Athletic Trainer System Software End User License Agreement

This Athletic Trainer System Software End User License Agreement ("Agreement" or "ATS Agreement") is made on ___December 3___, 20_21_, and is entered into between you, ___East Aurora School District 131___, ("Client") located at ___310 Seminary Ave___, ___Aurora IL 60505___ and Keffer Development Services, LLC, 24 Village Park Drive, Grove City, PA 16127.

Keffer Development Services, LLC ("KDS") permits Client to access and use, subject to this Agreement, for the Term as specified, the Athletic Trainer System (ATS) software application as described in Exhibit A ("Licensed Software"), and accompanying documentation related thereto.

1. License Grant

1.1 Subject to this Agreement and in consideration for the mutual covenants made herein, KDS grants to Client, and Client accepts from KDS, a limited, non-exclusive, non-transferable license to access and use the Licensed Software during the Term.

1.2 The grant of the license to access and use the Licensed Software shall apply to the initial version of the Licensed Software and any other version, revisions or updates of the Licensed Software subsequently provided to Client.

1.3 To ensure satisfactory maintenance and availability of the hosted Licensed Software, Client acknowledges and agrees that KDS may, at any time and for any reason, modify, discontinue, delete or restrict any aspect or feature of the Licensed Software (collectively 'updates') without consent from, or notice to, Client. KDS shall have no liability for any such changes or modifications. However, changes or modifications that effectively diminish the features or capabilities of the Software as represented at the time of purchase shall be considered a material breach of this Agreement for which Client may elect to terminate under section 4.3 herein. KDS agrees to provide Client with at least thirty (30) days prior notice of any product enhancements that are material in KDS's opinion.

2. Ownership and Preservation of Proprietary Rights

2.1 Client acknowledges and agrees that KDS intellectual property (i.e., source code, copyrighted or patented material, trademarks, service marks, trade secrets, and proprietary and confidential information) are the property of KDS, subject to Client's use pursuant to this Agreement and that KDS retains all rights in its intellectual property, including any enhancements thereto or derivative works thereof. It is expressly understood and agreed that ownership of any part of the Licensed Software source code or any related items provided hereunder, including any enhancements thereto or derivative works thereof, shall remain the sole and exclusive property of KDS and Client shall have no ownership interest in any such Licensed Software, enhancements thereto or derivative works there from.

2.2 Client agrees not to use KDS's service marks, trademarks or brand names (collectively, the "Marks") relating to the Licensed Software without KDS's prior written permission. KDS reserves all rights related to the Marks not expressly granted in this Agreement. KDS's grant of any license to use any of the Licensed Software is subject to the rights retained by KDS, which are exercisable in KDS's sole discretion.

2.3 Client reserves the right to control the use of its name and/or other identifying marks in every aspect. KDS agrees not to use Client's name or any other identifying marks in connection with any advertising or promotion related or pertaining to the work performed under this Agreement without the prior written approval of Client.

2.4 Client shall only use the Licensed Software for its own business purposes to process its own data and shall take all necessary measures to protect the Licensed Software from any unauthorized use, reproduction, display, publication, disclosure or distribution. Client shall not sell, resell, lease, license, sublicense, give, re-license, market, publicize, release, distribute or otherwise transfer or disclose for any purposes any component of the Licensed Software to any person, firm or entity including, but not limited to, its affiliates, nor shall Client use the Licensed Software to provide data, information services, service bureau, third party administration services, facility management services or consulting services to any other person, firm or entity. Under no circumstances shall Client disclose or provide access to the Licensed Software to individuals or entities who are not Authorized Users without first obtaining written permission from KDS.

3. Confidentiality

3.1 Each party acknowledges that it will be exposed to Confidential Information of the other during the performance of the Agreement and hereby agrees not to disclose Confidential Information to any third party without the prior written consent of the disclosing party. The receiving party may only use Confidential Information for the purpose intended herein and may only disclose Confidential Information on a need to know basis to its employees and/or authorized agents who agree to or are bound to similar obligations of confidentiality.

