

**CONTRACT NAME: AGREEMENT BETWEEN ICANOTES SOFTWARE AND
DAVIS JOINT UNIFIED SCHOOL DISTRICT**

BRIEF DESCRIPTION OF PLAN: This licensing agreement provides software for mental health clinicians to use to transcribe therapy notes.

FISCAL IMPACT: The cost of this agreement is included in the approved 2018-2019 Special Education budget.

ICANotes Software End User Agreement

1. **SOFTWARE.** This Agreement and the supplemental terms below apply to the software, applications, services and any updates for ICANotes (the "Software"). The specific components of the Software are listed in Appendix 1, below. The Software is provided by ICANotes, its affiliates and suppliers ("we" or "us"). We may discontinue or change any feature of the Software at any time and without notice. In this Agreement, we use the term *you* or *your* to mean you as an individual or such entity in whose behalf you act, if any, and we use the term "ICANotes" to mean the ICANotes Software.

2. **OWNERSHIP.** This is a license of the Software and not a sale. The Software and any content and services provided with the Software are protected by copyright and other intellectual property laws and by international treaties. We and our suppliers own all rights in the Software. Your rights to use the Software are specified in this Agreement and we retain and reserve all rights not expressly granted to you.

3. **LICENSE.** Provided that you comply with the terms of this Agreement, we grant you a limited, non-exclusive and non-transferable license to use the Software internal business purposes.

4. **RESTRICTIONS.** You may not: (i) make any copies of the Software, (ii) modify or create any derivative works of the Software or documentation; (iii) decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code, underlying ideas, or algorithms of the Software, or in any way ascertain, decipher, or obtain the communications protocols for accessing our networks; (iv) copy, reproduce, reuse in another product or service, modify, alter, or display in any manner any Javascript or HTML files, or parts thereof, included in the Software; (v) use the Software to develop software or services that access the address space of the Software or that intercept the proxy; (vi) attempt to gain unauthorized access to any our or our suppliers' and distributors' services, accounts, computer systems or networks associated with the Software; (vii) rent, lend, lease, sublicense or otherwise transfer rights to the Software; (viii) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Software; (ix) block, disable, or otherwise effect any advertising, advertisement banner window, tabs, links to other sites and services, or other features that constitute an integral part of the Software; (x) incorporate, integrate or otherwise include the Software or any portion thereof (including the communications protocols) into any software, program or product that communicates, accesses, or otherwise connects with our services or that interconnects any of our services with any other online service; (xi) use any of our services associated with the Software in any manner that could damage, disable, overburden, or impair such services or interfere with any other party's use and enjoyment of them; (xii) use the Software in any way that violates this Agreement or any law; (xiii) use the Software in any way that violates the rights of any third party; (xiv) use the Software in any way to transmit, directly or indirectly, any unsolicited bulk communications (such e-mails, voice, photos, video, or chat) or (xiii) authorize or assist any third party to do any of the things described in this paragraph.

5. **ACCESS.** You must provide at your own expense the equipment, Internet connections or wireless devices to access and use ICANotes. We do not guarantee that ICANotes can be accessed through all wireless devices or wireless service plans. We do not guarantee that ICANotes is available in all geographic locations. You acknowledge that for periods of time you notes may be unavailable to you because of system upgrades, normal maintenance, or unforeseen technical difficulties. You acknowledge that when you use ICANotes, your wireless carrier may charge you standard fees for data, messaging and other wireless access. Check with your carrier to verify whether there are any such fees that may apply to you. **YOU ARE SOLELY RESPONSIBLE FOR ANY COSTS YOU INCUR TO ACCESS THE SOFTWARE.**

6. **YOUR RESPONSIBILITIES.** You are responsible for: (a) all activities that occur under your account and for the contents of your clinical notes and for any possible errors in the note; ICANotes does not check for logical outcomes or identify conflicting information. The user must read the prepared note to determine its validity. If illogical, erroneous or incomplete information is contained the user is responsible for correcting the final document; (b) maintaining the confidentiality of any user name, passwords or log-in credentials; (c) taking reasonable steps to prevent unauthorized access to confidential information stored in your computer or other wireless device; and (d) complying with this agreement and with any and all applicable laws. You are solely responsible for the content you upload or otherwise provide (including clinical information and any personal information you choose to submit or share using the Software, such as disclosing your home address and the home address of others) and the consequences of sharing or publishing such content with others and/or the general public. We are not responsible if your account information (such as stored user names and passwords) becomes known to someone else. We recommend that you use a strong password (combinations of letters, numbers, and symbols) and change your password frequently. You should notify us immediately if you suspect that your account security has been breached.

