

Board Office Use: Legislative File Info.	
File ID Number	21-0764
Introduction Date	4/28/21
Enactment Number	21-0634
Enactment Date	4/28/2021 If



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 April 28, 2021

Subject Agreement - Acquisition of License for Aeries Software and for Aeries Communication (powered by ParentSquare, Inc.) - California Student Data Privacy Agreement (CSPDA)
Contractor: Aeries Software, Inc.
Services For: Technology Services Department

Ask of the Board Ratification by the Board of Education of Agreement for Acquisition of License for Aeries Software and Aeries Communication (powered by ParentSquare, Inc.) 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) for the period July 1, 2020 to June 30, 2021 for an amount not to exceed \$106,371.98, licensing, upgrades and support for the Aeries Communications Phase 1 Pilot for the period December 9, 2020 through January 31, 2021 for an amount not to exceed \$9,000.00, licensing upgrades and support for the Aeries Communications Phase 2 Pilot for the period February 1, 2021 through June 30, 2021 for an amount not to exceed \$46,250.00, resulting in a total contract amount not to exceed \$161,621.98, and Student Data Privacy Agreement between ParentSquare, Inc. and the Oakland Unified School District.

Background The Oakland Unified School District has successfully used Aeries as its student information system (SIS) for 2019-20 and for over 10 prior school years and 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.

The Oakland Unified School District also plans to pilot Aeries Communications (powered by ParentSquare, Inc.) during 2020-21. In order to provide these services, ParentSquare, Inc. requires access to certain District student data. Accordingly, the District and ParentSquare, Inc. executed the enclosed data sharing agreement.

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 2020-21 fiscal year. Ratification 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 plans to pilot Aeries Communications (powered by ParentSquare, Inc.) 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. Phase 1 of the pilot includes licensing, upgrades and support for up to five schools from December 9, 2020 through January 31, 2021. Phase 2 of the pilot includes licensing, upgrades and support district-wide from February 1, 2021 through June 30, 2021.

In order to provide these services, ParentSquare, Inc. requires access to certain District student data. Accordingly, the District and ParentSquare, Inc. executed the enclosed data sharing agreement on March 21, 2021, and now ask the Board to ratify this agreement. This data sharing agreement is the standard California Student Data Privacy Agreement (CSDPA), adopted by the California Student Privacy Alliance to meet the requirements of the Family Educational Rights and Privacy Act (FERPA) and Assembly Bill 1584 (which allows school districts to share data with software providers so long as the contracts include certain specified provisions). The standard terms of the CSDPA ensure that the vendor will take all precautions to safeguard our students' data. The term of the CSDPA is the same as the term of the underlying services contract. The CSDPA is a piggy-backable agreement. This means that a software vendor may enter the CSDPA with one school district and thereafter, by signing Exhibit E (which consists of a "general offer of terms") allow any other school district to countersign Exhibit E and be entitled to the same protections set forth in the underlying CSDPA.

Here, ParentSquare, Inc. has signed the CSDPA with Oak Grove School District, and it further signed Exhibit E, which, again, allows any other school district to likewise sign Exhibit E and share the same data with ParentSquare, Inc. under the same terms. Accordingly, the District signed Exhibit E on March 21, 2021, and now asks the Board to ratify this agreement.

Competitively Bid

No. Competitive bidding is not required 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.) In other words, 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.*)

As explained above, Oakland Unified has been successfully utilizing this software 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. In addition, the Aeries Communications system is natively integrated with the Aeries Student Information System which is not the case for other communications platforms.

The original agreement was approved by the Board of Education on July 14, 2004 as File ID 04-1141. 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. The contract renewal for 2018-19 was subsequently ratified by the Board of Education on August 22, 2018 as File ID 18-1742. Due to recent price increases, the renewal price for Aeries now exceeds the competitive bid threshold.

It would be cost-prohibitive, and would risk a gap in the management and reporting of student data, to discontinue use of this software in order to change to another vendor. The Oakland Unified School District receives Aeries at a highly discounted rate of \$2.86 per student per year. In contrast, the retail price for Aeries is \$7.50 per student per year, which is comparable to other leading student information systems. In addition, 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.

For this reason, going out to bid for the software and services 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. Competitive bidding is therefore excused under the reasoning of *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631 and related case law.

Fiscal Impact

Funding Resources:

0000/General Purpose (GP) Fund \$106,371.98: Data Processing, License Agreements, Districtwide
3220/Learning Loss Mitigation Funds (LLMF) \$9,000.00
3210/ Elementary and Secondary School Emergency Relief (ESSER) Fund \$46,250.00

Attachment(s)

- Agreement for Acquisition of License for Aeries Software (2020-21) and Pupil Records Rider
- ParentSquare, Inc. Student Data Privacy Agreement with Exhibit E
- Agreement for Acquisition of License for Aeries Software (Original Contract, File ID #19-1380)
- Renewal Notification RN-7454
- Quote No. Q-00500-2 for Aeries Communications Phase 1 Pilot
- Quote No. Q-00598-2 for Aeries Communications Phase 2 Pilot

AGREEMENT FOR ACQUISITION OF LICENSE FOR AERIES SOFTWARE BETWEEN AERIES SOFTWARE, INC. (d/b/a EAGLE SOFTWARE) AND OAKLAND UNIFIED SCHOOL DISTRICT

This Agreement is entered into by and between Oakland Unified School District (“OUSD”), and Aeries Software, Inc., d/b/a Eagle Software (“Eagle Software”), a California Corporation (collectively, the “Parties”).

RECITALS

1. WHEREAS, OUSD and Eagle Software entered into an agreement effective July 14, 2004 (OUSD Enactment No. 04-0186) (“2004 Agreement”), a true and correct copy of which is attached hereto as Exhibit A.
2. WHEREAS, the Agreement expired on June 30, 2020.
3. WHEREAS, OUSD and Eagle Software seek to enter this one-year agreement with the same terms as the 2004 Agreement, except as set forth below, for one (1) year (*i.e.*, from July 1, 2020, through June 30, 2021).
4. The foregoing recitals are agreed to by the Parties.

TERMS AND CONDITIONS

1. All terms of the 2004 Agreement are incorporated herein.
2. Term - The term of this Agreement shall be July 1, 2020, through June 30, 2021.
3. Amount - The Parties hereby agree that the total consideration payable and paid to Eagle Software by OUSD shall not exceed \$178,371.98, as set forth in the invoice and quotes attached hereto as Exhibit B, incorporated as if fully set forth herein, and summarized below:
 - a) the July 1, 2020 Invoice No. M&S-7454 for \$106,371.98 for the Aeries Student Information System (software to be provided from July 1, 2020 through July 31, 2021),
 - b) the September 21, 2020 Quote No. Q-00500-2 for \$9,000 for the ParentSquare Phase 1 Pilot (software to be provided from October 1, 2020 through November 30, 2020), and
 - c) the November 16, 2020 Quote No. Q-00598-2 for \$46,250 for the ParentSquare Phase 2 Pilot (software to be provided from February 1, 2021 through June 30, 2021).
4. Software/Services - Eagle Software shall provide the software described in the Software License/Support Subscription.

In addition, Eagle Software shall provide a fully integrated communications platform, known as 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, StudentSquare, 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 programs, customer support included).

5. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – OUSD and Eagle Software certify to the best of their knowledge and belief that OUSD’s, Eagle Software’s, and their respective principals: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or contractor according to Federal Acquisition Regulation Subpart 9.4, and by signing this Agreement, verify that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov>.
6. Integration – All understandings, agreements, covenants, and representations, express or implied, oral or written, between the Parties are contained and merged herein. No other agreements, covenants, or representations, express or implied, oral or written, have been made by or between the Parties concerning the subject of this Agreement. This is an integrated Agreement. It may not be altered, modified or otherwise changed in any respect except in a writing signed by OUSD and Eagle Software.

Dated: 3/23/21

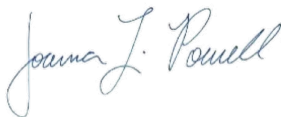
Aeries Software, Inc. d/b/a Eagle Software


By: 
Jonathan Cotton, Executive Director


Dated: _____

Oakland Unified School District

Approved as to form by
OUSD Staff Attorney
Joanna Powell on 3/19/21.



By: Shanthi Gonzales  4/29/2021
Board President

By:  4/29/2021
Kyla Johnson-Trammell, Superintendent
& Board Secretary

**OAKLAND UNIFIED SCHOOL DISTRICT
PUPIL RECORDS ADDENDUM FOR
DIGITAL RECORDS STORAGE AND/OR
DIGITAL EDUCATIONAL SOFTWARE AGREEMENTS**

Oakland Unified School District ("OUSD") and Aeries Software, Inc. d/b/a Eagle Software ("Contractor") have entered into an Agreement for Acquisition of License for Aeries Software between Aeries Software (d/b/a Eagle Software) and Oakland Unified School District Agreement ("Agreement") as of July 1, 2020. The Agreement includes (or may include) the digital storage, management and retrieval of pupil records and/or digital educational software through which Contractor accesses, stores and uses pupil records. This Pupil Records Addendum ("Addendum"), executed by OUSD and Contractor as of the date set forth below, is intended to supplement and amend the terms of the Agreement, as set forth below. This Addendum concerns pupil records, as that term is defined by Education Code section 49073.1 ("Pupil Records") and covered information, which means personally identifiable information or materials as defined by Business and Professions Code section 22584 ("Covered Information").

1. Pupil Records Property of OUSD. All Pupil Records are and will continue to be the property of and under the control of OUSD. The parties agree that as between them, all rights, including all intellectual property rights in and to Pupil Records shall remain the exclusive property of OUSD, and Contractor has a limited, nonexclusive license to such Pupil Records. The Agreement and Addendum do not give Contractor any rights, implied or otherwise, to Pupil Records, OUSD content, or intellectual property, except as expressly stated in the Agreement and this Addendum.

2. Pupil-Generated Content. Notwithstanding the provisions of section 1, pupils shall retain ownership and control of pupil-generated content, if any (as that term is defined by Education Code section 49073.1(d)(4)). Contractor shall make all pupil-generated content, if any, available to the pupil who created it and provide a process by which a pupil can transfer his or her pupil generated content to a personal account. Within thirty (30) days of the execution of this Addendum, Contractor shall provide OUSD with a written description of the process it will provide to pupils in compliance with this section 2.

3. Use of Information in Pupil Records. Contractor may not and will not use any Pupil Record or information in a Pupil Record for any purpose other than those required or specifically permitted by the Agreement and this Addendum.

4. Personally Identifiable Information. Contractor shall provide a process by which a pupil's parent, legal guardian, or the eligible pupil can review the personally identifiable information in an account created for the pupil's academic-related records and correct erroneous information. Within thirty (30) days of the execution of this Addendum, Contractor shall provide OUSD with a written description of the process it will provide to pupils and their parents/legal guardians in compliance with this section 4.

5. Security and Confidentiality of Pupil Records. Contractor will access, store and use Pupil Records in accordance with commercial best practices, including appropriate administrative,

physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure Contractor's own data of a similar type. Without limiting the foregoing, Contractor warrants that all Pupil Records will be encrypted in transmission via web interface using SSL (Secure Socket Layer) or for file transfers, a Secure FTP site.

In addition, Contractor will use industry-standards and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing services under the Agreement and/or this Addendum.

Contractor will designate employees or agents it holds and will hold primarily responsible for meeting the Contractor's duties to securely maintain and protect Pupil Records. Contractor will ensure that the designated persons have or will receive all training and information necessary to meet the Contractor's duties to securely protect and maintain Pupil Records. The designation of employees or agents required under this section does not relieve the Contractor of any of its duties under the law or the Agreement and/or this Addendum, nor relieve the Contractor of any liability for any breach thereof.

6. Unauthorized Disclosure. Immediately upon becoming aware of an unauthorized disclosure of Pupil Records, or of circumstances that could have resulted in unauthorized access to or disclosure or use of Pupil Records, Contractor will notify OUSD, fully investigate the incident, and cooperate fully with OUSD's investigation of and response to the incident. Except as otherwise required by law, Contractor will not provide notice of the incident directly to parents, legal guardians, or pupils whose personally identifiable information was involved, to regulatory agencies, or to other entities, without prior written permission from OUSD.

7. Retention of Pupil Records. The Contractor hereby certifies that Pupil Records shall not be retained or available to the Contractor, including any subcontractors, partners, or associated entities of the Contractor, upon completion of the terms of the Contractor and this Addendum. Notwithstanding the foregoing, Contractor may maintain pupil-generated content (as that term is defined by Education Code section 490730.1 (d)(4)), if any, upon completion of the term of the Agreement and this Addendum if, and only if, the parent, legal guardian, or eligible pupil chooses to establish or maintain an account with the Contractor for the purpose of storing the pupil-generated content and the Contractor receives the written permission of a pupil's parent or legal guardian to establish or maintain the pupil's account.

In furtherance of the foregoing, upon termination or expiration of the Agreement and this Addendum, Contractor will ensure that all Pupil Records are securely returned or destroyed as directed by OUSD. Transfer to OUSD or a third party designated by OUSD shall occur within a reasonable period of time, and without significant interruption in service. Contractor shall ensure that such transfer/migration uses facilities and methods that are compatible with the relevant systems of OUSD or its transferee, and to the extent technologically feasible, that OUSD will have reasonable access to Pupil Records during the transition. In the event that OUSD requests destruction of any Pupil Records, Contractor agrees to securely destroy all Pupil Records in its possession and in the possession of any subcontractors or agents to which the

Contractor might have transferred Pupil Records. The Contractor agrees to provide documentation of data destruction to OUSD.

8. Federal Educational Rights and Privacy Act. Contractor agrees to assist OUSD in maintaining the privacy of Pupil Records as may be required by State and Federal law, including but not limited to the Protection of Pupil Rights Amendment (PPRA), the Children's Online Privacy Protection Act (COPPA), the Family Educational Rights and Privacy Act (FERPA), and the Student Online Personal Information Protection Act (SOPIA).

Contractor will provide access to Pupil Records, including deidentified information, only to its employees and subcontractors who need to access the data to fulfill Contractor obligations under the Agreement and/or this Addendum. Contractor will ensure that employees and subcontractors who perform work under the Agreement and/or this Addendum have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of this Addendum. Contractor will use the education records only for the purpose of fulfilling its duties under the Agreement and/or this Addendum for OUSD's and its pupil's benefit, and will not share such data with or disclose it to any third party except as provided for in this Addendum, required by law, or authorized in writing by OUSD.

9. No Targeted Advertising. Contractor will not use Pupil Records for advertising or marketing purposes unless such use is specifically authorized by this Agreement or otherwise authorized in writing by OUSD. Contractor will not use Pupil Records to engage in targeted advertising. Contractor is prohibited from mining Pupil Records for any purposes other than those agreed to by the parties.

10. Covered Information. To the extent Contractor is an operator of an Internet Web site, online service, online application, or mobile application, with actual knowledge that the site, service, or application is used primarily for K-12 school purposes and was designed and marketed for K-12 school purposes, Contractor agrees to comply with all of the requirements of Business and Professions Code section 22584. Contractor agrees not to engage in targeted advertising as described in section 22584. Contractor agrees not to use information, including persistent unique identifiers, created or gathered by the Contractor's site, service, or application, to amass a profile about a student except in furtherance of OUSD's purposes. Contractor further agrees to that it will not sell, disclose, or otherwise use Covered Information without the prior written consent of OUSD. Contractor will implement and maintain reasonable security procedures to protect Covered Information and fulfill all other requirements of Business and Professions Code section 22584.

11. Compliance with Law. In the event of a conflict between this Addendum and the Agreement, the terms of this Addendum shall govern. This Addendum is intended to comply with Education Code section 49073.1 and Business and Professions Code section 22584. In addition to any other penalties, if the Agreement and this Addendum, taken together, fail to comply with Education Code section 49073.1 and Business and Professions Code section 22584, the Agreement shall be rendered void if, upon notice and a reasonable opportunity to cure, the noncompliant party fails to come into compliance and cure any defect. Written notice of noncompliance may be provided by any party to the Agreement. All parties subject to an

Agreement voided in accordance with this paragraph and Education Code section 49073.1 or Business and Professions Code section 22584 shall return all Pupil Records and Covered Information in their possession to OUSD. The term of this Addendum is coextensive with the term of the Agreement.

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Addendum, in duplicate, as of the day and year first above written.

Oakland Unified School District


By: _____  _____

Name: Dr. Kyla Johnson-Trammell

Title: Superintendent

Date: March 23, 2021

Aeries Software, Inc., d/b/a Eagle Software

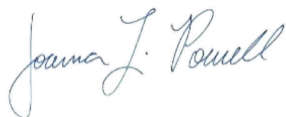
By: _____  _____

Name: Jonathan A. Cotton

Title: Executive Director of Operations

Date: 03/23/21

Approved as to form by OUSD Staff Attorney
Joanna Powell on 3/19/21.



AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE

1. Introduction.

This is an Agreement between Aeries Software, Inc. d.b.a. EAGLE SOFTWARE located at 505 N. Tustin Avenue, Suite 150, Santa Ana, California, 92705 (hereinafter "EAGLE SOFTWARE") and its customer Oakland Unified School DISTRICT, a public agency, ("hereinafter "DISTRICT"), under which software is licensed on a non-exclusive basis for the customer's use under the terms and conditions stated below. The effective date for purposes of the interpretation of the Agreement shall be July 14, 2004.

2. Definitions.

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

- "Acceptance" shall mean the date on which EAGLE SOFTWARE informs the DISTRICT and the DISTRICT confirms that the Licensed Software has been installed in accordance with the *Implementation Plan (Exhibit "B")*.
- "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 EAGLE 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 EAGLE SOFTWARE under this Agreement, including Aeries™ (formerly known as EASY95, EASY96, EASY97, EASY98 and EASY99), 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 EAGLE SOFTWARE, and any and all programs or Modules provided by EAGLE SOFTWARE in the future under this Agreement pursuant to the mutual written agreement of the parties.
- "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.
- "Implementation Plan" shall mean the documentation of tasks and events including the assignment of responsibilities leading to general productive use of the Licensed Software by the DISTRICT, attached hereto as *Implementation Plan (Exhibit "B")*.

3. Grant of Nonexclusive Software License.

EAGLE SOFTWARE hereby grants to DISTRICT a perpetual, non-exclusive license to use the Licensed Software and Documentation for its and its Users' business activities subject to the provisions of the *Nonexclusive Software License (Exhibit "C")*.

At no additional charge to DISTRICT, EAGLE SOFTWARE shall provide DISTRICT access to all Documentation on EAGLE 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 EAGLE 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.

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 Eagle Software; provided that DISTRICT may make one copy of the Software for backup or archival purposes. 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. During the first year following the Reference Date of this Agreement and any period during which the DISTRICT purchases and properly pays for maintenance and support of the Licensed Software from EAGLE SOFTWARE, DISTRICT shall have the right to acquire from EAGLE SOFTWARE any subsequent Release or Version of the Licensed Software produced by EAGLE SOFTWARE as an update to the Licensed Software at no charge to DISTRICT.

5. Licensed Software Installation, Implementation Plan, and First Productive Use.

EAGLE SOFTWARE agrees to install the Licensed Software in accordance with the time schedule as set forth in the *Implementation Plan (Exhibit "B")* or upon such reasonable time schedule as agreed to by and between the parties. The Licensed Software may be delivered to DISTRICT by electronic transmission. EAGLE SOFTWARE'S responsibilities for the delivery, installation, and First Productive Use, as applicable, as to each Module and as to the System, and the training of DISTRICT Users in the use of each Module and the System, shall be limited to the terms and conditions set forth herein and in the *Implementation Plan (Exhibit "B")*. Failure of EAGLE SOFTWARE to satisfy its responsibilities as set forth in the Implementation Plan as to any Module or as to the System, unless modified, shall be a material breach by EAGLE SOFTWARE of this Agreement, entitling DISTRICT, in addition to and cumulative of all remedies available to it at law, in equity or under this Agreement, to immediately commence withholding payments to EAGLE SOFTWARE under this Agreement until EAGLE SOFTWARE cures the Implementation Plan time schedule default. The amount of any payment(s) withheld by DISTRICT shall be in an amount that is in proportion to magnitude of the default.

6. System Configuration.

EAGLE SOFTWARE shall provide documentation of EAGLE 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 insuring 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 EAGLE SOFTWARE to pay for any necessary hardware or third party software upgrades or third party services that*

DISTRICT may employ to enhance its system.

The parties expressly acknowledge that EAGLE SOFTWARE is not providing any equipment or software other than the Licensed Software under this Agreement. Further, DISTRICT expressly represents and EAGLE 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 personal computers using Windows 3.1 or later operating system on a Windows-compatible network, using Windows-compatible protocols. The DISTRICT is responsible for insuring 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

7. Software Training.

EAGLE SOFTWARE shall provide training to the DISTRICT and its Users in accordance with the time schedule and assignment of responsibilities as agreed during the implementation planning and the pricing/number of days of training needed as outlined by the *Sales Proposal (Exhibit "A")*.

8. Payment of Software Licensing Fee and Related Fees.

In consideration of the license granted under this Agreement, DISTRICT shall pay EAGLE SOFTWARE the sum of \$578,000.00 plus any applicable sales tax for the license of the 'Aeries™' software in accordance with the *Sales Proposal (Exhibit "A")*. The license fee of \$578,000.00 covers the Oakland Unified School DISTRICT with a total base enrollment of 50,000 students in grades K-12 in accordance with the *Sales Proposal (Exhibit "A")* and *List of Schools (Exhibit "D")*. Additional Software License fees will not be required unless the DISTRICT enrollment as reported via the annual California Basic Educational Data System (CBEDS) exceeds 50,500 students in grades K-12. A base K-12 student enrollment of 50,000 students shall be the basis for calculating additional Software License fees. Additional Software License fees shall be due and payable to EAGLE SOFTWARE in the amount of \$6,140.00 per enrollment increase increment of 500 K-12 students above the base K-12 enrollment of 50,000 students based upon the DISTRICT'S enrollment as reported each year via the annual CBEDS report. Payment shall be made in accordance with the *Payment Schedule (Exhibit "H")*.

