

SUBSCRIPTION AGREEMENT FOR ACQUISITION OF LICENSE FOR Aeries® SOFTWARE

1. Introduction.

This is an Agreement between Aeries Software, Inc. located at 770 The City Drive South, Suite 6500, Orange, California 92868 (hereinafter "AERIES SOFTWARE") and its customer Azusa Unified School District ("hereinafter "DISTRICT"), to reflect a preexisting business relationship between the Parties dating back to 2013, under which certain computer software is licensed on a non-exclusive basis for the customer's use for a specified term under the terms and conditions stated below and in the accompanying documents. A true and correct copy of that Agreement is attached hereto as Exhibit A. The effective date for purposes of the interpretation of the Agreement shall be July 1, 2021.

2. Subscription Software Responsibilities.

In exchange for payment by DISTRICT under the terms and conditions of the Agreement, AERIES SOFTWARE will provide DISTRICT with support and maintenance services for the Licensed Software for the length of time specified below. Under the terms and conditions set forth below, AERIES SOFTWARE will make reasonable consulting services, technical advice, and support available to DISTRICT. Such services will be provided by phone or by electronic mail. Further, AERIES SOFTWARE will use reasonable efforts to make the Licensed Software or any module thereof perform substantially in accordance with the product description set forth in the documentation that accompanies the Licensed Software, as it may exist from time to time. AERIES SOFTWARE shall correct any failure of the Licensed Software or any Module including without limitation, defect repair, programming corrections, and remedial programming, and provide such services and repairs required to maintain the Licensed Software so that it operates properly.

Further, AERIES SOFTWARE shall provide support as follows:

(a) All requests for support shall be first directed to the appropriate "DISTRICT designated Representative (DISTRICT Representative)." The DISTRICT designated Representative will be either the DISTRICT'S designated Coordinator, if AERIES SOFTWARE is providing maintenance and support at a discounted rate (known as DISTRICT Coordinator Support) or a designated school site representative if the DISTRICT is not using DISTRICT Coordinator Support. The DISTRICT'S Representative shall first make reasonable efforts to resolve the support issue before contacting AERIES SOFTWARE.

(b) DISTRICT will designate a DISTRICT agent or employee as "DISTRICT Representative" to receive all requests for support or maintenance of the Licensed Software. DISTRICT shall inform AERIES SOFTWARE of the name, title and contact information for the "DISTRICT Representative" in writing. Further, DISTRICT shall notify AERIES SOFTWARE in writing at least ten (10) days in

advance of any change in the designation of the “DISTRICT Representative.” AERIES SOFTWARE shall have no obligation to provide support or maintenance of any person who has not been properly designated by DISTRICT as DISTRICT Representative.

(c) All requests for support shall be made during normal business hours (8 a.m. to 4:30 p.m. Pacific Standard Time, Monday through Friday) other than legal holidays and days designated by AERIES SOFTWARE as non-work days. A complete list of legal holidays and days designated by AERIES SOFTWARE as non-work days is posted on AERIES SOFTWARE’S Web site. No further notice will be provided. If AERIES SOFTWARE has agreed to provide “District Coordinator Support” to DISTRICT under a separate written licensing agreement and DISTRICT has agreed to designate a “District Coordinator,” the DISTRICT Coordinator shall be the “DISTRICT Representative” for the purposes of support and maintenance.

(d) All requests for support and maintenance by agents and employees of DISTRICT will be directed to the representative designated by DISTRICT to receive such requests. The DISTRICT Representative will receive all support and maintenance request and make reasonable efforts to resolve the requests before AERIES SOFTWARE is contacted.

(e) In the event that the DISTRICT Representative cannot resolve the request, the DISTRICT Representative may contact AERIES SOFTWARE and request support and maintenance of the Licensed Software. Before contacting AERIES SOFTWARE, the DISTRICT Representative shall obtain all information and data relevant to the request, including all relevant hardware, software and operating system information as well as the specific circumstances or conditions under such the request arose.