3.2 "Confidential Information" means (i) the terms and conditions of the Agreement; and (ii) any other information that (A) if disclosed in tangible form, is marked in writing as "confidential" or with a similar designation; (B) if disclosed orally or visually, is designated orally at the time of disclosure as "confidential"; or (C) with respect to Confidential Information of Client, is information maintained on the hosted system by KDS on behalf of the client.

3.3 Confidential Information will not include any information that (1) is already in the possession of the receiving party without obligation of confidence, (2) is independently developed by the receiving party, (3) is or becomes publicly available without breach of this Agreement, (4) is rightfully received by the receiving party without obligation of confidence, (5) is released for public disclosure by the disclosing party, (6) is commingled with other third party information for statistical purposes, or is subject to disclosure under applicable law.

3.4 Client shall not copy, disassemble, decompile, decrypt, reverse engineer or in any way attempt to discover or reproduce the source code of the Licensed Software or any part thereof.

4. Term and Termination.

4.1 This Agreement shall be effective beginning on the date of this Agreement, and shall auto-renew each year unless terminated in accordance with this Agreement. For purposes of this Agreement, 'Effective Date' shall be defined as the date on which the Client's system access is provided by KDS to Client users for implementation and training purposes.

4.2 Either party (the "Notifying Party") may terminate this Agreement if the other party (the "Breaching Party") or any officer, agent or employee of the Breaching Party breaches any material term or condition of this Agreement and if such breach is not cured to the reasonable satisfaction of the Notifying Party within ten (10) days after notice of such breach is sent by Notifying Party to the Breaching Party. In the event that Client does not cure a material breach within the time period provided herein, KDS may immediately revoke the License granted to Client, prohibit Client's use of the Licensed Software, and Client shall immediately discontinue use of the Licensed Software. In the event KDS does not cure a material breach within the time period provided herein, KDS shall reimburse Client a pro-rated portion of the license fee as of the effective date of termination. KDS shall reimburse the Client within 30 days of the termination date.

4.3 Client may terminate this Agreement at any time by providing KDS with 10 days advanced written notice. In the event of such termination, Client shall not be entitled to a refund of any payments already made unless such termination is due to the material breach by KDS of the terms of this Agreement.

4.4 In addition to the rights of KDS set forth in Section 4.2 in the event of a breach, KDS may terminate this Agreement and Client access to the Licensed Software effective upon ten (10) days written notice to Client upon: (a) any use, copying or distribution of the Licensed Software not expressly authorized herein; (b) the cessation of the business of Client; (c) voluntary or involuntary filing of a bankruptcy petition or similar proceeding under state law with respect to Client; (d) Client's becoming insolvent or making any assignment for the benefit of creditors; or (e) nonpayment of KDS invoices for Licensed Software access or other services rendered.

4.5 Termination shall not relieve either party or Client's Authorized Users of their obligations regarding the confidentiality of each party's confidential information. If termination occurs as a result of Client's material breach under this Agreement, Client shall continue to be obligated for any payments due as of the date of termination. Termination of the license shall be in addition to, and not in lieu of, any other remedies available to KDS.

4.6 Sections 2, 3, 4, 5, 7 and 8 shall survive termination of this Agreement.

5. LIMITATION OF LIABILITY

5.1 KDS, its affiliates and third party vendors shall have no liability for special, indirect, consequential, exemplary, or incidental damages or for any damages whatsoever resulting from unauthorized access to the system, loss of use, loss of data or loss of profits, loss of goodwill, additional employee hours or loss of anticipated savings arising out of or in connection with this Agreement and any exhibit or document executed in connection with this Agreement or the performance thereof, even if KDS or third party vendors have been advised of the possibility of such losses or damages except as a result of negligence by KDS, its affiliates, and/or third party vendors.

5.2 The cumulative liability of KDS and its affiliates and third party vendors for all loss and damage whatsoever and howsoever arising related to this agreement and any exhibit or document executed in connection with this agreement or the performance thereof, shall not exceed the amount equal to KDS's liability insurance coverage.

5.3 The provisions of this Section 5 shall apply to the fullest extent of the law, whether in contract, statute, tort (such as negligence), or otherwise.