Data Conversion. In addition to the payment of the license fee, DISTRICT shall pay EAGLE SOFTWARE the sum of \$40,000.00 for conversion of DISTRICT'S existing data for the 2004-2005 school year to a format that is recognizable to and may be used by the Licensed Software in accordance with the *Sales Proposal (Exhibit "A")*. One day of training for the DISTRICT'S Technical Staff is included to enable the District Staff to convert an unlimited number of previous year's data independent of Eagle Software. In addition to the payment of the license fee, DISTRICT shall pay EAGLE SOFTWARE the sum of \$15,000.00 for conversion of DISTRICT'S existing data for the three (3)

school years prior to the 2004-2005 school year to include the 2003-2004 school year, the 2002-2003 school year, and the 2001-2002 school year to a format that is recognizable to and may be used by the Licensed Software in accordance with the *Sales Proposal (Exhibit "A")*. The EAGLE SOFTWARE data conversion services require that the DISTRICT provide EAGLE SOFTWARE with uniformly formatted ASCII (fixed length) text file extracts from the existing SASI-III AS400 student information system data using identical formats for each school year/file extract. Payment shall be made in accordance with the *Payment Schedule (Exhibit "H")*.

Maintenance and Support. In addition to the payment of the license fee, DISTRICT shall pay EAGLE SOFTWARE the sum of \$66,000.00 for maintenance and support using the discounted district coordinator (DISTRICT Project Administrator) support terms as described in the *Sales Proposal (Exhibit "A")* for the period beginning with the Reference Date continuing through ~~June 30, 2005~~ ^{11/03/04}. DISTRICT shall pay ~~0946~~ ⁰⁹⁴⁶ EAGLE SOFTWARE a fee for maintenance and support for any subsequent year's maintenance and support at the then current rate for maintenance and support. *0946 11/03/04*

The annual maintenance and support fee covers the Oakland Unified School DISTRICT with a total base enrollment of 50,000 students in grades K-12 in accordance with the *Sales Proposal (Exhibit "A")* and *List of Schools (Exhibit "D")*. The sum of \$66,000.00 for the school year 2004-2005 shall be considered a base fee for the DISTRICT'S maintenance and support costs when calculating subsequent year's maintenance and support costs. The annual maintenance and support fees which is charged to the DISTRICT may be increased by EAGLE SOFTWARE in subsequent year's based upon a calculation applying the same percentage increase as may be applied to other EAGLE SOFTWARE clients and the then current DISTRICT base maintenance and support cost plus any incremental maintenance and support cost increase which is based upon an increase in the DISTRICT'S K-12 student enrollment.

The DISTRICT'S base fee for annual maintenance and support will be increased when DISTRICT enrollment as reported via the annual California Basic Educational Data System (CBEDS) exceeds 50, 500 students in grades K-12 or when a general percentage based increase is charged to other EAGLE SOFTWARE clients. The base K-12 student enrollment of 50,000 students shall be the basis for considering an incremental increase in the DISTRICT'S base fee for maintenance and support due to increased enrollment. An increase in the base maintenance and support fees shall be due and payable to EAGLE SOFTWARE in the amount of \$655.00 per enrollment increase increment of 500 K-12 students above the base K-12 enrollment of 50,000 students based upon the annual CBEDS report. When a general percentage based increase is charged to other EAGLE SOFTWARE clients the percentage will be applied to both the DISTRICT'S base fee for annual maintenance and support and the incremental cost increase based upon an increase in the DISTRICT'S K-12 student enrollment.

Training Fees. In addition to the payment of the license fee, DISTRICT shall pay EAGLE SOFTWARE a fee as described in the *Sales Proposal (Exhibit "A")* for training of DISTRICT staff. DISTRICT may negotiate and pay for a schedule for

additional days of training based upon EAGLE SOFTWARE'S fee for training services at the time of the request and the availability of EAGLE SOFTWARE'S Staff. Payment shall be made in accordance with the *Payment Schedule (Exhibit "H")*.

Installation. In addition to the payment of the license fee, DISTRICT shall pay EAGLE SOFTWARE the sum of \$1,000.00 per day plus expenses per Eagle Software representative that may be required to provide services on an if and as needed basis for installation of the Licensed Software on DISTRICT'S computer system.

Custom Programming. In addition to the payment of the license fee, DISTRICT shall pay EAGLE SOFTWARE a fee to be negotiated for custom programming services on an if and as needed basis for any DISTRICT custom programming needs in accordance with the *Implementation Plan (Exhibit "B")*.

Implementation/Project Management. In addition to the payment of the license fee, DISTRICT shall pay EAGLE SOFTWARE the sum of \$100.00 per hour plus expenses per EAGLE SOFTWARE representative that may be required to provide implementation/project management services on an if and as needed basis in accordance with the *Sales Proposal (Exhibit "A")*.

Other Services. In addition to the payment of the license fee, DISTRICT may negotiate a schedule for additional services beyond those described in the *Sales Proposal (Exhibit "A")* based upon EAGLE SOFTWARE'S fee for any requested services at the time of the request and the availability of EAGLE SOFTWARE'S Staff.

9. Agreement to Provide Specific Enhancements to the Licensed Software. EAGLE SOFTWARE shall provide the following specific enhancements to the Licensed Software at no additional cost to the DISTRICT:

- A. The ability for the DISTRICT to define fields required for data entry when entering a new student record shall be included as a feature of the Licensed Software by January 31, 2005.
- B. The ability for the DISTRICT to define codes which are valid/acceptable for specific fields when entering a new student record or changing an existing student record shall be included as a feature of the Licensed Software by January 31, 2005.
- C. A web-based Individual Education Plan (IEP) tracking system shall be included as a feature of the Licensed Software by July 1, 2005.
- D. Eagle Software agrees to provide the DISTRICT with a web-based version of the Licensed Software at no additional cost to the DISTRICT according to the following schedule and list of exclusions:
 - 1.) Phase 1 – Web-based functions as documented in Exhibit "E" will be available by September 1, 2005.
 - 2.) Phase 2 – Other web-based functions as documented in Exhibit "F" will be available by September 1, 2006.
 - 3.) Aeries functions such as those listed in Exhibit "G" will be excluded from

the contractual obligations of Phase 1 and 2 development of a web-based version of the Licensed Software.

- E. A user configurable student filter that can optionally be remembered for each user by July 1, 2005.
- F. A School Interoperability Framework (SIF) interface by March 31, 2005.
- G. Add additional security to the Teacher Data form to prevent the changing of the Staff ID field by users who do not have read permissions to the Staff Data table by July 1, 2005.
- H. A security restriction mechanism for the district to identify which specific users may use the Aerles QUERY Change functionality by July 1, 2005.

10. Maintenance and Support.

EAGLE 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, EAGLE SOFTWARE shall provide support as follows:

(a) All requests for support shall be first directed to the DISTRICT'S Project Administrator if the *Sales Proposal (Exhibit "A")* documents the expectation that the DISTRICT will take responsibility for local support that is to be provided by the DISTRICT'S Project Administrator. The DISTRICT'S Project Administrator (if any) shall first make reasonable efforts to resolve the support issue before contacting EAGLE SOFTWARE.

(b) If the DISTRICT'S Project Administrator cannot resolve the support issue, the DISTRICT'S Project Administrator will contact EAGLE SOFTWARE. The DISTRICT'S Project Administrator shall transmit all information relevant to the support issue to EAGLE SOFTWARE, including the relevant hardware and operating system information and the circumstances under which the support issue arose. If the DISTRICT does not have a Project Administrator as documented by the absence of a support discount on the *Sales Proposal (Exhibit "A")* and the DISTRICT has purchased support services from EAGLE SOFTWARE as documented on the *Sales Proposal (Exhibit "A")* then a designated, technically competent DISTRICT Representative for each site may contact EAGLE SOFTWARE for support.

(c) All requests for support shall be made during normal business hours (8:00 a.m. to 4:30 p.m. Pacific Standard Time, Monday through Friday, other than legal holidays and days designated by EAGLE SOFTWARE as non-work days. A complete list of legal holidays and days designated by EAGLE SOFTWARE as non-work days is posted on EAGLE SOFTWARE'S Web site. No further notice will be provided.).

(d) During the term of this Agreement, EAGLE SOFTWARE shall make

available to DISTRICT via the EAGLE SOFTWARE Web site Corrections, Updates, Enhancements, Improvements, and Releases to the Licensed Software, as they are made generally available to other EAGLE SOFTWARE clients.

(e) 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.

(f) *Notwithstanding the provisions of this Section, EAGLE SOFTWARE may terminate support with regard to the Licensed Software upon ninety (90) days written notice if (i) DISTRICT fails to remain within at least thirty (30) calendar days of EAGLE SOFTWARE'S most then-current production release of the Licensed Software and the failure to remain within thirty (30) calendar days of EAGLE 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.*

(g) *Notwithstanding the provisions of this Section, EAGLE 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 EAGLE SOFTWARE, (ii) act in reasonable accordance with EAGLE SOFTWARE'S requests and requirements, (iii) respond in a reasonable time and manner to EAGLE SOFTWARE'S written notice or inquiry, or (iv) otherwise act in good faith in furtherance of the material terms and conditions of this Agreement.*

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

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.

EAGLE SOFTWARE'S Proprietary or Confidential Information shall remain the sole and exclusive property of EAGLE 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 EAGLE 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 EAGLE 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.

EAGLE 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.

All of the DISTRICT data, records, and information processed by or input onto the System to which EAGLE SOFTWARE has access, or otherwise provided to EAGLE 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 EAGLE 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 EAGLE SOFTWARE or commercially exploited or otherwise used by or on behalf of EAGLE SOFTWARE, its officers, directors, employees, or agents.

EAGLE 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.

12. EAGLE SOFTWARE'S Representations, Warranties and Covenants

Warranty of Title. EAGLE SOFTWARE hereby represents and warrants to DISTRICT that EAGLE 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, EAGLE SOFTWARE represents, warrants and agrees that the Licensed Software shall perform in all material respects according to EAGLE SOFTWARE'S specifications concerning the Licensed Software when used with the appropriate computer equipment.

Warranty of Response Time. EAGLE SOFTWARE represents and warrants that the response time for the Licensed Software shall be normal for commercial software. As with any PC-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 and the speed of the PC and quantity and type of software operating on any given server.

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 EAGLE SOFTWARE to either: (i) procure, at EAGLE 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 EAGLE SOFTWARE. In the event of any breach or alleged breach of these warranties, DISTRICT shall promptly notify EAGLE SOFTWARE thereof and provide EAGLE SOFTWARE a reasonable opportunity to repair or replace the Licensed Software, at EAGLE 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 EAGLE SOFTWARE.

Warranty Disclaimer. EAGLE SOFTWARE DISCLAIMS AND DISTRICT SPECIFICALLY ACKNOWLEDGES THAT EAGLE 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. EAGLE SOFTWARE WILL NOT BE LIABLE FOR LOST PROFITS, LOST OPPORTUNITIES, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES UNDER ANY CIRCUMSTANCES.

In no event shall any demonstration or any promotional materials pursuant to this Section constitute an endorsement, representation or warranty, express or implied, by DISTRICT, with respect to the Licensed Software. In the event of a dispute between DISTRICT and EAGLE SOFTWARE, DISTRICT'S agreement to participate in promotions and demonstrations under this Section and all statements made by DISTRICT in connection with such activities shall not be deemed an admission or declaration against interest of DISTRICT in any trial or dispute resolution proceeding between the parties.

13. Overall Limitation of Liability and Damages

IN NO CASE SHALL EAGLE 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 EAGLE SOFTWARE UNDER THIS AGREEMENT.

14. 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 EAGLE SOFTWARE of any type, EAGLE SOFTWARE shall be paid at its then current rates for such services.

15. Assignment.

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

EAGLE 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 EAGLE 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) EAGLE 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.

16. 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 EAGLE 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. EAGLE 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. EAGLE 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 EAGLE SOFTWARE'S expense as described herein, EAGLE 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 EAGLE 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)"). EAGLE 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 Oswaldo A. Galarza,
Information Technology Officer
1025 Second Ave.
Oakland, California 94606.

TO: EAGLE SOFTWARE @

Aeries Software, Inc.
505 N. Tustin Avenue, Suite 150
Santa Ana, California 92705
Fax: (714) 571-3966

and to

David Christopher Baker
Hart, King and Coldren, A Law Corporation
200 East Sandpointe, Suite 400
P.O. Box 2507
Santa Ana, California 92707
Fax: (714) 546-7457

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 EAGLE 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 EAGLE 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. EAGLE 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.

Promotions. The parties agree that EAGLE 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: 10/26/04, 2004

DISTRICT

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE

By: [Signature]
Barry A. Combs, Attorney at Law
General Counsel

By: [Signature]

Title: _____

Randolph E. Ward, Ed.D.
State Administrator

Oakland Unified School District

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

DATE: 11-3, 2004

EAGLE SOFTWARE

By: [Signature]

Aeries Software, Inc.
d.b.a. EAGLE SOFTWARE

Legislative File

File ID No. 04-1141

Introduction Date 7/14/04

Enactment No. 04-0211

Enactment Date 7/14/04

By [Signature]

AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE

EXHIBIT A - Sales Proposal

AERIES Software Pricing Proposal Ref# 01142004-Oakland USD-1

The following is a price proposal summary for the Oakland Unified School District's AERIES Administrative Student Information Software purchase.

EAGLE SOFTWARE, 505 N. Tustin Avenue, Suite 150, Santa Ana, California, 92705 proposes the sale of a Software License and implementation plan, including a software license and services, installation services (if any), data conversion services (if any) and training with respect to EAGLE SOFTWARE's Aeries™ student administrative software package to Oakland Unified School DISTRICT (hereinafter "DISTRICT") based upon the following price schedule:

QTY	DESCRIPTION	UNIT PRICE	AMOUNT
SOFTWARE			
62	AERIES Student Software System Elementary School version (Please refer to attached school listing)	\$ 5,000.00	\$ 310,000.00
14	AERIES Student Software System Middle School version (Please refer to attached school listing)	\$ 7,000.00	\$ 98,000.00
6	AERIES Student Software System High School version (Please refer to attached school listing)	\$ 10,000.00	\$ 60,000.00
20	AERIES Student Software System Continuation High/Atypical Schools version (Please refer to attached school listing)	\$ 3,000.00	\$ 60,000.00
1	AERIES Student Software System District Office version	\$ 50,000.00	\$ 50,000.00
MAINTENANCE & DISTRICT COORDINATOR SUPPORT			
62	First year software support of AERIES Elementary School version (50% District Coordinator Support discount applied)	\$ 500.00	\$ 31,000.00
14	First year software support of AERIES Middle School version (50% District Coordinator Support discount applied)	\$ 1,000.00	\$ 14,000.00
6	First year software support of AERIES High School version (50% District Coordinator Support discount applied)	\$ 1,000.00	\$ 6,000.00

20	First year software support of AERIES Continuation High/Atypical version (50% District Coordinator Support discount applied)	\$ 500.00	\$ 10,000.00
1	First year software support of AERIES District Office version (50% District Coordinator Support discount applied)	\$ 5,000.00	\$ 5,000.00
DATA CONVERSION			
	Data file conversion from uniform ASCII (fixed length) text file extracts of the existing SASI-III AS400 student information system for the current school year only plus one day of training on the use/modification of the conversion tool for the District Technical Staff. The training as proposed is to enable the District Staff to convert an unlimited number of previous year's data independently of Eagle Software.		\$ 40,000.00
	Data conversion for 3 prior years.		\$ 15,000.00
TRAINING (As specified in Eagle Software's response to Oakland Bid No. 03-04/03, the District may use training Option 1, training Option 2 or a combination of both training options which could reduce the cost of training.)			
75	<u>Option 1:</u> Training of AERIES users. (Full days) Training of AERIES users. (Full days) Training to be provided by an Eagle Software representative, including Technical Leaders and District Office staff..	\$ 1,000.00	\$ 75,000.00
15	<u>Option 2:</u> Eagle Software also offers, Train the Trainer, Training Option 2. The Train the Trainer, Training Option 2, may be used in lieu of or in combination with Training Option 1. Option 2 would require fifteen (15) days of training (at \$1,000.00 per day) which could reduce the proposed training costs.	1,000.00/day	\$ 15,000.00
EXPENSES			
90	Travel expenses (estimated): Actual travel expenses (lodging, meals, car rental, airfare, etc.) will be invoiced as incurred. Approximate \$200.00 per day plus airfare.		\$ 18,000.00
PROJECT MANAGEMENT			
10	Project manager and management (Please see clarification below)	\$ 100.00/Hr.	\$ 1,000.00

COST SUBTOTAL

Software subtotal	\$ 578,000.00
(Software sales tax 8.25%)	\$ (47,685.00)
Data file conversion from uniform ASCII (fixed length) text file extracts of the existing SASI-III AS400 student information system for the current school year only	\$ 40,000.00
Data Conversion 3 prior years	\$ 15,000.00
Software support for year one	\$ 66,000.00
Training at district site (Option 1)	\$ 75,000.00
Training at district site (Option 2)	\$ 15,000.00
Training expenses (estimated)	\$ 18,000.00
Project management	\$ 1,000.00
(Total with sales taxes paid)	\$ 855,685.00
TOTAL (without sales tax)	\$ 808,000.00

EAGLE SOFTWARE hereby expressly represents to DISTRICT that this instant Sales Proposal is merely a proposal and is not binding upon either party unless and until both EAGLE SOFTWARE and DISTRICT have agreed in writing to the terms and conditions set forth in the separate AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE.

The instant Sales Proposal shall expire at 5:00 p.m. (P.S.T.) on July 15, 2004 without further notice from EAGLE SOFTWARE unless EAGLE SOFTWARE has agreed in writing to extend the expiration thereof or EAGLE SOFTWARE and DISTRICT have agreed in writing to the specific terms and conditions of an AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE.

We have a policy of waiving California Sales Tax if our product and documentation are downloaded from our web site. California sales tax rules allow for this exemption. **California Reg. § 1502 (f) 1) (D).** If you would like to use this option, it will reduce your quote by **\$47,685.00.**

Support Option: A discount of 50% of the cost of software support has been applied. It requires that the District use a district coordinator to contact Eagle Software for software support.

Training of Aeries users is available for \$1,000 per day plus expenses. (Full days at a lab within the District.) The number of training days and expenses proposed in this quote is an estimate. Training on Elementary Standards Based Grade Reporting and the Aeries Browser Interface may add to the number of training days required. Training and expenses will be invoiced based upon the actual number of training days and actual expenses that apply. Training may be provided at the Eagle Software training lab located in Santa Ana CA without

additional cost subject to its availability. Eagle Software proposes to negotiate the training options and/or combinations of training options with OUSD to meet the needs of the District.

Installation of Aeries: The cost of installation is omitted in the total cost proposed. Eagle Software's Aeries SIS software is traditionally installed by the District's staff (215 California School Districts to date). Factors such as number of computers per site, the District's continued desire to use Eagle Software's assistance after experiencing the ease of installation plus variables Eagle Software might encounter beyond our control, make it necessary to quote a daily rate for installation services (\$1,000.00 per day) plus travel expenses.

QTY	DESCRIPTION	UNIT PRICE	AMOUNT
To be determined based upon District needs.	Installation Services	1,000.00 per day per Eagle Software Representative required plus travel expenses.	To be determined based upon District needs.

Data Conversion: Any data conversion other than that identified in this proposal will be quoted for an additional fee. Data conversion services are performed in the Santa Ana office of Eagle Software and the data files are transmitted electronically between your district and Eagle Software. The data conversion cost proposed (Ref # 01142004-Oakland USD-1) is for the data file conversion from uniform ASCII (fixed length) text file extracts of the existing SASI-III AS400 student information system for the current school year only. As an additional data conversion option, Aeries will convert standard SASI-III PC based data files within the software.

Eagle Software feels that data synchronization is an unnecessary process which is outside the scope needed for successful data conversion into Aeries SIS. If OUSD determines that data synchronization is required, Eagle Software would need to identify the extent of the procedure before submitting a quote.

Please refer to the detailed explanation of data conversion and data synchronization in the "Implementation Plan".

Implementation/Project Management: The project management costs as follows:

QTY	DESCRIPTION	UNIT PRICE	AMOUNT
10 (ten) hours	Project Management	\$100.00 per hour per Eagle Software Representative required plus travel expenses (if required).	\$1,000.00

If the implementation assistance project management requirements exceeds 10 (ten) hours, the District will be billed the hourly rate.

AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE

EXHIBIT B - Implementation Plan

Aeries Software, Inc. d.b.a. EAGLE SOFTWARE, 505 N. Tustin Avenue, Suite 150, Santa Ana, California, 92705 (hereinafter "EAGLE SOFTWARE") proposes the following Implementation Plan for the Oakland Unified School DISTRICT'S (hereinafter "DISTRICT") purchase of the software license and services, installation, data conversion (if any) and training with respect to EAGLE SOFTWARE's Aeries™ student administrative software package. This plan covers the scheduling and coordination of the tasks that are required to enable Oakland Unified School DISTRICT as referenced in the *Sales Proposal (Exhibit "A")* and *List of Schools (Exhibit "D")* to make productive use of the Aeries™ software.

