



Software License Agreement

between

Hayes Software Systems

and

Sylvan Union School District



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This AGREEMENT (the “Agreement”) is made as of February 24th, 2020 (“Effective Date”), between Hayes Software Systems, a Texas corporation with its principal place of business at 12007 Research Blvd, Ste 103, Austin, TX 78759 (“HAYES”), and Sylvan Union School District, 605 Sylvan Ave, Modesto, CA, 95350 (“CUSTOMER”).

WHEREAS, HAYES is an educational software company that develops, distributes and licenses the use of educational software and provides hosting, training and other consulting services for K-12 education;

WHEREAS, CUSTOMER desires to license and/or purchase certain products and services from HAYES upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth herein, the parties hereto agree as follows:

SECTION 1

1.1 Grant of License.

(a) As used in this Agreement, “Licensed Software” means HAYES’ proprietary software described In **Exhibit A**, including all updates, corrections and revisions to the software as supplied by HAYES. Subject to the terms and conditions of this Agreement, HAYES hereby grants to CUSTOMER a non-exclusive, worldwide, nontransferable, non-assignable, non-sublicensable, royalty-free, limited license to the Licensed Software for CUSTOMER’s internal use at CUSTOMER’s Licensed Site(s) designated in **Exhibit B**. CUSTOMER shall not sell, lease, license or otherwise transfer, use or dispose of the Licensed Software except as expressly provided herein. CUSTOMER shall not make any alterations, additions or modifications to the Licensed Software without the prior written consent of HAYES in its sole discretion; and, if such permission is granted, all right, title and interest in and to such alterations, additions or modifications shall become the property of, and are hereby assigned to, HAYES. CUSTOMER will not decompile, disassemble or reverse engineer any software included within the Licensed Software.

(b) This grant of license is based upon use of the Licensed Software only at the Licensed Sites. CUSTOMER agrees to pay HAYES additional fees as set forth in **Exhibit E** (the “Additional Fees”) to expand use of the License Software to other sites, including but not limited to additional license fees, additional implementation fees, and additional professional development (training) fees. An Amendment to **Exhibit B** of the Agreement shall be executed by both parties prior to HAYES invoicing CUSTOMER for, or providing access to, the Licensed Software for new sites added to this Agreement.

(c) The Licensed Software can be purchased with varying levels of functionality. HAYES grants CUSTOMER the license to use the Licensed Software with the Licensed Software Functionality defined and designated in **Exhibit B**. At CUSTOMER’s sole discretion and via a mutually executed Amendment to **Exhibit B**, CUSTOMER may modify the Licensed Software Functionality designations for Licensed Sites by paying HAYES Additional Fees set forth in **Exhibit E**.

(d) CUSTOMER will, upon HAYES’ reasonable request but not more than once in any calendar year, permit HAYES or its authorized agents, at HAYES’ own expense, to audit the number of Licensed Sites using the Licensed Software. Audits shall be conducted without unreasonably disturbing CUSTOMER operations. Any information received during such audit will be deemed Confidential Information (as defined below) and may not be used or disclosed by HAYES or its authorized agents for any purposes other than determining the accuracy of payments made to HAYES and for enforcing HAYES’ rights under this Agreement.

1.2 Implementation of Licensed Software.

(a) Subject to CUSTOMER’s delivery of all information requested by HAYES, HAYES will provide implementation services, as described in **Exhibit C**. In no event shall HAYES be liable to CUSTOMER for any expenses incurred or damages resulting from any delay in the delivery of the Licensed Software beyond HAYES’ reasonable control.

(b) CUSTOMER will designate the following in **Exhibit F**:

- (i) CUSTOMER’s primary address.
- (ii) A Contract Coordinator who is authorized to handle all issues concerning this Agreement.
- (iii) A “Billing Contact” to whom HAYES shall submit all invoices.

1.3 Licensed Software Maintenance.

- (a) Subject to the terms and conditions of this Agreement, HAYES shall provide maintenance to the Licensed Software. In connection therewith, HAYES shall correct all material errors, malfunctions and defects in the Licensed Software within a reasonable period of time after CUSTOMER gives HAYES written notice thereof, which includes sufficient information to diagnose such problems.
- (b) As part of HAYES' maintenance obligations, HAYES shall provide CUSTOMER with upgrades to the Licensed Software as they become available to HAYES' customers generally, and at minimum one upgrade per year.
- (c) It is understood, agreed and acknowledged by CUSTOMER that in accordance with routine maintenance, updates and fixes, HAYES may change or modify any aspect of the Licensed Software as long as such modification does not materially alter the functionality of the Licensed Software. HAYES shall make a commercially reasonable effort to provide access to the Licensed Software at all times but does not warrant that it will be uninterrupted or that the Licensed Software shall be error-free, except as otherwise warranted hereunder.
- (d) As part of HAYES' maintenance obligations, HAYES shall provide product support for all users of the Licensed Software at Licensed Sites by phone (800-495-5993), or by e-mail (support@hayessoft.com) Product support shall be available 8 a.m. to 5:00 p.m., Central Time, Monday through Friday, excluding holidays observed by HAYES. HAYES shall provide additional hours of support at HAYES' sole discretion.