6. Client and KDS Responsibilities

6.1 Client is solely responsible for acquiring, servicing, securing, maintaining, and updating all equipment, computers, software and communications services not owned or operated by or on behalf of KDS, that allow Client to access and use the Licensed Software in accordance with any and all operating instructions or procedures that may be issued by KDS and that meet the minimum requirements specified by KDS. Client understands and agrees that the operation and availability of the systems used for accessing and interacting with the Licensed Software, including, telephones, computer networks the Internet to transmit information can be unpredictable and may, from time to time; interfere with or prevent the access to and/or the use or operation of the Licensed Software. KDS and its affiliates are not in any way responsible for any such interference with or prevention of Client's access and/or use of the Licensed Software.

6.2 Client shall take reasonable steps to establish access and password controls to ensure the security of the Licensed Software and Client Data. Client shall be responsible for system and network password management.

6.3 Client acknowledges that they have read and understand the information outlined in Exhibit A.

6.4 KDS will also have no responsibility or liability for issues or damages resulting from Client's failure to use the Licensed Software in accordance with its documentation or for its failure to properly manage system and network passwords.

7. Limited Warranty

7.1 KDS represents that the Licensed Software will substantially conform to the operational features detailed in the documentation that properly accompanies the Licensed Software, provided the Licensed Software is accessed and used as provided for therein.

7.2 The above warranties are the only warranties made by KDS to client hereunder. KDS makes and client receives no other warranty, express or implied and any and all warranties of merchantability and fitness for a particular purpose are expressly excluded. KDS does not represent that the system will meet client's requirements or that the operation of the licensed software will be uninterrupted or error free.

8. Research

8.1 Client acknowledges that it has read, understands and agrees to be bound by the following related to the ATS Research module:

  8.1.1 Client understands that the overall goal of the ATS Research application is to enable us, and other users, to compare our injury statistics with those entered by others.

  8.1.2 Client understands that the information we are sharing will not be identifiable; e.g. anonymous, de-identified; so that no confidential or specific athlete's specific information will be available.

  8.1.3 Client acknowledges that beyond their own purposes participating in this research application may also help the athletic training professional industry and ultimately help athletes.

  8.1.4 Client acknowledges that that other schools/organizations/agencies may also use the ATS Research application.

  8.1.5 Client acknowledges that KDS has no liability from our use of the data found using the ATS Research application.

9. General

9.1 Each party acknowledges that it has read, understands and agrees to be bound by this Agreement. Additionally, each party further represents and warrants that it has all the power and authority to enter into this Agreement and to comply with and be bound by its terms.

9.2 This Agreement, along with the respective Schedule(s), and any related exhibits, is the complete and exclusive statement of the Agreement between the parties with respect to the Licensed Software and shall supersede all prior proposals, understandings and all other agreements, oral and written. Client does not have the right to make modifications to this Agreement or to make any additional representations, commitments or warranties binding on KDS.

9.3 Neither party hereto shall be liable or deemed in default for any delay or failure in performance hereunder resulting from any cause beyond its reasonable control.

9.4 If any provision of this Agreement is held to be invalid or otherwise unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired.

9.5 This Agreement shall be binding upon and inure to the benefit only of the parties hereto and their respective successors and permitted assigns. Client agrees that KDS may assign this agreement to a third party with written notice, subject to that party being bound by all of the terms and provisions of this agreement. Should Client object to such assignment it may terminate this Agreement at its discretion and receive a pro-rated refund on fees paid in advance after the date that system utilization is terminated. Client may not assign this Agreement nor any of its rights, duties or obligations hereunder without the prior written consent of KDS.

9.6 The waiver or failure of either party to exercise any right provided for in this Agreement shall not be deemed a waiver of any further right hereunder.

9.7 In the event of a dispute, controversy, or claim ("dispute") arising under this Agreement, the parties shall first attempt to resolve the issue between themselves in good faith and cooperation in an effort to preserve their relationship. If a dispute cannot be resolved solely between the parties, then either party may give written notice to the other party of its intention to mediate. Any dispute arising under this Agreement may be settled by mediation in a venue and in accord with such procedures acceptable to the parties. Nothing contained herein shall prevent either party from exercising its right to injunctive relief in any court of law having proper jurisdiction.
Unless in conflict with other sections of this Agreement, the parties specifically waive and disclaim the applicability of the Uniform Commercial Code, Uniform Electronic Transactions Act, and Uniform Computer Information Transactions Act to this Agreement. In the event any action or proceeding is brought in connection with this Agreement, each party shall be responsible for its costs and reasonable attorneys' fees. Except for the Client and KDS, no other party may sue or be sued under this Agreement.

