

Board Office Use: Legislative File Info.	
File ID Number	22-1443
Introduction Date	6/29/22
Enactment Number	22-1268
Enactment Date	6-29-2022 CJH



Board Cover Memorandum

To Board of Education

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

Meeting Date June 29, 2022

Subject Approval of Resolution No. 2122-0235 Authorizing Use of *Graydon* Exception to Public Bidding; Approval by the Board of Education of Amendment No. 1 to Agreement for Acquisition of License for Aeries Software between Oakland Unified School District and Aeries Software, Inc.
Contractor: Aeries Software, Inc.
Services For: July 1, 2022 - June 30, 2025

Ask of the Board Approve Resolution No. 2122-0235 Authorizing Use of *Graydon* Exception to Public Bidding; Approve Amendment No. 1 to Agreement for Acquisition of License for Aeries Software between Oakland Unified School District and Aeries Software, Inc., Orange, CA, for the latter to provide licensing, upgrades and support for the Aeries Student Information System (SIS) and Aeries Communication (powered by ParentSquare) for the period July 1, 2022 to June 30, 2025 for an amount not to exceed \$1,314,402.56 consisting of the original 2021-22 contract amount of \$305,027.60, plus an amendment to increase the amount by \$1,009,374.96 and extend licensing through June 30, 2025, with the amendment to include a) \$322,740.88 for 2022-23, including \$132,220.88 for the Aeries SIS and \$190,520.00 for Aeries Communications, b) \$336,077.28 for 2023-24, including \$145,557.28 for the Aeries SIS and \$190,520.00 for Aeries Communications, and c) \$350,556.80 for 2024-25, including \$160,036.80 for the Aeries SIS and \$190,520.00 for Aeries Communications.

Background The Oakland Unified School District has successfully used Aeries as its student information system (SIS) for 2021-22 and for over 10 prior school years, and completed a successful pilot of Aeries Communications during the 2020-21 school year followed by a districtwide launch. Oakland Unified is using this firm going forward for the same services as previously provided. The Aeries SIS is used by Oakland Unified School District (OUSD) staff to manage student data, including attendance, master scheduling, grade reporting, discipline records, state-mandated reporting, and many other student data requirements. Aeries Communications (powered by ParentSquare) provides an integrated and

streamlined communications solution. The 2021-22 renewal of the Aeries SIS and pilot of Aeries Communications was previously approved by the Board of Education as Legistar File ID #21-1549.

Discussion

The Technology Services department hosts the Aeries database and application in our OUSD data centers. Upgrades are performed approximately six times per year to ensure that our Aeries version is current and supported. The Agreement for Acquisition of License for Aeries Software with Aeries Software includes licensing, upgrades and support for the 2021-22 fiscal year, and the proposed amendment includes licensing, upgrades and support for the 2022-23, 2023-24 and 2024-25 fiscal years. Approval of this Agreement will enable OUSD to continue using its SIS to help ensure the continued successful management of student information.

As noted above, the Oakland Unified School District also successfully piloted Aeries Communications (powered by ParentSquare) during 2020-21 followed by a successful districtwide launch. Because this system integrates natively with Aeries and supports multiple modes of communications, it has the potential to replace other systems and streamline communications going forward. Approval of this Agreement will enable OUSD to continue using Aeries Communications districtwide to provide critical and timely communications to OUSD students and families.

Competitively Bid

No. See attached Resolution No. 2122-0235 - Determining and Declaring that OUSD Can Enter into Amendment No. 1 to Agreement for Acquisition of License for Aeries Software Without Competitive Bidding.

Fiscal Impact

\$322,740.88 from 2022-23 Funding Resource 010-0000-0-0000-7700-5846-999-9860-9994-9999-99999: General Purpose (GP), Data Processing, License Agreements, Districtwide

\$336,077.28 from 2023-24 Funding Resource 010-0000-0-0000-7700-5846-999-9860-9994-9999-99999: General Purpose (GP), Data Processing, License Agreements, Districtwide

\$350,556.80 from 2024-25 Funding Resource 010-0000-0-0000-7700-5846-999-9860-9994-9999-99999: General Purpose (GP), Data Processing, License Agreements, Districtwide

Attachment(s)

- Resolution No. 2122-0235
- Amendment No. 1 to Agreement for Acquisition of License for Aeries Software (2022-23, 2023-24 and 2024-25)
- Quote Q-01297-22
- File 21-1549 Original Graydon Exception and Contract

**RESOLUTION OF THE
BOARD OF EDUCATION
OAKLAND UNIFIED SCHOOL DISTRICT**

RESOLUTION NO. [2122-0235]

**AUTHORIZING USE OF *GRAYDON* EXCEPTION TO PUBLIC BIDDING FOR
CONTRACT WITH AERIES SOFTWARE AND APPROVING AMENDMENT NO. 1 TO
AGREEMENT FOR ACQUISITION OF LICENSE FOR AERIES SOFTWARE**

WHEREAS, the Oakland Unified School District (“District”) has a need to contract with a vendor to provide hosting, licensing, upgrades and support for the Aeries Student Information System (SIS) and Aeries Communications (powered by ParentSquare);

WHEREAS, the contemplated contract is in an amount of \$1,314,402.56 consisting of the original 2021-22 contract amount of \$305,027.60, plus the proposed amendment to increase the amount by \$1,009,374.96 and extend licensing through June 30, 2025, with the amendment to include a) \$322,740.88 for 2022-23, including \$132,220.88 for the Aeries SIS and \$190,520.00 for Aeries Communications, b) \$336,077.28 for 2023-24, including \$145,557.28 for the Aeries SIS and \$190,520.00 for Aeries Communications, and c) \$350,556.80 for 2024-25, including \$160,036.80 for the Aeries SIS and \$190,520.00 for Aeries Communications;

WHEREAS, under Public Contracts Code section 20111, a contract in this amount would ordinarily require competitive bidding;

WHEREAS, one exception to this competitive bidding requirement is where “the nature of the subject of the contract is such that [bidding] would be unavailing or would not produce an advantage, and the advertisement for competitive bid would thus be undesirable, impractical, or impossible.” (*Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631, 645.)

WHEREAS, under this exception, a contract need not be bid where bidding would not serve its intended purpose--namely, to protect taxpayers from possible waste and dissipation of public funds--because it would “substantially impair[]” the public entity’s ability to operate, and/or would impose unnecessary additional costs (*Ibid.*);

WHEREAS, the District has been successfully utilizing software provided by Aeries for over 10 prior school years, and relies on the software and services to manage student data, including attendance, master scheduling, grade reporting, discipline records, state-mandated reporting, and many other student data requirements throughout the District;

WHEREAS, the District successfully piloted Aeries Communications during the 2020-21 school year followed by a successful districtwide launch;

WHEREAS, Aeries Communications is natively integrated with the Aeries Student Information System, which is not the case for other communications platforms;

WHEREAS, the District’s original agreement with Aeries was approved by the Board of Education on July 14, 2004 as File ID 04-1141, and the contract renewal for 2021-22 was subsequently approved by the Board of Education on June 30, 2021 as File ID 21-1549;

WHEREAS, the initial selection of Aeries was based upon a competitive-bid process (Award of Bid No. 03-04/30) with Aeries as the lowest responsible bidder;

WHEREAS, the Oakland Unified School District receives the Aeries SIS at a highly discounted rate of \$3.47 to \$4.40 per student per year, in contrast to the retail price for the Aeries SIS of \$5.00 per student per year, the retail price for Aeries being lower or comparable to other leading student information systems;