3. Updates and Other Changes.

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

4. Term of Agreement:

The term of this Agreement Shall commence on July 1, 2021 through June 30, 2022, unless terminated by the parties hereto. Renewal of this agreement for subsequent year’s maintenance and support shall be automatic unless terminated. The renewal of subsequent year’s maintenance and support shall cover the twelve (12) calendar month period from July 1st through the following June 30th annually.

5. Consideration:

In consideration of the limited license granted under this Agreement for July 1, 2021 through June 30, 2022, DISTRICT shall pay AERIES SOFTWARE at a per

student rate based upon the number of students enrolled at the DISTRICT, as determined by the publicly-available Completed Enrollment figures posted by the California Department of Education for CALPADS Fall 1 Certification. The number of students for the July 1, 2021 invoice shall be 7,330. Pricing is documented in the attached AERIES SOFTWARE invoice M&S-7872.

Aeries SIS Base Subscription. The cost for the base software limited license/support subscription for July 1, 2021 through June 30, 2022 shall be at a rate of \$3.08 per student for 7,330 students for a total due of \$22,576.40. As indicated elsewhere herein, said licensed use, maintenance, and support shall be provided for the License Term only, unless extended by agreement and payment of additional subscription fees.

Aeries Hosting Services. In addition to the payment of the base subscription software and maintenance and support fees, for the period of July 1, 2021 to June 30, 2022, DISTRICT shall pay AERIES SOFTWARE \$3.50 per student for the sum of \$25,655.00 for Aeries Hosting Services. Thereafter, DISTRICT shall pay AERIES SOFTWARE a fee for Aeries Hosting Services for any subsequent years at the then current rate.

Aeries Prior Years Database Maintenance. In addition to the payment of the base subscription software and maintenance and support fees, for the period of July 1, 2021 to June 30, 2022, DISTRICT shall pay AERIES SOFTWARE \$250.00 per database for the sum of \$250.00 for each prior year database hosted within the AERIES SOFTWARE hosted data center. Thereafter, DISTRICT shall pay AERIES SOFTWARE a fee for database maintenance for any subsequent years at the then current rate.

Aeries Online Enrollment. The cost for the use of the Aeries Online Enrollment shall be at a rate of \$2.00 per student for a total due of \$14,660.00.

Total Due. The total amount due for the services and products listed above for use from July 1, 2021 to June 30, 2022, shall be \$63,141.40. Full, timely payment by DISTRICT to AERIES SOFTWARE is a material term of this Agreement and this Agreement shall have no force and effect unless and until full, timely payment has been made.

Other Services. In addition to the payment of the above fees, DISTRICT may negotiate a schedule for additional services beyond those mentioned based upon AERIES SOFTWARE'S fee for any requested services at the time of the request and the availability of AERIES SOFTWARE'S Staff.

Future Fees. DISTRICT shall pay AERIES SOFTWARE a fee for the software license and maintenance and support and other services for any subsequent year's then current rate for said services. Failure to do so shall be considered a material breach of this Agreement.

6. Termination.

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

7. General Provisions

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

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

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

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

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

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

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

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

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

Notices. Any notices required or permitted to be given hereunder by either party to the other shall be given in writing: (1) by electronic facsimile with confirmation

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

TO: DISTRICT @ Azusa Unified School District
c/o Techolgy Department
546 S. Citrus Ave.
Azusa, California 91702

TO: AERIES SOFTWARE @

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

and to

David Christopher Baker
Law Office of David Christopher
Baker 3 Park Plaza, Suite 1520
Irvine, California 92614
[dbaker@iplawyeresq.co
m](mailto:dbaker@iplawyeresq.com)

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

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

Severability. If any provision of this Agreement is found to be invalid or

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

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

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

Attachment. This agreement for Aeries® Student Information System incorporates by reference the attached AERIES SOFTWARE pre-invoice RN-6935.