9.8 Client data stored within KDS's data center shall be considered the Client's property. Upon termination of this ATS Agreement, at the Client's written request, KDS agrees to deliver a copy of the Client data to the Client.

9.9 Governing Law and Compliance. This Agreement shall be governed by the laws of the State of Pennsylvania without regard to the conflict of laws principles thereof. The parties agree that any dispute, claim, and/or action arising out of or relating to this Agreement shall be brought in a court of competent jurisdiction in the State of Pennsylvania. The parties shall comply with all applicable federal, state, county, and municipal laws, rules, regulations and ordinances.

9.10 KDS represents that it maintains and is covered by the following insurances: Commercial General Liability in amounts not less than $1,000,000 per occurrence and $3,000,000 aggregate.

9.11   Indemnification.
    a. Subject to the Limitation of Liabilities section 5 herein, each Party shall indemnify the other party and its affiliates, trustees, officers, directors, employees and agents from and against any and all liabilities, claims, damages, awards and/or judgments to the extent such liabilities, claims, damages, awards and/or judgments arise out of its breach of its responsibilities under the terms of this agreement, or its negligent acts or omissions or the negligent acts or omissions of its employees, agents, contractors or affiliates in performance of those responsibilities. Each party agrees that it shall give prompt notice to the other of any claims threatened or made of suit instituted against it, which could result in a claim for or right to indemnification as herein provided. This section shall survive termination of the contract.
    b. KDS shall indemnify and defend (at its own cost) Client and its officers, directors, employees, and agents from and against any action brought against Client to the extent that it is based on a claim that the Licensed Software or any upgrade or update of the Licensed Software used within the scope of the Agreement infringes any copyright, patent, trademark, or other intellectual property right if KDS is promptly notified in writing of such claim

10. Fees and Payments

The license fees for use of the Licensed Software are based on services subscribed to and number of Authorized End Users of the Licensed Software, and shall be billed as set forth http://www.athletictrainersystem.com/pdf_Files/ats_pricing.pdf incorporated herein by reference. In the event Client wishes to increase the number of Authorized End Users, Client and KDS shall agree on an adjustment corresponding to the new level of use based on KDS's then current pricing. Client shall pay undisputed invoices net 30 days from the invoice date. Subject to other terms of this agreement, Client's obligation to pay undisputed accrued fees and expenses shall survive any termination of this Agreement.

11. Modifications, Enhancements, Upgrades, Updates, Additions

All modifications , enhancements, upgrades, and conversions, of the Licensed Software (collectively, "Modifications") regardless of whether developed in conjunction with use of the Licensed Software by Client, or jointly by Client and KDS, including, without limitation, such materials which may be developed by KDS through the reimbursed or unreimbursed efforts of Client's employees or its agents, shall be owned by KDS and shall automatically be deemed to be part of the Licensed Software for purposes hereof, and subject to all terms and conditions set forth herein. Such Modifications may be subject to additional license fees to be communicated to Client in advance, subject to availability and to KDS's decision to make any such Modifications available to any one or more of its licensees.

12. Notice. All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- via certified or registered United States mail, return receipt requested;
- by personal delivery;
- by expedited delivery service; or
- by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

KDS:

Keffer Development Services, LLC
Attn: Rhett Keffer
24 Village Park Drive
Grove City PA 16127
Email: rhett@kefferdevelopment.com

Client:

East Aurora School District 131

attn Andrew Allen

310 Seminary Ave   Aurora, IL 60505

aallen@ d131.org

Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement, inclusive of Exhibit A and Schedules 1, to be executed and effective this day:

Keffer Development Services, LLC

By: _____

Print: Rhett I. Keffer

Title: Owner

Date: 05/12/2022

Client: East Aurora School District 131

By: _____

Print: Andrew J. Allen

Title: Executive Director of Info Systems

Date: 12/3/21

EXHIBIT A

CLIENT ANNUAL SUPPORT AND MAINTENANCE

In addition to their mutual obligations spelled out in the ATS Agreement and applicable schedules, the parties further agree as follows:

Section 1. Definitions
The following definitions are used in this Exhibit:
1. "Licensed Software" shall be those programs or modules which are licensed for access by the Client under the ATS Agreement. This includes any updated program or module access to which is hereinafter furnished to Client by KDS in connection with a Licensed Software under this Exhibit.
2. "Reference Materials" shall mean the Documentation supplied for the current revision of the Licensed Software and updates to the Documentation as delivered or made available to the Client by KDS.
3. "Remote Support" is any service rendered by a KDS representative for the Client via telephone, Internet or any combination thereof.
4. "Authorized Users" shall include KDS staff and others defined by Client using the Licensed Software.
5. "Client Contact" shall be one or more individuals that have been fully trained on the Licensed Software who are authorized to communicate directly with KDS on behalf of Client.
6. "Client Data" refers to the SQL Server database containing Client information.
7. "Client Hardware" shall include any computer or laptop, tablet or phone used to access Client Data using the Licensed Software.
8. "Hardware" refers to all equipment necessary to operate the Licensed Software at the Client site, including, but not limited to the personal computers and all of their internal and external components, peripherals, printers, network hardware and wiring, communication devices, and the like.
9. "Update" is a maintenance release in which little to no enhancement or functionality is added to the program.
10. "Upgrade" is a significant update to existing functionality.
11. "Enhancement" is a modification to the Licensed Software where functionality is added.

Section 2. Coverage
ATS Annual Support: Annual support as outlined in Schedule 1, in the applicable amount will begin on the date of this agreement, renewable annually thereafter at the current support rate. Any additional Licensed Software access subsequently purchased by Client shall be automatically covered by KDS Annual Support and Maintenance.

Section 3. KDS's Responsibilities
1. KDS shall maintain the Licensed Software covered hereunder in good operating condition to perform the functions as specified in the Documentation.
2. KDS shall correct the Licensed Software if errors in the Licensed Software are discovered and effectively reported to KDS.
3. KDS shall provide Client with Remote Support for the Licensed Software. Remote Support shall be available to one Client Contact or designate who has been trained and certified on the operations in question, and only after the Client's Contact or designate has consulted the Reference Manual and on-line documentation for a possible solution to a problem.
4. KDS shall provide the Client, free of charge, updates, upgrades and enhancements for the Licensed Software for the term of the Agreement.
5. KDS shall provide preventive software maintenance for the Licensed Software as deemed necessary by KDS.
6. KDS shall normally respond to a properly communicated support request for the Licensed Software within 4 hours, and within 1 hour in the event of an Urgent Request provided such requests are made within the hours of 8am-5pm Eastern time. Outside of these times response will be made the next business day.
7. KDS will release periodic updates, upgrades and enhancements to address those issues that, because of their applicability to Clients nationwide and because of their non-urgent nature, warrant such updates or upgrades.

Section 4. Client Data Safeguards
1. KDS agrees to implement safeguards to ensure the confidentiality, availability, security and integrity of Client data during processing, storage, and transmission. These safeguards should be in accordance with industry best practices and should include (but not be limited to) controls such as datacenters with redundant power and connectivity, change control processes and documentation for system updates testing and deployment, logging and auditing associated with account management and access, and encrypted transmission channels for all Client Data.
2. KDS also agrees that any and all Client data will be stored, processed, and maintained solely on designated target servers and that no Client data at any time will be processed on or transferred to any portable or laptop computing

device or any portable storage medium, unless that storage medium is in use as part of the KDS's designated backup and recovery processes.

3. KDS agrees that upon termination of this Agreement it shall erase, destroy, and render unreadable all Client data in a manner acceptable and approved by Client, and shall provide an affidavit certifying said destruction within 30 days of the termination of this Agreement or within 7 days of the request of the Client, whichever shall come first.