WHEREAS, a transition to another student information system would be a multi-year project with significant one-time costs, as evidenced by the original contract from 2004 which included a total cost not to exceed \$11,604,056.00 over five years

WHEREAS, price increases in recent years and the addition of Aeries Communications have caused the renewal price for Aeries to exceed the competitive bid threshold;

WHEREAS, it would be cost-prohibitive, and could result in time gaps in the management and reporting of student data, including the completion of mandated state reporting, to transition to another system;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board finds and declares that going out to bid for the software and services provided by Aeries Software would not produce any advantage, would result in wasted taxpayer funds, and would substantially impair the District's ability to operate because it could result in time gaps in the management and reporting of student data, including the completion of mandated state reporting
2. Competitive bidding is therefore excused under the reasoning of *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631 and related case law, allowing the District to contract directly with Aeries.
3. The Acquisition of License for Aeries Software, for the period July 1, 2021 to June 30, 2025 for an amount not to exceed \$1,314,402.56 consisting of the original 2021-22 contract amount of \$305,027.60, plus the proposed amendment to increase the amount by \$1,009,374.96 and extend licensing through June 30, 2025, with the amendment to include a) \$322,740.88 for 2022-23, including \$132,220.88 for the Aeries SIS and \$190,520.00 for Aeries Communications, b) \$336,077.28 for 2023-24, including \$145,557.28 for the Aeries SIS and \$190,520.00 for Aeries Communications, and c) \$350,556.80 for 2024-25, including \$160,036.80 for the Aeries SIS and \$190,520.00 for Aeries Communications, is hereby approved.

PASSED AND ADOPTED on June 29, 2022, by the Governing Board of the Oakland Unified School District by the following vote:

PREFERENTIAL AYE: None

PREFERENTIAL NOE: None

PREFERENTIAL ABSTENTION: None

PREFERENTIAL RECUSE: None

AYES: Aimee Eng, Clifford Thompson, Vice President Benjamin "Sam" Davis, President Gary Yee

NOES: None

ABSTAINED: VanCedric Williams, Mike Hutchinson

RECUSED: None

ABSENT: Student Director Natalie Gallegos Chavez, Student Director Samantha Pal

CERTIFICATION

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Board of Education of the Oakland Unified School District held on June 29, 2022.

Legislative File	
File ID Number:	22-1443
Introduction Date:	06/29/22
Enactment Number:	22-1268
Enactment Date:	6-29-2022 CJH
By:	

OAKLAND UNIFIED SCHOOL DISTRICT

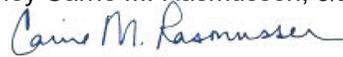

6-30-2022

Gary Yee
President, Board of Education


6-30-2022

Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education

Approved as to form by OUSD Attorney Carrie M. Rasmussen, 5/23/22



AMENDMENT NO. 1
to

Title of Original Contract/Agreement **Agreement for Acquisition of License for Aeries Software**

This Amendment amends the attached legal agreement (“Original Agreement”) and any prior amendments (“Prior Amendments,” together with Original Agreement, “(Amended) Agreement”), incorporated herein by reference, which includes the following information:

- The (Amended) Agreement is between the Oakland Unified School District (“OUSD”) and the below named entity or individual (“VENDOR,” together with OUSD, “PARTIES”):

Full Name of Vendor **Aeries Software, Inc.**

- The Parties entered into the Original Agreement on the below date:

Enactment Date **July 1, 2021**

- The Enactment Number of the Original Agreement is below:

Enactment No. **21-1073**

The PARTIES hereby agree to amend the (Amended) Agreement as stated herein.

1. Services:

The scope of work of the (Amended) Agreement is unchanged.

The scope of work of the (Amended) Agreement has changed. If the scope of work has changed: Provide brief description of revised scope of work including measurable description of expected final results, such as services, materials, products, and/or reports; select the appropriate option below:

Revised scope of work attached

VENDOR agrees to provide the following amended services:

Description of revision(s) to scope of w **Aeries will extend licenses for OUSD to use the Aeries Student Information System (SIS) and Aeries Communications (powered by ParentSquare) through June 30, 2025**

2. **Term** (duration): The term of the (Amended) Agreement is unchanged
 The term of the (Amended) Agreement has changed.
If the term has changed: The parties agree to amend the below original End Date of the (Amended) Agreement to the below new End Date:
Original End Date: **June 30, 2022**)
New End Date: **June 30, 2025**)

3. **Compensation**: The not-to-exceed amount in the (Amended) Agreement is unchanged
 The not-to-exceed amount in the (Amended) Agreement has changed. If the not-to-exceed amount has changed: The not-to-exceed amount in the (Amended) Agreement is amended as follows:
 Increase not-to-exceed amount by:
\$ **1,009,374.96**).
 Decrease not-to-exceed amount by:
\$ **N/A**).
The new not-to-exceed amount under the (Amended) Agreement, as herein amended, is
\$ **1,314,402.56**).

4. **COVID-19**: To the extent that the Agreement did not contain the following guarantees, by signing this Amendment, **VENDOR** agrees that:
a. Through its execution of this Amendment, **VENDOR** declares that it is able to meet its obligations and perform the Services required pursuant to this Amendment in accordance with any shelter-in-place (or similar) order or curfew (or similar) order (“Orders”) issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.
b. **VENDOR** agrees to notify **OUSD** within twelve (12) hours if **VENDOR** or any employee, subcontractor, agent, or representative of **VENDOR** tests positive for COVID-19, shows or reports symptoms consistent with COVID-19, or reports to **VENDOR** possible COVID-19 exposure.
c. **VENDOR** agrees to immediately adhere to and follow any **OUSD** directives regards health and safety protocols including, but not limited to, providing **OUSD** with information regarding possible exposure of

OUSD employees to VENDOR or any employee, subcontractor, agent, or representative of VENDOR and information necessary to perform contact tracing, as well as complying with any OUSD testing and vaccination requirements.

d. VENDOR shall bear all costs of compliance with this Paragraph.

5. **Remaining Provisions:** All other provisions of the (Amended) Agreement remain unchanged and in full force and effect as originally stated.

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

7. **Signature Authority.**

a. Each PARTY has the full power and authority to enter into and perform this Amendment, and the person(s) signing this Amendment on behalf of each PARTY has been given the proper authority and empowered to enter into this Amendment.

b. Notwithstanding subparagraph (a), only the Superintendent, Chiefs, Deputy Chiefs, and the General Counsel has authority to sign contracts for OUSD and only under limited circumstances, which required ratification by the OUSD Governing Board. VENDOR agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this Amendment or as legally binding in any way.

8. **Amendment Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Amendment unless and until it has been (i) formally approved by OUSD's Governing Board or (ii) validly and properly executed by the OUSD Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code or Board Policy, and no payment shall be owed or made to VENDOR absent such formal approval or valid and proper execution.

REST OF PAGE IS INTENTIONALLY LEFT BLANK

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

VENDOR

Name: Jonathan Cotton

Signature: 

Position: Executive Director of Operations Date: 05/20/2022

One of the terms and conditions to which VENDOR agrees by its signature is subparagraph (e) of Paragraph 8 (Compensation), which states that VENDOR acknowledges and agrees not to expect or demand payment for any Services performed prior to the PARTIES, particularly OUSD, validly and properly executing this Agreement until this Agreement is validly and properly executed and shall not rely on verbal or written communication from any individual, other than the President of the OUSD Governing Board, the OUSD Superintendent, or the OUSD General Counsel, stating that OUSD has validly and properly executed this Agreement. VENDOR specifically acknowledges and agrees to this term/condition on the above date.