SECTION 2

2.1 Fees.

- (a) CUSTOMER shall pay to HAYES the license fees (the "License Fees") and such other fees agreed upon in writing by the parties (which, together with the License Fees and any Additional Fees, are collectively referred to herein as the "Fees") as set forth in **Exhibit E**. Notwithstanding other provisions of this Agreement, CUSTOMER's failure to timely pay all Fees as described in **Exhibit E** shall be deemed a material breach of this Agreement.
- (b) CUSTOMER's rights to access the Licensed Software under this Agreement shall cease if CUSTOMER fails to timely pay the Fees provided in this Agreement.

SECTION 3

3.1 Term and Termination.

- (a) This Agreement shall enter into force on the Effective Date, and shall remain in force for the duration of the Term as defined in **Exhibit A**, unless sooner terminated by HAYES or CUSTOMER pursuant to the terms of this Agreement.
- (b) HAYES shall have the right to terminate this Agreement and all products and/or services provided under this Agreement, the Exhibits hereto or any SOWs if
 - (i) CUSTOMER fails to cure a material breach of this Agreement within thirty (30) days after having received written notice of such breach from HAYES, except that the time to cure for the non-payment of the Fees shall be ten (10) days; or
 - (ii) HAYES' license or other rights to the Licensed Software is at any time terminated.

In the event of a termination pursuant to clause (i) of this Section 3.1(b), CUSTOMER shall promptly pay to HAYES the undisputed amount of all Fees due under this Agreement; and in the event of a termination pursuant to clause (ii) of this Section 3.1(b) CUSTOMER shall promptly pay to HAYES the pro-rata portion of the Fees for all services provided through the effective date of termination, if not previously paid.

- (c) CUSTOMER shall have the right to terminate this Agreement
 - (i) if HAYES is in material breach of any provision of this Agreement and HAYES fails to cure such material breach within thirty (30) days after receiving detailed written notice of HAYES' material breach specifying the breach; except that

HAYES shall not be deemed in breach, and shall have no obligations to cure, if CUSTOMER modifies or changes the Licensed Software in any way. HAYES' failure to maintain its license or other rights to the Licensed Software shall not be deemed a breach of this Agreement if HAYES, at its option, provides CUSTOMER with software substantially similar to the Licensed Software.

(ii) if HAYES files for bankruptcy.

(iii) at the end of any fiscal year in the event that CUSTOMER's governing Board fails to appropriate funds for this Agreement (and any subsequent SOW) for the following fiscal year.

(d) In the event of a termination pursuant to this Section 3(c), CUSTOMER shall promptly pay to HAYES the pro-rata portion of the unpaid Fees for all products and services provided through the date of termination.

SECTION 4

4.1 HAYES' Representations and Warranties.

(a) HAYES represents and warrants to CUSTOMER:

(i) that to HAYES' knowledge, neither the Licensed Software nor the exercise by CUSTOMER of any of the rights granted hereunder will infringe any known or hereinafter existing worldwide copyrights, patents, trademarks, trade secrets, uniform resource locators, trade dress, brand features, know-how, moral rights, contract rights or other proprietary rights ("Intellectual Property") of any third party. HAYES will defend, indemnify and hold harmless the CUSTOMER from any action based on a claim that CUSTOMER's use of the Licensed Software infringes any patent, copyright or trade secret of any third party; and

(ii) that the Licensed Software shall substantially conform in all material respects to the specifications contained herein and any customization to the Licensed Software furnished by HAYES pursuant to a SOW shall substantially conform in all material respects to any specifications agreed to in writing by the parties with respect to such customization.

(b) HAYES' sole liability for any breach of the performance warranty in this Section 4.1 will be, in HAYES' sole discretion:

(i) to repair or replace CUSTOMER's defective Licensed Software; or

(ii) to refund to CUSTOMER all fees actually paid pursuant to this Agreement, in which case this Agreement and CUSTOMER's right to use the Licensed Software will be terminated.

HAYES will use its commercially reasonable best efforts to repair, replace, or advise pursuant to the warranty set forth in this Section 4.1. Notwithstanding the foregoing, HAYES shall not be in default hereunder as long as it is diligently pursuing the fulfillment of its warranty obligation.

(c) HAYES will have no warranty obligation unless:

(i) CUSTOMER informs HAYES in writing during the Term of the Agreement of a failure of the Licensed Software to perform as described in **Exhibit A**; and

(ii) CUSTOMER has not introduced other equipment or software creating an adverse impact on the Licensed Software; and

(iii) CUSTOMER has paid all amounts due hereunder and is not in breach or default of any provision of this Agreement; and

(d) THE WARRANTIES SET FORTH IN THIS SECTION 4.1 ARE LIMITED WARRANTIES AND ARE THE ONLY WARRANTIES MADE BY HAYES. HAYES EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING WITHOUT

LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY DISCLAIMED. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS SECTION, THE LICENSED SOFTWARE IS PROVIDED "AS IS" AND "WITH ALL FAULTS". THE EXPRESS WARRANTIES IN THIS SECTION 4.1 DO NOT APPLY TO DAMAGE RESULTING FROM MISUSE, ABUSE OR COMPUTER OR ELECTRICAL MALFUNCTION, OR IF THE LICENSED SOFTWARE HAS BEEN INSTALLED, USED, MODIFIED OR OPERATED OTHER THAN IN ACCORDANCE WITH INSTRUCTIONS FURNISHED BY HAYES OR OTHER THAN AS PERMITTED BY THIS AGREEMENT. HAYES DOES NOT WARRANT THE CUSTOMER'S USE OF THE LICENSED SOFTWARE WILL BE ERROR-FREE, UNINTERRUPTED, VIRUS-FREE, OR SECURE. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES IN THIS AGREEMENT. THE PROVISIONS OF THIS SECTION SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT. NO REPRESENTATIVE, AGENT, EMPLOYEE OR OTHER PERSON IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS, OR ADDITIONS TO THIS WARRANTY.

(e) If any modifications are made to the Licensed Software by any person or entity other than HAYES or if CUSTOMER breaches a material provision of this Agreement, any warranty provided for in this Agreement shall immediately be terminated. In addition, the warranty granted herein shall terminate if the Licensed Software is used on or in conjunction with hardware or software other than the hardware platform and software operating systems with which the Licensed Software was designed to be used, as described on **Exhibit D**.

4.2. CUSTOMER's Representations and Warranties. CUSTOMER represents and warrants to HAYES the following:

(a) that it has full power and authority to enter into and perform its obligations under this Agreement and to grant the rights herein granted, and that such power and authority are not limited or restricted by any agreements or understandings between CUSTOMER and third parties;

(b) that it has adequate funds to meet its obligations under this Agreement and that such funds for the first annual payment (through the current fiscal year) have been reserved for payment of CUSTOMER's obligations to HAYES hereunder; and

(c) that the materials and information provided by CUSTOMER to HAYES hereunder shall not violate or infringe upon any Intellectual Property rights of any third party.

(d) the CUSTOMER hereby grants HAYES the nonexclusive right to use and display the CUSTOMER's name and/or logo on its website, marketing collateral, promotional materials and press releases identifying CUSTOMER as a customer

4.3 Limitation of Liability. IN NO EVENT SHALL EITHER PARTY OR ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS BE RESPONSIBLE OR LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING WITHOUT LIMITATION, LOST OR ANTICIPATED PROFITS, LOST DATA OR INTERRUPTION OF BUSINESS RELATED TO THIS AGREEMENT OR RESULTING FROM CUSTOMER'S USE, DELAY OR INABILITY TO USE THE SOFTWARE OR LOSS OF INFORMATION ARISING FROM ANY CAUSE OF ACTION WHATSOEVER, INCLUDING CONTRACT, WARRANTY, STRICT LIABILITY, OR NEGLIGENCE, EVEN IF FORESEEABLE AND THE OTHER PARTY HAD BEEN INFORMED OF THE POSSIBILITY THEREOF AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE. HAYES' OBLIGATION TO PAY ANY DAMAGES WILL IN ANY EVENT BE LIMITED TO A RETURN OF ANY FEES ACTUALLY PAID BY CUSTOMER TO HAYES.

SECTION 5

5.1 Confidential Information.

(a) The parties recognize and acknowledge that this Agreement creates a confidential relationship between the parties and that to the extent permitted by law, the terms of this Agreement and information concerning each party's business affairs, products, software research and development, inventions, processes, techniques, designs, marketing and technical information, finances, properties, methods of operation, computer programs, and documentation, and other such information, whether written, oral, or otherwise (collectively, "Confidential Information"), is confidential and proprietary. Confidential Information includes all student information and records and shall remain confidential by both parties as required under the Family Educational and Privacy Rights Act ("FERPA"). Confidential Information shall not include information that is publicly known without breach of this Agreement, information already known to the receiving party before disclosure as evidenced by the receiving party's written records, or information that is subject to disclosure by law (including this Agreement).

(b) During the Term, and for two (2) years after the termination or expiration of this Agreement for whatever reason, the parties agree and shall take all reasonable steps to hold all Confidential Information in trust and confidence and, except as

may be authorized in writing, shall not use Confidential Information for any purpose other than the performance of the various services under this Agreement, nor disclose Confidential Information to any other person, company or entity. Notwithstanding the foregoing, the parties recognize and acknowledge that the Confidential Information related to the Licensed Software (including but not limited to functionality, specifications, research and development, inventions, techniques, and designs) and to student records confidential under FERPA will be maintained as Confidential Information by both parties in perpetuity.

SECTION 6

6.1 Ownership.

(a) HAYES acknowledges and agrees that CUSTOMER retains ownership of all CUSTOMER-specific data added to the Licensed Software database after installation, (“Customer Data”). CUSTOMER will have access to tag data at any time via exports within the software. The CUSTOMER may request HAYES provide a copy of Customer Data in electronic format at any time. HAYES may charge an hourly rate for that service. HAYES must submit a copy of Customer Data to CUSTOMER in electronic format within seven (7) days of a written request by CUSTOMER, such requests must occur within ninety (90) days of contract termination.

(b) HAYES will not sell or provide Customer Data to any third party for any reason without the prior written direction of CUSTOMER.