EAGLE SOFTWARE proposes to act in the role of "Product Reseller / Provider" of its product known as Aeries™ for DISTRICT. EAGLE SOFTWARE shall act as an independent contractor and not an officer, agent or employee of DISTRICT.

EAGLE SOFTWARE proposes to develop an implementation schedule based upon discussions and in cooperation with DISTRICT'S designated Liaison/Project Administrator. This schedule will define the dates when installation, training, data conversion and first productive use are planned with regard to the Aeries™ software. DISTRICT will be responsible for scheduling and coordinating any related activities such as preliminary staff training in the use of a mouse/Windows and hardware/software acquisition/upgrades.

EAGLE SOFTWARE proposes to assist DISTRICT with the evaluation of DISTRICT'S various servers, workstations, networks and associated client skill level to determine the customer's readiness to use the EAGLE SOFTWARE. EAGLE SOFTWARE may make recommendations that could require DISTRICT'S attention before installation can begin. Minimum hardware and staff skill requirements will be discussed during the initial implementation-planning meeting. These discussions are proposed with DISTRICT'S satisfaction as the goal. The parties expressly recognize, acknowledge and agree that EAGLE SOFTWARE is not and will not be responsible for the setup and/or configuration of new equipment, hardware upgrades, network issues or ancillary software.

EAGLE SOFTWARE proposes that delivery of the Aeries™ Software and documentation is intended to facilitate installation and training. The software and documentation may be delivered at the initial implementation-planning meeting. DISTRICT may electronically download the Aeries™ software and its related product documentation once the DISTRICT has formally approved the Software License Agreement and has agreed to the purchase of services as outlined in the Sales Proposal attached thereto.

EAGLE SOFTWARE proposes that installation include the addition of the Aeries™ software product on each individual workstation and the file server. Desktop icons will

be added to each workstation. EAGLE SOFTWARE can do file server configuration provided EAGLE SOFTWARE'S employees are granted the necessary file server administration rights and permissions.

EAGLE SOFTWARE represents that certain features included in the Aeries™ software are designed to handle data file conversion. Any data file conversion which involves the EAGLE SOFTWARE programming staff as outlined in the Sales Proposal may require up to thirty workdays for completion after the data is available to the EAGLE SOFTWARE staff. Coordination of the data file conversion schedule with the DISTRICT'S staff will be necessary to insure that downtime and added workloads are minimized without loss of data. Data file conversion services, which are not handled by the features of the Aeries™ software "on site" at each school or the DISTRICT Office, will be performed at the EAGLE SOFTWARE offices in Santa Ana, California.

DISTRICT must be prepared to discuss, document and make decisions regarding their unique data files/fields/codes in order to facilitate the data conversion process in a timely manner. Once DISTRICT'S data conversion process has been defined in mutually agreeable terms and the actual conversion process has begun, no changes can be accommodated without additional cost to the DISTRICT.

EAGLE SOFTWARE proposes that it will provide training for the software end users according to EAGLE SOFTWARE'S established training practices based upon the number of days of training purchased as outlined in the sale proposal. EAGLE SOFTWARE will work with the DISTRICT to define the DISTRICT'S training requirements including the number of people to be trained, how the DISTRICT staff will be grouped for training, the levels/types of training needed, the preferred location and a proposed schedule.

EAGLE SOFTWARE proposes that it will provide product support if it is included as part of the Sales Proposal and purchased by the DISTRICT. This product support consists of toll-free telephone support during normal business hours (normal business hours are deemed to be 8:00 A.M. to 4:30 P.M. Pacific Time), and a 24-hour update service for Aeries™ via the EAGLE SOFTWARE Web site. Product support is available now and would begin as of the Reference Date of this agreement.

EAGLE SOFTWARE proposes that any additional services that may be required based upon the DISTRICT'S needs which are not covered by the Sales Proposal (Exhibit "A") and are not specifically noted above will be billed at EAGLE SOFTWARE 's then current hourly rate for such services. Written authorization will be required before these additional services can be delivered. Travel expenses will be added for service, which require driving more than thirty (30) miles from the EAGLE SOFTWARE staff's point of departure.

EAGLE SOFTWARE proposes that EAGLE SOFTWARE 's employees and/or the DISTRICT'S employees shall perform the services specified in this implementation plan as outlined below:

1. DISTRICT responsibilities shall include:

- A. Identification of a qualified customer Liaison/Project Administrator (and backup) who is technically competent and able to make decisions that will impact the implementation process.
- B. Commitment to an implementation schedule and coordination of both activities and staff time based upon the DISTRICT'S targeted date to be operational with live data.
- C. Planning and coordination activities which are independent of EAGLE SOFTWARE 'S involvement or responsibility such as preliminary staff training in the use of a mouse/Windows and hardware/software acquisition/upgrades.
- D. Verification that the DISTRICT'S staff has computer skills appropriate for their job including a basic ability use a mouse, size/move windows and start applications from menus.
- E. Verification that the DISTRICT'S technical users/trainers/support staff have advanced computer skills that will enable them to provide local DISTRICT level support.
- F. Definition of the DISTRICT'S training requirements in cooperation with EAGLE SOFTWARE including the number of people to be trained, how the DISTRICT staff will be grouped for training, levels/types of training, preferred location and proposed schedule.
- G. Verification that the DISTRICT'S computer hardware (workstations, servers, printers and scanners) networks, operating systems and other software configurations comply with EAGLE SOFTWARE 's specifications.
- H. Verification that the DISTRICT has an adequate number of licenses for MS Access, adequate MS SQL Server licenses if necessary and/or acquisition of licenses as needed.
- I. Definition, documentation and decisions regarding unique data files/fields/codes to facilitate data conversion.
- J. Arranging for EAGLE SOFTWARE 's staff to have access to DISTRICT computers/servers with appropriate levels of permission.
- K. Provision for staff access to an e-mail system that is adequate to facilitate communication and transfer of data files as attachments between the DISTRICT and the EAGLE SOFTWARE office.
- L. Provision for staff access to the Internet with the ability to download software, software updates and documents.

2. EAGLE SOFTWARE'S responsibilities shall include:

- A. Implementation planning, scheduling and coordination of tasks involving EAGLE SOFTWARE 's personnel based upon the Sales Proposal and *license/purchase arrangements in cooperation with the DISTRICT'S Project Administrator.*
- B. Delivery of the Aeries™ software and documentation or provision for downloading the software/documentation.
- C. Assisting the DISTRICT'S Project Administrator with evaluation of DISTRICT

equipment, networks and general readiness of the DISTRICT for implementation of the EAGLE SOFTWARE.

- D. Assisting the DISTRICT'S Project Administrator with definition of training needs and scheduling of any training purchased from EAGLE SOFTWARE.
- E. Actual training of DISTRICT staff in use of EAGLE SOFTWARE (may use the train-the-trainer model) using the Sales Proposal as a basis for allocating purchased training time. Typical topics that may be included:
 - 1.) Three and one-half hours (3.5 hours) minimum of overview for everyone who will use Aeries™.
 - 2.) Three and one-half hours (3.5 hours) of system administration for appropriate/selected DISTRICT staff.
 - 3.) Separate three and one-half hour (3.5 hour) sessions for topics such as grades, scheduling, period attendance, daily attendance, enrolling students and Query based upon the DISTRICT'S needs, assignment of responsibilities and the amount of training days purchased as documented in the Sales Proposal.
- F. Assisting the DISTRICT with definition of policies and practices necessary to make proper use of the software. This task will be completed as a part of the system administration training.
- G. Installation of the Aeries™ Software in a manner defined during the license and purchase negotiations as documented in the Sales Proposal.
- H. Telephone support based upon the Sales Proposal and purchase arrangements.
- I. Data conversion as defined by the Sales Proposal and purchase arrangements.
- J. Provision for a Web site accessible by the DISTRICT where software fixes/updates and documentation can be reviewed and optionally downloaded by the DISTRICT.
- K. Providing optional items which may be purchased in addition to the items outlined in the Sales Proposal based upon DISTRICT needs/interests:
 - 1.) Training based upon a daily rate plus expenses.
 - 2.) Installation and/or implementation support based upon an hourly rate plus expenses.
 - 3.) Data conversion assistance for a fee.
 - 4.) Custom programming for a fee.

EAGLE SOFTWARE hereby expressly represents to DISTRICT that the Implementation Plan is merely a proposal and is not binding upon either party unless and until both EAGLE SOFTWARE and DISTRICT have agreed in writing to the terms and conditions set forth in the separate AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE.

AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE

EXHIBIT C - Nonexclusive Software License

Pursuant to the terms and conditions of the Software License Agreement, this is a License between Aeries Software, Inc. d.b.a. EAGLE SOFTWARE, 505 N. Tustin Avenue, Suite 150, Santa Ana, California 92705 (hereinafter "EAGLE SOFTWARE") and the Oakland Unified School District (hereinafter "DISTRICT"). This License states the terms and conditions upon which EAGLE 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.

DISTRICT IS RESPONSIBLE FOR TAKING ALL NECESSARY PRECAUTIONS TO MAKE BACKUP COPIES OF, AND TO SAFEGUARD, DISTRICT DATA WHICH MAY BE CONTAINED IN THE SOFTWARE. EAGLE SOFTWARE ACCEPTS NO RESPONSIBILITY FOR ANY DATA WHICH MAY BE LOST.

BY SIGNING THIS AGREEMENT, OR BY USING THE SOFTWARE, 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 EAGLE 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 EAGLE SOFTWARE retains all title and ownership of its respective Software and related documentation.
2. The Software may be used only at an authorized school, or other site, for which a license has been purchased. Additional schools or sites require the purchase of additional licenses.
3. 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.

4. 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 EAGLE SOFTWARE 's copyright notice on the backup copy of the Software.

5. Any portion of the Software merged into or used in conjunction with another software will continue to be the property of EAGLE SOFTWARE and subject to the terms and conditions of this License. DISTRICT must reproduce and include EAGLE SOFTWARE 's copyright notice on any portion merged in or used in conjunction with another software.

6. DISTRICT may not sublicense, assign or otherwise transfer the Software or this license to any other person without the prior written consent of EAGLE SOFTWARE. EAGLE 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.

7. DISTRICT acknowledges that DISTRICT is receiving, on a LIMITED LICENSE TO USE, the Software and that EAGLE SOFTWARE retains all right, title and interest in and to the Software. DISTRICT acknowledges that EAGLE 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.

8. DISTRICT agrees to indemnify and hold harmless EAGLE SOFTWARE from any action or liability resulting from DISTRICT'S use of the Software, except to the extent that EAGLE 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 EAGLE 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 EAGLE SOFTWARE. The portions of this License

that protect the proprietary rights of EAGLE SOFTWARE will continue in force after

termination of the License. EAGLE 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 EAGLE 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. EAGLE 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. EAGLE 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 EAGLE 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 EAGLE SOFTWARE has been advised of the possibility of damages, except as provided under the "Agreement for Acquisition of Aeries™ Software". EAGLE SOFTWARE's entire liability and DISTRICT'S exclusive remedy shall be limited to the following:

1. The replacement of any disk not meeting EAGLE SOFTWARE's "Limited Warranty" explained above and which is returned to the place of purchase with a copy of DISTRICT receipt, or
2. If EAGLE SOFTWARE is unable to deliver a replacement disk 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 EAGLE 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.

This license does not include technical support that must be purchased separately.

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

DISTRICT hereby accepts the terms and conditions as set forth above

DATE: 10/26/04, 2004

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE
By: [Signature]
HOY, E. POMERS, Attorney at Law
General Counsel

DISTRICT

By: [Signature]
Title: Randolph E. Ward, Ed.D.
State Administrator
Oakland Unified School District

EAGLE SOFTWARE hereby accepts the terms and conditions as set forth above

DATE: 11-3, 2004

EAGLE SOFTWARE

By: [Signature]
Aeries Software, Inc.
d.b.a. EAGLE SOFTWARE

Legislative File

File ID No. 04-1141
Introduction Date 7/14/04
Enactment No. 04-0816
Enactment Date 7/14/04
By [Signature]

AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE

EXHIBIT D – List of Schools

SCHOOL	GRADES
Allendale Elementary	K – 5
Ascend	K - 8
Bella Vista Elementary	K – 5
Bret Harte Middle	6 – 8
Brewer Middle	6 - 8
Brookfield Village Elementary	K – 5
Bunche Academy	6 – 8
Burckhalter Elementary	K – 5
Calvin Simmons Middle	6 – 8
Carl B. Munck Elementary	K – 5
Carter Middle	6 – 8
Castlemont Senior High	9 – 12
Chabot Elementary	K – 5
Claremont Middle	6 – 8
Cleveland Elementary	K – 5
Cole Elementary	4 – 8
Cox Elementary	K – 5
Crocker Highlands Elementary	K – 5
Dewey Academy	9 – 12
Elisabeth Sherman Elementary	K – 5
Elmhurst Middle	6 – 8
Emerson Elementary	K – 5
Far West	6 – 12
Franklin Elementary	K – 5
Fremont (Architecture Academy)	9 – 12
Fremont (Mandela High)	9 – 12
Fremont (Media College Prep)	9 – 12
Fremont (Robeson Visual Performing Arts)	9 – 12
Fremont (Youth Empowerment School)	9 – 12
Fremont in Transition (FIT)	9 – 12
Frick Middle	6 – 8
Fruitvale Elementary	K – 5
Garfield Elementary	K – 5
Glenview Elementary	K – 5
Golden Gate Elementary	K – 5
Grass Valley Elementary	K – 5
Havenscourt Middle	6 – 8
Hawthorne Elementary	K – 5
Highland Elementary	K – 5
Hillcrest Elementary	K – 8

Hoover Elementary	K - 5
Horace Mann Elementary	K - 5
Howard Elementary	K - 5
Independent Study	K - 12
International Community	K - 5
Jefferson Elementary	K - 5
Joaquin Miller Elementary	K - 5
Kaiser Elementary	K - 8
King Estates Middle	6 - 8
KIPP-Oak College Preparatory	5 - 6
La Escuelita Elementary	K - 5
Lafayette Elementary	K - 5
Lakeview Elementary	K - 5
Laney Middle College	3 - 9
Laurel Elementary	K - 5
Lazear Elementary	K - 5
LIFE Academy	9 - 12
Lincoln Elementary	K - 5
Lockwood Elementary	K - 5
Lowell Middle	6 - 8
Madison Middle	6 - 8
Manzanita Elementary	K - 5
Marham Elementary	K - 5
Marshall Elementary	K - 5
Martin Luther King Jr. Elementary	K - 3
Maxwell Park Elementary	K - 5
McClymonds Senior High	9 - 12
Melrose Elementary	K - 5
Melrose Leadership Academy	6 - 8
Merrit Middle College High	9 - 12
MetWest High School	9 - 12
Montclair Elementary	K - 5
Montera Middle	6 - 8
Oakland Senior High	9 - 12
Oakland Technical Senior High	9 - 12
Parker Elementary	K - 5
Peralta Elementary	K - 5
Piedmont Avenue Elementary	K - 5
Prescott Elementary	K - 5
Redwood Heights Elementary	K - 5
Roosevelt Middle	6 - 8

Ruddsdale Academy	8
Santa Fe Elementary	K - 5
School of Social Justice	9 - 12
Sequoia Elementary	K - 5
Skyline Senior High	9 - 12
Sobrante Park Elementary	K - 5
Stonehurst Elementary	K - 5
Street Academy Senior High	9 - 12
Think College Now	K-2
Thornhill Elementary	K - 5
Urban Promise Academy	6 - 8
Washington Elementary	K - 5
Webster Academy	K - 5
Westlake Middle	6 - 8
Whittier Elementary	K - 5
Woodland Elementary	K - 5
Total # Schools - 97	

NEW SCHOOLS

Castlemont - Splits into 3 schools (Business Information Technology) (Leadership Prep) (East Oakland School for the Arts)	9 - 12
Community Day School	9 - 12
East Oakland Community High School	9 - 12
Encompass	E
Explore MS	6 - 8
Village Academy	6 - 8

AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE

EXHIBIT E – Web-based Functions

Phase 1
Available September 1, 2005

- General Functions
 - School Options and Configurations
 - School Calendar Management
 - Teacher Data Management
 - Course Data Management
- District Functions
 - Student Data Access
 - View Only
 - Attendance
 - Supplemental Data
 - Interventions
 - Retentions
 - Activities and Awards
 - Medical Log
 - Medical History
 - Immunizations
 - Hearing
 - Vision
 - Physicals
 - Scoliosis
 - Discipline
 - Emergency Contacts
 - Test Scores
 - Enrollment History
 - Change Data
 - Language Assessment
 - Free and Reduced Meals
 - Special Education
- Elementary School Functions
 - Student Demographic Data
 - Add, Transfer, Delete, and Change Data
 - Student Photos
 - Medical
 - Medical Log (MED table)
 - Medical History (MHS table)
 - Immunizations (IMM table)
 - Hearing (HRN table)
 - Vision (VSN table)
 - Physicals (HWO table)
 - Scoliosis (SCO table)

- Supplemental Data (SUP table)
- Interventions (INV table)
- Retentions (RET table)
- Discipline (ADS and DIS tables)
- Emergency Contacts (CON table)
- Test Scores (TST table)
- Fees (FEE table)
- Attendance
 - Teacher or Office Clerk Posting
 - Reports
 - Class Rosters
 - Absence and Tardy Lists
 - Attendance Letters
 - Class Enrollment Reports
 - Attendance Summaries
 - Gain and Loss Report
 - Monthly Attendance Report
 - Monthly Attendance Summary
- Standards Based Grade Reporting
 - Teacher Data Entry and Viewing

AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE

EXHIBIT F – Other Web-based Functions

Phase 2
Available September 1, 2006

- **General Features**
 - **Aeries Query**
- **Secondary School Features**
 - **Scheduling**
 - **Master Schedule and Scheduling Master Schedule Management**
 - **Course Request Gathering**
 - **Master Schedule Building Tools**
 - **Master Schedule Reports**
 - **Mass Add/Change Course Requests**
 - **Course Request Analysis Reports**
 - **Mass Scheduler and Walk-in Scheduler**
 - **Scheduling Optimizer**
 - **Locator Cards**
 - **Bell Scheduler**
 - **Block Schedule Calendar**
 - **Grade Reporting**
 - **Teacher/Administrator Data Entry**
 - **Missing Mark Listing**
 - **GPA Computation**
 - **Report Cards**
 - **Graduation Status Reports**
 - **Transcripts/Course History**
 - **College Entrance Tests**
 - **UC/CSU Entrance Eligibility**
 - **Period Attendance Functions**
- **Elementary School Functions**
 - **Standards Based Grade Reporting**
 - **Configuration and Management**
 - **Report Cards**
- **District Functions**
 - **Enrollment Analysis Reports**
 - **Test Score Pre-ID and Load**

AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE

EXHIBIT G – Functions Excluded from Web-based Versions of Aeries Through Phase 2

1. *Eagle Software recognizes that as Oakland USD moves forward with the implementation of Aeries, the needs of the district will become clearer and the programming priorities for individual functional areas in the web-based version can be adjusted by mutual consent.*
 2. *This list of excluded functions is not exhaustive and it is intended to demonstrate the conceptual areas of Aeries that are not included in the agreement with Oakland USD.*
 3. *This list is intended for general reference only. Omission of a function from this list does NOT imply that the function will be made available in the Web-based version of Aeries.*
- District Functions
 - Miscellaneous Functions
 - Year-end rollover of other like processes that require large volumes of data to be moved or copied
 - School Functions
 - Complex, Rarely Run Reports
 - Textbook Management
 - Complex Assessment and Testing Analysis
 - Progress Reporting (*Multiple Mark Grade Reporting should negate the need for Progress Reports*)
 - Tuition Billing
 - Scrip Tracking
 - Text File Creation Programs not needed by Oakland USD
 - Work Permits
 - Healthy Start Events
 - Hot Keys (*this functionality will be replaced by a Favorites menu in the web-based version*)
 - Scanning
 - Report Printing Packets
 - Run Timed Procedures
 - Security Management (*Microsoft tools handle this function for a SQL database*)
 - Staff Data Management

AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeris™ SOFTWARE

EXHIBIT H -- Payment Schedule

I. Cost Summary From Sales Proposal Ref# 01142004-Oakland USD-1:

Software subtotal	\$578,000.00
Data file conversion from uniform ASCII (fixed length) text file extracts of the existing SASI-III AS400 student information system for the current school year only	\$ 40,000.00
Data Conversion 3 prior years	\$ 15,000.00
Software support for year one	\$ 66,000.00
Training at district site (Option 1)	\$ 75,000.00
Training at district site (Option 2)	\$ 15,000.00
Training expenses (estimated)	\$ 18,000.00
Project management	\$ 1,000.00
TOTAL (without sales tax)	\$808,000.00

II. Items for scheduled payments:

Software Licenses	\$578,000.00
Software support for year one 2004-2005	\$ 66,000.00
Software support for year two 2005-2006	\$ 66,000.00
Licenses plus Maintenance and Support for 2004-2005 and 2005-2006	\$710,000.00

III. Scheduled Payments:

Payment #1 due thirty (30) days after agreement is signed	\$ 90,000.00
Payment #2 due one hundred and twenty (120) days after agreement is signed	\$125,000.00
Payment #3 due two hundred and ten (210) days after agreement is signed	\$125,000.00
Payment #4 due three hundred (300) days after agreement is signed	\$158,000.00
Payment #5 due three hundred and ninety (390) days after agreement is signed	\$212,000.00
Total	\$710,000.00

IV. Data conversion services to be paid upon completion of each phase as itemized on the sales proposal:

Data file conversion from uniform ASCII (fixed length) text file extracts of the existing SASI-III AS400 student information system for the current school year only	\$ 40,000.00
Data Conversion 3 prior years	\$ 15,000.00

V. The balance of the services from Eagle Software such as but not limited to Training, Project Management and the associated expenses will be invoiced, due and payable as they are provided to the Oakland Unified School District.



