knows of such breach at the time of acceptance. No failure or delay by a party to exercise any right it may have by reason of the default of the other party shall operate as a waiver of default or modification of this Agreement or shall prevent the exercise of any right of the non-defaulting party under this Agreement.

Independent Contractor. AERIES SOFTWARE acknowledges that it is at all times acting as an independent contractor under this Agreement and except as specifically provided herein, not as an agent, employee, or partner of DISTRICT. AERIES SOFTWARE agrees to be solely responsible for all matters relating to compensation of its employees, including but not limited to compliance with laws governing workers' compensation, Social Security, withholding and payment of any and all federal, state and local personal income taxes, disability insurance, unemployment, and any other taxes for such persons, including any related employer assessment or contributions required by law, and all other regulations governing such matters, and the payment of all salary, vacation and other employee benefits.

Choice of Law. This Agreement shall be construed under and in accordance with the laws of the State of California.

Venue. The parties expressly agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a party elects to file an action in federal court) courts located in the County of Orange, State of California. This choice of venue is intended by the parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the parties with respect to, or arising out of, this Agreement in any jurisdiction other than that specified in this Section. Each party waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section.

Agreement Drafted by All Parties. This Agreement is the result of arm's length negotiations between the parties and shall be construed to have been drafted by all parties such that any ambiguities in this Agreement shall not be construed against either party.

Terminology. All personal pronouns used herein, whether used in the feminine, masculine, or neuter gender, shall include all other genders, and the singular shall include the plural and *vice versa*.

Section Headings. The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties at such time as all the signatories hereto have signed a counterpart of this Agreement.

Notices. Any notices required or permitted to be given hereunder by either party to the other shall be given in writing: (1) by electronic facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt

requested; (2) by bonded courier or by a nationally recognized overnight delivery company; or (3) by United States first class registered or certified mail, postage prepaid, return receipt requested, in each case, addressed to the parties as follows (or to such other addresses as the parties may request in writing by notice given pursuant to this section):

TO: DISTRICT @ Alameda Unified School District
2060 Challenger Dr
Alameda, CA 94501-1037

TO: AERIES SOFTWARE @

Aeries Software, Inc.
770 The City Drive South, Suite 6500
Orange, CA 92868

and to

David Christopher Baker
Law Offices of David C. Baker
3 Park Plaza #1520
Irvine, CA 92614

Notice shall be deemed received on the earliest, upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed, twenty-four (24) hours following deposit with a bonded courier or overnight delivery company; or seventy-two (72) hours following deposit in the U.S. Mail as required herein.

Entire Agreement. This Agreement contains the entire agreement between AERIES SOFTWARE and DISTRICT with respect to support and maintenance of the Licensed Software, and it supersedes all other prior and contemporary agreements, understandings, and commitments between AERIES SOFTWARE and DISTRICT with respect to support and maintenance of the Licensed Software. This Agreement shall have no effect on any written software licensing agreement existing by and between the parties, the terms and conditions of which shall supersede and control any of the terms and conditions of this Agreement. This agreement incorporates by reference any previously executed Software License Agreement for Aeries (also known as Easy 95, Easy 96, Easy 97, Easy 98 and Easy 99).

Severability. If any provision of this Agreement is found to be invalid or unenforceable by any court, such provision shall be ineffective only to the extent that it is in contravention of applicable laws without invalidating the remaining provisions hereof.

Mediation of Disputes. AERIES SOFTWARE and DISTRICT agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If any party commences an action based on a dispute or claim to which this paragraph applies, without first attempting to resolve the matter through mediation, then that party shall not be entitled to recover attorney's fees, even if they would otherwise be available to that party in any such action.

Attorneys' Fees. Should either party to this Agreement institute any action or proceeding, to enforce this Agreement or any provision hereof, or for damages by reason of any alleged breach of this Agreement, otherwise arising under this Agreement, or for a declaration of rights hereunder, the prevailing party in any such action or proceeding shall be entitled to receive from the other party all costs and expenses, including without limitation reasonable attorney's fees, incurred by the prevailing party in such arbitration, action or proceeding.

IN WITNESS WHEREOF,

DISTRICT hereby accepts the terms and conditions as set forth above and in the attached invoice hereto,

DATE: _____

DISTRICT

By: _____

Title: _____

AERIES SOFTWARE hereby accepts the terms and conditions as set forth above and in the attached invoice hereto,

DATE: _____

AERIES SOFTWARE

By: _____

Aeries Software, Inc.