(c) CUSTOMER acknowledges and agrees that HAYES may access, view and use Customer Data to:

- (i) Monitor and measure the effectiveness of the Licensed Software and supporting hardware;
- (ii) Monitor compliance by CUSTOMER with this Agreement;
- (iii) Provide technical support to CUSTOMER; and
- (iv) Perform regular back-up security functions in an effort to protect Customer Data from loss.

(d) All Licensed Software and any and all modifications, bug fixes, updates and releases provided by HAYES, and all worldwide Intellectual Property rights therein, are and shall remain the exclusive property of HAYES and its licensors. The parties expressly agree that any and all services provided by HAYES under this Agreement shall not be considered works-made-for-hire, as that term is defined in the U.S. Copyright Act (17 U.S.C. § 101, et. seq.), and all ownership rights relating to the Licensed Software and any modifications thereto resulting from the services of HAYES shall remain vested in HAYES. CUSTOMER acknowledges and agrees that all Intellectual Property rights of whatever nature in the Licensed Software, the source code relating to the Licensed Software, and any and all derivative works relating to the Licensed Software, are and shall remain the property of HAYES, and nothing in this Agreement should be construed as transferring any aspects of such rights to CUSTOMER or any third party.

(e) CUSTOMER understands that a bankruptcy filing, merger or acquisition may or may not result in the termination of HAYES' rights to the Licensed Software. If HAYES' rights to the Licensed Software are not terminated, the provisions of this Agreement shall withstand such event. If HAYES' rights to the Licensed Software are terminated, the provisions of this Agreement shall be transferred to the new owner of the Licensed Software. CUSTOMER's rights pursuant to this Agreement shall survive such an event.

6.2 CUSTOMER agrees that access to the Licensed Software is limited to internal use solely by employees or independent contractors of the CUSTOMER (“Users”). CUSTOMER shall not permit Users or any third party to:

- (a) gain unauthorized access to any portion of the Licensed Software for which the CUSTOMER is not licensed;
- (b) violate or attempt to violate the security of the Licensed Software or the HAYES website, including without limitation,
 - (i) attempting to probe, scan, or test the vulnerability of a system or network or to breach security or authentication measures;

- (ii) introducing any harmful code or virus into the Licensed Software or otherwise hacking into the Licensed Software's server(s); or
- (iii) creating a false identity for the purpose of misleading HAYES as to the identity of the user who is accessing the Licensed Software.

SECTION 7

7.1 Responsibilities. The parties hereto agree that CUSTOMER is solely responsible for:

- (a) the collection of all personal information and data delivered to HAYES;
- (b) verification of the accuracy of all personal information and data;
- (c) correction of any mistakes or other errors or inaccuracies in the personal information and Customer Data;
- (d) compliance with the Children's Online Privacy Protection Act of 1998; and
- (e) the use and integrity over the dissemination of all personal information and data.

SECTION 8

8.1 Consultant Not an Employee. HAYES and its employees are private contractors and not employees of CUSTOMER. Nothing contained herein shall be construed to imply a partnership, joint venture, or principal and agent relationship between the parties, and neither party shall have any right, power or authority to create any obligation, express or implied, on behalf of the other in connection with its performance hereunder or otherwise.

8.2 Additional Products and Services. CUSTOMER, pursuant to written SOWs signed by both parties hereto, may purchase additional software, hardware, training, or consulting services for further implementation, but not included in this Agreement. Unless otherwise specified, the SOWs shall incorporate all of the terms and conditions of this Agreement.

8.3 Governing Law and Venue. The parties hereto agree that venue for any and all disputes, claims or controversies arising out of or relating to this Agreement, the relationship between the parties, or the services performed, shall lie in a court of competent jurisdiction in the county indicated in **Exhibit A**.

8.4 Severability. In the event a court or authority of competent jurisdiction holds any portion of this Agreement to be invalid, illegal, or unenforceable by final judgment, the unenforceable provision will be severed from the remainder of this Agreement and the remaining provisions will, subject to the discretion of such court or authority in light of the intentions of the parties, be deemed in full force and effect as if they had been executed by both parties subsequent to the invalid provision being deleted.

8.5 Amendment. This Agreement may be modified, altered or amended only by a written instrument duly executed by both parties.

8.6 Use of Subcontractors. At various times, HAYES, as it deems necessary and commercially reasonable, may subcontract various portions of the services.

8.7 Force Majeure. Neither party shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement, if such delay or failure arises by any reason beyond its reasonable control, including any acts of God, events of war, acts of terrorism, riots, fire, flood, earthquake, explosion or other natural disasters. The obligation that cannot be performed shall be delayed until it can be performed, including interruption or termination of service by the Internet access provider being used by CUSTOMER. The party claiming excusable delay must promptly notify the other party, in writing, of such delay. If the delay of a material obligation under this Agreement continues for more than forty-five (45) days, the other party may terminate this Agreement by giving fifteen (15) days written notice to the delaying party, provided, however,

that this Agreement will not terminate if the party claiming excusable delay substantially performs the material obligation within such fifteen (15) days.

8.8 Successors and Assigns. Neither party may assign its rights or obligations under this Agreement to any other person or entity without the other's consent, except that HAYES may assign its rights or obligations hereunder to an affiliate, or as part of a corporate or other reorganization, or in connection with a merger or sale of substantially all of HAYES' assets. This Agreement will inure to the benefit of and be binding on the parties and their respective successors and assigns.