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

DATE: _____

DISTRICT

By: _____

Title: _____

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

DATE: 06/07/21

AERIES SOFTWARE

By:  _____

Title: Executive Director of Operations

**Aeries Software
Data Hosting Agreement -
Addendum to Software License Agreement**

This Data Hosting Services Agreement (the "Hosting Agreement") is entered into by and between Aeries Software, Inc. (hereinafter "AERIES SOFTWARE") and its customer Azusa Unified School District, a public agency, (hereinafter "DISTRICT"), for the provision of student information and data hosting services by AERIES SOFTWARE to DISTRICT. The effective date for purposes of the interpretation of the Agreement shall be July 1, 2021.

Recitals

WHEREAS, AERIES SOFTWARE and DISTRICT have entered into a Software License Agreement whereby AERIES SOFTWARE has agreed to license to DISTRICT the use of AERIES SOFTWARE's proprietary Aeries® Student Information Software (the Aeries® Software),

WHEREAS, AERIES SOFTWARE has the capacity to host the student information and related data that DISTRICT intends to use in connection with its licensed usage of the Aeries® Software; and

WHEREAS, DISTRICT desires for AERIES SOFTWARE to host the student information and related data that DISTRICT intends to use in connection with its licensed usage of the Aeries® Software;

Agreement

1. Hosting Services. AERIES SOFTWARE hereby grants DISTRICT a non-exclusive, non-transferable, worldwide right to use the AERIES SOFTWARE computer servers, subject to the terms and conditions of this Agreement for the creation, management, delivery, and tracking of student information and related data content for internal use and for use by third party. AERIES SOFTWARE shall host the Aeries® Software and the associated DISTRICT student information and related data entered or submitted by DISTRICT at its existing data center facility for the period specified in the Software License Agreement. Except for downtime for scheduled maintenance, AERIES SOFTWARE shall make the Aeries® Software and DISTRICT's student information and related data available to users twenty-four (24) hours a day, seven (7) days a week. Notice of scheduled maintenance shall be provided to DISTRICT via email, the web, or telephone before the scheduled maintenance. AERIES SOFTWARE shall be financially and operationally responsible for the hosting environment including maintenance, repair, replacement and upgrade, and the performance, availability, reliability, compatibility and interoperability of the Aeries® Software and hosting environment. AERIES SOFTWARE shall provide the hosting services through a telecommunications connection to DISTRICT via the Internet. DISTRICT's telecommunications connection capability to the Internet and DISTRICT's ability to connect to the AERIES SOFTWARE data center facility is the sole responsibility of DISTRICT. AERIES SOFTWARE shall not be responsible for DISTRICT's telecommunications connection capability to the AERIES SOFTWARE data center facility. The equipment, connectivity and other items located at AERIES SOFTWARE's existing data center facility are included within the hosting environment and access to be provided by AERIES SOFTWARE under this Section. All rights not expressly granted to DISTRICT are reserved by AERIES SOFTWARE. DISTRICT agrees not to cause or permit the reverse engineering, disassembly or decompilation of the Aeries® Software.

2. Student Information and Data Creation. DISTRICT shall be solely responsible for the creation of any and all student information and data hosted by AERIES SOFTWARE pursuant to this Hosting Agreement as well as the input, amendment, revision, correction, redaction, and removal of said information and data for the entire term of this Hosting Agreement. DISTRICT is responsible for obtaining access to the Internet using Software and hardware that meet AERIES SOFTWARE's minimum requirements, including security requirements. AERIES SOFTWARE will not be responsible for and shall not input any student information or data on behalf of DISTRICT and shall not make any changes to the student information or data except as specifically requested by DISTRICT and agreed to beforehand, in writing, by AERIES SOFTWARE. DISTRICT shall be solely responsible for the accuracy of all student information and related data entered by or on behalf of DISTRICT and AERIES SOFTWARE shall have no responsibility whatsoever to determine or ensure the reliability of any such information and data.