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

Renewal Notification RN-7454

DATE 05/01/2020

TERMS

P.O. NO.

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
37193	Software License/Support Subscription	2.86	07/01/2020	06/30/2021	\$106,371.98

SUBTOTAL 106,371.98

TOTAL 106,371.98

AMOUNT RECEIVED \$

AMOUNT DUE \$



Aeries Software, Inc.

A solution where data empowers, never impedes.

PREPARED BY
Brandon Cruz
brandonc@aeries.com

Oakland USD Pilot Terms: 10/01/20 - 11/30/20

Pricing provided has been prepared for the following term -

Quote #: Q-00500-2
Date: 9/21/2020 2:56 PM
Expires On: 12/20/2020

District: Oakland Unified School District
Contact: Julie McCalmont
Email: julie.mccalmont@ousd.org
Phone: (510) 879-2709
Address: 900 Hlgh St.
Oakland, CA 94601

Additional Products & Services

QTY	PRODUCTS	DESCRIPTION	UNIT PRICE	EXTENDED
1	Aeries Communications	<p>Oakland USD Pilot: OUSD may pilot AERIES Communications, Powered by ParentSquare in up to 5 schools. The district may also send up to 5 district wide messages during the pilot. The pilot will include full AERIES Communications functionality, including the following features:</p> <p>Mass Notifications:</p> <ul style="list-style-type: none">• Urgent Alerts & "Smart" Alerts, Auto Notifications , Attendance / Lunch Balance Notifications, Social Share, FB, TW, Web) <p>Classroom Communications:</p> <ul style="list-style-type: none">• Posts - Two-Way, Direct & Group Messaging, StudentSquare, Newsletter Templates, Volunteering & Sign-ups, Parent-Teacher Conferences, Language Translation <p>School Services:</p> <ul style="list-style-type: none">• Permission Slips & Forms, Surveys & Polls, Calendar Sync & Event, RSVP, School Directory <p>Aeries Integration:</p> <ul style="list-style-type: none">• Single Sign-On, Seamless API Data Integration, Aeries Student Groups, Gradebook Alerts, Mobile App, Data Reports & Analytics, Multi-Modality, Customer Support Included	\$9,000.00	\$9,000.00
Additional Products & Services TOTAL:				\$9,000.00

Upon completion of the Pilot, should the district chooses to adopt AERIES Communications District-Wide, the \$9000 pilot fee will be applied to the district wide contract as a credit against the onboarding fee.

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:

Jenn Blake

Effective Date:

09 / 28 / 2020

Name (Print):

Jenn Blake

Title:

Executive Director/SELPA Director

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



Aeries Software, Inc.

A solution where data empowers, never impedes.

PREPARED BY
Brandon Cruz
brandonc@aeries.com

Quote #: Q-00598-2
Date: 11/16/2020 8:24 AM
Expires On: 2/14/2021

District: Oakland Unified School District
Contact: Julie McCalmont
Email: julie.mccalmont@ousd.org
Phone: (510) 879-2709
Address: 900 Hlgh St.
Oakland, CA 94601

Pricing provided has been prepared for the following term -

Additional Products & Services

QTY	PRODUCTS	DESCRIPTION	UNIT PRICE	EXTENDED
37,000	Aeries Communications	<u>Terms: 02/01/21 - 06/30/21</u> Fully Integrated Communications Platform Includes: Mass Notifications: <ul style="list-style-type: none">• Urgent Alerts & "Smart" Alerts, Auto Notifications , Attendance / Lunch Balance Notifications, Social Share, FB, TW, Web) Classroom Communications: <ul style="list-style-type: none">• Posts - Two-Way, Direct & Group Messaging, StudentSquare, Newsletter Templates, Volunteering & Sign-ups, Parent-Teacher Conferences, Language Translation School Services: <ul style="list-style-type: none">• Permission Slips & Forms, Surveys & Polls, Calendar Sync & Event, RSVP, School Directory Aeries Integration: <ul style="list-style-type: none">• Single Sign-On, Seamless API Data Integration, Aeries Student Groups, Gradebook Alerts, Mobile App, Data Reports & Analytics, Multi-Modality, Customer Support Included Robocalls Newsletter & Message Templates Secure Document Delivery E-signatures Virtual IEPs COVID-19 Health Screening Forms Attendance Letters Summer Learning and After School Programs	\$1.25	\$46,250.00
Additional Products & Services TOTAL:				\$46,250.00

TOTAL: \$46,250.00

Phase 2 of the Oakland USD pilot of Aeries Communications, powered by ParentSquare. District-wide implementation of the ParentSquare product for an introductory pilot rate of \$1.25/student from February 1st, 2021, through June 30th, 2021.

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):

Dr. Kyla Johnson-Trammell

Title:

Superintendent

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

CALIFORNIA STUDENT DATA PRIVACY AGREEMENT

Version 2.0 (September 7, 2018)

School District/Local Education Agency:

Oak Grove School District

AND

Provider:

ParentSquare

Date:

02/06/2019

This California Student Data Privacy Agreement (“DPA”) is entered into by and between the **Oak Grove School District** (hereinafter referred to as “LEA”) and **ParentSquare** (hereinafter referred to as “Provider”) on **02/06/2019**. The Parties agree to the terms as stated herein.

RECITALS

WHEREAS, the Provider has agreed to provide the Local Education Agency (“LEA”) with certain digital educational services (“Services”) pursuant to a contract dated **02/06/2019** (“Service Agreement”); and

WHEREAS, in order to provide the Services described in the Service Agreement, the Provider may receive or create, and the LEA may provide documents or data that are covered by several federal statutes, among them, the Family Educational Rights and Privacy Act (“FERPA”) at 20 U.S.C. 1232g (34 CFR Part 99), Children’s Online Privacy Protection Act (“COPPA”), 15 U.S.C. 6501-6506; Protection of Pupil Rights Amendment (“PPRA”) 20 U.S.C. 1232h; and

WHEREAS, the documents and data transferred from LEAs and created by the Provider’s Services are also subject to California state student privacy laws, including AB 1584, found at California Education Code Section 49073.1 and the Student Online Personal Information Protection Act (“SOPIPA”) found at California Business and Professions Code section 22584; and

WHEREAS, for the purposes of this DPA, Provider is a school official with legitimate educational interests in accessing educational records pursuant to the Service Agreement; and

WHEREAS, the Parties wish to enter into this DPA to ensure that the Service Agreement conforms to the requirements of the privacy laws referred to above and to establish implementing procedures and duties; and

WHEREAS, the Provider may, by signing the “General Offer of Privacy Terms” (Exhibit “E”), agree to allow other LEAs in California the opportunity to accept and enjoy the benefits of this DPA for the Services described herein, without the need to negotiate terms in a separate DPA.

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

ARTICLE I: PURPOSE AND SCOPE

1. **Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities to protect student data transmitted to Provider from LEA pursuant to the Service Agreement, including compliance with all applicable statutes, including the FERPA, PPRA, COPPA, SOPIPA, AB 1584, and other applicable California State laws, all as may be amended from time to time. In performing these services, the Provider shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the LEA. With respect to the use and maintenance of Student Data, Provider shall be under the direct control and supervision of the LEA.
2. **Nature of Services Provided.** The Provider has agreed to provide the following digital educational products and services described below and as may be further outlined in Exhibit “A” hereto:

ParentSquare is a modern two-way parent communication and engagement platform for districts and schools.

3. **Student Data to Be Provided.** The Parties shall indicate the categories of student data to be provided in the Schedule of Data, attached hereto as Exhibit “B”.
4. **DPA Definitions.** The definition of terms used in this DPA is found in Exhibit “C”. In the event of a conflict, definitions used in this DPA shall prevail over term used in the Service Agreement.

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Student Data Property of LEA.** All Student Data transmitted to the Provider pursuant to the Service Agreement is and will continue to be the property of and under the control of the LEA. The Provider further acknowledges and agrees that all copies of such Student Data transmitted to the Provider, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this Agreement in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the Service Agreement shall remain the exclusive property of the LEA. For the purposes of FERPA, the Provider shall be considered a School Official, under the control and direction of the LEAs as it pertains to the use of Student Data notwithstanding the above. Provider may transfer pupil-generated content to a separate account, according to the procedures set forth below.
2. **Parent Access.** LEA shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Student Data in the pupil’s records, correct erroneous information, and procedures for the transfer of pupil-generated content to a personal account, consistent with the functionality of services. Provider shall respond in a timely manner (and no later than 45 days from the date of the request) to the LEA’s request for Student Data in a pupil’s records held by the Provider to view or correct as necessary. In the event that a parent of a pupil or other individual contacts the Provider to review any of the Student Data accessed pursuant to the Services, the Provider shall refer the parent or individual to the LEA, who will follow the necessary and proper procedures regarding the requested information.
3. **Separate Account.** If pupil generated content is stored or maintained by the Provider as part of the Services described in Exhibit “A”, Provider shall, at the request of the LEA, transfer said pupil generated content to a separate student account upon termination of the Service Agreement; provided, however, such transfer shall only apply to pupil generated content that is severable from the Service.
4. **Third Party Request.** Should a Third Party, including law enforcement and government entities, contact Provider with a request for data held by the Provider pursuant to the Services, the Provider shall redirect the Third Party to request the data directly from the LEA. Provider shall notify the LEA in advance of a compelled disclosure to a Third Party.
5. **Subprocessors.** Provider shall enter into written agreements with all Subprocessors performing functions pursuant to the Service Agreement, whereby the Subprocessors agree to protect

Student Data in manner consistent with the terms of this DPA.

ARTICLE III: DUTIES OF LEA

1. **Privacy Compliance.** LEA shall provide data for the purposes of the Service Agreement in compliance with FERPA, COPPA, PPRA, SOPIPA, AB 1584 and all other California privacy statutes.
2. **Annual Notification of Rights.** If the LEA has a policy of disclosing education records under FERPA (4 CFR § 99.31 (a) (1)), LEA shall include a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest in its Annual notification of rights.
3. **Reasonable Precautions.** LEA shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted data.
4. **Unauthorized Access Notification.** LEA shall notify Provider promptly of any known or suspected unauthorized access. LEA will assist Provider in any efforts by Provider to investigate and respond to any unauthorized access.

ARTICLE IV: DUTIES OF PROVIDER

1. **Privacy Compliance.** The Provider shall comply with all applicable state and federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRA, SOPIPA, AB 1584 and all other California privacy statutes.
2. **Authorized Use.** The data shared pursuant to the Service Agreement, including persistent unique identifiers, shall be used for no purpose other than the Services stated in the Service Agreement and/or otherwise authorized under the statutes referred to in subsection (1), above. Provider also acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion thereof, including without limitation, meta data, user content or other non-public information and/or personally identifiable information contained in the Student Data, without the express written consent of the LEA.
3. **Employee Obligation.** Provider shall require all employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the data shared under the Service Agreement.
4. **No Disclosure.** De-identified information may be used by the Provider for the purposes of development, research, and improvement of educational sites, services, or applications, as any other member of the public or party would be able to use de-identified data pursuant to 34 CFR 99.31(b). Provider agrees not to attempt to re-identify de-identified Student Data and not to transfer de-identified Student Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to LEA who has provided prior written consent for such transfer. Provider shall not copy, reproduce or transmit any data obtained under the Service Agreement and/or any portion thereof, except as necessary to fulfill the Service Agreement.

5. **Disposition of Data.** Upon written request and in accordance with the applicable terms in subsection a or b, below, Provider shall dispose or delete all Student Data obtained under the Service Agreement when it is no longer needed for the purpose for which it was obtained. Disposition shall include (1) the shredding of any hard copies of any Student Data; (2) Erasing; or (3) Otherwise modifying the personal information in those records to make it unreadable or indecipherable by human or digital means. Nothing in the Service Agreement authorizes Provider to maintain Student Data obtained under the Service Agreement beyond the time period reasonably needed to complete the disposition. Provider shall provide written notification to LEA when the Student Data has been disposed. The duty to dispose of Student Data shall not extend to data that has been de-identified or placed in a separate Student account, pursuant to the other terms of the DPA. The LEA may employ a “Request for Return or Deletion of Student Data” form, a copy of which is attached hereto as Exhibit “D”. Upon receipt of a request from the LEA, the Provider will immediately provide the LEA with any specified portion of the Student Data within ten (10) calendar days of receipt of said request.
 - a. **Partial Disposal During Term of Service Agreement.** Throughout the Term of the Service Agreement, LEA may request partial disposal of Student Data obtained under the Service Agreement that is no longer needed. Partial disposal of data shall be subject to LEA’s request to transfer data to a separate account, pursuant to Article II, section 3, above.
 - b. **Complete Disposal Upon Termination of Service Agreement.** Upon Termination of the Service Agreement Provider shall dispose or delete all Student Data obtained under the Service Agreement. Prior to disposition of the data, Provider shall notify LEA in writing of its option to transfer data to a separate account, pursuant to Article II, section 3, above. In no event shall Provider dispose of data pursuant to this provision unless and until Provider has received affirmative written confirmation from LEA that data will not be transferred to a separate account.
6. **Advertising Prohibition.** Provider is prohibited from using or selling Student Data to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing, advertising, or other commercial efforts by a Provider; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to LEA; or (d) use the Student Data for the development of commercial products or services, other than as necessary to provide the Service to LEA. This section does not prohibit Provider from using Student Data for adaptive learning or customized student learning purposes.

ARTICLE V: DATA PROVISIONS

1. **Data Security.** The Provider agrees to abide by and maintain adequate data security measures, consistent with industry standards and technology best practices, to protect Student Data from unauthorized disclosure or acquisition by an unauthorized person. The general security duties of Provider are set forth below. Provider may further detail its security programs and measures in Exhibit “F” hereto. These measures shall include, but are not limited to:
 - a. **Passwords and Employee Access.** Provider shall secure usernames, passwords, and any other means of gaining access to the Services or to Student Data, at a level suggested by

the applicable standards, as set forth in Article 4.3 of NIST 800-63-3. Provider shall only provide access to Student Data to employees or contractors that are performing the Services. Employees with access to Student Data shall have signed confidentiality agreements regarding said Student Data. All employees with access to Student Records shall be subject to criminal background checks in compliance with state and local ordinances.

- b. **Destruction of Data.** Provider shall destroy or delete all Student Data obtained under the Service Agreement when it is no longer needed for the purpose for which it was obtained, or transfer said data to LEA or LEA's designee, according to the procedure identified in Article IV, section 5, above. Nothing in the Service Agreement authorizes Provider to maintain Student Data beyond the time period reasonably needed to complete the disposition.
- c. **Security Protocols.** Both parties agree to maintain security protocols that meet industry standards in the transfer or transmission of any data, including ensuring that data may only be viewed or accessed by parties legally allowed to do so. Provider shall maintain all data obtained or generated pursuant to the Service Agreement in a secure digital environment and not copy, reproduce, or transmit data obtained pursuant to the Service Agreement, except as necessary to fulfill the purpose of data requests by LEA.
- d. **Employee Training.** The Provider shall provide periodic security training to those of its employees who operate or have access to the system. Further, Provider shall provide LEA with contact information of an employee who LEA may contact if there are any security concerns or questions.
- e. **Security Technology.** When the service is accessed using a supported web browser, Provider shall employ industry standard measures to protect data from unauthorized access. The service security measures shall include server authentication and data encryption. Provider shall host data pursuant to the Service Agreement in an environment using a firewall that is updated according to industry standards.
- f. **Security Coordinator.** If different from the designated representative identified in Article VII, section 5, Provider shall provide the name and contact information of Provider's Security Coordinator for the Student Data received pursuant to the Service Agreement.
- g. **Subprocessors Bound.** Provider shall enter into written agreements whereby Subprocessors agree to secure and protect Student Data in a manner consistent with the terms of this Article V. Provider shall periodically conduct or review compliance monitoring and assessments of Subprocessors to determine their compliance with this Article.
- h. **Periodic Risk Assessment.** Provider further acknowledges and agrees to conduct digital and physical periodic (no less than semi-annual) risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner.

2. **Data Breach.** In the event that Student Data is accessed or obtained by an unauthorized individual, Provider shall provide notification to LEA within a reasonable amount of time of the incident, and not exceeding forty-eight (48) hours. Provider shall follow the following process:
- a. The security breach notification shall be written in plain language, shall be titled “Notice of Data Breach,” and shall present the information described herein under the following headings: “What Happened,” “What Information Was Involved,” “What We Are Doing,” “What You Can Do,” and “For More Information.” Additional information may be provided as a supplement to the notice.
 - b. The security breach notification described above in section 2(a) shall include, at a minimum, the following information:
 - i. The name and contact information of the reporting LEA subject to this section.
 - ii. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
 - iii. If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
 - iv. Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided.
 - v. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
 - c. At LEA’s discretion, the security breach notification may also include any of the following:
 - i. Information about what the agency has done to protect individuals whose information has been breached.
 - ii. Advice on steps that the person whose information has been breached may take to protect himself or herself.
 - d. Provider agrees to adhere to all requirements in applicable State and in federal law with respect to a data breach related to the Student Data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
 - e. Provider further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Student Data or any portion thereof, including personally

identifiable information and agrees to provide LEA, upon request, with a copy of said written incident response plan.

- f. Provider is prohibited from directly contacting parent, legal guardian or eligible pupil unless expressly requested by LEA. If LEA requests Provider's assistance providing notice of unauthorized access, and such assistance is not unduly burdensome to Provider, Provider shall notify the affected parent, legal guardian or eligible pupil of the unauthorized access, which shall include the information listed in subsections (b) and (c), above. If requested by LEA, Provider shall reimburse LEA for costs incurred to notify parents/families of a breach not originating from LEA's use of the Service.
- g. In the event of a breach originating from LEA's use of the Service, Provider shall cooperate with LEA to the extent necessary to expeditiously secure Student Data.

ARTICLE VI- GENERAL OFFER OF PRIVACY TERMS

Provider may, by signing the attached Form of General Offer of Privacy Terms (General Offer, attached hereto as Exhibit "E"), be bound by the terms of this DPA to any other LEA who signs the acceptance on in said Exhibit. The Form is limited by the terms and conditions described therein.

ARTICLE VII: MISCELLANEOUS

1. **Term.** The Provider shall be bound by this DPA for the duration of the Service Agreement or so long as the Provider maintains any Student Data.
2. **Termination.** In the event that either party seeks to terminate this DPA, they may do so by mutual written consent so long as the Service Agreement has lapsed or has been terminated. LEA shall have the right to terminate the DPA and Service Agreement in the event of a material breach of the terms of this DPA.
3. **Effect of Termination Survival.** If the Service Agreement is terminated, the Provider shall destroy all of LEA's data pursuant to Article V, section 1(b), and Article II, section 3, above.
4. **Priority of Agreements.** This DPA shall govern the treatment of student data in order to comply with privacy protections, including those found in FERPA and all applicable privacy statutes identified in this DPA. In the event there is conflict between the DPA and the Service Agreement, the DPA shall apply and take precedence. Except as described in this paragraph herein, all other provisions of the Service Agreement shall remain in effect.
5. **Notice.** All notices or other communication required or permitted to be given hereunder must be in writing and given by personal delivery, or e-mail transmission (if contact information is provided for the specific mode of delivery), or first-class mail, postage prepaid, sent to the designated representatives before:
 - a. **Designated Representatives**
The designated representative for the LEA for this Agreement is:
Name: **Najeeb Qasimi**
Title: **The Director of IT**

Contact Information:

6578 Santa Teresa Blvd
San Jose, CA 95119
(408) 227-8300

The designated representative for the Provider for this Agreement is:

Name: **Anupama Vaid**

Title: **President and Founder**

Contact Information:

3905 State Street, Suite 7502
Santa Barbara, CA 93105
805-637-8381

- b. **Notification of Acceptance of General Offer of Terms.** Upon execution of Exhibit E, General Offer of Terms, Subscribing LEA shall provide notice of such acceptance in writing and given by personal delivery, or e-mail transmission (if contact information is provided for the specific mode of delivery), or first-class mail, postage prepaid, to the designated representative below.

The designated representative for the notice of acceptance of the General Offer of Privacy Terms is:

Name: **Anupama Vaid**

Title: **President & Founder**

Contact Information:

3905 State St, Ste 7502
Santa Barbara, CA 93105
805.637.8381


6. **Entire Agreement.** This DPA constitutes the entire agreement of the parties relating to the subject matter hereof and supersedes all prior communications, representations, or agreements, oral or written, by the parties relating thereto. This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the signed written consent of both parties. Neither failure nor delay on the part of any party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.
7. **Severability.** Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.

8. **Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THIS AGREEMENT IS EXECUTED, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. EACH PARTY CONSENTS AND SUBMITS TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR THE COUNTY IN WHICH THIS AGREEMENT IS FORMED FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS SERVICE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
9. **Authority.** Provider represents that it is authorized to bind to the terms of this Agreement, including confidentiality and destruction of Student Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Student Data and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Student Data and portion thereof stored, maintained or used in any way. Provider agrees that any purchaser of the Provider shall also be bound to the Agreement.
10. **Waiver.** No delay or omission of the LEA to exercise any right hereunder shall be construed as a waiver of any such right and the LEA reserves the right to exercise any such right from time to time, as often as may be deemed expedient.
11. **Successors Bound.** This DPA is and shall be binding upon the respective successors in interest to Provider in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this California Student Data Privacy Agreement as of the last day noted below.