7. **WARNINGS.** ICANotes does not offer medical advice. Any content accessed through ICANotes is for informational purposes only, and is not intended to cover all possible uses, directions, precautions, drug interactions, or adverse effects. This content should not be used during a medical emergency or for the diagnosis or treatment of any medical condition.

8. **SUGGESTIONS.** You agree that we may, without limitation and for no compensation, use in any manner all comments, suggestions, complaints and other feedback you provide relating to the Software.

9. **YOUR REPRESENTATIONS.** You represent and warrant that you have adequate legal capacity to enter into this Agreement, that you will use the Software only for lawful purposes and that you will not violate the terms of this Agreement.

10. **AUTOMATED UPDATES.** We may, but we are under no obligation, to provide update, patches and fixes ("Updates"). You authorize us to deliver automatically any Update if we believe it is necessary to provide for the continued functionality of the Software. Your use of the Updates will be governed by this Agreement unless you are asked to agree to new or additional terms at the time of download or installation.

11. **THIRD PARTY OFFERINGS.** If available, you may only use third-party plug-ins or applications authorized by us for use with the Software. You use such third-party applications at your own risk. We make no representations or warranties, express or implied, regarding the third party applications. We have no obligation to correct errors or provide Updates for third party applications.

12. **TERMINATION.** This Agreement automatically terminates if you fail to comply with the terms hereof or if you attempt to assign the Agreement or transfer the software to a third party except as expressly permitted in this agreement. Upon termination, you must stop all use of the Software and must destroy all copies of the Software that are in your possession. All provisions of this Agreement, except for the license grant in Section 3 above, survive the termination of this Agreement. We may take any technical remedies to prevent unsolicited bulk communications from entering, utilizing, or remaining within our computer or communications networks.

13. **DISCLAIMER OF WARRANTY.** WE LICENSE THE SOFTWARE "AS IS" AND "AS AVAILABLE" AND WITH ALL FAULTS. WE DO NOT WARRANT THAT THIS SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT IT'S OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE. THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, EFFORT

AND COST OF ANY SERVICE AND REPAIR IS WITH YOU. IN PARTICULAR WE DO NOT WARRANT THE ACCURACY OF THE CPT SERVICE CODES AUTOMATICALLY ARRIVED AT BY THE PROGRAM. BILLING BASED ON SERVICE CODES IS ENTIRELY YOUR RESPONSIBILITY AND CPT CODES AUTOMATICALLY GENERATED BY ICANOTES ARE RECOMMENDATIONS THAT REQUIRE FINAL REVIEW AND APPROVAL BY YOU. THE RISKS OF INCORRECT SERVICE CODES ARE ENTIRELY YOURS. ICANOTES DOES NOT MAKE ANY WARRANTY THAT THE CONTENT IN ICANOTES SATISFIES GOVERNMENT REGULATIONS REQUIRING DISCLOSURE OF INFORMATION ON PRESCRIPTION DRUG PRODUCTS. WE, OUR SUPPLIERS AND DISTRIBUTORS DISCLAIM ALL EXPRESS WARRANTIES AND ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INTERFERENCE, NON-INFRINGEMENT OR ACCURACY, UNLESS SUCH IMPLIED WARRANTIES ARE LEGALLY INCAPABLE OF EXCLUSION. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY US SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY THAT CANNOT BE DISCLAIMED UNDER APPLICABLE LAW. WE, OUR SUPPLIERS AND DISTRIBUTORS HAVE NO LIABILITY WITH RESPECT TO YOUR USE OF THE SOFTWARE. IF ANY IMPLIED WARRANTY MAY NOT BE DISCLAIMED UNDER APPLICABLE LAW, THEN SUCH IMPLIED WARRANTY IS LIMITED TO 30 DAYS FROM THE DATE YOU ACQUIRED THE SOFTWARE FROM US OR OUR AUTHORIZED DISTRIBUTOR.