3. Security. AERIES SOFTWARE shall maintain the confidentiality of the student information and related data that is input by DISTRICT and shall take all steps reasonably necessary to maintain the confidentiality thereof as well as to protect the privacy rights of the individuals about whom the student information and related data pertains. However, AERIES SOFTWARE shall comply with all California State and U.S. Federal statutes and regulations regarding the release of student information and related data, including but not limited to applicable court orders. Further, AERIES SOFTWARE will not refuse to comply with a valid court order regarding the release of such information solely based upon instructions from DISTRICT or any other third party. DISTRICT acknowledges that AERIES SOFTWARE does not control the transfer of data over telecommunications facilities, including the Internet. AERIES SOFTWARE does not warrant secure operation of the services or that it will be able to prevent third party disruptions of the hosting environment.

4. Confidentiality. Neither party shall, without written consent of the other, or as specified below, communicate confidential information of the other designated in writing to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that it protects its own confidential information. Both parties' obligations of confidentiality and nondisclosure shall not apply to disclosures to such parties counsel or other advisors or to a court, arbitration panel or other similar body, in the event such party has a bona fide dispute with the other party regarding this Agreement. Both parties further agree that all confidential commitments hereunder shall survive any termination or expiration of the Agreement.

5. Account Name and Passwords. DISTRICT is responsible for the confidentiality and use of its account name(s) and password(s). AERIES SOFTWARE will deem any communication, data transfer, or use of the hosting system received under DISTRICT account name and password to be for DISTRICT's benefit and use. DISTRICT agrees to notify AERIES SOFTWARE if the account name or password is lost, stolen, or being used in an unauthorized manner. DISTRICT represents and warrants that it has the rights to all DISTRICT student information and related data, including the right to upload DISTRICT information and data to the host server in connection with its authorized use of the hosting system. DISTRICT agrees that DISTRICT Data and its use do not infringe the rights of any third party and agrees to indemnify and hold AERIES SOFTWARE harmless from any third-party claims of infringement under the same terms and conditions as set forth below.

6. Ownership of Data and License. DISTRICT shall retain ownership of all DISTRICT student information and related data stored or retrieved in connection with use of the hosting

system, which data shall be subject to the confidentiality provisions set forth herein. DISTRICT agrees that back-up or archival of DISTRICT student information and related data is not an infringement of any Intellectual Property Rights of DISTRICT or any third party. DISTRICT agrees that it will not store data on the host server that is subject to the rights of any third parties without first obtaining all required authorizations and rights in writing from such third parties. When required, DISTRICT agrees to access the hosting system and to store and retrieve data using third party programs, including specifically Internet "browser" programs, that support data security protocols compatible with those specified by AERIES SOFTWARE.

7. Intellectual Property Ownership. AERIES SOFTWARE (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the AERIES SOFTWARE technology, the content (excluding DISTRICT student information and related data) and the service, including but not limited to the Aeries® Student Information Software. In the event DISTRICT provides any suggestions, ideas, enhancement requests, or feedback ("Feedback") to AERIES SOFTWARE with respect to the service, DISTRICT agrees that AERIES SOFTWARE may freely use, disclose, reproduce, license, distribute and otherwise commercialize the feedback in any AERIES SOFTWARE product or service. This Data Hosting Agreement is not a sale and does not convey any rights of ownership in or related to the Service, the AERIES SOFTWARE technology or the Intellectual Property Rights owned by AERIES SOFTWARE. The AERIES SOFTWARE name, including but not limited to Aeries®, the AERIES SOFTWARE logo, and the product names including AERIES SOFTWARE's Aeries® Student Information Software associated with the service are trademarks of AERIES SOFTWARE or third parties, and no right or license is granted to use them. AERIES SOFTWARE retains all title, copyright, Intellectual Property Rights and other proprietary rights in the hosting system. DISTRICT does not acquire any rights, express or implied, in the hosting system, other than those specified in the Data Hosting Agreement. DISTRICT agrees that it will not use the hosting system for inappropriate, improper, or offensive content or commerce; copyrighted materials to which DISTRICT does not have appropriate rights; materials offensive to community standards; or other materials prohibited by applicable international, Federal, state, or local laws and regulations. DISTRICT agrees to fully comply with all Federal, state, and local privacy laws in connection with use of the hosting system and service.