OUSD

Name: Gary Yee

Signature: _____

Position:

Date:

- Board President
- Superintendent
- Chief/Deputy Chief/Executive Director

Name: Kyla Johnson-Trammell

Signature: _____

Position: Secretary, Board of Education

Date:



Aeries Software, Inc.

A solution where data empowers, never impedes.

PREPARED BY
Sonia Cassatt
soniac@aeries.com

Quote #: Q-01297-22
Date: 05/11/2022 2:51 PM
Expires On: 7/1/2025

District: Oakland School District

Contact: Susan Beltz
Email: susan.beltz@ousd.k12.ca.us

Phone: (510) 879-8872
Address: 900 High St.
Oakland, CA 94601

Pricing provided has been prepared for the following terms:
7/1/2022 - 6/30/2023, 7/1/2023 – 6/30/2024, 7/1/2024 – 6/30/2025

Aeries SIS Software & Annual Subscription 7/1/2022-6/30/2023

QTY	PRODUCTS	UNIT PRICE	EXTENDED
38104	Aeries Software License/Support Subscription 10% increase	\$3.47	\$132,220.88
38104	Aeries Communications by PSQ	\$5.00	\$190,520.00
Year 1 Subtotal			\$322,740.80

Aeries SIS Software & Annual Subscription 7/1/2023-6/30/2024

QTY	PRODUCTS	UNIT PRICE	EXTENDED
38104	Aeries Software License/Support Subscription 10% increase	\$3.82	\$145,557.28
38104	Aeries Communications by PSQ	\$5.00	\$190,520.00
Year 2 Subtotal			\$336,077.28

Aeries SIS Software & Annual Subscription 7/1/2024-6/30/2025

QTY	PRODUCTS	UNIT PRICE	EXTENDED
38104	Aeries Software License/Support Subscription 10% increase	\$4.40	\$160,036.80
38104	Aeries Communications by PSQ	\$5.00	\$190,520.00
Year 3 Subtotal			\$350,556.80

**Prices provided in this document are subject to change based on changes in district enrollment year over year.*

Signature: _____
Name (Print): _____

Effective Date: ____/____/____
Title: _____

THANK YOU FOR YOUR BUSINESS!
770 The City Dr. S, Suite 6500, Orange, CA 92868
Phone: 888.487.7555

Board Office Use: Legislative File Info.	
File ID Number	21-1549
Introduction Date	6/23/21
Enactment Number	21-1073
Enactment Date	6/23/2021 os



Board Cover Memorandum

To Board of Education

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

Meeting Date June 30, 2021

Subject Approval of Resolution No. 2021-0286 Authorizing Use of *Graydon* Exception to Public Bidding; Approval by the Board of Education of Agreement for Acquisition of License for Aeries Software between Oakland Unified School District and Aeries Software, Inc.
Contractor: Aeries Software, Inc.
Services For: July 1, 2021 - June 30, 2022

Ask of the Board Approve Resolution No. 2021-0286 Authorizing Use of *Graydon* Exception to Public Bidding; Approve Agreement for Acquisition of License for Aeries Software between Oakland Unified School District and Aeries Software, Inc., Orange, CA, for the latter to provide licensing, upgrades and support for the Aeries Student Information System (SIS) and Aeries Communication (powered by ParentSquare) for the period July 1, 2021 to June 30, 2022 for an amount not to exceed \$305,027.60, consisting of \$120,027.60 for the Aeries SIS and \$185,000 for Aeries Communications.

Background The Oakland Unified School District has successfully used Aeries as its student information system (SIS) for 2020-21 and for over 10 prior school years, and has completed a successful pilot of Aeries Communications during the 2020-21 school year. Oakland Unified is using this firm going forward for the same services as previously provided. The Aeries SIS is used by Oakland Unified School District (OUSD) staff to manage student data, including attendance, master scheduling, grade reporting, discipline records, state-mandated reporting, and many other student data requirements. Aeries Communications (powered by ParentSquare) provides an integrated and streamlined communications solution. The 2020-21 renewal of the Aeries SIS and pilot of Aeries Communications was previously approved by the Board of Education as Legistar File ID #21-0764.

Discussion The Technology Services department hosts the Aeries database and application in our OUSD data centers. Upgrades are performed approximately six times per year to ensure that our Aeries version is current and supported. The Agreement for

Acquisition of License for Aeries Software with Aeries Software includes licensing, upgrades and support for the 2021-22 fiscal year. Approval of this Agreement will enable OUSD to continue using its SIS to help ensure the continued successful management of student information.

As noted above, the Oakland Unified School District also successfully piloted Aeries Communications (powered by ParentSquare) during 2020-21. Because this system integrates natively with Aeries and supports multiple modes of communications, it has the potential to replace other systems and streamline communications going forward. Approval of this Agreement will enable OUSD to continue using Aeries Communications district-wide to provide critical and timely communications to OUSD students and families.

- Competitively Bid** No. See attached Resolution No. 2021-0286 - Determining and Declaring that OUSD Can Enter into Agreement for Acquisition of License for Aeries Software Without Competitive Bidding.
- Fiscal Impact** \$305,027.60 from 2021-22 Funding Resource 010-0000-0-0000-7700-5846-999-9860-9994-9999-99999: General Purpose (GP), Data Processing, License Agreements, Districtwide
- Attachment(s)**
- Resolution No. 2021-0286
 - Agreement for Acquisition of License for Aeries Software (2021-22)
 - Renewal Notification RN-8105
 - Quote No. Q-00913-2 for Aeries Communications

**RESOLUTION OF THE
BOARD OF EDUCATION
OAKLAND UNIFIED SCHOOL DISTRICT**

RESOLUTION NO. 2021-0286

**AUTHORIZING USE OF *GRAYDON* EXCEPTION TO PUBLIC BIDDING FOR
CONTRACT WITH AERIES SOFTWARE AND APPROVING AGREEMENT FOR
ACQUISITION OF LICENSE FOR AERIES SOFTWARE**

WHEREAS, the Oakland Unified School District (“District”) has a need to contract with a vendor to provide hosting, licensing, upgrades and support for the Aeries Student Information System (SIS) and Aeries Communications (powered by ParentSquare);

WHEREAS, the contemplated contract is in an amount of \$305,027.60 for 2021-22, consisting of \$120,027.60 for the Aeries SIS and \$185,000 for Aeries Communications;

WHEREAS, under Public Contracts Code section 20111, a contract in this amount would ordinarily require competitive bidding;

WHEREAS, one exception to this competitive bidding requirement is where “the nature of the subject of the contract is such that [bidding] would be unavailing or would not produce an advantage, and the advertisement for competitive bid would thus be undesirable, impractical, or impossible.” (*Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631, 645.)