Section 5. Client's Responsibilities

1. The Client shall notify KDS immediately if it becomes aware of any errors occurring in the Licensed Software or operation of the system. Failure to provide this notification in a timely manner may hamper the ability of KDS to correct the problem.
2. Client shall maintain the necessary environment for the Hardware upon which the Licensed Software is accessed at the Client site. Client shall be diligent in all respects to assure the successful operation of the Licensed Software.

Section 6. Exclusions. Limitations, and Additional Provisions

1. KDS's obligation to provide maintenance services under Schedule 1 is contingent upon the proper configuration of Client Hardware and the appropriate use of Licensed Software as recommended by KDS.
2. Maintenance services that are required because of accident, neglect, misuse, electronic problems, media failure, force majeure, originating at the Client site, or any failure on the Client's part to abide by the above Client obligations are not covered by this Schedule and shall be paid for by the Client at KDS's prevailing non-contractual, hourly rates as reflected in Schedule 1.
3. Maintenance services do not include standard operating supplies, tapes, paper forms, cables, etc. Client must provide its own computer supplies required for normal operations.
4. Maintenance services do not include access to new programs or additional modules not described as included in Schedule 1, but does include updates, upgrades and enhancements only to the Licensed Software for the applicable subscribed to modules.
5. Maintenance services do not include: design or changes of forms or reports, custom modules, custom reports, or custom programs, custom modifications to the Licensed Software, modifications to the Licensed Software based solely upon Client preference, data conversion, and similar functions.
6. Support of problems unrelated to the Licensed Software is not covered under this Exhibit. Unrelated problems include, but are not limited to, all Client hardware problems, all Client network problems, problems with Client third-party vendors, programs, and applications, problems with Client operating systems, problems with Client network operating system and system integration, and Client environmental problems, such as heat, radiation and power surges.
7. KDS is not responsible for the diagnosis and/or correction of problems that are not related to the Licensed Software, but may offer such services at its discretion. Unrelated Client problems may include, but are not limited to, Hardware problems, problems with other applications and environmental problems such as heat, radiation and power surges. If at any time during or at the conclusion of the troubleshooting process the cause of the problem is determined to be one that is not covered by this Exhibit, the Client shall be billed at KDS's then prevailing non-contractual, hourly rate (as reflected in Schedule 1) based upon the time required to make such a determination.
8. Any obligations and duties which, by their nature, extend beyond the termination of this Exhibit shall survive any termination and remain in effect. This includes all obligations and duties as described in the ATS Agreement.
9. If any provision or provisions of this Exhibit are held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be in any way affected or impaired.
10. KDS is not responsible for failure to fulfill its obligations under this Exhibit due to causes beyond its control., including such causes as are normally considered force majeure.

Schedule 1

Annual Maintenance and Support

1. **Initial ATS Purchase Subscription**
   Service Releases
   Telephone (1-888-328-2577) & email (support@kefferdevelopment.com)

2. **Annual Maintenance**
   Module & Service Releases
   Telephone & email support

3. **Support Policy Comments**
   Telephone support is available Monday through Friday, with the exception of legal and scheduled company holidays, from 9:00am to 5:00pm Eastern time.

4. **Types of software releases and their timing**

   Emergency Release
   Programming problems which cause our software to halt or abort. These have a high priority, are addressed immediately and will be implemented for clients as needed. Emergency status is determined by a senior member of our staff.

   Service Release
   Program changes or enhancements that do not dramatically affect the overall functionality of the system, but which make usage of the system easier. These releases are made available when completed.

   Module Release
   Additional modules are added to our software for different clients at different times. As these modules are created they will be made available to all clients on a specific cost basis. These releases are made available as they are completed. With each module release purchased you will receive additional support incidents prorated on the size of the module.

5. **Additional fees, if desired.**

Type of Support	Client with Maintenance
Daily On-site	$1500/day. 8-hour day+ lodging and expenses. 8-hour day. 1 day minimum.
Hourly On-Site	$225/hour, 2 hour minimum
"GoTo" Training	$135/hour
Additional Work	$135/hour, based on statement of work & estimate

6. **Current information included in this schedule and available at**

   www.athletictrainersystem.com/pdf_Files/ats_pricing.pdf