8. Term and Termination. DISTRICT's rights to use the hosting system and services shall remain in effect for the term specified in the separate Software License Agreement and may be extended in accordance therewith unless terminated by either party hereto. AERIES SOFTWARE may suspend all services immediately if DISTRICT commits a material breach of this Agreement and/or the Software License Agreement. Termination of this Agreement shall not prevent AERIES SOFTWARE from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve DISTRICT's obligation to pay all fees that have accrued or are otherwise owed by DISTRICT under the Software License Agreement or under this Data Hosting Agreement. Upon termination of this Data Hosting Agreement, DISTRICT shall no longer have any access to the hosting system.

9. INDEMNITY, WARRANTIES, REMEDIES.

9.1 DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS DATA HOSTING AGREEMENT OR THE SEPARATE SOFTWARE LICENSE AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICES OR ANY CONTENT

OR INFORMATION. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, AERIES SOFTWARE DOES NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICES WILL MEET DISTRICT'S REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY DISTRICT THROUGH THE SERVICES PROVIDED BY AERIES SOFTWARE WILL MEET DISTRICT'S REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE HOST SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT AND INFORMATION IS PROVIDED STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9.2. INTERNET DELAYS. THE SERVICES PROVIDED BY AERIES SOFTWARE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. AERIES SOFTWARE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

9.3. Representations and Warranties. AERIES SOFTWARE represents and warrants that: (a) its hosting system and services will perform in conformity with its documentation, manuals, and specifications, (b) to its knowledge, there are no suits or proceedings pending or threatened which allege any infringement of any third party Intellectual Property Rights, and (c) it has the valid right to grant to DISTRICT all rights to the hosting system and service as granted herein.

9.4. LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM DISTRICT IN THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICES, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICES, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICES, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.5. DISTRICT Indemnity. DISTRICT shall indemnify and defend AERIES SOFTWARE against all costs, including but not limited to reasonable attorney's fees, and losses arising out of any action by a third party against AERIES SOFTWARE arising directly or indirectly out of or incidental to (i) the breach by DISTRICT of any of its obligations or covenants hereunder; (ii) the content, disclosure and distribution of any DISTRICT Data; or (iii) an alleged

infringement of DISTRICT Data on a third party's intellectual property right(s).

9.6. Exclusive Remedies. For any breach of the warranties contained or implied herein, DISTRICT's exclusive remedy, and AERIES SOFTWARE's entire liability, shall be:

A. For hosting system: The correction of Hosting Program errors that caused breach of the warranty. Any error not reported to AERIES SOFTWARE by DISTRICT within sixty (60) days of its discovery will be deemed waived and accepted by DISTRICT.

B. For all other services: The re-performance of the services, provided that DISTRICT notifies AERIES SOFTWARE in writing of any defects in the Services within ninety (90) days of their performance.

10. GENERAL TERMS.

10.1. Governing Law and Dispute Resolution. The choice of law and dispute resolution provisions set forth in the Software License Agreement shall apply to this Data Hosting Agreement in their entirety. To the extent that any provisions pertaining to dispute resolution set forth in the Software License Agreement, including but not limited to Subsection 18 of the Software License Agreement, conflict with the provisions of this Hosting Agreement, the provisions of the Software License Agreement shall control.

10.2. Notice. The notice provisions set forth in the Software License Agreement shall apply to this Data Hosting Agreement in their entirety.

10.3. Other Terms. In the event any provision of this Data Hosting Agreement is held to be invalid or unenforceable, the remaining provisions of the Data Hosting Agreement will remain in full force. The waiver by either party of any default or breach of the Data Hosting Agreement shall not constitute a waiver of any other or subsequent default or breach. All rights and licenses granted to DISTRICT in this Data Hosting Agreement shall apply to DISTRICT's subsidiaries provided DISTRICT remains fully liable for the acts and any omissions of its subsidiaries under this Data Hosting Agreement. This Data Hosting Agreement constitutes an addendum to the Software License Agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Data Hosting Agreement. DISTRICT may not assign this Data Hosting Agreement or any rights or obligations hereunder without the prior written consent of AERIES SOFTWARE, which consent shall not be unreasonably withheld or delayed; any such assignment without prior consent shall be null and void. Notwithstanding the foregoing, DISTRICT may assign this Data Hosting Agreement to any entity who acquires (by merger, acquisition, or otherwise) all or substantially all of the business assets of DISTRICT applicable to the subject matter of this Data Hosting Agreement.