WHEREAS, under this exception, a contract need not be bid where bidding would not serve its intended purpose--namely, to protect taxpayers from possible waste and dissipation of public funds--because it would “substantially impair[]” the public entity’s ability to operate, and/or would impose unnecessary additional costs (*Ibid.*);

WHEREAS, the District has been successfully utilizing software provided by Aeries for over 10 prior school years, and relies on the software and services to manage student data, including attendance, master scheduling, grade reporting, discipline records, state-mandated reporting, and many other student data requirements throughout the District;

WHEREAS, the District has successfully piloted Aeries Communications during the 2020-21 school year;

WHEREAS, Aeries Communications is natively integrated with the Aeries Student Information System, which is not the case for other communications platforms;

WHEREAS, the District’s original agreement with Aeries was approved by the Board of Education on July 14, 2004 as File ID 04-1141, and the contract renewal for 2020-21 was subsequently ratified by the Board of Education on April 28, 2021 as File ID 21-0764;

WHEREAS, the initial selection of Aeries was based upon a competitive-bid process (Award of Bid No. 03-04/30) with Aeries as the lowest responsible bidder;

WHEREAS, the Oakland Unified School District receives the Aeries SIS at a highly discounted rate of \$3.15 per student per year, in contrast to the retail price for the Aeries SIS of \$7.50 per student per year, the retail price for Aeries being comparable to other leading student information systems;

WHEREAS, a transition to another student information system would be a multi-year project with significant one-time costs, as evidenced by the original contract from 2004 which included a total cost not to exceed \$11,604,056.00 over five years

WHEREAS, price increases in recent years and the addition of Aeries Communications have caused the renewal price for Aeries to exceed the competitive bid threshold;

WHEREAS, it would be cost-prohibitive, and could result in time gaps in the management and reporting of student data, including the completion of mandated state reporting, to transition to another system;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board finds and declares that going out to bid for the software and services provided by Aeries Software would not produce any advantage, would result in wasted taxpayer funds, and would substantially impair the District's ability to operate because it could result in time gaps in the management and reporting of student data, including the completion of mandated state reporting
2. Competitive bidding is therefore excused under the reasoning of *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631 and related case law, allowing the District to contract directly with Aeries.
3. The Acquisition of License for Aeries Software, for the period July 1, 2021 to June 30, 2022 for an amount not to exceed \$305,027.60, consisting of \$120,027.60 for the Aeries SIS and \$185,000 for Aeries Communications, is hereby approved.

PASSED AND ADOPTED on June 30, 2021, by the Governing Board of the Oakland Unified School District by the following vote:

PREFERENTIAL AYE:	None
PREFERENTIAL NOE:	None
PREFERENTIAL ABSTENTION:	None
PREFERENTIAL RECUSE:	None
AYES:	Mike Hutchinson, Gary Yee, VanCedric Williams, Aimee Eng, Clifford Thompson, Vice President Benjamin "Sam" Davis, President Shanthy Gonzales
NOES:	None
ABSTAINED:	None
RECUSED:	None
ABSENT:	Jessica Ramos (Student Director), Samantha Pal (Student Director)

CERTIFICATION

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Board of Education of the Oakland Unified School District held on June 30, 2021.

Legislative File	
File ID Number:	21-1549
Introduction Date:	6/30/21
Enactment Number:	21-1073
Enactment Date:	6/23/2021
By:	os

OAKLAND UNIFIED SCHOOL DISTRICT



Shanthi Gonzales
President, Board of Education



Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education

Approved as to form by OUSD Staff Attorney Joanna Powell on 6/3/21.



**AGREEMENT FOR ACQUISITION OF LICENSE FOR AERIES
SOFTWARE BETWEEN AERIES SOFTWARE, INC.
AND OAKLAND UNIFIED SCHOOL DISTRICT**

1. Introduction.

This is an Agreement between Aeries Software, Inc. located at 770 The City Drive South, Suite 6500, Orange, California 92868 (hereinafter "AERIES SOFTWARE") and its customer Oakland Unified School District ("hereinafter "DISTRICT"), under which certain computer software is licensed on a non-exclusive basis for the customer's use for a specified term under the terms and conditions stated below and in the accompanying documents. The effective date for purposes of the interpretation of the Agreement shall be July 1, 2021.

Recitals

WHEREAS, AERIES SOFTWARE and DISTRICT previously entered into a business relationship in 2004 and DISTRICT requests to update said agreement, AERIES SOFTWARE and DISTRICT agree as follows:

2. Definitions.

The following terms, when used in this Agreement, shall have the following meanings:

- "Acceptance" shall mean the date on which AERIES SOFTWARE informs the DISTRICT and the DISTRICT confirms that the Licensed Software has been installed.
- "Agreement" shall mean this Agreement, Exhibits, and all documentation incorporated herein by reference. "Correction" or "Update" shall mean electronic media containing a Licensed Software correction or "bug fix" or a newly programmed feature intended to either rectify Licensed Software errors or cause the System to perform in a manner which conforms to the System Specifications.
- "Defect" shall mean the failure of the Licensed Software component to function in accordance with the System Specifications.
- "Documentation" shall mean all of AERIES SOFTWARE's training course materials, system specifications and technical manuals, and all other user instructions regarding the capabilities, operation, installation and use of the Licensed Software, including but not limited to manuals, handbooks, flow charts, technical information, and other reference materials relating to the Licensed Software.
- "Enhancement" or "Improvement" shall mean electronic media containing any functional or operational improvement made to the Licensed Software.

- “Equipment” shall mean the computer hardware comprising DISTRICT’s existing computer system.
- “First Productive Use” shall mean the first use of the System to process data of DISTRICT’s students in day-to-day operations.
- “Implementation” shall mean the activities such as training, data conversion and installation which are used to prepare the DISTRICT for use of the Licensed Software as provided in this Agreement.
- “Installation” shall mean the process which is used to make the Licensed Software available for DISTRICT’s use, testing, and training without regard to who performs the process.
- “Licensed Software” shall mean individually each, and collectively all, of the computer programs or Modules provided by AERIES SOFTWARE under this Agreement, including Aeries® SIS, and subsequent releases thereof, however denominated, including as to each program or Module: the processes and routines used in the processing of data, the source code and object code, tapes, disks, Documentation, Corrections, Updates, Enhancements, Improvements, Releases, and Versions to such programs or Modules as may generally be made available by AERIES SOFTWARE, and any and all programs or Modules provided by AERIES SOFTWARE in the future under this Agreement pursuant to the mutual written agreement of the parties. In addition, Aeries Software shall provide a fully integrated communications platform, known as Aeries Communications, powered by ParentSquare, which includes mass notifications (i.e., urgent alerts & “smart” alerts, auto notifications, attendance/lunch balance notifications, social share, FB, TW, web); classroom communications (i.e., posts - two-way, direct & group messaging, Student Square, Newsletter Templates, volunteering & sign-ups, parent-teacher conferences, language translation); school services (permission slips & forms, surveys & polls, calendar sync & event, RSVP, school directory); Aeries integration (single sign-on, seamless API data integration, Aeries student groups, gradebook alerts, mobile app, data reports & analytics, multi-modality, robocalls, newsletter and message templates, secure document delivery, electronic signatures, virtual IEPs, COVID health screening forms, attendance letters, support for summer learning and after school.
- “License Term” shall mean the period during which the license of the Licensed Software by AERIES SOFTWARE to DISTRICT is in effect and, for purposes of this Agreement, the License Term shall be from July 1, 2021 to June 30, 2022.
- “DISTRICT” shall include Oakland Unified School District, its officers, employees and agents, and any person or entity to which this Agreement is assigned in accordance with the terms and conditions of this Agreement.