Provider: **ParentSquare**

BY: 

Date: **02/06/2019**

Printed Name: **Anupama Vaid**

Title/Position: **President and Founder**

Local Education Agency:

BY: 

Date: **02/06/19**

Printed Name: **Najeeb Qasimi**

Title/Position: **Director**

Note: Electronic signature not permitted.

EXHIBIT “A”

DESCRIPTION OF SERVICES

ParentSquare is a communication platform designed to help educational leaders build a positive and supportive culture with parents. ParentSquare simplifies the engagement of parents with a diverse set of communication styles, languages and interaction opportunities, ensuring every parent can participate and support the educational process.

EXHIBIT “B”

SCHEDULE OF DATA

Category of Data	Elements	Check if used by your system
Application Technology Meta Data	IP Addresses of users, Use of cookies etc.	✓
	Other application technology meta data-Please specify:	-
Application Use Statistics	Meta data on user interaction with application	-
Assessment	Standardized test scores	-
	Observation data	-
	Other assessment data-Please specify:	-
Attendance	Student school (daily) attendance data	✓
	Student class attendance data	✓
Communications	Online communications that are captured (emails, blog entries)	✓
Conduct	Conduct or behavioral data	-
Demographics	Date of Birth	-
	Place of Birth	-
	Gender	✓
	Ethnicity or race	-
	Language information (native, preferred or primary language spoken by student)	✓
	Other demographic information-Please specify:	-
Enrollment	Student school enrollment	✓
	Student grade level	✓
	Homeroom	✓
	Guidance counselor	✓
	Specific curriculum program	✓
	Year of graduation	✓
	Other enrollment information-Please specify:	-
Parent/Guardian Contact Information	Address	✓
	Email	✓
	Phone	✓
Parent/Guardian ID	Parent ID number (created to link parents to students)	✓
Parent/Guardian Name	First and/or Last	✓
Schedule	Student scheduled courses	✓
	Teacher names	✓
Special Indicator	English language learner information	optional
	Low income status	optional
	Medical alerts/health data	-

	Student disability information	-
	Specialized education services (IEP or 504)	optional
	Living situations (homeless/foster care)	optional
	Other indicator information-Please specify:	-
Student Contact Information	Address	✓
	Email	✓
	Phone	✓
Student Identifiers	Local (School district) ID number	✓
	State ID number	✓
	Provider/App assigned student ID number	✓
	Student app username	✓
	Student app passwords	✓
Student Name	First and/or Last	✓
Student In App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	-
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	✓
Student Survey Responses	Student responses to surveys or questionnaires	✓
Student work	Student generated content; writing, pictures etc.	-
	Other student work data -Please specify:	-
Transcript	Student course grades	optional
	Student course data	-
	Student course grades/performance scores	optional
	Other transcript data -Please specify:	-
Transportation	Student bus assignment	optional
	Student pick up and/or drop off location	-
	Student bus card ID number	-
	Other transportation data -Please specify:	-
Other	Please list on the next page each additional data element used, stored or collected by your application	(Optional) lunch balances, assignments

No Student Data Collected at this time _____.

* Provider shall immediately notify LEA if this designation is no longer applicable.

Other: Use this box, if more space is needed.

EXHIBIT “C”

DEFINITIONS

AB 1584, Buchanan: The statutory designation for what is now California Education Code § 49073.1, relating to pupil records.

De-Identifiable Information (DII): De-Identification refers to the process by which the Provider removes or obscures any Personally Identifiable Information (“PII”) from student records in a way that removes or minimizes the risk of disclosure of the identity of the individual and information about them.

Educational Records: Educational Records are official records, files and data directly related to a student and maintained by the school or local education agency, including but not limited to, records encompassing all the material kept in the student’s cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs. For purposes of this DPA, Educational Records are referred to as Student Data.

NIST: Draft National Institute of Standards and Technology (“NIST”) Special Publication Digital Authentication Guideline.

Operator: The term “Operator” means the operator of an Internet Website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for K–12 school purposes and was designed and marketed for K–12 school purposes. For the purpose of the Service Agreement, the term “Operator” is replaced by the term “Provider.” This term shall encompass the term “Third Party,” as it is found in applicable state statutes.

Personally Identifiable Information (PII): The terms “Personally Identifiable Information” or “PII” shall include, but are not limited to, student data, metadata, and user or pupil-generated content obtained by reason of the use of Provider’s software, website, service, or app, including mobile apps, whether gathered by Provider or provided by LEA or its users, students, or students’ parents/guardians. PII includes Indirect Identifiers, which is any information that, either alone or in aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty. For purposes of this DPA, Personally Identifiable Information shall include the categories of information listed in the definition of Student Data.

Provider: For purposes of the Service Agreement, the term “Provider” means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records. Within the DPA the term “Provider” includes the term “Third Party” and the term “Operator” as used in applicable state statutes.

Pupil Generated Content: The term “pupil-generated content” means materials or content created by a pupil during and for the purpose of education including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of pupil content.

Pupil Records: Means both of the following: (1) Any information that directly relates to a pupil that is maintained by LEA and (2) any information acquired directly from the pupil through the use of

instructional software or applications assigned to the pupil by a teacher or other LEA employee. For the purposes of this Agreement, Pupil Records shall be the same as Educational Records, Student Personal Information and Covered Information, all of which are deemed Student Data for the purposes of this Agreement.

Service Agreement: Refers to the Contract or Purchase Order to which this DPA supplements and modifies.

School Official: For the purposes of this Agreement and pursuant to 34 CFR 99.31 (B), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and (3) Is subject to 34 CFR 99.33(a) governing the use and re-disclosure of personally identifiable information from student records.

SOPIPA: Once passed, the requirements of SOPIPA were added to Chapter 22.2 (commencing with Section 22584) to Division 8 of the Business and Professions Code relating to privacy.

Student Data: Student Data includes any data, whether gathered by Provider or provided by LEA or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, home address, telephone number, email address, or other information allowing online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information text messages, documents, student identifies, search activity, photos, voice recordings or geolocation information. Student Data shall constitute Pupil Records for the purposes of this Agreement, and for the purposes of California and federal laws and regulations. Student Data as specified in Exhibit "B" is confirmed to be collected or processed by the Provider pursuant to the Services. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data regarding a student's use of Provider's services.

SDPC (The Student Data Privacy Consortium): Refers to the national collaborative of schools, districts, regional, territories and state agencies, policy makers, trade organizations and marketplace providers addressing real-world, adaptable, and implementable solutions to growing data privacy concerns.

Student Personal Information: "Student Personal Information" means information collected through a school service that personally identifies an individual student or other information collected and maintained about an individual student that is linked to information that identifies an individual student, as identified by Washington Compact Provision 28A.604.010. For purposes of this DPA, Student Personal Information is referred to as Student Data.

Subscribing LEA: An LEA that was not party to the original Services Agreement and who accepts the Provider's General Offer of Privacy Terms.

Subprocessor: For the purposes of this Agreement, the term "Subprocessor" (sometimes referred to as the "Subcontractor") means a party other than LEA or Provider, who Provider uses for data collection,

analytics, storage, or other service to operate and/or improve its software, and who has access to PII.

Targeted Advertising: Targeted advertising means presenting an advertisement to a student where the selection of the advertisement is based on student information, student records or student generated content or inferred over time from the usage of the Provider's website, online service or mobile application by such student or the retention of such student's online activities or requests over time.

Third Party: The term "Third Party" means a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records. However, for the purpose of this Agreement, the term "Third Party" when used to indicate the provider of digital educational software or services is replaced by the term "Provider."

EXHIBIT “D”

DIRECTIVE FOR DISPOSITION OF DATA

_____ directs **ParentSquare** to dispose of data obtained by Provider pursuant to the terms of the Service Agreement between LEA and Provider. The terms of the Disposition are set forth below:

<u>Extent of Disposition</u> Disposition shall be:	_____ Partial. The categories of data to be disposed of are as follows: _____ Complete. Disposition extends to all categories of data.
<u>Nature of Disposition</u> Disposition shall be by:	_____ Destruction or deletion of data. _____ Transfer of data. The data shall be transferred as set forth in an attachment to this Directive. Following confirmation from LEA that data was successfully transferred, Provider shall destroy or delete all applicable data.
<u>Timing of Disposition</u> Data shall be disposed of by the following date:	_____ As soon as commercially practicable _____ By (Insert Date) _____

Authorized Representative of LEA

Date

Verification of Disposition of Data
by Authorized Representative of Provider

Date

EXHIBIT "E"

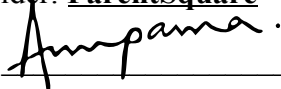
GENERAL OFFER OF PRIVACY TERMS

1. Offer of Terms

Provider offers the same privacy protections found in this DPA between it and **Oak Grove School District** and which is dated 02/06/2019 to any other LEA ("Subscribing LEA") who accepts this General Offer though its signature below. This General Offer shall extend only to privacy protections and Provider's signature shall not necessarily bind Provider to other terms, such as price, term, or schedule of services, or to any other provision not addressed in this DPA. The Provider and the other LEA may also agree to change the data provided by LEA to the Provider in Exhibit "B" to suit the unique needs of the LEA. The Provider may withdraw the General Offer in the event of: (1) a material change in the applicable privacy statutes; (2) a material change in the services and products subject listed in the Originating Service Agreement; or three (3) years after the date of Provider's signature to this Form. Provider shall notify CETPA in the event of any withdrawal so that this information may be transmitted to the Alliance's users.

Provider: **ParentSquare**

BY: _____



Date: **02/06/2019**

Printed Name: **Anupama Vaid**

Title/Position: **President and Founder**

2. Subscribing LEA

A Subscribing LEA, by signing a separate Service Agreement with Provider, and by its signature below, accepts the General Offer of Privacy Terms. The Subscribing LEA and the Provider shall therefore be bound by the same terms of this DPA.

Subscribing LEA:

BY: _____



Date: 3/21/2021

Printed Name: Susan Beltz

Title/Position: Chief Technology Officer

TO ACCEPT THE GENERAL OFFER, THE SUBSCRIBING LEA MUST DELIVER THIS SIGNED EXHIBIT TO THE PERSON AND EMAIL ADDRESS LISTED BELOW

Name: **Anupama Vaid**

Title: **President & Founder**

Email Address: **anupama.vaid@parentsquare.com**

The agreement between Aeries Software, Inc. and Oakland Unified and any subsequent renewals, constitute the separate Service Agreement for ParentSquare software.

EXHIBIT “F” DATA SECURITY REQUIREMENTS

-

00618-00001/4274378.1

Board Office Use: Legislative File Info.	
File ID Number	19-1380
Introduction Date	June 26, 2019
Enactment Number	19-1020
Enactment Date	6/26/19 If



**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

Memo

To Board of Education

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

Board Meeting Date June 26, 2019

Subject Approval by the Board of Education of One-Year Term Extension and 2019 Amendment to the 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, 2019 - June 30, 2020

Action Requested and Recommendation Approval by the Board of Education of One-Year Term Extension and 2019 Amendment to the 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) for the period July 1, 2019 to June 30, 2020 for an amount not to exceed \$100,054.92.

Background
(Why do we need these services? Why have you selected this vendor)

The Oakland Unified School District has successfully used Aeries as its student information system (SIS) for 2018-19 and for over 10 prior school years and 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.

The Technology Services department hosts the Aeries database and application in our OUSD data centers. Upgrades are performed approximately four times per year to ensure that our Aeries version is current and supported. The One-Year Term Extension and 2019 Amendment to the Agreement for Acquisition of License for Aeries Software with Aeries Software includes licensing, upgrades and support for the 2019-20 fiscal year. Approval of this Agreement will enable OUSD to continue using its SIS to help ensure the continued successful management of student information.

Competitively Bid

No. Oakland Unified has been successfully utilizing this software 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. The original agreement was approved by the Board of Education on July 14, 2004 as File ID 04-1141. 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. The contract renewal for 2018-19 was subsequently ratified by the Board of Education on August 22, 2018 as File ID 18-1742. Due to a price increase to \$100,054.92 for 2019-20, the renewal price for Aeries now exceeds the competitive bid threshold of \$92,600.00. It would be cost-prohibitive, and would risk a gap in the management and reporting of student data, to discontinue use of this software in order to change to another vendor. The Oakland Unified School District receives Aeries at a highly discounted rate of \$2.60 per student per year. In contrast, the retail price for Aeries is \$7.50 per student per year, which is comparable to other leading student information systems. In addition, 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. For this reason, going out to bid for the software and services would not produce any advantage, would be futile, and in fact, would be detrimental to the District because it could result in time gaps in the management and reporting of student data, including the completion of mandated state reporting. Competitive bidding is therefore excused under the reasoning of *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631 and related case law.

Fiscal Impact

\$100,054.92 from Funding Resource
010-0000-0-0000-7700-5846-999-9860-9994-9999-99999: General Purpose (GP), Data Processing, License Agreements, Districtwide

Attachments

- One-Year Term Extension and 2019 Amendment to the Agreement for Acquisition of License for Aeries Software between Oakland Unified School District and Aeries Software, Inc.
- Renewal Notification RN-6882
- Agreement for Acquisition of License for Aeries Software

**ONE (1) YEAR TERM EXTENSION OF AND 2019 AMENDMENT TO
THE AGREEMENT FOR ACQUISITION OF LICENSE FOR AERIES
SOFTWARE BETWEEN AERIES SOFTWARE, INC. (d/b/a EAGLE
SOFTWARE) AND OAKLAND UNIFIED SCHOOL DISTRICT**

This Agreement Extension and 2019 Amendment is entered into by and between Oakland Unified School District ("OUSD"), and Aeries Software, Inc., d/b/a Eagle Software ("Eagle Software"), a California Corporation (collectively, the "Parties").

RECITALS

1. WHEREAS, OUSD and Eagle Software entered into an agreement effective July 14, 2004 (OUSD Enactment No. 04-0186) ("Agreement"), a true and correct copy of which is attached hereto as Exhibit A.
2. WHEREAS, through various extensions, the Agreement expires on June 30, 2019.
3. WHEREAS, OUSD and Eagle Software seek to extend and amend the Agreement for one (1) year (*i.e.*, through June 30, 2020).
4. The foregoing recitals are agreed to by the Parties.

TERMS AND CONDITIONS

1. Term of Agreement Extension and 2019 Amendment - This Agreement Extension and 2019 Amendment is for a one (1) year contract extension term effective July 1, 2019 through June 30, 2020 for the Software License/Support Subscription, with said license/support subscription at a total cost to OUSD of \$100,054.92, as set forth in the May 1, 2019 Renewal Notification RN-6882, which renewal notification is attached hereto as Exhibit B and incorporated as if fully set forth herein.
3. Not To Exceed – The Parties hereby agree that the total consideration payable and paid to Eagle Software by OUSD for the Term of the Agreement Extension and 2019 Amendment shall not exceed \$100,054.92.
4. Extension of Prior Terms and Conditions – Except as amended above, all other terms and conditions of the Agreement are extended by incorporation herein.
5. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – OUSD and Eagle Software certify to the best of their knowledge and belief that OUSD's, Eagle Software's, and their respective principals: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or contractor according to Federal Acquisition Regulation Subpart 9.4, and by signing

this Agreement Extension and Amendment No. 1 to the Agreement, verify that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov>.

6. Integration of Agreement and Agreement Extension and 2019 Amendment – All understandings, agreements, covenants, and representations, express or implied, oral or written, between the Parties are contained and merged herein. No other agreements, covenants, or representations, express or implied, oral or written, have been made by or between the Parties concerning the subject of this Agreement Extension and Amendment. This is an integrated Agreement Extension and 2019 Amendment. It may not be altered, modified or otherwise changed in any respect except in a writing signed by OUSD and Eagle Software.


Dated: 06/19/2019

Aeries Software, Inc. d/b/a Eagle Software


By: 
Brent Lloyd, Vice President

Dated: 6/27/19

Oakland Unified School District

By: 
Aimee Eng, Board President

File ID Number: 19-1380
Introduction Date: 6/26/19
Enactment Number: 19-1020
Enactment Date: 6/26/19 lf

By: 
Kyla Johnson-Trammell, Superintendent
& Board Secretary

Approved as to form:
By: Kelly M Rem
Counsel for OUSD

**OAKLAND UNIFIED SCHOOL DISTRICT
PUPIL RECORDS ADDENDUM FOR
DIGITAL RECORDS STORAGE AND/OR
DIGITAL EDUCATIONAL SOFTWARE AGREEMENTS**

Oakland Unified School District ("OUSD") and Aeries Software, Inc. d/b/a Eagle Software ("Contractor") have entered into that certain One (1) Year Term Extension of and 2019 Amendment to the Agreement for Acquisition of License for Aeries Software between Aeries Software (d/b/a Eagle Software) and Oakland Unified School District Agreement ("Agreement") as of July 1, 2019. The Agreement includes (or may include) the digital storage, management and retrieval of pupil records and/or digital educational software through which Contractor accesses, stores and uses pupil records. This Pupil Records Addendum ("Addendum"), executed by OUSD and Contractor as of the date set forth below, is intended to supplement and amend the terms of the Agreement, as set forth below. This Addendum concerns pupil records, as that term is defined by Education Code section 49073.1 ("Pupil Records") and covered information, which means personally identifiable information or materials as defined by Business and Professions Code section 22584 ("Covered Information").

1. Pupil Records Property of OUSD. All Pupil Records are and will continue to be the property of and under the control of OUSD. The parties agree that as between them, all rights, including all intellectual property rights in and to Pupil Records shall remain the exclusive property of OUSD, and Contractor has a limited, nonexclusive license to such Pupil Records. The Agreement and Addendum do not give Contractor any rights, implied or otherwise, to Pupil Records, OUSD content, or intellectual property, except as expressly stated in the Agreement and this Addendum.
2. Pupil-Generated Content. Notwithstanding the provisions of section 1, pupils shall retain ownership and control of pupil-generated content, if any (as that term is defined by Education Code section 49073.1(d)(4)). Contractor shall make all pupil-generated content, if any, available to the pupil who created it and provide a process by which a pupil can transfer his or her pupil-generated content to a personal account. Within thirty (30) days of the execution of this Addendum, Contractor shall provide OUSD with a written description of the process it will provide to pupils in compliance with this section 2.
3. Use of Information in Pupil Records. Contractor may not and will not use any Pupil Record or information in a Pupil Record for any purpose other than those required or specifically permitted by the Agreement and this Addendum.
4. Personally Identifiable Information. Contractor shall provide a process by which a pupil's parent, legal guardian, or the eligible pupil can review the personally identifiable information in an account created for the pupil's academic-related records and correct erroneous information. Within thirty (30) days of the execution of this Addendum, Contractor shall provide OUSD with a written description of the process it will provide to pupils and their parents/legal guardians in compliance with this section 4.
5. Security and Confidentiality of Pupil Records. Contractor will access, store and use Pupil Records in accordance with commercial best practices, including appropriate

administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure Contractor's own data of a similar type. Without limiting the foregoing, Contractor warrants that all Pupil Records will be encrypted in transmission via web interface using SSL (Secure Socket Layer) or for file transfers, a Secure FTP site.

In addition, Contractor will use industry-standards and up-to-date security tools and technologies such as anti-virus protections and intrusion detection methods in providing services under the Agreement and/or this Addendum.

Contractor will designate employees or agents it holds and will hold primarily responsible for meeting the Contractor's duties to securely maintain and protect Pupil Records. Contractor will ensure that the designated persons have or will receive all training and information necessary to meet the Contractor's duties to securely protect and maintain Pupil Records. The designation of employees or agents required under this section does not relieve the Contractor of any of its duties under the law or the Agreement and/or this Addendum, nor relieve the Contractor of any liability for any breach thereof.

6. Unauthorized Disclosure. Immediately upon becoming aware of an unauthorized disclosure of Pupil Records, or of circumstances that could have resulted in unauthorized access to or disclosure or use of Pupil Records, Contractor will notify OUSD, fully investigate the incident, and cooperate fully with OUSD's investigation of and response to the incident. Except as otherwise required by law, Contractor will not provide notice of the incident directly to parents, legal guardians, or pupils whose personally identifiable information was involved, to regulatory agencies, or to other entities, without prior written permission from OUSD.

7. Retention of Pupil Records. The Contractor hereby certifies that Pupil Records shall not be retained or available to the Contractor, including any subcontractors, partners, or associated entities of the Contractor, upon completion of the terms of the Contractor and this Addendum. Notwithstanding the foregoing, Contractor may maintain pupil-generated content (as that term is defined by Education Code section 49073.1(d)(4)), if any, upon completion of the term of the Agreement and this Addendum if, and only if, the parent, legal guardian, or eligible pupil chooses to establish or maintain an account with the Contractor for the purpose of storing the pupil-generated content and the Contractor receives the written permission of a pupil's parent or legal guardian to establish or maintain the pupil's account.

In furtherance of the foregoing, upon termination or expiration of the Agreement and this Addendum, Contractor will ensure that all Pupil Records are securely returned or destroyed as directed by OUSD. Transfer to OUSD or a third party designated by OUSD shall occur within a reasonable period of time, and without significant interruption in service. Contractor shall ensure that such transfer/migration uses facilities and methods that are compatible with the relevant systems of OUSD or its transferee, and to the extent technologically feasible, that OUSD will have reasonable access to Pupil Records during the transition. In the event that OUSD requests destruction of any Pupil Records, Contractor agrees to securely destroy all Pupil Records in its possession and in the possession of any subcontractors or agents to which the

Contractor might have transferred Pupil Records. The Contractor agrees to provide documentation of data destruction to OUSD.

