Smartetools

**Software License and
Maintenance Agreement**

For

SmarteFinance

Software License and Maintenance Agreement

THIS AGREEMENT is made and entered into as of this day 23rd of June, 2020 ("Effective Date"), by and between Newhall School District having its principal office located at 25375 Orchard Village Road, Santa Clarita, California, 91355 (**"LICENSEE"**); and Smartetools, Inc., a California Corporation having its principal office located at 19031 US Highway 18, Suite 220, Apple Valley, California, 92307 (**"LICENSOR"**). LICENSOR and LICENSEE shall sometimes be referred to collectively as "Parties" and individually as "Party".

WHEREAS, LICENSOR is the sole owner of the proprietary computer application program, **SmarteFinance,** including but not limited to the source code, object code and documentation for this program, and has title to and all the rights of ownership in this program, including the right to grant a license;

WHEREAS, LICENSEE desires to obtain a license for the object code and documentation for **SmarteFinance**;

NOW, THEREFORE, in consideration of the above Recitals, which are incorporated into the operative provisions of this Agreement by this reference, the mutual promises made herein, and other good and valuable consideration, the receipt of which is acknowledged, the Parties agree as follows:

A.   Definitions

1.   "SOFTWARE" means the **SmarteFinance** application program or the object code of and documentation for this program, as determined by the context in which it is used.

2.   "Unauthorized person(s)" means any person, entity or organization who has not executed a license agreement with LICENSOR for the use, installation and copying of the SOFTWARE. The District's employees that have not executed a license agreement but are authorized by the District to use the SOFTWARE are not "Unauthorized Persons" within the meaning of this License Agreement.

3.   "Premises" means the collective physical premises and various school and facility sites of the **Newhall School District.**

4.   "Object code" means the code produced from compiling the source code of the SOFTWARE.

B.   Ownership of the SOFTWARE

1.   The SOFTWARE and any copies of the SOFTWARE made by the LICENSEE are the intellectual property of and are owned by the LICENSOR. LICENSOR retains title to and ownership of the SOFTWARE regardless of the form or media in which or on which it may exist.

2.   This Agreement confers no title to or ownership rights in the SOFTWARE to the LICENSEE and is not a sale of such title or rights.

C.   License Grant and Limitations:

LICENSOR grants to LICENSEE a non-assignable, indivisible, non-transferable, and non-exclusive right and license to use, install and have installed and copy the SOFTWARE, subject to the following restrictions:

1.   LICENSEE may ONLY use, install or have the object code of the SOFTWARE installed on a server, network or computer physically located on its premises, unless expressly authorized in writing by LICENSOR.

2.   LICENSEE may ONLY store the object code of the SOFTWARE on a storage device physically located on its premises, unless expressly authorized in writing by LICENSOR.

3.   LICENSEE may ONLY keep copies of the documentation for the SOFTWARE on its premises, unless expressly authorized in writing by LICENSOR.

4.   LICENSEE may make ONLY the number of copies of the object code of the SOFTWARE and documentation for the SOFTWARE that it needs, provided this is done only on its premises**.**

5.   The rights granted to LICENSEE under this Section C shall be for the term of five (5) years ("Initial Term") and, at LICENSEE's written election, such term shall be renewable for a term of one (1), two (2), three (3), four (4) or five (5) years.

6.   LICENSEE shall take adequate and reasonable precautions to preclude unauthorized persons from having access to the SOFTWARE and to exercise all due care and attention in the use of passwords associated with the use of the object code of the SOFTWARE. This includes, but is not limited to, compliance with accepted good practices in the use and maintenance of passwords, such as not disclosing them to unauthorized persons.

7.   LICENSEE shall not modify, translate, adapt, reverse engineer, improve upon, add to or disassemble the SOFTWARE, create a derivative work based upon the SOFTWARE, attempt to construct the source code of the SOFTWARE, or disable any security measure in the object code of the SOFTWARE.

8.   The object code of and documentation for the SOFTWARE is licensed as a single product and its component parts shall not be separated or removed for any reason.

9.   LICENSEE shall not disclose the SOFTWARE to any unauthorized person without first obtaining the express written consent of the LICENSOR.

10.   Upon three (3) working days' notice, LICENSEE shall allow LICENSOR reasonable access to its premises so that LICENSOR may conduct a meaningful inspection of LICENSEE's servers where the SOFTWARE is stored or installed to determine if LICENSEE is in compliance with the terms of this Agreement. Such access shall also include enabling LICENSOR to access LICENSEE's servers via the Internet.