8.9 Notices. All notices and other communications under this Agreement must be in writing and given by hand delivery, fax, or overnight courier, or registered or certified mail postage prepaid return receipt requested, to the parties at their respective addresses above, or to such other addresses as they may, respectively, furnish by such notice. Such communications will be effective upon actual receipt.

8.10 Disclosure. The parties may disclose to third parties that they have entered into this Agreement (including a general description of the Licensed Software) but shall not, and shall not permit any of their respective agents, employees or advisors to, disclose the confidential terms of this Agreement without the prior written consent of the other party.

8.11 Legal Fees. In the event any action or proceeding between the parties hereto arises pursuant to the provisions of this Agreement, the prevailing party shall be entitled to recover its reasonable legal fees, cost and expenses incurred from the non-prevailing party.

8.12 Construction. The Section headings in this Agreement are solely for convenience and will not be considered in its interpretation. The Exhibits attached to this Agreement are incorporated herein as if set forth herein in full. This Agreement has been reviewed and negotiated by the parties and each party has had the opportunity to review this Agreement with counsel of its own choosing; accordingly, this Agreement shall not be construed strictly for or against either party.

8.13 Entire Agreement. This Agreement is the complete Agreement between the parties and supersedes all prior proposals, understandings and all other agreements, oral or written, between the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

For: Hayes Software Systems

By: Matt Winebright



Title: President/
Chief Executive Officer

Date: February 24th, 2020

Federal Tax ID# **74-2576112**

For: Sylvan Union School District

By: _____
Print Name

Signature

Title: _____

Date: _____

EXHIBIT A: DEFINITIONS

The “Term”: Beginning on the Effective Date, with a first term lasting from April through June of 2020 and continuing for a total of (4) additional one-year terms thereafter.

Governing Law and Venue: Stanislaus County

The “Licensed Software”:

TIPWeb ©: A web-based software platform that includes a database and software foundation routines upon which various function-specific applications are built and executed.

TIPWeb-IT ©: A web-based software program, built on the TIPWeb platform that facilitates tracking and management of technology items. TIPWeb-IT, as part of the Licensed Software, includes all object code, executables, utilities, databases, and other computer files implemented as part of the TIPWeb-IT solution.

TIPWeb-RFID ©: A software program configured with an RFID scanner specified by HAYES, that facilitates performing inventory audits of assets to which RFID tags have been affixed. TIPWeb-RFID includes all object code, executables, utilities, databases, and other computer files implemented as part of the TIPWeb-IT solution.

EXHIBIT B: LICENSED SITES AND FUNCTIONALITY DESIGNATIONS

The following designates the list of CUSTOMER's Licensed Sites and their Licensed Software Functionality as defined below:

a) For TIPWeb-IT:

TIPWeb-IT Licensed Site Description	Full Featured License
District Office	1
Secondary Schools	3
Elementary Schools	10

TIPWeb-IT Licensed Software Functionality:

All features of the TIPWeb-IT Licensed Software are available for use for each Licensed Site.

EXHIBIT C: SCOPE OF SERVICES

CUSTOMER has opted to have HAYES install and maintain the Licensed Software on servers in HAYES' designated secure data center ("HAYES-Hosted").

C.1 Licensed Software Installation

- (a) HAYES will provide the CUSTOMER an (1) introductory web-based training for each software module purchased as part of the installation
- (b) HAYES will provide CUSTOMER access to (1) instance of the latest version of the Licensed Software hosted on HAYES' servers.
- (c) Service Level Commitment
 - (i) While this Agreement is in effect, HAYES will endeavor to offer the Licensed Software at an availability of 99.9% or greater from 7:00 AM until 8:00 PM on business days in CUSTOMER's time zone, measured on a monthly basis, except for periods of unavailability due to
 - a. actions by CUSTOMER
 - b. malfunctions or defects in CUSTOMER's computer systems or Internet access
 - c. the general unavailability of the Internet
 - d. scheduled or emergency maintenance for which HAYES has provided CUSTOMER with at least 24 hours prior written notice, and
 - e. any circumstance or event beyond HAYES' reasonable control (the "Service Level Commitment").
 - (ii) HAYES reserves the right to amend the Service Level Commitment from time to time, subject to prior approval by CUSTOMER. If CUSTOMER does not agree to the amendment to the Service Level Commitment, CUSTOMER may terminate this Agreement and shall pay the pro-rata amount of undisputed Fees, as defined in **Section 2**, due but not yet paid up to the time of termination. HAYES will refund the pro-rata portion of any pre-paid annual maintenance fee for the months of service remaining in the term.
 - (iii) CUSTOMER agrees to promptly notify HAYES of any unavailability of the Licensed Software that CUSTOMER believes is the responsibility of HAYES.
 - (iv) CUSTOMER agrees to cooperate with HAYES to diagnose and repair the cause of any unavailability of the Licensed Software.
 - (v) It is understood, agreed and acknowledged by CUSTOMER that HAYES shall from time to time perform routine maintenance on computer servers that host CUSTOMER's data and Licensed Software. Prior to any routine maintenance, HAYES will notify CUSTOMER's designated Primary User as to the scheduled maintenance estimated date and time. Under no circumstances shall routine maintenance, communicated to CUSTOMER in advance, and conducted during non-business hours, be considered a reduction in availability as referred to in this Agreement.
 - (vi) If the availability of the Licensed Software falls below the Service Level Commitment for any given month, then HAYES will provide CUSTOMER with a credit (the "Service Credit") as follows:
 - a. if the availability for a given month is greater than 90.0%, but less than the Service Level Commitment, then the Service Credit for such month shall be equal to 1/2 of one month, and
 - b. if the availability for a given month is 89.9% or lower, then the Service Credit for such month shall be equal to a full month.
 - (vii) The Service Credit will be used to automatically extend the term of this Agreement for the number of months or partial months of the Service Credit. In no event will the Service Credit result in a refund to CUSTOMER of dues previously paid or an abatement of fees yet due. The Service Credit shall be CUSTOMER's sole and exclusive remedy for claims related to the availability of the Licensed Software.
 - (viii) CUSTOMER must use all professional services within one (1) year of the Effective Date unless otherwise noted.