8. Federal Educational Rights and Privacy Act. Contractor agrees to assist OUSD in maintaining the privacy of Pupil Records as may be required by State and Federal law, including but not limited to the Protection of Pupil Rights Amendment (PPRA), the Children's Online Privacy Protection Act (COPPA), the Family Educational Rights and Privacy Act (FERPA), and the Student Online Personal Information Protection Act (SOPIPA).

Contractor will provide access to Pupil Records, including deidentified information, only to its employees and subcontractors who need to access the data to fulfill Contractor obligations under the Agreement and/or this Addendum. Contractor will ensure that employees and subcontractors who perform work under the Agreement and/or this Addendum have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of this Addendum. Contractor will use the education records only for the purpose of fulfilling its duties under the Agreement and/or this Addendum for OUSD's and its pupil's benefit, and will not share such data with or disclose it to any third party except as provided for in this Addendum, required by law, or authorized in writing by OUSD.

9. No Targeted Advertising. Contractor will not use Pupil Records for advertising or marketing purposes unless such use is specifically authorized by this Agreement or otherwise authorized in writing by OUSD. Contractor will not use Pupil Records to engage in targeted advertising. Contractor is prohibited from mining Pupil Records for any purposes other than those agreed to by the parties.

10. Covered Information. To the extent Contractor is an operator of an Internet Web site, online service, online application, or mobile application, with actual knowledge that the site, service, or application is used primarily for K-12 school purposes and was designed and marketed for K-12 school purposes, Contractor agrees to comply with all of the requirements of Business and Professions Code section 22584. Contractor agrees not to engage in targeted advertising as described in section 22584. Contractor agrees not to use information, including persistent unique identifiers, created or gathered by the Contractor's site, service, or application, to amass a profile about a student except in furtherance of OUSD's purposes. Contractor further agrees to that it will not sell, disclose, or otherwise use Covered Information without the prior written consent of OUSD. Contractor will implement and maintain reasonable security procedures to protect Covered Information and fulfill all other requirements of Business and Professions Code section 22584.

11. Compliance with Law. In the event of a conflict between this Addendum and the Agreement, the terms of this Addendum shall govern. This Addendum is intended to comply with Education Code section 49073.1 and Business and Professions Code section 22584. In addition to any other penalties, if the Agreement and this Addendum, taken together, fail to comply with Education Code section 49073.1 and Business and Professions Code section 22584, the Agreement shall be rendered void if, upon notice and a reasonable opportunity to cure, the noncompliant party fails to come into compliance and cure any defect. Written notice of noncompliance may be provided by any party to the Agreement. All parties subject to an

Agreement voided in accordance with this paragraph and Education Code section 49073.1 or Business and Professions Code section 22584 shall return all Pupil Records and Covered Information in their possession to OUSD. The term of this Addendum is coextensive with the term of the Agreement.

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Addendum, in duplicate, as of the day and year first above written.

Oakland Unified School District

Aeries Software, Inc. d/b/a Eagle Software

By: _____

By: Brent Lloyd

Name: _____

Name: Brent Lloyd

Title: _____

Title: Vice President

Date: _____

Date: 06/19/201

Approved as to form:
By: Kelly M Rem
Counsel for OUSD



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

Renewal Notification RN-6882
DATE 05/01/2019
TERMS
P.O. NO. ..

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
36888	Software License/Support Subscription	2.60	07/01/2019	06/30/2020	\$95,908.80
1	Deferred Revenue from 2018-19 from discounted difference	3,769.20			\$3,769.20
1	Credit - over-payment of M&S-6245	376.92			\$376.92
SUBTOTAL					100,054.92
TOTAL					100,054.92
AMOUNT RECEIVED					\$
AMOUNT DUE					\$



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools. Thriving Students.

Board Office Use: Legislative File Info.	
File Number	18- 1742
Introduction Date	8/22/2018
Enactment Number	18-1407
Enactment Date	8/22/18 os

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Marcus Battle, Chief Business Officer
Susan Beltz, Chief Technology Officer

Board Meeting Date August 22, 2018

Subject Approval of One-Year Term Extension and 2018 Amendment to the Agreement for Acquisition of License for Aeries Software between Oakland Unified School District and Aeries Software, Inc.

Action Requested Approval of One-Year Term Extension and 2018 Amendment to the Agreement for Acquisition of License for Aeries Software between Oakland Unified School District and Aeries Software, Inc. beginning July 1, 2018 through June 30, 2019 in the amount of \$90,083.88.

Background The Oakland Unified School District has successfully used Aeries as its student information system (SIS) for 2017-18 and is using this firm going forward for the same services as previously provided.

Discussion 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



OAKLAND UNIFIED SCHOOL DISTRICT

Community Schools, Thriving Students

student data requirements. Aeries has been successfully used by OUSD for this purpose for 2017-18 and for over 10 prior school years. In addition, Aeries previously provided one-time professional services during 2017-18 to develop additional Application Programming Interface (API) functionality to support integration with the SchoolMint system used for Enrollment.

The Technology Services department hosts the Aeries database and application in our OUSD data centers. Upgrades are performed approximately four times per year to ensure that our Aeries version is current and supported. The One-Year Term Extension and 2018 Amendment to the Agreement for Acquisition of License for Aeries Software with Aeries Software includes licensing, upgrades and support for the 2018-19 fiscal year. Approval of this Agreement will enable OUSD to continue using its SIS to help ensure the continued successful management of student information.

Recommendation

Approval of One-Year Term Extension and 2018 Amendment to the Agreement for Acquisition of License for Aeries Software between Oakland Unified School District and Aeries Software, Inc. beginning July 1, 2018 through June 30, 2019 in the amount of \$90,083.88.

Fiscal Impact

\$90,083.88 from Funding Resource
010-0000-0-0000-7700-5846-999-9860-9994-9999-99999: General Purpose (GP), Data Processing, License Agreements, Districtwide

Attachments

One-Year Term Extension and 2018 Amendment to the Agreement for Acquisition of License for Aeries Software between Oakland Unified School District and Aeries Software, Inc.



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

CONTRACT JUSTIFICATION FORM
**This Form Shall Be Submitted to the
Board Office With *Every* Consent
Agenda Contract.**

Legislative File ID No. 18-1742

Department: Technology Services

Vendor Name: Aeries Software

Contract Term: Start Date: July 1, 2018 End Date: June 30, 2019

Annual Cost: \$ 90,083.88

Approved by: Susan Beltz

Is Vendor a local Oakland business? Yes ☐ No ☒

Why was this Vendor selected?

The Aeries Student Information System (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 has been successfully used by OUSD for this purpose for 2017-18 and for over 10 prior school years.

Summarize the services this Vendor will be providing.

Aeries Software will provide licensing, upgrades and support for Aeries SIS for the 2018-19 fiscal year.

Was this contract competitively bid? Yes ☐ No ☒

If No, answer the following:

1) How did you determine the price is competitive?

The Oakland Unified School District receives the Aeries SIS at a highly discounted rate of \$2.40 per student per year. (The retail price for the Aeries SIS is \$7.50 per student per year). For comparison purposes, the retail price for the Illuminate student information system (SIS), which is also a leading provider in California K-12 education, is listed as \$7 per student per year.

2) Please check the competitive bid exception relied upon:

- ☐ **Educational Materials**
- ☐ **Special Services** contracts for financial, economic, accounting, legal or administrative services
- ☐ **CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- ☒ **Professional Service Agreements** of less than \$ 90,200 (increases a small amount on January 1 of each year)
- ☐ **Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- ☐ **Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- ☐ **Emergency** contracts [requires Board resolution declaring an emergency]
- ☐ **Technology** contracts
 - ☐ electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$ 90,200 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
 - ☐ contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
 - ☐ Western States Contracting Alliance Contracts (WSCA)
 - ☐ California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- ☐ **"Piggyback" Contracts** with other governmental entities
- ☐ **Perishable Food**
- ☐ **Sole Source**
- ☐ **Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- ☐ **Other, please provide specific exception**

**ONE (1) YEAR TERM EXTENSION OF AND 2018 AMENDMENT TO
THE AGREEMENT FOR ACQUISITION OF LICENSE FOR AERIES
SOFTWARE BETWEEN AERIES SOFTWARE, INC. (d/b/a EAGLE
SOFTWARE) AND OAKLAND UNIFIED SCHOOL DISTRICT**

This Agreement Extension and 2018 Amendment is entered into by and between Oakland Unified School District ("OUSD"), and Aeries Software, Inc., d/b/a Eagle Software ("Eagle Software"), a California Corporation (collectively, the "Parties").

RECITALS

1. WHEREAS, OUSD and Eagle Software entered into an agreement effective July 14, 2004 (OUSD Enactment No. 04-0186) ("Agreement"), a true and correct copy of which is attached hereto as Exhibit A.
2. WHEREAS, through various extensions, the Agreement expires on June 30, 2018.
3. WHEREAS, OUSD and Eagle Software seek to extend and amend the Agreement for one (1) year (*i.e.*, through June 30, 2019).
4. The foregoing recitals are agreed to by the Parties.

TERMS AND CONDITIONS

1. Term of Agreement Extension and 2018 Amendment - This Agreement Extension and 2018 Amendment is for a one (1) year contract extension term effective July 1, 2018 through June 30, 2019 for the Software License/Support Subscription, with said license/support subscription at a total cost to OUSD of \$90,083.88, as set forth in the July 1, 2018 Invoice No. M&S-6245, which invoice is attached hereto as Exhibit B and incorporated as if fully set forth herein.
3. Not To Exceed - The Parties hereby agree that the total consideration payable and paid to Eagle Software by OUSD for the Term of the Agreement Extension and 2018 Amendment shall not exceed \$90,083.88.
4. Extension of Prior Terms and Conditions - Except as amended above, all other terms and conditions of the Agreement are extended by incorporation herein.
5. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - OUSD and Eagle Software certify to the best of their knowledge and belief that OUSD's, Eagle Software's, and their respective principals: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or contractor according to Federal Acquisition Regulation Subpart 9.4, and by signing

this Agreement Extension and Amendment No. 1 to the Agreement, verify that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov>.

6. Integration of Agreement and Agreement Extension and 2018 Amendment – All understandings, agreements, covenants, and representations, express or implied, oral or written, between the Parties are contained and merged herein. No other agreements, covenants, or representations, express or implied, oral or written, have been made by or between the Parties concerning the subject of this Agreement Extension and Amendment. This is an integrated Agreement Extension and 2018 Amendment. It may not be altered, modified or otherwise changed in any respect except in a writing signed by OUSD and Eagle Software.

Dated: 7/27/18

Aeries Software, Inc. d/b/a Eagle Software

By: Brent Lloyd
Brent Lloyd, CEO Vice President

Dated: 8/23/18

Oakland Unified School District

By: Aimee Eng
Aimee Eng, Board President

By: Kyla Johnson-Trammell
Kyla Johnson-Trammell, Superintendent
& Board Secretary

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE

By: Amy Brandt 8.3.18
Amy Brandt, Attorney at Law



PLEASE REMIT TO:
Aeries Software
1065 N. Pacific Center Dr.
Suite 400
Anaheim, CA 92806

INVOICE NO. M&S-6245
DATE 07/01/2018
TERMS Net 30
P.O. NO.

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

Please make all checks payable to Aeries Software and include a copy of this invoice with your check. 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
37692	Software License/Support Subscription \$2.50 per student discounted to \$2.39. The difference of \$3,769.20 to be added to the 2019-20 invoice along with an increase to \$2.60.	2.39	07/01/2018	06/30/2019	\$90,083.88
SUBTOTAL					90,083.88
TOTAL					90,083.88
AMOUNT RECEIVED					\$0.00
AMOUNT DUE					\$90,083.88

AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE

1. Introduction.

This is an Agreement between Aeries Software, Inc. d.b.a. EAGLE SOFTWARE located at 505 N. Tustin Avenue, Suite 150, Santa Ana, California, 92705 (hereinafter "EAGLE SOFTWARE") and its customer Oakland Unified School DISTRICT, a public agency, ("hereinafter "DISTRICT"), under which software is licensed on a non-exclusive basis for the customer's use under the terms and conditions stated below. The effective date for purposes of the interpretation of the Agreement shall be July 14, 2004.

2. Definitions.

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

- "Acceptance" shall mean the date on which EAGLE SOFTWARE informs the DISTRICT and the DISTRICT confirms that the Licensed Software has been installed in accordance with the *Implementation Plan (Exhibit "B")*.
- "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 EAGLE 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 EAGLE SOFTWARE under this Agreement, including Aeries™ (formerly known as EASY95, EASY96, EASY97, EASY98 and EASY99), 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 EAGLE SOFTWARE, and any and all programs or Modules provided by EAGLE SOFTWARE in the future under this Agreement pursuant to the mutual written agreement of the parties.
- "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.
- "Implementation Plan" shall mean the documentation of tasks and events including the assignment of responsibilities leading to general productive use of the Licensed Software by the DISTRICT, attached hereto as *Implementation Plan (Exhibit "B")*.

3. Grant of Nonexclusive Software License.

EAGLE SOFTWARE hereby grants to DISTRICT a perpetual, non-exclusive license to use the Licensed Software and Documentation for its and its Users' business activities subject to the provisions of the *Nonexclusive Software License (Exhibit "C")*.

At no additional charge to DISTRICT, EAGLE SOFTWARE shall provide DISTRICT access to all Documentation on EAGLE 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 EAGLE 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.

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 Eagle Software; provided that DISTRICT may make one copy of the Software for backup or archival purposes. 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. During the first year following the Reference Date of this Agreement and any period during which the DISTRICT purchases and properly pays for maintenance and support of the Licensed Software from EAGLE SOFTWARE, DISTRICT shall have the right to acquire from EAGLE SOFTWARE any subsequent Release or Version of the Licensed Software produced by EAGLE SOFTWARE as an update to the Licensed Software at no charge to DISTRICT.

5. Licensed Software Installation, Implementation Plan, and First Productive Use.

EAGLE SOFTWARE agrees to install the Licensed Software in accordance with the time schedule as set forth in the *Implementation Plan (Exhibit "B")* or upon such reasonable time schedule as agreed to by and between the parties. The Licensed Software may be delivered to DISTRICT by electronic transmission. EAGLE SOFTWARE'S responsibilities for the delivery, installation, and First Productive Use, as applicable, as to each Module and as to the System, and the training of DISTRICT Users in the use of each Module and the System, shall be limited to the terms and conditions set forth herein and in the *Implementation Plan (Exhibit "B")*. Failure of EAGLE SOFTWARE to satisfy its responsibilities as set forth in the Implementation Plan as to any Module or as to the System, unless modified, shall be a material breach by EAGLE SOFTWARE of this Agreement, entitling DISTRICT, in addition to and cumulative of all remedies available to it at law, in equity or under this Agreement, to immediately commence withholding payments to EAGLE SOFTWARE under this Agreement until EAGLE SOFTWARE cures the Implementation Plan time schedule default. The amount of any payment(s) withheld by DISTRICT shall be in an amount that is in proportion to magnitude of the default.

6. System Configuration.

EAGLE SOFTWARE shall provide documentation of EAGLE 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 insuring 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 EAGLE SOFTWARE to pay for any necessary hardware or third party software upgrades or third party services that*

DISTRICT may employ to enhance its system.

The parties expressly acknowledge that EAGLE SOFTWARE is not providing any equipment or software other than the Licensed Software under this Agreement. Further, DISTRICT expressly represents and EAGLE 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 personal computers using Windows 3.1 or later operating system on a Windows-compatible network, using Windows-compatible protocols. The DISTRICT is responsible for insuring 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

7. Software Training.

EAGLE SOFTWARE shall provide training to the DISTRICT and its Users in accordance with the time schedule and assignment of responsibilities as agreed during the implementation planning and the pricing/number of days of training needed as outlined by the *Sales Proposal (Exhibit "A")*.

8. Payment of Software Licensing Fee and Related Fees.

In consideration of the license granted under this Agreement, DISTRICT shall pay EAGLE SOFTWARE the sum of \$578,000.00 plus any applicable sales tax for the license of the 'Aeries™' software in accordance with the *Sales Proposal (Exhibit "A")*. The license fee of \$578,000.00 covers the Oakland Unified School DISTRICT with a total base enrollment of 50,000 students in grades K-12 in accordance with the *Sales Proposal (Exhibit "A")* and *List of Schools (Exhibit "D")*. Additional Software License fees will not be required unless the DISTRICT enrollment as reported via the annual California Basic Educational Data System (CBEDS) exceeds 50,500 students in grades K-12. A base K-12 student enrollment of 50,000 students shall be the basis for calculating additional Software License fees. Additional Software License fees shall be due and payable to EAGLE SOFTWARE in the amount of \$6,140.00 per enrollment increase increment of 500 K-12 students above the base K-12 enrollment of 50,000 students based upon the DISTRICT'S enrollment as reported each year via the annual CBEDS report. Payment shall be made in accordance with the *Payment Schedule (Exhibit "H")*.

Data Conversion. In addition to the payment of the license fee, DISTRICT shall pay EAGLE SOFTWARE the sum of \$40,000.00 for conversion of DISTRICT'S existing data for the 2004-2005 school year to a format that is recognizable to and may be used by the Licensed Software in accordance with the *Sales Proposal (Exhibit "A")*. One day of training for the DISTRICT'S Technical Staff is included to enable the District Staff to convert an unlimited number of previous year's data independent of Eagle Software. In addition to the payment of the license fee, DISTRICT shall pay EAGLE SOFTWARE the sum of \$15,000.00 for conversion of DISTRICT'S existing data for the three (3)

school years prior to the 2004-2005 school year to include the 2003-2004 school year, the 2002-2003 school year, and the 2001-2002 school year to a format that is recognizable to and may be used by the Licensed Software in accordance with the *Sales Proposal (Exhibit "A")*. The EAGLE SOFTWARE data conversion services require that the DISTRICT provide EAGLE SOFTWARE with uniformly formatted ASCII (fixed length) text file extracts from the existing SASI-III AS400 student information system data using identical formats for each school year/file extract. Payment shall be made in accordance with the *Payment Schedule (Exhibit "H")*.

Maintenance and Support. In addition to the payment of the license fee, DISTRICT shall pay EAGLE SOFTWARE the sum of \$66,000.00 for maintenance and support using the discounted district coordinator (DISTRICT Project Administrator) support terms as described in the *Sales Proposal (Exhibit "A")* for the period beginning with the Reference Date continuing through ~~June 30, 2005~~ ^{11/03/04}. DISTRICT shall pay ~~0946~~ ⁰⁹⁴⁶ EAGLE SOFTWARE a fee for maintenance and support for any subsequent year's maintenance and support at the then current rate for maintenance and support. *0946 11/03/04*

The annual maintenance and support fee covers the Oakland Unified School DISTRICT with a total base enrollment of 50,000 students in grades K-12 in accordance with the *Sales Proposal (Exhibit "A")* and *List of Schools (Exhibit "D")*. The sum of \$66,000.00 for the school year 2004-2005 shall be considered a base fee for the DISTRICT'S maintenance and support costs when calculating subsequent year's maintenance and support costs. The annual maintenance and support fees which is charged to the DISTRICT may be increased by EAGLE SOFTWARE in subsequent year's based upon a calculation applying the same percentage increase as may be applied to other EAGLE SOFTWARE clients and the then current DISTRICT base maintenance and support cost plus any incremental maintenance and support cost increase which is based upon an increase in the DISTRICT'S K-12 student enrollment.

The DISTRICT'S base fee for annual maintenance and support will be increased when DISTRICT enrollment as reported via the annual California Basic Educational Data System (CBEDS) exceeds 50, 500 students in grades K-12 or when a general percentage based increase is charged to other EAGLE SOFTWARE clients. The base K-12 student enrollment of 50,000 students shall be the basis for considering an incremental increase in the DISTRICT'S base fee for maintenance and support due to increased enrollment. An increase in the base maintenance and support fees shall be due and payable to EAGLE SOFTWARE in the amount of \$655.00 per enrollment increase increment of 500 K-12 students above the base K-12 enrollment of 50,000 students based upon the annual CBEDS report. When a general percentage based increase is charged to other EAGLE SOFTWARE clients the percentage will be applied to both the DISTRICT'S base fee for annual maintenance and support and the incremental cost increase based upon an increase in the DISTRICT'S K-12 student enrollment.

Training Fees. In addition to the payment of the license fee, DISTRICT shall pay EAGLE SOFTWARE a fee as described in the *Sales Proposal (Exhibit "A")* for training of DISTRICT staff. DISTRICT may negotiate and pay for a schedule for

additional days of training based upon EAGLE SOFTWARE'S fee for training services at the time of the request and the availability of EAGLE SOFTWARE'S Staff. Payment shall be made in accordance with the *Payment Schedule (Exhibit "H")*.

Installation. In addition to the payment of the license fee, DISTRICT shall pay EAGLE SOFTWARE the sum of \$1,000.00 per day plus expenses per Eagle Software representative that may be required to provide services on an if and as needed basis for installation of the Licensed Software on DISTRICT'S computer system.

Custom Programming. In addition to the payment of the license fee, DISTRICT shall pay EAGLE SOFTWARE a fee to be negotiated for custom programming services on an if and as needed basis for any DISTRICT custom programming needs in accordance with the *Implementation Plan (Exhibit "B")*.