ADDENDUM A - TECHNOLOGY SERVICES AGREEMENT FOR CALIFORNIA ASSEMBLY BILL 1584 COMPLIANCE

This Agreement is entered into between the Alameda Unified School District ("DISTRICT") and Aeries Software, Inc. ("AERIES SOFTWARE") on July 1, 2020 ("Effective Date").

WHEREAS, the DISTRICT and AERIES SOFTWARE entered into an agreement for technology services titled Aeries® Student Information Software Maintenance and Support Agreement ("Technology Services Agreement") on July 1, 2020.

WHEREAS, the DISTRICT is a California public entity subject to all state and federal laws governing education, including but not limited to California Assembly Bill 1584 ("AB 1584"), the California Education Code, the Children's Online Privacy and Protection Act ("COPPA"), and the Family Educational Rights and Privacy Act ("FERPA");

WHEREAS, AB 1584 requires, in part, that any agreement entered into, renewed or amended after January 1, 2015 between a local education agency and a third-party must include certain terms; and

WHEREAS, the DISTRICT and the AERIES SOFTWARE desire to have the Technology Services Agreement and the services provided comply with AB-1584.

NOW, THEREFORE, the Parties agree as follows:

1. The terms and conditions of the Technology Services Agreement and any addenda are incorporated herein by reference.
2. The term of this Addendum shall expire on the termination date stated in the Technology Services Agreement or in any addenda to such Technology Services Agreement, whichever controls.
3. Pupil records¹ obtained by AERIES SOFTWARE from DISTRICT continue to be the property of and under the control of the DISTRICT.

¹ Pupil records include any information directly related to a pupil that is maintained by the LEA or acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other LEA employees. Pupil records does not include de-identified information (information that cannot be used to identify an individual pupil) used by the third party to (1) improve educational products for adaptive learning purposes and for customized pupil learning; De-identified information, including aggregated de-identified information, (2) demonstrate the effectiveness of the operator's products in the marketing of those products; or for the development and improvement of educational sites, services, or applications.

4. The procedures by which pupils may retain possession and control of their own pupil-generated content are outlined as follows:

AERIES SOFTWARE provides the software solution by which DISTRICT retains and updates pupil information. DISTRICT will host this data in its own data centers and AERIES SOFTWARE will not have any ownership or collection of any pupil information, except for temporary instances whereby AERIES SOFTWARE is providing technical support and resolution assistance when requested by DISTRICT, after which the data is deleted. DISTRICT shall be solely responsible for determining the procedures by which pupils may retain possession and control of their own pupil-generated content.

5. The options by which a pupil may transfer pupil-generated content to a personal account include:

AERIES SOFTWARE provides the software solution by which DISTRICT retains and updates pupil information. DISTRICT will host this data in its own data centers and AERIES SOFTWARE will not have any ownership or collection of any pupil information, except for temporary instances whereby AERIES SOFTWARE is providing technical support and resolution assistance when requested by DISTRICT, after which the data is deleted. DISTRICT shall be solely responsible for determining the options by which a pupil may transfer pupil-generated content to a personal account.

6. Parents, legal guardians, or eligible pupils may review personally identifiable information in the pupil's records and correct erroneous information by the following protocol:

AERIES SOFTWARE provides the software solution by which DISTRICT retains and updates pupil information. DISTRICT will host this data in its own data centers and AERIES SOFTWARE will not have any ownership or collection of any pupil information, except for temporary instances whereby AERIES SOFTWARE is providing technical support and resolution assistance when requested by DISTRICT, after which the data is deleted. DISTRICT shall be solely responsible for offering parents, legal guardians, or eligible pupils the ability to personally identifiable information in the pupil's records and correct erroneous information. AERIES SOFTWARE provides a portal and process to update information that DISTRICT may choose to utilize to accomplish this process.

7. Service Provider shall take actions to ensure the security and confidentiality of pupil records, including but not limited to designating and training responsible individuals on ensuring the security and confidentiality of pupil records, by the following measures:

AERIES SOFTWARE provides the software solution by which DISTRICT retains and updates pupil information. DISTRICT will host this data in its own data centers and AERIES SOFTWARE will not have any ownership or collection of any pupil information, except for temporary instances whereby AERIES SOFTWARE is providing technical support and resolution assistance when requested by DISTRICT, after which the data is deleted. AERIES SOFTWARE shall conduct annual training seminars for all its responsible agents to review all student privacy laws and AERIES SOFTWARE practices to ensure the security and confidentiality of pupil records.