C.2 SIS Integration

- (a) CUSTOMER will provide HAYES data from their Student Information System (SIS) for nightly, automated processing into the Licensed Software
- (b) Data will be provided by CUSTOMER to HAYES in a CSV formatted text file
- (c) HAYES will provide CUSTOMER with standard formats for the data files to be imported
- (d) CUSTOMER shall be responsible for the content and completeness of the data files
- (e) HAYES shall provide access to a secure FTP site (SFTP) where files will be transferred for processing
- (f) HAYES will work with CUSTOMER to ensure validity of the data formats prior to setting up the automated process
- (g) CUSTOMER will receive a nightly report on the import process that will include records that were rejected for import and why they were rejected
- (h) Modifications to rejected records will be processed during the next nightly run of the import utility
- (i) The launch date and availability of the Licensed Software may be impacted if data in CUSTOMER's Data Source and other CUSTOMER information are not available and provided as specified herein.

C.3 Data Conversions

- (a) CUSTOMER has data that CUSTOMER wishes to convert/transfer into the database of the Licensed Software on a one-time basis ("Existing Data"). HAYES has submitted to CUSTOMER a cost estimate for conversion of CUSTOMER's Existing Data (the "Estimate"). The Estimate is based on conversion of Existing Data according to the guidelines listed below. If CUSTOMER does not provide Existing Data to HAYES in accordance with the guidelines in this section, HAYES may conclude that additional resources above and beyond those included in the Estimate are required. In this case, HAYES will provide to CUSTOMER a revised quote for the work required based on hourly rates detailed in Exhibit E. CUSTOMER, at their sole discretion, may pay for the additional work or accept a modification of the scope of the Data Conversion to align the cost with the original Estimate.
- (b) CUSTOMER shall submit to HAYES the Existing Data using a template provided by HAYES. Existing Data shall be free of errors, duplicate records, omissions, or other data anomalies ("Data Errors") which would require additional work by HAYES to fix or clean prior to migration.
- (c) HAYES will use its best efforts to discover any Data Errors, and when Data Errors are discovered, HAYES will notify CUSTOMER. CUSTOMER will make the necessary corrections to the Existing Data, and resubmit to HAYES. The Estimate is based on CUSTOMER performing all corrections on Existing Data.
- (d) CUSTOMER agrees that once CUSTOMER has submitted a copy of the Existing Data to HAYES for conversion, no changes to the original data source including deletions, additions or modifications should be made. Any changes made to the CUSTOMER's original data source after the Existing Data has been submitted to HAYES for conversion may be corrected at HAYES's sole discretion, and at CUSTOMER's expense, based on hourly rates detailed in **Exhibit E**.
- (e) CUSTOMER and HAYES will mutually determine the most appropriate schedule for performing the Data Conversion.

C.4 Professional Development

- (a) HAYES and CUSTOMER have mutually agreed upon a professional development strategy to effectively train all users on the Licensed Software.

- (b) CUSTOMER will take delivery of all proposed professional development during normal business hours within one (1) year of the Effective Date (the “Professional Development Service Period”, or “PDSP”).
- (c) CUSTOMER and HAYES will schedule professional development at mutually agreed upon times, and HAYES commits to make all reasonable efforts to respond to CUSTOMER’s requests to schedule Professional Development services during the PDSP.
- (d) Hayes has no obligation to deliver Professional Development services following the termination or expiration of the PDSP, nor to refund any fees (or portion thereof) with respect to any Professional Development services that were not scheduled and delivered during the PDSP.
- (e) All professional development shall be conducted by HAYES-certified trainers.
- (f) Webcast Training
 - (i) CUSTOMER and HAYES collaboratively determine a training date and time at least ten (10) business days in advance for any webcast training sessions, for the purposes of scheduling a trainer.
 - (ii) Webcast training sessions typically last two (2) hours. CUSTOMER and HAYES may mutually agree upon alternative length sessions.
 - (iii) CUSTOMER shall provide each participant access to a computer with an Internet connection and the ability to run web-based training software (ie. WebEx, Ilnq, GoToMeeting, etc.).
 - (iv) Training sessions are designed for up to 10 participants.