11.   LICENSEE shall not rent, sub-license or transfer the SOFTWARE or any of LICENSEE's rights granted under this Agreement.

12.   No other rights are granted under this Section by implication, estoppels or otherwise.

D.   Limited Warranties

1.   LICENSOR does not warrant that the SOFTWARE is error-free, will operate without limitation or compatible with all equipment and software configurations.

2.   LICENSOR warrants that during the licensing period, the SOFTWARE will be in substantial accordance with the applicable general description. The extent of LICENSOR's liability under this warranty is limited to the correction or replacement of any defective item(s) at the LICENSEE's facilities at LICENSOR's own cost and expense, provided reasonable written notice of such defect is given to LICENSOR during the license term. Such corrections or replacements shall be made within fourteen (14) calendar days of LICENSOR's receipt of written notice. LICENSOR is not liable for any indirect, incidental, or consequential damages including, without limitations, loss of income, profit, use, data or information unless a result of gross negligence or willful misconduct of LICENSOR or its employees or agents.

3.   No oral or written information or advice given by the LICENSOR, its employees, or agents shall increase the scope of the warranties described in this Agreement, or create any new warranties. All other implied or express warranties are disclaimed.

4.   LICENSOR makes no other warranty of any kind whatsoever, either expressed or implied, as to SOFTWARE or any methods, processes, techniques, information, knowledge, know-how, trade processes or trade secrets communicated under this Agreement.

5. The warranty described in this Agreement shall not apply if:
    i. An item is not used in accordance with the LICENSOR's written instructions.
    ii. An item has been altered, modified or converted by LICENSEE without the written approval of LICENSOR.
    iii. LICENSEE's hardware malfunctions or other causes within the control of LICENSEE result in an item becoming inoperative, unless a result of gross negligence or willful misconduct of LICENSOR or its employees or agents.

E. Risk of Loss

Upon receipt of the original object code of or documentation for the SOFTWARE, LICENSEE shall be solely responsible for safekeeping them and any copies of them that LICENSEE reproduces, as provided for under the terms of this Agreement. In addition, LICENSEE shall return to LICENSOR any misplaced, stolen or lost copies of the object code of the SOFTWARE that are subsequently found by, returned to or otherwise recovered by LICENSEE.

F. Proprietary Information, Non-disclosure and Duplication

LICENSEE understands and agrees that the SOFTWARE contains LICENSOR's confidential or trade secret information, and that disclosure of such information to unauthorized third parties will cause great harm to LICENSOR. LICENSEE, therefore, agrees to safeguard the SOFTWARE using due care. LICENSEE further agrees that it will not transmit or cause to be transmitted any of LICENSOR's confidential or trade secret information to any third party outside of LICENSEE's organization, without the express written consent of LICENSOR. LICENSEE shall also take all reasonable precautions to prevent disclosure of LICENSOR's confidential or trade secret information by LICENSEE's employees or authorized agents. LICENSEE shall be liable for any damages to LICENSOR resulting from any unauthorized disclosure of its confidential or trade secret information, including reasonable court costs and attorney's fees incurred in enforcement of the LICENSOR's rights herein.

LICENSEE further agrees that LICENSOR will suffer irreparable harm from any unauthorized disclosure of the SOFTWARE or LICENSOR's confidential or trade secret information and that, therefore, LICENSOR is entitled to an injunction in a court of competent jurisdiction enjoining LICENSEE and those acting in concert with LICENSEE from continuing with such unauthorized disclosure. LICENSEE consents and stipulates to the entry of such injunctive relief prohibiting it from using or disclosing LICENSOR's SOFTWARE or its confidential or trade secret information in violation of this License Agreement.

Notwithstanding the foregoing, confidential or trade secret Information shall not include:
    i. information known to a Party prior to obtaining the same from the other Party;

ii.   information in the public domain at the time of disclosure by a Party;
iii.   information obtained by a Party from a third party who was under no obligation of confidentiality with respect to such information;
iv.   information independently developed by a Party without use of any confidential or trade secret Information of the other Party;
v.   information approved for release by express prior written consent of an authorized agent of the other Party; or
vi.   any records or documents that LICENSEE would be required to disclose in response to any request for records under the California Public Records Act.