- “Module” shall mean a self-contained unit of the Licensed Software that has its own discrete function and may be separately compiled.
- “Proprietary or Confidential Information” shall mean, with respect to a party hereto, all information or material which (i) gives that party some competitive business advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of that party; or (ii) which is either (A) marked “Confidential,” “Restricted,” or “Proprietary Information” or other similar marking, (B) known by the parties to be considered confidential and proprietary or (C) from all the relevant circumstances should reasonably be assumed to be confidential and proprietary. Proprietary or Confidential Information includes, but is not limited to, the System and any trade secrets related thereto, and DISTRICT’s student data, provided, however, that no information constitutes Proprietary or Confidential Information if it is generic information or otherwise publicly known or in the public domain. All information regarding any student input into Aeries® shall be considered confidential.
- “Reference Date” shall mean the earlier of the delivery of the Licensed Software to DISTRICT or the date of the DISTRICT’s purchase order or the date of this agreement or the date of the DISTRICT’s payment or the date of the official action approving acquisition of the Licensed Software by the DISTRICT’s governing board.
- “Release” shall mean the general availability of a new, modified or updated version of the Licensed Software containing an aggregation of Licensed Software Corrections or Enhancements made to the Licensed Software.
- “Source Material” shall mean the source code for the Licensed Software, including all new releases, updates, modifications, enhancements, corrections, patches, and improvements, and all Documentation and other proprietary information related to the source code.
- “System” shall mean the operation of the Licensed Software in a functionally integrated manner, with each System Component enabling Users to access and input information to, from, or between Module(s) of the Licensed Software as provided under this Agreement.
- “System Component(s)” shall mean individually each, and collectively all, of the Licensed Software.
- “System Specifications” shall mean the minimum required computer hardware required to properly operate the Licensed Software.
- “Users” shall mean any individual or entity authorized by DISTRICT to use the Licensed Software under this Agreement.

- “Version” shall mean a descriptive reference (which is typically a number qualified by a date) to new Licensed Software features packaged and delivered as a significant revision to Licensed Software.

3. Grant of Nonexclusive Software License.

AERIES SOFTWARE hereby grants to DISTRICT a non-exclusive license for a limited term as defined herein to use the Licensed Software and Documentation for its and its Users' business activities subject to the provisions of the *Nonexclusive Software License (Exhibit “B”)*.

At no additional charge to DISTRICT and for the duration of the term of this Agreement and license, AERIES SOFTWARE shall provide DISTRICT access to all Documentation on AERIES SOFTWARE's current Web site relating to the Licensed Software. DISTRICT may, at any time, reproduce copies of all Documentation and other materials provided by AERIES SOFTWARE, distribute such copies to its Users, and incorporate such copies into its own technical manuals, provided that such reproduction relates to DISTRICT's use of the Licensed Software or Module(s), and copyright notices, if any, are reproduced thereon.

4. Restrictions on Grant of Software License.

The license granted by AERIES SOFTWARE to DISTRICT for use of the Licensed Software and Documentation shall be for a limited term and shall be active only on condition that DISTRICT is current on the payment of all fees set forth herein. Should DISTRICT's financial account fall out of good standing, Aeries Software shall allow DISTRICT a 90-day grace period to bring their account current before terminating services. DISTRICT may renew and extend its license on a subscription basis by making timely payment of all outstanding license fees to AERIES SOFTWARE. Failure to do so shall result in termination of the license without further notice.

DISTRICT shall not actually nor attempt to disassemble, decompile, or reverse engineer modify, copy, duplicate, reproduce, license or sublicense the Software, or transfer or convey the Software or any right in the Software to anyone else without the prior written consent of AERIES SOFTWARE. DISTRICT may maintain copies of all data and information generated by DISTRICT in connection with use of the Licensed Software. DISTRICT shall not be authorized to make the Licensed Software available for use to any person or entity that has no substantive affiliation or relationship with DISTRICT's business.

DISTRICT may develop, install, and make operational DISTRICT Custom Programming, but DISTRICT shall be solely responsible for such programming and shall be the sole owner of such code modifications. DISTRICT shall have the right to acquire from AERIES SOFTWARE any subsequent Release or Version of the Licensed Software produced by AERIES SOFTWARE as an update to the Licensed Software during the term of the license, at no cost to DISTRICT, on condition that DISTRICT has paid all licensing fees due AERIES SOFTWARE.

5. System Configuration.

AERIES SOFTWARE shall provide documentation of AERIES SOFTWARE's minimum and recommended hardware requirements and may assist the DISTRICT in evaluating the DISTRICT's existing information systems, computer platform(s), operating system(s), applications, network connectivity, and workstation configurations (hereinafter collectively referred to as the "Existing System"). The DISTRICT is responsible for ensuring that its Existing System is sufficient in size, capacity, and processing capability to operate the Licensed Software for the use of DISTRICT and its Users. Nothing in this agreement shall require AERIES SOFTWARE to pay for any necessary hardware or third party software upgrades or third party services that DISTRICT may employ to enhance Existing System.

The parties expressly acknowledge that AERIES SOFTWARE is not providing any equipment or software other than the Licensed Software under this Agreement. Further, DISTRICT expressly represents and AERIES SOFTWARE is relying upon the representation that the Existing System consists of the DISTRICT computer platform(s), operating system(s), scanners, printers, applications, network connectivity (local and wide area networks), and workstations. The DISTRICT's Existing System operates on computers with access to modern web browsers that are kept up-to-date, including devices such as Chromebooks. The DISTRICT is responsible for ensuring that its Existing System is sufficient in size, capacity, and processing capability to operate the Licensed Software for the use of DISTRICT and its Users.

6. Payment of Software Licensing Fee and Related Fees.

(a) Software License/Support Subscription 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 and Hosting Services, DISTRICT shall pay AERIES SOFTWARE the sum of \$3.15 per student based on prior year's Calpads Enrollment (38,104) for a total of \$120,027.60 as indicated in the attached Invoice RN-8105. 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. However, auto-renewals will not be allowed for more than five (5) years. 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 Communications powered by ParentSquare.** In addition to the payment of the License Fee, DISTRICT shall pay AERIES SOFTWARE, the sum of \$5.00 per student based on based on prior year's Calpads Enrollment (38,104) for a total of \$190,520.00 as indicated in the attached Sales Quote Q-00913-2 for the use and support of the Aeries Communications product.
- (ii) **Other Services.** At a future date, DISTRICT may negotiate a schedule for additional services (i.e., customized programming, additional data conversion, etc.) beyond those described in the *Sales Proposal (Exhibit "A")* based upon AERIES SOFTWARE's fee for any requested services at the time of the request and the availability of AERIES SOFTWARE's Staff. Additional services require written amendment to this agreement.

7. Maintenance and Support.

During the operative term of this Agreement, at no additional cost, AERIES SOFTWARE shall correct any failure of the Licensed Software or any Module, to perform in accordance with the System Specifications, 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 and in accordance with the System Specifications.

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) Charges to DISTRICT for maintenance and support for the initial term as of this Agreement are indicated in the *Sales Proposal (Exhibit "A")*. Thereafter, the maintenance and support fees shall be calculated as set forth in Section 8 (Payment) above.

(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 (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.

(e) 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.

(f) 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.

8. Ownership and Non-Disclosure of Proprietary or Confidential Information

AERIES SOFTWARE's treatment of DISTRICT's student data is governed by the attached Student Data Privacy Addendum, executed concurrently herewith. To the extent that any terms of this Agreement conflict with the Student Data Privacy Addendum, the Student Data Privacy Addendum shall govern.