Implementation/Project Management. In addition to the payment of the license fee, DISTRICT shall pay EAGLE SOFTWARE the sum of \$100.00 per hour plus expenses per EAGLE SOFTWARE representative that may be required to provide implementation/project management services on an if and as needed basis in accordance with the *Sales Proposal (Exhibit "A")*.

Other Services. In addition to the payment of the license fee, DISTRICT may negotiate a schedule for additional services beyond those described in the *Sales Proposal (Exhibit "A")* based upon EAGLE SOFTWARE'S fee for any requested services at the time of the request and the availability of EAGLE SOFTWARE'S Staff.

9. Agreement to Provide Specific Enhancements to the Licensed Software. EAGLE SOFTWARE shall provide the following specific enhancements to the Licensed Software at no additional cost to the DISTRICT:

- A. The ability for the DISTRICT to define fields required for data entry when entering a new student record shall be included as a feature of the Licensed Software by January 31, 2005.
- B. The ability for the DISTRICT to define codes which are valid/acceptable for specific fields when entering a new student record or changing an existing student record shall be included as a feature of the Licensed Software by January 31, 2005.
- C. A web-based Individual Education Plan (IEP) tracking system shall be included as a feature of the Licensed Software by July 1, 2005.
- D. Eagle Software agrees to provide the DISTRICT with a web-based version of the Licensed Software at no additional cost to the DISTRICT according to the following schedule and list of exclusions:
 - 1.) Phase 1 – Web-based functions as documented in Exhibit "E" will be available by September 1, 2005.
 - 2.) Phase 2 – Other web-based functions as documented in Exhibit "F" will be available by September 1, 2006.
 - 3.) Aeries functions such as those listed in Exhibit "G" will be excluded from

the contractual obligations of Phase 1 and 2 development of a web-based version of the Licensed Software.

- E. A user configurable student filter that can optionally be remembered for each user by July 1, 2005.
- F. A School Interoperability Framework (SIF) interface by March 31, 2005.
- G. Add additional security to the Teacher Data form to prevent the changing of the Staff ID field by users who do not have read permissions to the Staff Data table by July 1, 2005.
- H. A security restriction mechanism for the district to identify which specific users may use the Aerles QUERY Change functionality by July 1, 2005.

10. Maintenance and Support.

EAGLE 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, EAGLE SOFTWARE shall provide support as follows:

(a) All requests for support shall be first directed to the DISTRICT'S Project Administrator if the *Sales Proposal (Exhibit "A")* documents the expectation that the DISTRICT will take responsibility for local support that is to be provided by the DISTRICT'S Project Administrator. The DISTRICT'S Project Administrator (if any) shall first make reasonable efforts to resolve the support issue before contacting EAGLE SOFTWARE.

(b) If the DISTRICT'S Project Administrator cannot resolve the support issue, the DISTRICT'S Project Administrator will contact EAGLE SOFTWARE. The DISTRICT'S Project Administrator shall transmit all information relevant to the support issue to EAGLE SOFTWARE, including the relevant hardware and operating system information and the circumstances under which the support issue arose. If the DISTRICT does not have a Project Administrator as documented by the absence of a support discount on the *Sales Proposal (Exhibit "A")* and the DISTRICT has purchased support services from EAGLE SOFTWARE as documented on the *Sales Proposal (Exhibit "A")* then a designated, technically competent DISTRICT Representative for each site may contact EAGLE SOFTWARE for support.

(c) All requests for support shall be made during normal business hours (8:00 a.m. to 4:30 p.m. Pacific Standard Time, Monday through Friday, other than legal holidays and days designated by EAGLE SOFTWARE as non-work days. A complete list of legal holidays and days designated by EAGLE SOFTWARE as non-work days is posted on EAGLE SOFTWARE'S Web site. No further notice will be provided.).

(d) During the term of this Agreement, EAGLE SOFTWARE shall make

available to DISTRICT via the EAGLE SOFTWARE Web site Corrections, Updates, Enhancements, Improvements, and Releases to the Licensed Software, as they are made generally available to other EAGLE SOFTWARE clients.

(e) 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.

(f) *Notwithstanding the provisions of this Section, EAGLE SOFTWARE may terminate support with regard to the Licensed Software upon ninety (90) days written notice if (i) DISTRICT fails to remain within at least thirty (30) calendar days of EAGLE SOFTWARE'S most then-current production release of the Licensed Software and the failure to remain within thirty (30) calendar days of EAGLE 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.*

(g) *Notwithstanding the provisions of this Section, EAGLE 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 EAGLE SOFTWARE, (ii) act in reasonable accordance with EAGLE SOFTWARE'S requests and requirements, (iii) respond in a reasonable time and manner to EAGLE SOFTWARE'S written notice or inquiry, or (iv) otherwise act in good faith in furtherance of the material terms and conditions of this Agreement.*

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

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.

EAGLE SOFTWARE'S Proprietary or Confidential Information shall remain the sole and exclusive property of EAGLE 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 EAGLE 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 EAGLE 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.

EAGLE 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.

All of the DISTRICT data, records, and information processed by or input onto the System to which EAGLE SOFTWARE has access, or otherwise provided to EAGLE 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 EAGLE 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 EAGLE SOFTWARE or commercially exploited or otherwise used by or on behalf of EAGLE SOFTWARE, its officers, directors, employees, or agents.

EAGLE 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.

12. EAGLE SOFTWARE'S Representations, Warranties and Covenants

Warranty of Title. EAGLE SOFTWARE hereby represents and warrants to DISTRICT that EAGLE 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, EAGLE SOFTWARE represents, warrants and agrees that the Licensed Software shall perform in all material respects according to EAGLE SOFTWARE'S specifications concerning the Licensed Software when used with the appropriate computer equipment.

Warranty of Response Time. EAGLE SOFTWARE represents and warrants that the response time for the Licensed Software shall be normal for commercial software. As with any PC-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 and the speed of the PC and quantity and type of software operating on any given server.

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 EAGLE SOFTWARE to either: (i) procure, at EAGLE 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 EAGLE SOFTWARE. In the event of any breach or alleged breach of these warranties, DISTRICT shall promptly notify EAGLE SOFTWARE thereof and provide EAGLE SOFTWARE a reasonable opportunity to repair or replace the Licensed Software, at EAGLE 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 EAGLE SOFTWARE.

Warranty Disclaimer. EAGLE SOFTWARE DISCLAIMS AND DISTRICT SPECIFICALLY ACKNOWLEDGES THAT EAGLE 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. EAGLE SOFTWARE WILL NOT BE LIABLE FOR LOST PROFITS, LOST OPPORTUNITIES, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES UNDER ANY CIRCUMSTANCES.

In no event shall any demonstration or any promotional materials pursuant to this Section constitute an endorsement, representation or warranty, express or implied, by DISTRICT, with respect to the Licensed Software. In the event of a dispute between DISTRICT and EAGLE SOFTWARE, DISTRICT'S agreement to participate in promotions and demonstrations under this Section and all statements made by DISTRICT in connection with such activities shall not be deemed an admission or declaration against interest of DISTRICT in any trial or dispute resolution proceeding between the parties.

13. Overall Limitation of Liability and Damages

IN NO CASE SHALL EAGLE 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 EAGLE SOFTWARE UNDER THIS AGREEMENT.

14. 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 EAGLE SOFTWARE of any type, EAGLE SOFTWARE shall be paid at its then current rates for such services.

15. Assignment.

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

EAGLE 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 EAGLE 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) EAGLE 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.

16. 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 EAGLE 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. EAGLE 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. EAGLE 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 EAGLE SOFTWARE'S expense as described herein, EAGLE 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 EAGLE 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)"). EAGLE 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 Oswaldo A. Galarza,
Information Technology Officer
1025 Second Ave.
Oakland, California 94606.

TO: EAGLE SOFTWARE @

Aeries Software, Inc.
505 N. Tustin Avenue, Suite 150
Santa Ana, California 92705
Fax: (714) 571-3966

and to

David Christopher Baker
Hart, King and Coldren, A Law Corporation
200 East Sandpointe, Suite 400
P.O. Box 2507
Santa Ana, California 92707
Fax: (714) 546-7457

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 EAGLE 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 EAGLE 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. EAGLE 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.

Promotions. The parties agree that EAGLE 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: 10/26/04, 2004

DISTRICT

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE

By: [Signature]
Barry A. COMBS, Attorney at Law
General Counsel

By: [Signature]

Title: _____

Randolph E. Ward, Ed.D.
State Administrator

Oakland Unified School District

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

DATE: 11-3, 2004

EAGLE SOFTWARE

By: [Signature]

Aeries Software, Inc.
d.b.a. EAGLE SOFTWARE

Legislative File

File ID No. 04-1141
Introduction Date 7/14/04
Enactment No. 04-0211
Enactment Date 7/14/04
By [Signature]

AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE

EXHIBIT A - Sales Proposal

AERIES Software Pricing Proposal Ref# 01142004-Oakland USD-1

The following is a price proposal summary for the Oakland Unified School District's AERIES Administrative Student Information Software purchase.

EAGLE SOFTWARE, 505 N. Tustin Avenue, Suite 150, Santa Ana, California, 92705 proposes the sale of a Software License and implementation plan, including a software license and services, installation services (if any), data conversion services (if any) and training with respect to EAGLE SOFTWARE's Aeries™ student administrative software package to Oakland Unified School DISTRICT (hereinafter "DISTRICT") based upon the following price schedule:

QTY	DESCRIPTION	UNIT PRICE	AMOUNT
SOFTWARE			
62	AERIES Student Software System Elementary School version (Please refer to attached school listing)	\$ 5,000.00	\$ 310,000.00
14	AERIES Student Software System Middle School version (Please refer to attached school listing)	\$ 7,000.00	\$ 98,000.00
6	AERIES Student Software System High School version (Please refer to attached school listing)	\$ 10,000.00	\$ 60,000.00
20	AERIES Student Software System Continuation High/Atypical Schools version (Please refer to attached school listing)	\$ 3,000.00	\$ 60,000.00
1	AERIES Student Software System District Office version	\$ 50,000.00	\$ 50,000.00
MAINTENANCE & DISTRICT COORDINATOR SUPPORT			
62	First year software support of AERIES Elementary School version (50% District Coordinator Support discount applied)	\$ 500.00	\$ 31,000.00
14	First year software support of AERIES Middle School version (50% District Coordinator Support discount applied)	\$ 1,000.00	\$ 14,000.00
6	First year software support of AERIES High School version (50% District Coordinator Support discount applied)	\$ 1,000.00	\$ 6,000.00

20	First year software support of AERIES Continuation High/Atypical version (50% District Coordinator Support discount applied)	\$ 500.00	\$ 10,000.00
1	First year software support of AERIES District Office version (50% District Coordinator Support discount applied)	\$ 5,000.00	\$ 5,000.00
DATA CONVERSION			
	Data file conversion from uniform ASCII (fixed length) text file extracts of the existing SASI-III AS400 student information system for the current school year only plus one day of training on the use/modification of the conversion tool for the District Technical Staff. The training as proposed is to enable the District Staff to convert an unlimited number of previous year's data independently of Eagle Software.		\$ 40,000.00
	Data conversion for 3 prior years.		\$ 15,000.00
TRAINING (As specified in Eagle Software's response to Oakland Bid No. 03-04/03, the District may use training Option 1, training Option 2 or a combination of both training options which could reduce the cost of training.)			
75	<u>Option 1:</u> Training of AERIES users. (Full days) Training of AERIES users. (Full days) Training to be provided by an Eagle Software representative, including Technical Leaders and District Office staff..	\$ 1,000.00	\$ 75,000.00
15	<u>Option 2:</u> Eagle Software also offers, Train the Trainer, Training Option 2. The Train the Trainer, Training Option 2, may be used in lieu of or in combination with Training Option 1. Option 2 would require fifteen (15) days of training (at \$1,000.00 per day) which could reduce the proposed training costs.	1,000.00/day	\$ 15,000.00
EXPENSES			
90	Travel expenses (estimated): Actual travel expenses (lodging, meals, car rental, airfare, etc.) will be invoiced as incurred. Approximate \$200.00 per day plus airfare.		\$ 18,000.00
PROJECT MANAGEMENT			
10	Project manager and management (Please see clarification below)	\$ 100.00/Hr.	\$ 1,000.00

COST SUBTOTAL

Software subtotal	\$ 578,000.00
(Software sales tax 8.25%)	\$ (47,685.00)
Data file conversion from uniform ASCII (fixed length) text file extracts of the existing SASI-III AS400 student information system for the current school year only	\$ 40,000.00
Data Conversion 3 prior years	\$ 15,000.00
Software support for year one	\$ 66,000.00
Training at district site (Option 1)	\$ 75,000.00
Training at district site (Option 2)	\$ 15,000.00
Training expenses (estimated)	\$ 18,000.00
Project management	\$ 1,000.00
(Total with sales taxes paid)	\$ 855,685.00
TOTAL (without sales tax)	\$ 808,000.00

EAGLE SOFTWARE hereby expressly represents to DISTRICT that this instant Sales Proposal is merely a proposal and is not binding upon either party unless and until both EAGLE SOFTWARE and DISTRICT have agreed in writing to the terms and conditions set forth in the separate AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE.

The instant Sales Proposal shall expire at 5:00 p.m. (P.S.T.) on July 15, 2004 without further notice from EAGLE SOFTWARE unless EAGLE SOFTWARE has agreed in writing to extend the expiration thereof or EAGLE SOFTWARE and DISTRICT have agreed in writing to the specific terms and conditions of an AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE.

We have a policy of waiving California Sales Tax if our product and documentation are downloaded from our web site. California sales tax rules allow for this exemption. **California Reg. § 1502 (f) 1) (D).** If you would like to use this option, it will reduce your quote by **\$47,685.00.**

Support Option: A discount of 50% of the cost of software support has been applied. It requires that the District use a district coordinator to contact Eagle Software for software support.

Training of Aeries users is available for \$1,000 per day plus expenses. (Full days at a lab within the District.) The number of training days and expenses proposed in this quote is an estimate. Training on Elementary Standards Based Grade Reporting and the Aeries Browser Interface may add to the number of training days required. Training and expenses will be invoiced based upon the actual number of training days and actual expenses that apply. Training may be provided at the Eagle Software training lab located in Santa Ana CA without

additional cost subject to its availability. Eagle Software proposes to negotiate the training options and/or combinations of training options with OUSD to meet the needs of the District.

Installation of Aeries: The cost of installation is omitted in the total cost proposed. Eagle Software's Aeries SIS software is traditionally installed by the District's staff (215 California School Districts to date). Factors such as number of computers per site, the District's continued desire to use Eagle Software's assistance after experiencing the ease of installation plus variables Eagle Software might encounter beyond our control, make it necessary to quote a daily rate for installation services (\$1,000.00 per day) plus travel expenses.

QTY	DESCRIPTION	UNIT PRICE	AMOUNT
To be determined based upon District needs.	Installation Services	1,000.00 per day per Eagle Software Representative required plus travel expenses.	To be determined based upon District needs.

Data Conversion: Any data conversion other than that identified in this proposal will be quoted for an additional fee. Data conversion services are performed in the Santa Ana office of Eagle Software and the data files are transmitted electronically between your district and Eagle Software. The data conversion cost proposed (Ref # 01142004-Oakland USD-1) is for the data file conversion from uniform ASCII (fixed length) text file extracts of the existing SASI-III AS400 student information system for the current school year only. As an additional data conversion option, Aeries will convert standard SASI-III PC based data files within the software.

Eagle Software feels that data synchronization is an unnecessary process which is outside the scope needed for successful data conversion into Aeries SIS. If OUSD determines that data synchronization is required, Eagle Software would need to identify the extent of the procedure before submitting a quote.

Please refer to the detailed explanation of data conversion and data synchronization in the "Implementation Plan".

Implementation/Project Management: The project management costs as follows:

QTY	DESCRIPTION	UNIT PRICE	AMOUNT
10 (ten) hours	Project Management	\$100.00 per hour per Eagle Software Representative required plus travel expenses (if required).	\$1,000.00

If the implementation assistance project management requirements exceeds 10 (ten) hours, the District will be billed the hourly rate.

AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE

EXHIBIT B - Implementation Plan

Aeries Software, Inc. d.b.a. EAGLE SOFTWARE, 505 N. Tustin Avenue, Suite 150, Santa Ana, California, 92705 (hereinafter "EAGLE SOFTWARE") proposes the following Implementation Plan for the Oakland Unified School DISTRICT'S (hereinafter "DISTRICT") purchase of the software license and services, installation, data conversion (if any) and training with respect to EAGLE SOFTWARE's Aeries™ student administrative software package. This plan covers the scheduling and coordination of the tasks that are required to enable Oakland Unified School DISTRICT as referenced in the *Sales Proposal (Exhibit "A")* and *List of Schools (Exhibit "D")* to make productive use of the Aeries™ software.

EAGLE SOFTWARE proposes to act in the role of "Product Reseller / Provider" of its product known as Aeries™ for DISTRICT. EAGLE SOFTWARE shall act as an independent contractor and not an officer, agent or employee of DISTRICT.

EAGLE SOFTWARE proposes to develop an implementation schedule based upon discussions and in cooperation with DISTRICT'S designated Liaison/Project Administrator. This schedule will define the dates when installation, training, data conversion and first productive use are planned with regard to the Aeries™ software. DISTRICT will be responsible for scheduling and coordinating any related activities such as preliminary staff training in the use of a mouse/Windows and hardware/software acquisition/upgrades.

EAGLE SOFTWARE proposes to assist DISTRICT with the evaluation of DISTRICT'S various servers, workstations, networks and associated client skill level to determine the customer's readiness to use the EAGLE SOFTWARE. EAGLE SOFTWARE may make recommendations that could require DISTRICT'S attention before installation can begin. Minimum hardware and staff skill requirements will be discussed during the initial implementation-planning meeting. These discussions are proposed with DISTRICT'S satisfaction as the goal. The parties expressly recognize, acknowledge and agree that EAGLE SOFTWARE is not and will not be responsible for the setup and/or configuration of new equipment, hardware upgrades, network issues or ancillary software.

EAGLE SOFTWARE proposes that delivery of the Aeries™ Software and documentation is intended to facilitate installation and training. The software and documentation may be delivered at the initial implementation-planning meeting. DISTRICT may electronically download the Aeries™ software and its related product documentation once the DISTRICT has formally approved the Software License Agreement and has agreed to the purchase of services as outlined in the Sales Proposal attached thereto.

EAGLE SOFTWARE proposes that installation include the addition of the Aeries™ software product on each individual workstation and the file server. Desktop icons will

be added to each workstation. EAGLE SOFTWARE can do file server configuration provided EAGLE SOFTWARE'S employees are granted the necessary file server administration rights and permissions.

EAGLE SOFTWARE represents that certain features included in the Aeries™ software are designed to handle data file conversion. Any data file conversion which involves the EAGLE SOFTWARE programming staff as outlined in the Sales Proposal may require up to thirty workdays for completion after the data is available to the EAGLE SOFTWARE staff. Coordination of the data file conversion schedule with the DISTRICT'S staff will be necessary to insure that downtime and added workloads are minimized without loss of data. Data file conversion services, which are not handled by the features of the Aeries™ software "on site" at each school or the DISTRICT Office, will be performed at the EAGLE SOFTWARE offices in Santa Ana, California.

DISTRICT must be prepared to discuss, document and make decisions regarding their unique data files/fields/codes in order to facilitate the data conversion process in a timely manner. Once DISTRICT'S data conversion process has been defined in mutually agreeable terms and the actual conversion process has begun, no changes can be accommodated without additional cost to the DISTRICT.

EAGLE SOFTWARE proposes that it will provide training for the software end users according to EAGLE SOFTWARE'S established training practices based upon the number of days of training purchased as outlined in the sale proposal. EAGLE SOFTWARE will work with the DISTRICT to define the DISTRICT'S training requirements including the number of people to be trained, how the DISTRICT staff will be grouped for training, the levels/types of training needed, the preferred location and a proposed schedule.

EAGLE SOFTWARE proposes that it will provide product support if it is included as part of the Sales Proposal and purchased by the DISTRICT. This product support consists of toll-free telephone support during normal business hours (normal business hours are deemed to be 8:00 A.M. to 4:30 P.M. Pacific Time), and a 24-hour update service for Aeries™ via the EAGLE SOFTWARE Web site. Product support is available now and would begin as of the Reference Date of this agreement.

EAGLE SOFTWARE proposes that any additional services that may be required based upon the DISTRICT'S needs which are not covered by the Sales Proposal (Exhibit "A") and are not specifically noted above will be billed at EAGLE SOFTWARE 's then current hourly rate for such services. Written authorization will be required before these additional services can be delivered. Travel expenses will be added for service, which require driving more than thirty (30) miles from the EAGLE SOFTWARE staff's point of departure.