LICENSEE agrees to give LICENSOR reasonable notice of any request that might lead to the disclosure of LICENSOR's Proprietary Information, so that LICENSOR can take action to protect its Proprietary Information. If LICENSEE is required to defend or otherwise respond to any action or proceeding wherein request is made for the disclosure of records or documents deemed exempt from disclosure as confidential or trade secrets by LICENSOR, LICENSOR agrees to defend, indemnify and hold harmless LICENSEE and its Board of Trustees, employees, officers and agents, in any action or proceeding from and against any liability, including without limitation attorneys' fees arising therefrom. LICENSOR shall be solely responsible for the cost and defense in any action or proceeding seeking to compel disclosure of such materials; LICENSEE's sole involvement in any such action shall be that of a stakeholder, retaining the requested materials until otherwise ordered by a court of competent jurisdiction.

G.   Indemnification

1.   LICENSOR shall indemnify and hold LICENSEE, its governing board members, agents and employees, harmless from any loss, damage or liability due to infringement of any United States copyright with respect to the use of items delivered to LICENSEE under this License Agreement, provided that: LICENSOR is promptly notified in writing of any suit or claim against LICENSEE and LICENSEE permits LICENSOR to defend, compromise or settle the same and control the defense of the lawsuit; no settlement of such suit or claim shall be made without LICENSOR's approval; LICENSEE cooperates fully with LICENSOR, including but not limited to keeping LICENSOR informed of developments in the lawsuit, obtaining LICENSOR's approval of strategies and tactics, advance approval of hiring of experts and consultants and legal fees or costs to be incurred in defending such claims and providing LICENSOR with all information reasonably necessary to LICENSEE's defense. LICENSOR shall refund to LICENSEE any prepaid amounts for services which may not be provided due to an infringement claim.

2.   LICENSOR shall not have any obligation to indemnify LICENSEE for any infringement arising out of LICENSEE's use of the SOFTWARE in any combination, manner or fashion which was not authorized or for which the SOFTWARE was not designed.

3.   LICENSOR shall not indemnify or hold harmless LICENSEE for any claims, losses or damages, including legal fees and expenses, due to willful misconduct or gross negligence by LICENSEE in any lawsuit for infringement of a U.S. copyright against LICENSEE ("Lawsuit"), disobedience by LICENSEE of court orders or the judgment in the Lawsuit, LICENSEE's breach of settlement terms for the Lawsuit, or LICENSEE's failure or refusal to cooperate with LICENSOR in defending the Lawsuit. LICENSOR shall give LICENSEE reasonable notice of any such transgression by LICENSEE and shall give LICENSEE reasonable opportunity to cure. But once such reasonable opportunity to cure has passed without a cure occurring, LICENSOR may terminate its obligations to defend and indemnify upon written notice to LICENSEE at its regular place of business.

4.   LICENSEE shall comply with the applicable State and Federal Fair Trade and Antitrust laws, rules or regulations and hold LICENSOR harmless for any violations by LICENSEE of such laws, rules or regulations.

5.   Each party hereby assumes all risk of and responsibility for, and agrees to indemnify, defend and save harmless the other party, its parent and subsidiary organizations, directors, officers, employees and agents from and against any and all claims, demands, suits, actions, recoveries, judgments, costs and expenses in connection therewith, made, brought or obtained on account of loss of life or property, or injury or damage to the person or property of any person or persons, which arise out of or result from the negligence or willful misconduct of the indemnifying party, or any agent or employee of the indemnifying party, except to the extent that such loss, injury or damage is caused by the indemnified party, its agents or employees.

H.   Confidentiality

1.   LICENSOR shall use the same degree of care it uses to protect its Confidential Information in accessing, storing or using all information not specifically excluded under Section H paragraph 2 ("LICENSEE Confidential Information") that has been disclosed by LICENSEE to LICENSOR, e.g., employing security measures such as passwords, VPN (Virtual Private Network) for computer network communication on the internet, a network firewall, and computer virus and malware monitoring and removal.

2.   LICENSEE Confidential Information shall not include information which was:
   i.   Generally available to the public at the time of disclosure, or later available to the public other than through fault of LICENSOR or a third party;
   ii.   Already known to LICENSOR prior to disclosure pursuant to this Agreement;
   iii.   Obtained at any time lawfully from a third-party under circumstances permitting its use or disclosure to others; or
   iv.   Required by law or court order to be disclosed.

3   LICENSOR shall not be responsible for: any unauthorized third party access, disclosure or use of LICENSEE Confidential Information, including but not limited to unauthorized access, disclosure or use by LICENSEE's employees or agents, regardless of whether LICENSEE has employed reasonable security measures; or any loss, destruction or unauthorized access, use or publication of LICENSEE Confidential Information arising from or related to any unforeseen cause or cause beyond LICENSOR's control except as may be a result of gross negligence or willful misconduct of LICENSOR or its employees or agents.