14. INJUNCTIVE RELIEF. You agree that your breach or threatened breach of this Agreement will cause us irreparable damage for which recovery of money damages would be inadequate and that we, therefore, may obtain timely injunctive relief to protect its rights under this Agreement in addition to any and all other remedies available at law or in equity.

15. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WE OR OUR PARENT, AFFILIATES, DIRECTORS, EMPLOYEES, DISTRIBUTORS, LICENSORS, SUPPLIERS, AGENTS OR DISTRIBUTORS (COLLECTIVELY, "ICANotes LLC") BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SOFTWARE, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, LOST PROFITS, LOSS OF DATA, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. IN ANY CASE, ICANotes LLC'S ENTIRE COLLECTIVE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL NOT EXCEED IN THE AGGREGATE THE SUM OF THE FEES YOU PAID FOR THE SETUP AND THREE MONTH'S SERVICE FEES, NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, WITH THE EXCEPTION OF DEATH OR PERSONAL INJURY CAUSED BY OUR NEGLIGENCE TO THE EXTENT APPLICABLE LAW PROHIBITS THE LIMITATION OF DAMAGES IN SUCH CASES. ICANotes LLC IS NOT RESPONSIBLE FOR ANY LIABILITY ARISING OUT OF CONTENT PROVIDED BY YOU OR A THIRD PARTY THAT IS ACCESSED THROUGH THE SOFTWARE AND/OR ANY MATERIAL LINKED THROUGH SUCH CONTENT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, SO THIS EXCLUSION AND LIMITATION MAY NOT APPLY TO YOU.

16. NO SUPPORT OR UPGRADE OBLIGATIONS. We, our suppliers, and distributors are not obligated to create or provide any support, corrections, updates, upgrades, bug fixes and/or enhancements of the Software.

17. IMPORT/EXPORT CONTROL. The Software is subject to export and import laws, regulations, rules and orders of the United States and foreign nations. You must comply with these laws that apply to the Software. You may not directly or indirectly export, re-export, transfer, or release the Software, any other commodities, software or technology received from us, or any direct product thereof, for any proscribed end-use, or to any proscribed country, entity or person (wherever located), without proper authorization from the U.S. and/or foreign government.

18. U.S. GOVERNMENT END-USERS. The Software is a "commercial item," as that term is defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995) and 48 C.F.R. 227.7202 (June 1995). Consistent with 48 C.F.R. 12.212, 48 C.F.R. 27.405(b) (2) (June 1998) and 48 C.F.R. 227.7202, all U.S. Government End Users acquire the Software with only those rights as described in this License.

19. ELECTRONIC NOTICES. YOU AGREE TO THIS LICENSE ELECTRONICALLY. YOU AUTHORIZE US TO PROVIDE YOU ANY INFORMATION AND NOTICES REGARDING THE SOFTWARE ("NOTICES") IN ELECTRONIC FORM. WE MAY PROVIDE NOTICES TO YOU (1) VIA E-MAIL IF YOU HAVE PROVIDED US WITH A VALID EMAIL ADDRESS OR (2) BY POSTING THE NOTICE ON A WEB PAGE DESIGNATED BY US FOR THIS PURPOSE. The delivery of any Notice is effective when sent or posted by us, regardless of whether you read the Notice or actually receive the delivery. You can withdraw your consent to receive Notices electronically by discontinuing your use of the Software. As long as you are able to access the Internet using the Software, you will be able to receive electronic notices from us.