C.5 TIPWeb-RFID Software

- (a) CUSTOMER has purchased a license to use TIPWeb-RFID software installed on one or more RFID Scanners from TURCK -U Grok It (“Grokker”). HAYES shall procure all RFID Scanners ordered by CUSTOMER.
- (b) As part of the purchase price of the RFID Scanner, the CUSTOMER receives a one (1)-year Limited Warranty from U Grok It, Inc. (the “RFID Scanner Warranty”). The CUSTOMER shall process the necessary paperwork to activate the RFID Scanner Warranty associated with the serial number of RFID Scanner. HAYES shall provide the CUSTOMER the warranty email and contact phone number, the Purchase Order number for their respective RFID Scanner(s), and HAYES’ Customer/Client number in order to help facilitate claims. This information will be included in the start-up box with the RFID Scanner.
- (c) Regarding the RFID Scanner Warranty:
 - (i) CUSTOMER shall ship RFID Scanners needing repair to U Grok It via U Grok It’s standard RMA process.
 - (ii) All repair work, and any associated costs, shall be exclusively between CUSTOMER and U Grok It.
 - (iii) The RFID Scanner Warranty applies to the RFID Scanner and ensures that the unit will be free from defects in material and in workmanship.
 - (iv) Not covered under the RFID Scanner Warranty are problems caused by physical damage, operator error, unauthorized alterations or attempted repair, direct lightning damage, or other natural or manmade disasters, including but not limited to:
 - a. Excessive dirt or contamination affecting performance
 - b. Spillage of liquids and other foreign substances on products
 - c. Unapproved modification of product
 - d. Disassembled product
 - e. Defacement of manufacturing labels
 - f. Scratched, contaminated, and/or damaged components
 - g. Loose or missing parts

- h. Broken, cracked, disfigured, housings or triggers
 - i. Broken or cracked plastic parts (internal or external)
 - j. Damaged external cables
 - k. Batteries with insufficient capacity affecting performance
 - l. Use of abrasive cleaners or other unapproved cleaning materials
 - m. Improper use of product
 - n. Connection of product to an unapproved host device
 - o. Connection of product to unapproved power source or faulty electrical power
 - p. Product that has been opened/ serviced by unauthorized personnel
 - q. Charred or melted product and/or parts
 - r. Product exposed to environments beyond specification
 - s. Products exposed to natural disaster
 - t. Use of parts or accessories not approved or supplied by U Grok It
 - u. Repairs necessitated due to the use of non-certified batteries or accessories
- (v) Additional information on the RFID Scanner Warranty can be found at:
Warranties@turck.com. 763.553.7300 or 763.553.7486 Masa.Bailey@turck.com

EXHIBIT D: HOSTING & WEB BROWSER SPECIFICATIONS

(a) The Licensed Software shall be available through a mutually agreed upon URL.

(b) Client Computer Platform and Browser Specifications

(i) The current version of the Licensed Software requires the following minimum platform specifications:

- 1 GHz processor
- 1 GB RAM
- Microsoft Windows 7 or higher, or
- Mac (OS 9 and OSX) Operating System

(ii) Browser Specifications: For optimal performance, HAYES recommends the use the latest version of Google Chrome or Mozilla Firefox. For Microsoft Internet Explorer users, we recommend IEv10 or later operating on the Windows 7 platform. For Macintosh users, we recommend Safari version 5.X or later.

EXHIBIT E: COST, PAYMENT SCHEDULE AND TERMS, AND OTHER FEES

(a) Quote associated with this Agreement:

Date: 2/24/2020

Quote #: 045: Valid for 45 days from the above date.

Project Quote for:

TIPWeb-IT

Small District 7,501-10,000



Hosted by: Hayes Software Systems

Confidential Information from Hayes Software Systems

Sylvan Union School District

Attention: Marti Reed

605 Sylvan Ave Modesto, CA 95350

(209) 574-5000 mreed@sylvan.k12.ca.us

Qty/Hours	Part Number	Description of Products and Services	Unit Price			Total
		TIPWeb-IT Software Licensing (includes RFID)				
1.00	S-IT-SMDIS-5.45	TIPWeb-IT Bundled Software Package (unlimited assets, users, and reporting)	\$10,000.00			\$10,000.00
		TOTAL LICENSES				\$10,000.00
		Implementation				
1.00	P-SIS-SMALL	SIS Integration	\$1,500.00			\$1,500.00
13.00	P-DATACON-IT	LIGHT Data Conversion for TIPWeb-IT. Estimated until sample received.	\$175.00			\$2,275.00
		TOTAL IMPLEMENTATION				\$3,775.00

Retail Value **\$13,775.00**

Notes:

First year of Annual Maintenance on software is included in the License price. See chart below for payment schedule.

Maintenance includes all available upgrades to software licenses plus toll-free telephone support.

Services are billed at a blended rate of \$175/hour

Subtotal **\$13,775.00**

Tax

Shipping

Total \$13,775.00

LIGHT Data Conversion includes (1) Client Template(s), (2) Pre-Migration Validations, and up to 20,000 Unique Records.