I.   Maintenance, Support and Enhancement Plan

1.   During the term of this Agreement, LICENSOR shall provide to LICENSEE the following maintenance, support and other services:
   i.   All updates, enhancements, upgrades or releases of SOFTWARE and documentation for them developed during the term of this Agreement;
   ii.   Reasonable access by telephone and/or Internet to LICENSOR's technical staff for consultation in the use and operation of the SOFTWARE;

2.   LICENSEE agrees to furnish computer time to LICENSOR during and for the installation, testing, and maintenance of the SOFTWARE. This will include but is not limited to on-site access and access via the Internet to LICENSEE's computers and computer network solely for the purpose of implementing this Software License and Maintenance Agreement.

3.   LICENSEE and LICENSOR agree that computer network security is an important concern for each of them. LICENSEE and LICENSOR agree to apply properly and diligently the protection mechanisms generally available for computer network protection.

J.   License and Maintenance Fee

1.   LICENSEE agrees to pay to LICENSOR an annual license and maintenance fee as shown in the following payment schedule. The first annual payment shall be due and payable on the 1st day of July, 2020 and thereafter on the same date of each subsequent year for the term of this agreement as defined in **Section C, Item 5** of this agreement.

Payment Schedule

Fiscal Year	Due Date	License & Maintenance
2020-2021	July 1, 2020	$19,500.00
2021-2022	July 1, 2021	$19,500.00
2022-2023	July 1, 2022	$19,500.00
2023-2024	July 1, 2023	$19,500.00
2024-2025	July 1, 2024	$19,500.00

2. After the expiration of the Initial Term, LICENSOR may increase the amount of the annual license and/or maintenance fees to reflect changes in the market value of the SOFTWARE by giving LICENSEE one hundred eighty (180) days written notice of the increase, prior to the commencement of a new term.

3. LICENSEE shall be deemed to have agreed to a subsequent renewal term unless it gives written notice to LICENSOR at least ninety (90) days prior to the termination of the Initial Term of this License Agreement. If the LICENSOR and LICENSEE have not agreed upon a duration for a subsequent renewal in writing, the parties agree that the renewal term shall be for one (1) year unless otherwise approved by LICENSEE in writing.

4. LICENSEE shall have the option to extend the Term of this License Agreement for a period of one, two, three, four or five years with written notice to the LICENSOR at least ninety days (90) prior to the termination of the Initial Term of this License Agreement. LICENSOR may increase the amount of the annual license and/or maintenance fees as stated in paragraph 3 of this section for the extended term.

K.   Termination of Agreement

1. LICENSOR may terminate this Agreement:
    i.   Immediately, in the event of a breach of this Agreement by LICENSEE, by providing LICENSEE with written notice of the breach and termination; or
    ii. With ninety (90) days written notice to the LICENSEE, in the absence of a breach of the Agreement by LICENSEE.

2. LICENSEE may terminate this Agreement:
    i.   In the event of LICENSOR's failure to cure a breach of this agreement within 30 days of written notice of such a breach by LICENSEE, by providing LICENSEE with written notice of termination.
    ii. The LICENSEE may only terminate this License Agreement for breach by the LICENSOR. If LICENSEE attempts to terminate this License Agreement for any other reason, then LICENSEE shall owe the remaining balance of the License and Maintenance Fees which shall be immediately due and payable.

3. Upon termination or expiration of this Agreement, LICENSEE shall:
    i.   Immediately cease any and all use of the SOFTWARE and related materials;
    ii. Immediately destroy any and all copies of the object code, source code and documentation for the SOFTWARE, regardless of how and where it is stored, in its possession, custody or control;
    iii. Return to LICENSOR within twenty-four (24) hours the media on which SOFTWARE was originally given to LICENSEE; and
    iv. Pay any amounts due to LICENSOR as of the date of expiration or termination of this Agreement within ten (10) days of the termination or

expiration of this Agreement.

4.   Section F above shall survive the termination of this Agreement.

L.   Force Majeure

LICENSOR shall not be liable to LICENSEE for any failure or delay caused by events beyond the reasonable control of the LICENSOR including without limitation, sabotage, failure or delays in transportation or communication, failures or substitutions of equipment, labor disputes, accidents, shortages of labor, fuel, raw materials, or equipment, or technical failure.