EAGLE SOFTWARE proposes that EAGLE SOFTWARE 's employees and/or the DISTRICT'S employees shall perform the services specified in this implementation plan as outlined below:

1. DISTRICT responsibilities shall include:

- A. Identification of a qualified customer Liaison/Project Administrator (and backup) who is technically competent and able to make decisions that will impact the implementation process.
- B. Commitment to an implementation schedule and coordination of both activities and staff time based upon the DISTRICT'S targeted date to be operational with live data.
- C. Planning and coordination activities which are independent of EAGLE SOFTWARE 'S involvement or responsibility such as preliminary staff training in the use of a mouse/Windows and hardware/software acquisition/upgrades.
- D. Verification that the DISTRICT'S staff has computer skills appropriate for their job including a basic ability use a mouse, size/move windows and start applications from menus.
- E. Verification that the DISTRICT'S technical users/trainers/support staff have advanced computer skills that will enable them to provide local DISTRICT level support.
- F. Definition of the DISTRICT'S training requirements in cooperation with EAGLE SOFTWARE including the number of people to be trained, how the DISTRICT staff will be grouped for training, levels/types of training, preferred location and proposed schedule.
- G. Verification that the DISTRICT'S computer hardware (workstations, servers, printers and scanners) networks, operating systems and other software configurations comply with EAGLE SOFTWARE 's specifications.
- H. Verification that the DISTRICT has an adequate number of licenses for MS Access, adequate MS SQL Server licenses if necessary and/or acquisition of licenses as needed.
- I. Definition, documentation and decisions regarding unique data files/fields/codes to facilitate data conversion.
- J. Arranging for EAGLE SOFTWARE 's staff to have access to DISTRICT computers/servers with appropriate levels of permission.
- K. Provision for staff access to an e-mail system that is adequate to facilitate communication and transfer of data files as attachments between the DISTRICT and the EAGLE SOFTWARE office.
- L. Provision for staff access to the Internet with the ability to download software, software updates and documents.

2. EAGLE SOFTWARE'S responsibilities shall include:

- A. Implementation planning, scheduling and coordination of tasks involving EAGLE SOFTWARE 's personnel based upon the Sales Proposal and *license/purchase arrangements in cooperation with the DISTRICT'S Project Administrator.*
- B. Delivery of the Aeries™ software and documentation or provision for downloading the software/documentation.
- C. Assisting the DISTRICT'S Project Administrator with evaluation of DISTRICT

equipment, networks and general readiness of the DISTRICT for implementation of the EAGLE SOFTWARE.

- D. Assisting the DISTRICT'S Project Administrator with definition of training needs and scheduling of any training purchased from EAGLE SOFTWARE.
- E. Actual training of DISTRICT staff in use of EAGLE SOFTWARE (may use the train-the-trainer model) using the Sales Proposal as a basis for allocating purchased training time. Typical topics that may be included:
 - 1.) Three and one-half hours (3.5 hours) minimum of overview for everyone who will use Aeries™.
 - 2.) Three and one-half hours (3.5 hours) of system administration for appropriate/selected DISTRICT staff.
 - 3.) Separate three and one-half hour (3.5 hour) sessions for topics such as grades, scheduling, period attendance, daily attendance, enrolling students and Query based upon the DISTRICT'S needs, assignment of responsibilities and the amount of training days purchased as documented in the Sales Proposal.
- F. Assisting the DISTRICT with definition of policies and practices necessary to make proper use of the software. This task will be completed as a part of the system administration training.
- G. Installation of the Aeries™ Software in a manner defined during the license and purchase negotiations as documented in the Sales Proposal.
- H. Telephone support based upon the Sales Proposal and purchase arrangements.
- I. Data conversion as defined by the Sales Proposal and purchase arrangements.
- J. Provision for a Web site accessible by the DISTRICT where software fixes/updates and documentation can be reviewed and optionally downloaded by the DISTRICT.
- K. Providing optional items which may be purchased in addition to the items outlined in the Sales Proposal based upon DISTRICT needs/interests:
 - 1.) Training based upon a daily rate plus expenses.
 - 2.) Installation and/or implementation support based upon an hourly rate plus expenses.
 - 3.) Data conversion assistance for a fee.
 - 4.) Custom programming for a fee.

EAGLE SOFTWARE hereby expressly represents to DISTRICT that the Implementation Plan is merely a proposal and is not binding upon either party unless and until both EAGLE SOFTWARE and DISTRICT have agreed in writing to the terms and conditions set forth in the separate AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE.

AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE

EXHIBIT C - Nonexclusive Software License

Pursuant to the terms and conditions of the Software License Agreement, this is a License between Aeries Software, Inc. d.b.a. EAGLE SOFTWARE, 505 N. Tustin Avenue, Suite 150, Santa Ana, California 92705 (hereinafter "EAGLE SOFTWARE") and the Oakland Unified School District (hereinafter "DISTRICT"). This License states the terms and conditions upon which EAGLE 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.

DISTRICT IS RESPONSIBLE FOR TAKING ALL NECESSARY PRECAUTIONS TO MAKE BACKUP COPIES OF, AND TO SAFEGUARD, DISTRICT DATA WHICH MAY BE CONTAINED IN THE SOFTWARE. EAGLE SOFTWARE ACCEPTS NO RESPONSIBILITY FOR ANY DATA WHICH MAY BE LOST.

BY SIGNING THIS AGREEMENT, OR BY USING THE SOFTWARE, 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 EAGLE 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 EAGLE SOFTWARE retains all title and ownership of its respective Software and related documentation.
2. The Software may be used only at an authorized school, or other site, for which a license has been purchased. Additional schools or sites require the purchase of additional licenses.
3. 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.

4. 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 EAGLE SOFTWARE 's copyright notice on the backup copy of the Software.

5. Any portion of the Software merged into or used in conjunction with another software will continue to be the property of EAGLE SOFTWARE and subject to the terms and conditions of this License. DISTRICT must reproduce and include EAGLE SOFTWARE 's copyright notice on any portion merged in or used in conjunction with another software.

6. DISTRICT may not sublicense, assign or otherwise transfer the Software or this license to any other person without the prior written consent of EAGLE SOFTWARE. EAGLE 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.

7. DISTRICT acknowledges that DISTRICT is receiving, on a LIMITED LICENSE TO USE, the Software and that EAGLE SOFTWARE retains all right, title and interest in and to the Software. DISTRICT acknowledges that EAGLE 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.

8. DISTRICT agrees to indemnify and hold harmless EAGLE SOFTWARE from any action or liability resulting from DISTRICT'S use of the Software, except to the extent that EAGLE 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 EAGLE 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 EAGLE SOFTWARE. The portions of this License

that protect the proprietary rights of EAGLE SOFTWARE will continue in force after

termination of the License. EAGLE 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 EAGLE 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. EAGLE 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. EAGLE 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 EAGLE 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 EAGLE SOFTWARE has been advised of the possibility of damages, except as provided under the "Agreement for Acquisition of Aeries™ Software". EAGLE SOFTWARE's entire liability and DISTRICT'S exclusive remedy shall be limited to the following:

1. The replacement of any disk not meeting EAGLE SOFTWARE's "Limited Warranty" explained above and which is returned to the place of purchase with a copy of DISTRICT receipt, or
2. If EAGLE SOFTWARE is unable to deliver a replacement disk 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 EAGLE 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.

This license does not include technical support that must be purchased separately.

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

DISTRICT hereby accepts the terms and conditions as set forth above

DATE: 10/26/04, 2004

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE
By: [Signature]
HOY, E. POMERS, Attorney at Law
General Counsel

DISTRICT

By: [Signature]
Title: Randolph E. Ward, Ed.D.
State Administrator
Oakland Unified School District

EAGLE SOFTWARE hereby accepts the terms and conditions as set forth above

DATE: 11-3, 2004

EAGLE SOFTWARE

By: [Signature]
Aeries Software, Inc.
d.b.a. EAGLE SOFTWARE

Legislative File

File ID No. 04-1141
Introduction Date 7/14/04
Enactment No. 04-0816
Enactment Date 7/14/04
By [Signature]

AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE

EXHIBIT D – List of Schools

SCHOOL	GRADES
Allendale Elementary	K – 5
Ascend	K - 8
Bella Vista Elementary	K – 5
Bret Harte Middle	6 – 8
Brewer Middle	6 - 8
Brookfield Village Elementary	K – 5
Bunche Academy	6 – 8
Burckhalter Elementary	K – 5
Calvin Simmons Middle	6 – 8
Carl B. Munck Elementary	K – 5
Carter Middle	6 – 8
Castlemont Senior High	9 – 12
Chabot Elementary	K – 5
Claremont Middle	6 – 8
Cleveland Elementary	K – 5
Cole Elementary	4 – 8
Cox Elementary	K – 5
Crocker Highlands Elementary	K – 5
Dewey Academy	9 – 12
Elisabeth Sherman Elementary	K – 5
Elmhurst Middle	6 – 8
Emerson Elementary	K – 5
Far West	6 – 12
Franklin Elementary	K – 5
Fremont (Architecture Academy)	9 – 12
Fremont (Mandela High)	9 – 12
Fremont (Media College Prep)	9 – 12
Fremont (Robeson Visual Performing Arts)	9 – 12
Fremont (Youth Empowerment School)	9 – 12
Fremont in Transition (FIT)	9 – 12
Frick Middle	6 – 8
Fruitvale Elementary	K – 5
Garfield Elementary	K – 5
Glenview Elementary	K – 5
Golden Gate Elementary	K – 5
Grass Valley Elementary	K – 5
Havenscourt Middle	6 – 8
Hawthorne Elementary	K – 5
Highland Elementary	K – 5
Hillcrest Elementary	K – 8

Hoover Elementary	K - 5
Horace Mann Elementary	K - 5
Howard Elementary	K - 5
Independent Study	K - 12
International Community	K - 5
Jefferson Elementary	K - 5
Joaquin Miller Elementary	K - 5
Kaiser Elementary	K - 8
King Estates Middle	6 - 8
KIPP-Oak College Preparatory	5 - 6
La Escuelita Elementary	K - 5
Lafayette Elementary	K - 5
Lakeview Elementary	K - 5
Laney Middle College	3 - 9
Laurel Elementary	K - 5
Lazear Elementary	K - 5
LIFE Academy	9 - 12
Lincoln Elementary	K - 5
Lockwood Elementary	K - 5
Lowell Middle	6 - 8
Madison Middle	6 - 8
Manzanita Elementary	K - 5
Marham Elementary	K - 5
Marshall Elementary	K - 5
Martin Luther King Jr. Elementary	K - 3
Maxwell Park Elementary	K - 5
McClymonds Senior High	9 - 12
Melrose Elementary	K - 5
Melrose Leadership Academy	6 - 8
Merrit Middle College High	9 - 12
MetWest High School	9 - 12
Montclair Elementary	K - 5
Montera Middle	6 - 8
Oakland Senior High	9 - 12
Oakland Technical Senior High	9 - 12
Parker Elementary	K - 5
Peralta Elementary	K - 5
Piedmont Avenue Elementary	K - 5
Prescott Elementary	K - 5
Redwood Heights Elementary	K - 5
Roosevelt Middle	6 - 8

Ruddsdale Academy	8
Santa Fe Elementary	K - 5
School of Social Justice	9 - 12
Sequoia Elementary	K - 5
Skyline Senior High	9 - 12
Sobrante Park Elementary	K - 5
Stonehurst Elementary	K - 5
Street Academy Senior High	9 - 12
Think College Now	K-2
Thornhill Elementary	K - 5
Urban Promise Academy	6 - 8
Washington Elementary	K - 5
Webster Academy	K - 5
Westlake Middle	6 - 8
Whittier Elementary	K - 5
Woodland Elementary	K - 5
Total # Schools - 97	

NEW SCHOOLS

Castlemont - Splits into 3 schools (Business Information Technology) (Leadership Prep) (East Oakland School for the Arts)	9 - 12
Community Day School	9 - 12
East Oakland Community High School	9 - 12
Encompass	E
Explore MS	6 - 8
Village Academy	6 - 8

AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE

EXHIBIT E – Web-based Functions

Phase 1
Available September 1, 2005

- **General Functions**
 - School Options and Configurations
 - School Calendar Management
 - Teacher Data Management
 - Course Data Management
- **District Functions**
 - Student Data Access
 - View Only
 - Attendance
 - Supplemental Data
 - Interventions
 - Retentions
 - Activities and Awards
 - Medical Log
 - Medical History
 - Immunizations
 - Hearing
 - Vision
 - Physicals
 - Scoliosis
 - Discipline
 - Emergency Contacts
 - Test Scores
 - Enrollment History
 - Change Data
 - Language Assessment
 - Free and Reduced Meals
 - Special Education
- **Elementary School Functions**
 - Student Demographic Data
 - Add, Transfer, Delete, and Change Data
 - Student Photos
 - Medical
 - Medical Log (MED table)
 - Medical History (MHS table)
 - Immunizations (IMM table)
 - Hearing (HRN table)
 - Vision (VSN table)
 - Physicals (HWO table)
 - Scoliosis (SCO table)

- Supplemental Data (SUP table)
- Interventions (INV table)
- Retentions (RET table)
- Discipline (ADS and DIS tables)
- Emergency Contacts (CON table)
- Test Scores (TST table)
- Fees (FEE table)
- Attendance
 - Teacher or Office Clerk Posting
 - Reports
 - Class Rosters
 - Absence and Tardy Lists
 - Attendance Letters
 - Class Enrollment Reports
 - Attendance Summaries
 - Gain and Loss Report
 - Monthly Attendance Report
 - Monthly Attendance Summary
- Standards Based Grade Reporting
 - Teacher Data Entry and Viewing

AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE

EXHIBIT F – Other Web-based Functions

Phase 2
Available September 1, 2006

- **General Features**
 - **Aeries Query**
- **Secondary School Features**
 - **Scheduling**
 - **Master Schedule and Scheduling Master Schedule Management**
 - **Course Request Gathering**
 - **Master Schedule Building Tools**
 - **Master Schedule Reports**
 - **Mass Add/Change Course Requests**
 - **Course Request Analysis Reports**
 - **Mass Scheduler and Walk-in Scheduler**
 - **Scheduling Optimizer**
 - **Locator Cards**
 - **Bell Scheduler**
 - **Block Schedule Calendar**
 - **Grade Reporting**
 - **Teacher/Administrator Data Entry**
 - **Missing Mark Listing**
 - **GPA Computation**
 - **Report Cards**
 - **Graduation Status Reports**
 - **Transcripts/Course History**
 - **College Entrance Tests**
 - **UC/CSU Entrance Eligibility**
 - **Period Attendance Functions**
- **Elementary School Functions**
 - **Standards Based Grade Reporting**
 - **Configuration and Management**
 - **Report Cards**
- **District Functions**
 - **Enrollment Analysis Reports**
 - **Test Score Pre-ID and Load**

AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries™ SOFTWARE

EXHIBIT G – Functions Excluded from Web-based Versions of Aeries Through Phase 2

1. *Eagle Software recognizes that as Oakland USD moves forward with the implementation of Aeries, the needs of the district will become clearer and the programming priorities for individual functional areas in the web-based version can be adjusted by mutual consent.*
 2. *This list of excluded functions is not exhaustive and it is intended to demonstrate the conceptual areas of Aeries that are not included in the agreement with Oakland USD.*
 3. *This list is intended for general reference only. Omission of a function from this list does NOT imply that the function will be made available in the Web-based version of Aeries.*
- District Functions
 - Miscellaneous Functions
 - Year-end rollover of other like processes that require large volumes of data to be moved or copied
 - School Functions
 - Complex, Rarely Run Reports
 - Textbook Management
 - Complex Assessment and Testing Analysis
 - Progress Reporting (*Multiple Mark Grade Reporting should negate the need for Progress Reports*)
 - Tuition Billing
 - Scrip Tracking
 - Text File Creation Programs not needed by Oakland USD
 - Work Permits
 - Healthy Start Events
 - Hot Keys (*this functionality will be replaced by a Favorites menu in the web-based version*)
 - Scanning
 - Report Printing Packets
 - Run Timed Procedures
 - Security Management (*Microsoft tools handle this function for a SQL database*)
 - Staff Data Management

AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeris™ SOFTWARE

EXHIBIT H -- Payment Schedule

I. Cost Summary From Sales Proposal Ref# 01142004-Oakland USD-1:

Software subtotal	\$578,000.00
Data file conversion from uniform ASCII (fixed length) text file extracts of the existing SASI-III AS400 student information system for the current school year only	\$ 40,000.00
Data Conversion 3 prior years	\$ 15,000.00
Software support for year one	\$ 66,000.00
Training at district site (Option 1)	\$ 75,000.00
Training at district site (Option 2)	\$ 15,000.00
Training expenses (estimated)	\$ 18,000.00
Project management	\$ 1,000.00
TOTAL (without sales tax)	\$808,000.00

II. Items for scheduled payments:

Software Licenses	\$578,000.00
Software support for year one 2004-2005	\$ 66,000.00
Software support for year two 2005-2006	\$ 66,000.00
Licenses plus Maintenance and Support for 2004-2005 and 2005-2006	\$710,000.00

III. Scheduled Payments:

Payment #1 due thirty (30) days after agreement is signed	\$ 90,000.00
Payment #2 due one hundred and twenty (120) days after agreement is signed	\$125,000.00
Payment #3 due two hundred and ten (210) days after agreement is signed	\$125,000.00
Payment #4 due three hundred (300) days after agreement is signed	\$158,000.00
Payment #5 due three hundred and ninety (390) days after agreement is signed	\$212,000.00
Total	\$710,000.00

IV. Data conversion services to be paid upon completion of each phase as itemized on the sales proposal:

Data file conversion from uniform ASCII (fixed length) text file extracts of the existing SASI-III AS400 student information system for the current school year only	\$ 40,000.00
Data Conversion 3 prior years	\$ 15,000.00

V. The balance of the services from Eagle Software such as but not limited to Training, Project Management and the associated expenses will be invoiced, due and payable as they are provided to the Oakland Unified School District.



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

Renewal Notification RN-7454
DATE 05/01/2020
TERMS
P.O. NO.

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
37193	Software License/Support Subscription	2.86	07/01/2020	06/30/2021	\$106,371.98
SUBTOTAL					106,371.98
TOTAL					106,371.98
AMOUNT RECEIVED					\$
AMOUNT DUE					\$



Aeries Software, Inc.

A solution where data empowers, never impedes.

PREPARED BY
Brandon Cruz
brandonc@aeries.com

Oakland USD Pilot Terms: 10/01/20 - 11/30/20

Pricing provided has been prepared for the following term -

Quote #: Q-00500-2
Date: 9/21/2020 2:56 PM
Expires On: 12/20/2020

District: Oakland Unified School District
Contact: Julie McCalmont
Email: julie.mccalmont@ousd.org
Phone: (510) 879-2709
Address: 900 Hlgh St.
Oakland, CA 94601

Additional Products & Services

QTY	PRODUCTS	DESCRIPTION	UNIT PRICE	EXTENDED
1	Aeries Communications	<p>Oakland USD Pilot: OUSD may pilot AERIES Communications, Powered by ParentSquare in up to 5 schools. The district may also send up to 5 district wide messages during the pilot. The pilot will include full AERIES Communications functionality, including the following features:</p> <p>Mass Notifications:</p> <ul style="list-style-type: none">• Urgent Alerts & "Smart" Alerts, Auto Notifications , Attendance / Lunch Balance Notifications, Social Share, FB, TW, Web) <p>Classroom Communications:</p> <ul style="list-style-type: none">• Posts - Two-Way, Direct & Group Messaging, StudentSquare, Newsletter Templates, Volunteering & Sign-ups, Parent-Teacher Conferences, Language Translation <p>School Services:</p> <ul style="list-style-type: none">• Permission Slips & Forms, Surveys & Polls, Calendar Sync & Event, RSVP, School Directory <p>Aeries Integration:</p> <ul style="list-style-type: none">• Single Sign-On, Seamless API Data Integration, Aeries Student Groups, Gradebook Alerts, Mobile App, Data Reports & Analytics, Multi-Modality, Customer Support Included	\$9,000.00	\$9,000.00
Additional Products & Services TOTAL:				\$9,000.00

Upon completion of the Pilot, should the district chooses to adopt AERIES Communications District-Wide, the \$9000 pilot fee will be applied to the district wide contract as a credit against the onboarding fee.

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:

Jenn Blake

Effective Date:

09 / 28 / 2020

Name (Print):

Jenn Blake

Title:

Executive Director/SELPA Director

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



Aeries Software, Inc.

A solution where data empowers, never impedes.

PREPARED BY
Brandon Cruz
brandonc@aeries.com

Quote #: Q-00598-2
Date: 11/16/2020 8:24 AM
Expires On: 2/14/2021

District: Oakland Unified School District
Contact: Julie McCalmont
Email: julie.mccalmont@ousd.org
Phone: (510) 879-2709
Address: 900 Hlgh St.
Oakland, CA 94601

Pricing provided has been prepared for the following term -

Additional Products & Services

QTY	PRODUCTS	DESCRIPTION	UNIT PRICE	EXTENDED
37,000	Aeries Communications	<u>Terms: 02/01/21 - 06/30/21</u> Fully Integrated Communications Platform Includes: Mass Notifications: <ul style="list-style-type: none">• Urgent Alerts & "Smart" Alerts, Auto Notifications , Attendance / Lunch Balance Notifications, Social Share, FB, TW, Web) Classroom Communications: <ul style="list-style-type: none">• Posts - Two-Way, Direct & Group Messaging, StudentSquare, Newsletter Templates, Volunteering & Sign-ups, Parent-Teacher Conferences, Language Translation School Services: <ul style="list-style-type: none">• Permission Slips & Forms, Surveys & Polls, Calendar Sync & Event, RSVP, School Directory Aeries Integration: <ul style="list-style-type: none">• Single Sign-On, Seamless API Data Integration, Aeries Student Groups, Gradebook Alerts, Mobile App, Data Reports & Analytics, Multi-Modality, Customer Support Included Robocalls Newsletter & Message Templates Secure Document Delivery E-signatures Virtual IEPs COVID-19 Health Screening Forms Attendance Letters Summer Learning and After School Programs	\$1.25	\$46,250.00
Additional Products & Services TOTAL:				\$46,250.00

TOTAL: \$46,250.00

Phase 2 of the Oakland USD pilot of Aeries Communications, powered by ParentSquare. District-wide implementation of the ParentSquare product for an introductory pilot rate of \$1.25/student from February 1st, 2021, through June 30th, 2021.

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