The parties agree, both during the term of this Agreement and for a period of five (5) years after termination of this Agreement to hold each other's Proprietary or Confidential Information in strict confidence, except for DISTRICT's student data which shall be held in such confidence in perpetuity. The parties agree not to make each other's Proprietary or Confidential Information available in any form to any third party or to use each other's Proprietary or Confidential Information for any purpose other than the implementation of and as specified in this Agreement. Each party agrees to take all reasonable steps to ensure that Proprietary or Confidential Information of either party is not disclosed or distributed by its employees, agents or consultants in violation of the provisions of this Agreement, and DISTRICT also agrees to take all such steps with respect to any Users of the System.

AERIES SOFTWARE's Proprietary or Confidential Information shall remain the sole and exclusive property of AERIES SOFTWARE. DISTRICT's Proprietary or Confidential Information shall remain the sole and exclusive property of DISTRICT. DISTRICT shall have no interest in, and no right to use, including, without limitation, any use resulting in disclosure to any third party any AERIES SOFTWARE Proprietary or

Confidential Information except as specifically provided for by this Agreement or as otherwise permitted and specified by separate written license agreement executed by both parties hereto.

Each party shall ensure that its employees, agents and consultants, and in the case of DISTRICT's granting access to the System, its Users, as described in Section 2, shall be permitted access to the other party's Proprietary or Confidential Information only on a need-to-know basis and are instructed regarding, and agree in writing to act in accordance with, the obligations of nondisclosure and non-use imposed by this Agreement.

Each party acknowledges that any use or disclosure of the other party's Proprietary or Confidential Information other than as specifically provided for in this Agreement and other written agreements between AERIES SOFTWARE and DISTRICT may result in irreparable injury and damage to the non-using or non-disclosing party. Accordingly, each party hereby agrees that, in the event of use or disclosure by the other party other than as specifically provided for in this Agreement and in other written agreements between the parties, the non-using or non-disclosing party may be entitled to equitable relief as granted by any appropriate judicial body.

Each party expressly agrees to include, maintain, reproduce and perpetuate all notices or markings on all copies of all tangible media comprising each party's Proprietary or Confidential Information in the manner in which such notices or markings appear on such tangible media or in the manner in which either party may reasonably request.

AERIES SOFTWARE acknowledges and agrees that all student records shall be subject to the confidentiality and disclosure provisions of federal and state law and agrees to maintain the confidentiality of all such records in accordance with such laws. AERIES SOFTWARE's treatment of DISTRICT's student data is governed by the attached Student Data Privacy Addendum, executed concurrently herewith. To the extent that any terms of this Agreement conflict with the Student Data Privacy Addendum, the Student Data Privacy Addendum shall govern.

All of the DISTRICT data, records, and information processed by or input onto the System to which AERIES SOFTWARE has access, or otherwise provided to AERIES SOFTWARE under this Agreement shall be and remain the property of DISTRICT and DISTRICT shall retain exclusive rights and ownership thereto. The data of DISTRICT shall not be used by AERIES SOFTWARE for any purpose other than as required under this Agreement, nor shall such data or any part of such data be disclosed, sold, assigned, leased or otherwise disposed of to third parties by AERIES SOFTWARE or commercially exploited or otherwise used by or on behalf of AERIES SOFTWARE, its officers, directors, employees, or agents.

AERIES SOFTWARE shall provide, at no charge to DISTRICT, sufficient access control applications to enable DISTRICT to identify and authenticate Users and control access to System Modules.

9. AERIES SOFTWARE's Representations, Warranties and Covenants

Warranty of Title. AERIES SOFTWARE hereby represents and warrants to DISTRICT that AERIES SOFTWARE is the owner of the Software or otherwise has the right to grant to DISTRICT the rights set forth in this Agreement.

Warranty of Functionality. For a period encompassing the term of this Agreement, AERIES SOFTWARE represents, warrants and agrees that the Licensed Software shall perform in all material respects according to AERIES SOFTWARE's specifications concerning the Licensed Software when used with the appropriate computer equipment.

Warranty of Response Time. AERIES SOFTWARE represents and warrants that the response time for the Licensed Software shall be normal for commercial software. As with any browser-based software, the speed is completely dependent on the speed of the workstation computer, the quantity and type of other software that may be running on any individual workstation, the quality and speed of the internet connection of the computer, and the speed of the computer.

Exclusive Remedy. In the event of any breach or threatened breach of the foregoing representation and warranty, DISTRICT's sole remedy shall be to require AERIES SOFTWARE to either: (i) procure, at AERIES SOFTWARE's expense, the right to use the Software, (ii) replace the Software or any part thereof that is in breach and replace it with Software of comparable functionality that does not cause any breach, or (iii) refund to DISTRICT the full amount of the license fee upon the return of the Software and all copies thereof to AERIES SOFTWARE. In the event of any breach or alleged breach of these warranties, DISTRICT shall promptly notify AERIES SOFTWARE thereof and provide AERIES SOFTWARE a reasonable opportunity to repair or replace the Licensed Software, at AERIES SOFTWARE's sole election. These warranties shall not apply to the Licensed Software if modified or if used improperly or on an operating system not approved by AERIES SOFTWARE.

Warranty Disclaimer. AERIES SOFTWARE DISCLAIMS AND DISTRICT SPECIFICALLY ACKNOWLEDGES THAT AERIES SOFTWARE DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, WITH RESPECT TO THE PROGRAM AND THE ACCOMPANYING WRITTEN MATERIALS. AERIES SOFTWARE WILL NOT BE LIABLE FOR LOST PROFITS, LOST OPPORTUNITIES, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES UNDER ANY CIRCUMSTANCES.

10. Overall Limitation of Liability and Damages

IN NO CASE SHALL AERIES SOFTWARE BE RESPONSIBLE FOR NOR SHALL THE AGGREGATE AMOUNT OF DAMAGES PAYABLE TO DISTRICT FROM ANY AND ALL PARTIES FOR ANY CLAIM ARISING FROM THE LICENSED

SOFTWARE OR THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, ITS WARRANTY AND INDEMNIFICATION PROVISIONS) EXCEED THE AMOUNTS PAID BY DISTRICT TO AERIES SOFTWARE UNDER THIS AGREEMENT.

11. Termination.

This Agreement and the associated Software License shall expire according to the limited term set forth hereinabove in Section 3 unless the Agreement is renewed for an additional term as set forth in Section 6. 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.

12. Assignment.

This Agreement shall not be assigned by either party without the prior written consent of the other except as follows:

AERIES SOFTWARE may assign this Agreement provided such assignment (i) is in writing and in a form reasonably acceptable to DISTRICT, (ii) states that the assignee is accepting all obligations of AERIES SOFTWARE under this Agreement and agrees to be bound by and discharge the Agreement's terms, conditions, and obligations as if it were the original party hereto, and (iii) AERIES SOFTWARE, the assignee entity, or both agree in writing to support the Licensed Software throughout the term of this Agreement.

DISTRICT may assign this Agreement to a parent or subsidiary entity, or any corporation or entity in which DISTRICT has an ownership interest, or in the event of merger, consolidation or other disposition of substantially all of its assets, between DISTRICT and a third party(ies), provided such assignment (i) is in writing and (ii) states that the assignee is accepting all obligations of DISTRICT under this Agreement and agrees to be bound by and discharge each of the Agreement's terms, conditions, and obligations as if it were the original party hereto.