Part Number	Product	Contract year 1 (Upon Contract Execution)	Contract Term 2 7/1/2020	Contract Term 3 7/1/2021	Contract Term 4 7/1/2022	Contract Term 5 7/1/2023
			Annual Maintenance, Updates, and Support			
	Implementation Services	\$3,775.00				
	Prorated Software License for 4/1/2020 to 6/30/2020. \$10,000/12 months X 3 months = \$2,500	\$2,500.00				
	TIPWeb-IT discount %		\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
S-IT-MAINT	TIPWeb-IT Total		\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
	Other Maintenance discount %		\$1,225.00 100%	\$1,225.00 100%	\$1,225.00 100%	\$1,225.00 100%
P-INT-YEARLY	Other Maintenance Total					
	Yearly Total	\$6,275.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00

Your maintenance includes (1) TIPWeb-IT web-based refresher training session per year.

Signature: _____

Print Name: **Patrick Nguyen, National Account Manager**

(b) Schedule of Payments:

Payment Due Date	Description of Payment	Payment Amount
Upon Contract Execution	Implementation Services	\$3,775.00
Upon Contract Execution	Prorated Software License for 4/1/2020 to 6/30/2020. \$10,000/12 months X 3 months = \$2,500	\$2,500.00
Contract Term 2 (7/1/2020)	Updates and Technical Support	\$10,000.00
Contract Term 3 (7/1/2021)	Updates and Technical Support	\$10,000.00
Contract Term 4 (7/1/2022)	Updates and Technical Support	\$10,000.00
Contract Term 5 (7/1/2023)	Updates and Technical Support	\$10,000.00

(c) Optional Fees:

Product/Service	Description	Fee
Contract Extension	CUSTOMER may opt to renew its Grant of License to the Licensed Software and technical support. To avoid a gap in service, the contract will automatically renew on a year-by-year basis. This rate can change at contract renewal dates (after initial Term) subject to HAYES sole discretion.	\$10,000.00/yr
Custom Programming	Custom design/modification of the Licensed Software	\$175.00/hour
Data Conversion	Data Conversion above and beyond the proposed estimate	\$175.00/hour
On-Site Professional Development	Training and training services performed at client's location	\$ 2,600.00 /day
On-Site Consulting	Other services provided at client's location	Variable, based on service provided

Any services shall be agreed to in advance between HAYES and CUSTOMER, and shall be paid upon invoicing net 30 days. Such invoicing may periodically be in advance of the services actually rendered.

If CUSTOMER requests any other service(s) not addressed in this Agreement, after mutual agreement in writing as to the scope of and cost for additional services, CUSTOMER shall pay to HAYES the fees for such services, which generally shall be based upon HAYES' then current hourly and daily service rates.

HAYES reserves the right to change HAYES' rates on thirty (30) days prior written notice. HAYES will maintain reasonable service rates.

EXHIBIT F: CONTACT INFORMATION

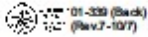
CUSTOMER designates, as of the effective date of this contract, the following important contact information. Changes to this information can be submitted to HAYES at any time via telephone, fax, or email.

HAYES will not sell or share the information in this Exhibit with any third party except where CUSTOMER has requested products or services that would require this information to be shared with the third party providing the requested product or service.

Primary Address: Site Name: _____ Address: _____ _____ City, ST ZIP: _____ Phone, fax: _____	"Site Name" can be a specific building such as "Administration Office". This is CUSTOMER's primary location.
Contract Coordinator: Name & Title: _____ Address: _____ _____ City, ST ZIP: _____ Phone, Email: _____	<input type="checkbox"/> Check if address is the same as the Primary Address
Billing Contact: Name & Title: _____ Address: _____ _____ City, ST ZIP: _____ Phone, Email: _____	<input type="checkbox"/> Check if address is the same as the Primary Address

EXHIBIT G: TAX EXEMPTION CERTIFICATE

In order for HAYES not to charge Sales and Use Tax on products and services sold to CUSTOMER, CUSTOMER must submit an applicable Sales and Use Tax Exemption Certificate. (Texas Version shown below).



Texas Sales and Use Tax Exemption Certification

This certificate does not require a number to be valid.

Name of purchaser, firm or agency	
Address (Street & number, P.O. Box or Route number)	Phone (Area code and number)
City, State, ZIP code	

I, the purchaser named above, claim an exemption from payment of sales and use taxes (for the purchase of taxable items described below or on the attached order or invoice) from:

Seller: _____


Street address: _____ City, State, ZIP code: _____

Description of items to be purchased or on the attached order or invoice:

Purchaser claims this exemption for the following reason:

I understand that I will be liable for payment of all state and local sales or use taxes which may become due for failure to comply with the provisions of the Tax Code and/or all applicable law.

I understand that it is a criminal offense to give an exemption certificate to the seller for taxable items that I know, at the time of purchase, will be used in a manner other than that expressed in this certificate, and depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.

 Purchaser	Title	Date
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NOTE: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle.

THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID.

Sales and Use Tax "Exemption Numbers" or "Tax Exempt" Numbers do not exist.

This certificate should be furnished to the supplier. Do not send the completed certificate to the Comptroller of Public Accounts.