10.4. Changes to Agreement. The terms and conditions set forth in this Data Hosting Agreement, including without limitation all usage provisions, may be revised, modified or supplemented by AERIES SOFTWARE in its discretion at any time or from time to time by providing thirty (30) days advance notice of such change to DISTRICT in writing (including email), provided however that any pricing change shall not take effect until the expiration of the term for any pre-paid services currently in effect. Upon receipt of notice of any change in the terms and conditions, DISTRICT shall have the right to terminate the Data Hosting Agreement

upon written notice to AERIES SOFTWARE, in the absence of which notice DISTRICT will be deemed to have accepted the new terms and conditions.

WHEREFORE, the parties have executed this Hosting Agreement as of the date set forth above,

DISTRICT


Dated: _____

By: _____

Title: _____

AERIES SOFTWARE, INC.

Dated: 06/07/21

By:  _____

Title: Executive Director of Operations

ADDENDUM A - TECHNOLOGY SERVICES AGREEMENT FOR CALIFORNIA EDUCATION CODE 49073.1 COMPLIANCE

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

WHEREAS, the DISTRICT and AERIES SOFTWARE entered into an agreement for technology services titled Aeries® Student Information System Subscription Agreement ("Technology Services Agreement") on July 1, 2021.

WHEREAS, the DISTRICT is a California public entity subject to all state and federal laws governing education, including but not limited to California Education Code 49073.1 introduced by Assembly Bill 1584 ("AB 1584"), the entirety of the California Education Code, the Children's Online Privacy and Protection Act ("COPPA"), and the Family Educational Rights and Privacy Act ("FERPA");

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

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

NOW, THEREFORE, the Parties agree as follows:

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

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

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

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

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

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

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

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

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

AERIES SOFTWARE shall conduct annual training seminars for all its responsible agents to review all student privacy laws and AERIES SOFTWARE practices to ensure the security and confidentiality of pupil records.

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

DISTRICT shall be solely responsible for reporting to parent, legal guardians,

or eligible pupil in the event of an unauthorized disclosure of a pupil's records. If AERIES SOFTWARE discovers that the records were disclosed through its own faults or a flaw in its system, AERIES SOFTWARE shall notify DISTRICT immediately, and optionally notify the affected parties through a message in the software portal.

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

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

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

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


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

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

DISTRICT

Aeries Software, Inc.

Authorized Signature



Authorized Signature

Printed Name and Title

Jonathan Cotton, Executive Director

Printed Name and Title

Date

June 6th, 2021

Date

California AB 1584 Compliance Checklist for School District Technology Services Agreements

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

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

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



INVOICE NO. M&S-7872

DATE 07/01/2021

TERMS Net 30

P.O. NO.

PLEASE REMIT TO:

Aeries Software
770 The City Dr. S.
Suite 6500
Orange, CA 92868

BILL TO

Azusa Unified School District
546 S. Citrus Ave.
Attn: Accounts Payable
Azusa, CA 91702

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
7330	Software License/Support Subscription	3.08	07/01/2021	06/30/2022	\$22,576.40
7330	Aeries ASP Hosting Services Subscription	3.50	07/01/2021	06/30/2022	\$25,655.00
1	Aeries ASP Subscription - Additional/Prior Years Databases	250.00	07/01/2021	06/30/2022	\$250.00
7330	Aeries Online Enrollment	2.00	07/01/2021	06/30/2022	\$14,660.00
SUBTOTAL					63,141.40
TOTAL					63,141.40
AMOUNT RECEIVED					\$0.00
AMOUNT DUE					\$63,141.40