13. 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. At AERIES SOFTWARE's expense as described herein, AERIES SOFTWARE agrees to defend, indemnify, and hold harmless DISTRICT, its officers, agents, employees, members, subsidiaries, joint venture partners, and predecessors and successors in interest from and against any claim, action, proceeding, liability, loss, damage, cost, or expense, including, without limitation, attorneys' fees as provided herein arising out of AERIES SOFTWARE's alleged failure to pay, when due, all such taxes and obligations (collectively referred to for purposes of this Section as "Employment Claim(s)"). AERIES SOFTWARE shall pay to DISTRICT any expenses or charges relating to or arising from any such Employment Claim(s) as they are incurred by DISTRICT.

Interpretation of Agreement. In the event of any conflict or inconsistency in the interpretation of this Agreement (including its Exhibits), such conflict or inconsistency shall be resolved by giving precedence first to the body of this Agreement, and then to the Exhibits.

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 as of the Reference Date 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 @

Oakland Unified School District
C/O Technology Department
900 High St.
Oakland, CA 94601
Fax Number: (510) 879-4282

TO: AERIES SOFTWARE @

Aeries Software, Inc.
770 The City Drive South, Suite 6500
Orange, California 92868
Fax: (657) 202-3339

and to

David Christopher Baker
Law Office of David Christopher Baker
3 Park Plaza, Suite 1520
Irvine, California 92614
dbaker@iplawyeresq.com

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 the subject matter of this Agreement, and it supersedes all other prior and contemporary agreements, understandings, and commitments between AERIES SOFTWARE and DISTRICT with respect to the subject matter of this Agreement.

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. Except as provided herein, 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.

Promotions. The parties agree that AERIES SOFTWARE may use DISTRICT as a reference for all clients and potential clients.

IN WITNESS WHEREOF, DISTRICT hereby accepts the terms and conditions as set forth above and in the attached exhibits hereto,

DATE: 6/24/2021

DISTRICT

Kyla Johnson-Trammell
Kyla Johnson-Trammell, Secretary,
BOE

By: *[Signature]*

Approved as to form by OUSD Staff
Attorney Joanna Powell on 6/2/21

Title: President, BOE

Joanna L. Powell

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

DATE: 06/02/21

AERIES SOFTWARE

By: *[Signature]*

Title: Executive Director of Operations

EXHIBIT B - Nonexclusive Software License

Pursuant to the terms and conditions of the Software License Agreement, this is a License between Aeries Software, Inc., 770 The City Drive South, Suite 6500, Orange, California 92868 (hereinafter "AERIES SOFTWARE") and the Oakland Unified School District (hereinafter "DISTRICT"). This License states the terms and conditions upon which AERIES SOFTWARE offers to license its software and the License is expressly conditioned upon DISTRICT's acceptance thereof. The Licensed Software shall include source as well as machine-readable code and documentation (together "Software").

DISTRICT assumes full responsibility for the selection of the Software to achieve DISTRICT's intended results, and for the installation, use and results obtained from the Software.

BY SIGNING THIS AGREEMENT, DISTRICT IS AGREEING TO BECOME BOUND BY THE TERMS OF THIS LICENSE. IF DISTRICT DOES NOT AGREE TO THE TERMS OF THIS LICENSE, DISTRICT SHALL NOT USE THE SOFTWARE AND, WITHIN 15 DAYS, DISTRICT SHALL RETURN THE SOFTWARE AND ALL RELATED MATERIALS TO THE ENTITY FROM WHOM DISTRICT PURCHASED THE SOFTWARE, WITH ALL ITS CONTENTS, FOR A FULL REFUND.

LICENSE:

1. All Software enclosed is licensed, not sold, to DISTRICT on a non-exclusive basis for use only under the terms of this License, and AERIES SOFTWARE reserves all rights not expressly granted to DISTRICT. DISTRICT owns the disk or other media on which the Software is originally or subsequently recorded or fixed, but AERIES SOFTWARE retains all title and ownership of its respective Software and related documentation.
2. DISTRICT and DISTRICT's employees and agents are required to protect the confidentiality of the Software. DISTRICT may not distribute or otherwise make the Software available to any third party. Notwithstanding this paragraph, DISTRICT may provide access to the Software and DISTRICT's information stored with it to the extent necessary to comply with the California Public Records Act and to the extent required by law.
3. DISTRICT may not copy or reproduce the Software for any purpose except to make one (1) archival copy of the Software, for backup purposes only, in support of DISTRICT's use of the Software. DISTRICT must reproduce and include AERIES SOFTWARE's copyright notice on the backup copy of the Software.
4. Any portion of the Software merged into or used in conjunction with another software will continue to be the property of AERIES SOFTWARE and subject to the terms and conditions of this License. DISTRICT must reproduce and include AERIES SOFTWARE's copyright notice on any portion merged in or used in conjunction with another software.

5. DISTRICT may not sublicense, assign or otherwise transfer the Software or this license to any other person without the prior written consent of AERIES SOFTWARE. AERIES SOFTWARE retains the right to require additional licenses for any portions of its code that are copied whether or not merged with any other code.

6. DISTRICT acknowledges that DISTRICT is receiving, on a LIMITED LICENSE TO USE, the Software and that AERIES SOFTWARE retains all right, title and interest in and to the Software. DISTRICT acknowledges that AERIES SOFTWARE has valuable proprietary interests in its Software. DISTRICT may not use, copy, modify, or transfer the Software or any copy, modification or merged portion in whole or in part except as expressly provided for in this License. If DISTRICT transfers possession of any copy modification or merged portion of the Software to another party, DISTRICT's license is automatically terminated.

7. DISTRICT agrees to indemnify and hold harmless AERIES SOFTWARE from any action or liability resulting from DISTRICT's use of the Software, except to the extent that AERIES SOFTWARE shall indemnify and hold DISTRICT harmless in accordance with the Agreement.

TERMINATION. The License granted to DISTRICT is effective until terminated. DISTRICT may terminate it at any time by returning the Software to AERIES SOFTWARE together with all copies, modifications, and merged portions in any form. The License will also terminate upon conditions set forth elsewhere in the "Software License Agreement for Acquisition of License for Aeries® Software" or if DISTRICT fails to comply with any term or condition of this License. DISTRICT agrees upon such termination to return the Software to AERIES SOFTWARE. The portions of this License that protect the proprietary rights of AERIES SOFTWARE will continue in force after termination of the License. AERIES SOFTWARE shall have no right to terminate this License, except in the event of a material violation by DISTRICT of the terms and conditions of this License, and after first giving reasonable written notice to DISTRICT of the violation and providing DISTRICT with a reasonable opportunity to cure the violation. In the event AERIES SOFTWARE fails to provide such notice and opportunity to cure, the paragraph hereof-entitled "Limitation of Remedies and Damages" shall not apply to such termination.

LIMITED WARRANTY. AERIES SOFTWARE warrants, as the sole warranty, that the software will perform substantially in accordance with the accompanying documentation for a period of ninety (90) days from the date of receipt, except as provided in the "Software License Agreement for Acquisition of License for Aeries® Software". No other entity or person is authorized to expand or alter this warranty or this License. AERIES SOFTWARE does not warrant that the functions contained in the Software will completely meet DISTRICT's requirements or that the operation of the Software will be uninterrupted or error-free. Except as stated above in this section, the Software is provided as-is without warranty of any kind, either expressed or implied, including the implied warranties of merchantability and fitness for a particular purpose. DISTRICT assumes the entire risk as it applies to the quality and performance of the Software. This warranty gives DISTRICT specific legal rights and DISTRICT may also have other

rights that vary from country or state. Some countries and states do not allow the exclusion or limitation of implied warranties, so this exclusion may not apply to DISTRICT.