20. INDEMNIFICATION. Upon a request by us, you agree to defend, indemnify, and hold harmless us and our parent and other affiliated companies, and our respective employees, contractors, officers, directors, suppliers and agents and distributors from all liabilities, claims, and expenses, including attorney's fees that arise from your use or misuse of ICANotes and/or the Software. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with us in asserting any available defenses.

21. CHOICE OF LAW AND LOCATION FOR RESOLVING DISPUTES. You agree that the laws of the State of New Jersey govern this contract and any claim or dispute that you may have against us, without regard to New Jersey's conflict of laws rules, and that the United Nations Convention on Contracts for the International Sale of Goods shall have no applicability. You further agree that any disputes or claims that you may have against us will be resolved by a court located in the State of New Jersey and you agree and submit to the exercise of personal jurisdiction of such courts for the purpose of litigating any such claim or action.

PLEASE NOTE THAT BY AGREEING TO THESE TERMS OF USE, YOU ARE: (1) WAIVING CLAIMS THAT YOU MIGHT OTHERWISE HAVE AGAINST US BASED ON THE LAWS OF OTHER JURISDICTIONS, INCLUDING YOUR OWN; (2) IRREVOCABLY CONSENTING TO THE EXCLUSIVE JURISDICTION OF, AND VENUE IN, STATE OR FEDERAL COURTS IN THE STATE OF NEW JERSEY OVER ANY DISPUTES OR CLAIMS YOU HAVE WITH US; AND (3) SUBMITTING YOURSELF TO THE PERSONAL JURISDICTION OF COURTS LOCATED IN THE STATE OF NEW JERSEY FOR THE PURPOSE OF RESOLVING ANY SUCH DISPUTES OR CLAIMS.

22. ENTIRE AGREEMENT. This Agreement and any supplemental terms constitute the entire agreement between you and us concerning the subject matter of this Agreement, which may only be modified by us.

23. GENERAL TERMS. (a) This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. (b) If any part of this Agreement is held invalid or unenforceable, that part shall be construed to reflect the parties' original intent, and the remaining portions remain in full force and effect, or we may at our option terminate this Agreement. (c) The controlling language of this Agreement is English. If you have received a translation into another language, it has been provided for your convenience only. (d) A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof. (e) You may not assign or otherwise transfer by operation of law or otherwise this Agreement or any rights or obligations herein. We may assign this Agreement to any entity at its sole discretion and without notice to you. (f) This Agreement shall be binding upon and shall inure to the benefit of the parties, their

successors and permitted assigns. (g) Neither party shall be in default or be liable for any delay, failure in performance or interruption of service resulting directly or indirectly from any cause beyond its reasonable control.

24. USER OUTSIDE THE U.S. If you are using the Software outside the U.S., then the provisions of this Section shall apply:

(i) Les parties aux présentes confirment leur volonté que cette convention de mème que tous les documents y compris tout avis qui s'y rattache, soient redigés en langue anglaise. (translation: "The parties confirm that this Agreement and all related documentation is and will be in the English language."); (ii) you are responsible for complying with any local laws in your jurisdiction which might impact your right to import, export or use the Software, and you represent that you have complied with any regulations or registration procedures required by applicable law to make this license enforceable; and (iii) if the laws applicable to your use of the Software would prohibit the enforceability of this Agreement, or impose any additional burdens on ICANotes, or confer any rights to you that are materially different from the terms and conditions of this Agreement, then you are not authorized to use the Software and you agree to stop using it and remove it from your computer.

Davis Joint Unified School District

ICANotes

Terms of Service

Jurisdiction, Venue, & Interpretation

The Terms of Service shall be governed by and construed in accordance with the laws of the State of California. Each party consents to personal jurisdiction and venue in Yolo County. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed. If a court of competent jurisdiction rules as invalid any provision of this agreement or the application of any provision to any person or circumstance, the parties agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and all other provisions shall remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the Service, the use of the Code.Org website or iOS Apps, or the Terms of Service must be filed within one (1) year after such claim or cause of action arose or be forever barred.

Accepted as addendum to Terms and Conditions

By:



Title: Compliance Officer

Date: 07 / 18 / 2018