8. In the event of an unauthorized disclosure of a pupil's records, Service Provider shall report to an affected parent, legal guardian, or eligible pupil pursuant to the following procedure:

AERIES SOFTWARE provides the software solution by which DISTRICT retains and updates pupil information. DISTRICT will host this data in its own data centers and AERIES SOFTWARE will not have any ownership or collection of any pupil information, except for temporary instances whereby AERIES SOFTWARE is providing technical support and resolution assistance when requested by DISTRICT, after which the data is deleted. DISTRICT shall be solely responsible for reporting to parent, legal guardians, or eligible pupil in the event of an unauthorized disclosure of a pupil's records. If AERIES SOFTWARE discovers that the records were disclosed through its own faults or a flaw in its system, AERIES SOFTWARE shall notify DISTRICT immediately, and optionally notify the affected parties through a message in the software portal.

9. Service Provider shall not use any information in a pupil record for any purpose other than those required or specifically permitted by the Technology Services Agreement.

10. Service Provider certifies that a pupil's records shall not be retained or available to the Service Provider upon completion of the terms of the Technology Services Agreement, except for a case where a pupil chooses to establish or maintain an account with Service Provider for the purpose of storing pupil-generated content, either by retaining possession and control of their own pupil-generated content, or by transferring pupil-generated content to a personal account. Such certification will be enforced through the following procedure:

AERIES SOFTWARE provides the software solution by which DISTRICT retains and updates pupil information. DISTRICT will host this data in its own data centers and AERIES SOFTWARE will not have any ownership or collection of any pupil information, except for temporary instances whereby AERIES SOFTWARE is providing technical support and resolution assistance when requested by DISTRICT, after which the data is deleted.

11. LEA agrees to work with Service Provider to ensure compliance with FERPA and the Parties will ensure compliance through the following procedure:

AERIES SOFTWARE has reviewed FERPA requirements and deemed that its software possesses the ability to meet all requirements through recommended data practices. AERIES SOFTWARE offers training on its software to ensure DISTRICT utilizes the software as recommended to ensure compliance with FERPA and other student privacy laws. AERIES SOFTWARE is currently working with a third party organization to audit its software and policies on FERPA.

IN WITNESS WHEREOF, parties execute this Agreement on the dates set forth below.

DISTRICT

Aeries Software, Inc.

Authorized Signature

Authorized Signature

Printed Name and Title

Printed Name and Title

Date

Date

California AB 1584 Compliance Checklist for School District Technology Services Agreements

Technology services agreements entered into, amended, or renewed by a local education agency on or after January 1, 2015 must include specific requirements. These requirements apply to contracts for services that utilize electronic technology, including cloud-based services, for the digital storage, management and retrieval of pupil records, as well as educational software that authorizes a third-party provider to access, store and use pupil records. All of the following requirements must be included in such contracts:

- ☒ A statement that pupil records continue to be the property of and under the control of the school district;
- ☒ A description of the means by which pupils may retain possession and control of their own pupil-generated content, if applicable, including options by which a pupil may transfer pupil-generated content to a personal account;
- ☒ A prohibition against the third party using any information in the pupil record for any purpose other than those required or specifically permitted by the contract;
- ☒ A description of the procedures by which a parent, legal guardian, or eligible pupil may review personally identifiable information in the pupil's records and correct erroneous information;
- ☒ A description of the actions the third party will take—including the designation and training of responsible individuals—to ensure the security and confidentiality of pupil records;
- ☒ A description of the procedures for notifying the affected parent, legal guardian, or eligible pupil in the event of an unauthorized disclosure of the pupil's records;
- ☒ A certification that a pupil's records shall not be retained or available to the third party upon completion of the terms of the contract and a description of how that certification will be enforced (NOTE: This requirement does not apply to pupil-generated content if the pupil chooses to establish or maintain an account with the third party for the purpose of storing that content, either by retaining possession and control of their own pupil-generated content, or by transferring pupil-generated content to a personal account.);
- ☒ A description of how the district and the third party will jointly ensure compliance with the federal Family Educational Rights and Privacy Act; and
- ☒ A prohibition against the third party using personally identifiable information in pupil records to engage in targeted advertising.

References: AB 1584; Cal. Educ. Code § 49073.1; 20 U.S.C. § 1232g