M.   Assignment

LICENSOR shall have the right to assign this Agreement, in whole or in part, and/or to subcontract its performance obligations under this Agreement at any time and from time to time in its sole discretion by providing LICENSEE with at least ninety (90) days written notice of the assignment or subcontract; or with less than ninety (90) days written notice with the express written consent of LICENSEE.

N.   Severability

Each provision of this Agreement shall be severable from the whole. If any provision of this Agreement shall be found contrary to law, the remainder of the Agreement shall continue in full force.

O.   Governing Law and Venue

This Agreement is made under and shall be governed by and construed in accordance with the laws of the State of California. Any dispute arising out of this Agreement shall be adjudicated exclusively in the State or Federal courts in San Bernardino County, California and all parties consent to personal jurisdiction and venue therein.

P.   Notices

Any notices required under this License shall be given in writing and delivered personally or by telecopy / facsimile (with transmission confirmed), registered or certified mail, return receipt requested, or overnight delivery service to the parties at their addresses noted above or such other addresses as shall have been designated to each other in writing. Notices shall be deemed delivered upon

personal delivery; two days after deposit with the delivery service if the notice has prepaid overnight delivery; or upon five days after the deposit of the notice with the U.S. Post Office for registered or certified mail. Either party may change its address from time to time in writing.

Q.   Entire Agreement

This Agreement supersedes all previous license and maintenance agreements for the SOFTWARE and constitutes the entire understanding between the parties hereto. This Agreement shall have no force and effect until executed by a duly authorized officer of LICENSEE and a duly authorized officer of LICENSOR, and any modifications or amendments to the Agreement must be in writing and executed by the parties hereto.

R.   Authority

Each party represents and warrants that it is a legal business entity duly organized and validly existing in good standing under the laws of the state of California and the United States of America. Each party represents that the person signing this License Agreement on its behalf has been properly authorized and empowered to do so.

S.   Waiver and Modification

The waiver or modification of any of the provisions of this License Agreement shall not be binding unless in writing and signed by the party to be charged.

T.   Compliance with Laws

LICENSEE agrees to comply with all applicable federal, state, and local statutes, ordinances, rules, and regulations, including, without limitation, the rules and regulations under the United States Export Administration Act and the United States Foreign Corrupt Trade Practices Act, as the same may be amended from time to time. Without in any way limiting the foregoing, (a) LICENSEE shall not export or otherwise remove any Licensed Software or Licensed Documentation from the United States, either directly or indirectly, without the consent of LICENSOR and without first obtaining any licenses or approvals required from the United States Department of Commerce and any other applicable agency of the United States Government, and (b) LICENSEE agrees that neither it, nor any of its officers, directors, employees, or agents (1) shall pay or be instructed to pay or give anything of value, either directly or indirectly, to an official of any foreign government or any foreign political party for the purpose of influencing an act or decision in such person's official capacity, or inducing such person to use

such person's influence with the foreign government in order to assist LICENSEE in obtaining or retaining business for or with, or directing business to, any person, or (2) is at present or shall at any time during the term of this License Agreement become an official, officer, or representative of a foreign country.

U.   Independent Contractor

The LICENSOR, in the performance of this License Agreement, shall be and act as an independent contractor. The LICENSOR understands and agrees that the LICENSOR and all of the LICENSOR's employees shall not be considered officers, employees, or agents of the LICENSEE, and are not entitled to benefits of any kind or nature normally provided employees of the LICENSEE and/or to which LICENSEE's employees are normally entitled including, but not limited to, State Unemployment Compensation or Workers' Compensation. LICENSOR assumes the full responsibility for the acts and/or omissions of the LICENSOR's employees or agents as they relate to the services to be provided under this License Agreement. The LICENSOR shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security, and income taxes for the respective employees of the LICENSOR.

IN WITNESS WHEREOF the parties hereto, each by a duly authorized representative, have executed this Agreement as of the date first written above.

Licensee

Newhall School District

_____   _____
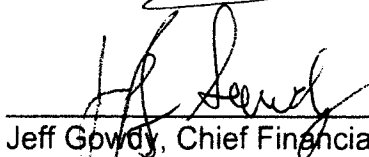Signature   Date

_____
Title

Board Approved: _____
                            (Date)

Licensor

Smartetools, Inc.
A California Corporation

_____   05/20/20
Ray Hindy, Chief Executive Officer   Date

_____   5/20/2020
Jeff Gowdy, Chief Financial Officer   Date