LIMITATION OF REMEDIES AND DAMAGES – WAIVER AND RELEASE OF LIABILITY FOR CONSEQUENTIAL DAMAGES. To the maximum extent permitted by applicable law, in no event shall AERIES SOFTWARE be liable for any damages whatsoever (including without limitation, special, incidental, consequential, or indirect damages for personal injury, loss of business profits, business interruption, loss of business information, or any other pecuniary loss) arising out of the use of or inability to use this product, even if AERIES SOFTWARE has been advised of the possibility of damages, except as provided under the “Agreement for Acquisition of Aeries® Software”. AERIES SOFTWARE’s entire liability and DISTRICT’s exclusive remedy shall be limited to the following:

1. The replacement of any software not meeting AERIES SOFTWARE’s “Limited Warranty” explained above, or
2. If AERIES SOFTWARE is unable to deliver replacement software that conforms to the warranty provided under this Agreement, DISTRICT may terminate this Agreement by returning the Software to the respective Company, authorized Company distributor or dealer from whom DISTRICT obtained the program and DISTRICT license fee will be refunded.

In no event will AERIES SOFTWARE be liable for damages to DISTRICT or any other entity in excess of the amount of the license fee paid by DISTRICT to use the Software regardless of the form of the claim. Any action brought under this License must be brought within six (6) months from the time the action accrues.

AERIES SOFTWARE and DISTRICT expressly acknowledge and agree that the instant Nonexclusive Software License is not binding upon either party unless and until both AERIES SOFTWARE and DISTRICT have agreed in writing to the terms and conditions set forth in the separate Software License Agreement.

[SIGNATURE BLOCKS FOLLOW ON NEXT PAGE]

DISTRICT hereby accepts the terms and conditions as set forth above.

DATE: 6/24/2021

Approved as to form by OUSD Staff
Attorney Joanna Powell on 6/2/21.



DISTRICT



Kyla Johnson-Trammell,
Secretary, BOE

By: _____

Title: President, BOE

AERIES SOFTWARE hereby accepts the terms and conditions as set forth above.

DATE: 06/02/21

AERIES SOFTWARE

By: _____

Title: Executive Director of Operations

Attachment A – STUDENT DATA PRIVACY ADDENDUM FOR CALIFORNIA ASSEMBLY BILL 1584 COMPLIANCE

This Agreement is entered into between the Oakland Unified School District ("DISTRICT") and AERIES SOFTWARE, Inc. ("AERIES SOFTWARE") on July 1, 2021 ("Effective Date").

WHEREAS, the DISTRICT and AERIES SOFTWARE entered into an agreement for technology services titled AERIES SOFTWARE License Agreement ("Technology Services Agreement") on July 1, 2021.

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 License 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. AERIES SOFTWARE hosts this data in its own data centers, but 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. DISTRICT shall be solely responsible for determining the procedures by which pupils may retain possession and control of their own pupil-generated content. DISTRICT may utilize the provided software solution to revise or delete data as necessary.

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

DISTRICT shall be solely responsible for determining the options by which a pupil may transfer pupil-generated content to a personal account. DISTRICT may utilize the provided software solution to revise, delete, or transfer data as required.

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:

DISTRICT shall be solely responsible for offering parents, legal guardians, or eligible pupils the ability to review personally identifiable information in the pupil's records and correct erroneous information. AERIES SOFTWARE provides a portal for parents, legal guardians, and pupils that includes a 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 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:

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:

If DISTRICT decides to no longer continue a business relationship with AERIES SOFTWARE, AERIES SOFTWARE shall offer the DISTRICT the ability to take a local copy of their student information system data and thereafter delete all DISTRICT data from AERIES SOFTWARE's data centers.

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



Authorized Signature

Shanthi Gonzales, President, BOE

Printed Name and Title

6/24/2021

Date



Kyla Johnson-Trammell, Secretary, BOE

Approved as to form by OUSD Staff
Attorney Joanna Powell on 6/2/21.



Aeries Software, Inc.



Authorized Signature

Jonathan Cotton, Executive Director

Printed Name and Title

06/02/21

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



Renewal Notification RN-8105
DATE 05/01/2021
TERMS
P.O. NO.

PLEASE REMIT TO:
Aeries Software
 770 The City Dr. S.
 Suite 6500
 Orange, CA 92868

BILL TO Oakland Unified School District
 900 High St.
 Attn: Accounts Payable
 Oakland, CA 94601

This is a notification of your upcoming renewal. It is not due at this time, but because of budgetary issues, we wanted you to have it early in order to prepare for payment. If you have any questions, please contact Connie Castillo at conniec@aeries.com or 888-487-7555.

Message:

Quantity	Description	Unit Price	Start Date	End Date	Total Amount
38104	Software License/Support Subscription	3.15	07/01/2021	06/30/2022	\$120,027.60
SUBTOTAL					120,027.60
TOTAL					120,027.60
AMOUNT RECEIVED					\$
AMOUNT DUE					\$



Aeries Software, Inc.

A solution where data empowers, never impedes.

PREPARED BY
Brandon Cruz
brandonc@aeries.com

Quote #: Q-00913-2
Date: 5/12/2021 8:35 AM
Expires On: 7/31/2021

District: Oakland Unified School District

Contact: Susan Beltz
Email: susan.beltz@ousd.k12.ca.us
Phone: (510) 879-8873
Address: 900 High St.
Oakland, CA 94601

Pricing provided has been prepared for the following term 7/1/2021 - 6/30/2022

Additional Products & Services

QTY	PRODUCTS	DESCRIPTION	UNIT PRICE	EXTENDED
37,000	Aeries Communications	Fully integrated Communications Platform. Includes: Mass Notifications - Urgent Alerts & "Smart" Alerts, AutoNotices, Attendance / Lunch Balance Notifications, Social Share; Classroom Communications Posts - Two-Way, Direct & Group Messaging, StudentSquare, Parent-Teacher Conferences, Volunteer Signups, Newsletter Templates; School Services - Permission Slips & Forms, Surveys & Polls, Calendar Sync & Event, RSVP, School Directory; Supported by - Aeries Integration, Single Sign-On, Seamless API Data Integration, Aeries Student Groups, Contact Management, Gradebook Alerts, Mobile App, Volunteering, Customer Support Included; Secure Document Delivery	\$5.00	\$185,000.00
Additional Products & Services TOTAL:				\$185,000.00

TOTAL: \$185,000.00

Aeries Communications Terms and Conditions:

The Services are subject to the terms contained in this Order Form, the School Agreement located at www.parentsquare.com/agreement, and incorporated by reference into this Order Form ("ParentSquare School Agreement"), and any exceptions listed in the Exceptions section.

Signature: _____

Effective Date: ____/____/____

Name (Print): _____

Title: _____

Please sign and email to Brandon Cruz at brandonc@aeries.com

THANK YOU FOR YOUR BUSINESS!

770 The City Dr. S, Suite 6500, Orange, CA 92868
Phone: 888.487.7555
Email: sales@aeries.com