NIGHTINGALE NOTES
APPLICATION SUBSCRIPTION AGREEMENT
CHAMP SOFTWARE, INC.

This Agreement is entered in to this 7th day of March, 2023 by and between Champ Software, Inc., PO Box 2246, North Mankato MN 56002, (hereinafter called "Vendor") and Siskiyou County Health and Human Services Agency/Public Health Division, with its principal place of business at 810 S. Main Street, Yreka, CA 96097 (hereinafter called "Agency").

This Agreement shall become effective on the date of the last signature below and shall terminate one (1) year thereafter, unless terminated in accordance with the provisions of this Agreement or as otherwise provided herein.

Vendor is a computer software company that provides software, training, and support for the web application hereinafter called "Nightingale Notes," and Agency desires to license Nightingale Notes from the Vendor.

Now, therefore, the parties agree as follows:

I.　　**GRANT OF LICENSE.** Vendor hereby grants to Agency the right to use Nightingale Notes ("License") according to the terms specified in this Agreement and Attachment "B", BAA, attached hereto and hereby incorporated by reference.

　　　A.　　Vendor retains title and ownership of Nightingale Notes.

　　　B.　　Vendor grants Agency a non-exclusive license to use the application "Nightingale Notes" according to the terms herein. Authorized users of the application are limited to employees of Agency and any authorized third-parties. To obtain authorization for third-parties (including independent contractors) to use the application, Agency must notify Vendor of the name of the third-party and the purpose for the use, and must obtain written consent of Vendor authorizing the use, which will be limited to the particular third-party and purpose identified in the request, unless further limited by Vendor.

　　　C.　　The license granted under this Agreement is non-transferrable. Agency may not sublicense, resell, lease, delegate, assign, or otherwise transfer its rights under this Agreement, whether wholly or partially, to a third-party (including independent contractors) without prior written consent of Vendor.

　　　D.　　Vendor reserves the right to monitor the use of the application and license count on a periodic basis.

　　　E.　　All rights not expressly granted by Vendor under this Agreement are reserved by Vendor.

II.　　**LICENSE AND OTHER COSTS**. Agency will pay to Vendor an annual subscription fee for the use of the software application and support. Initial Training and Implementation fees are a one-time expense. Applicable sales taxes will be added to fees as appropriate. See Attachment "A", proposal, attached hereto and hereby incorporated by reference.

A. **Annual Subscription Fee**. The annual subscription fee for the application and support is $16,206.00. This fee is for 15 named licenses. If using the Teletask or Availity integration option there are fees associated with those services outside of Champ fees. Teletask and Availity require signed agreements to provide the integrated service and handle billing for the services outside of Champ billing.

B. **Implementation and Training Fee**. The fee for the implementation of application, plus staff time for setup, support and training, is $8,700.00. This fee is based on 15 named licenses.

C. **Expenses for Training** in the Agency's office (if applicable) will be billed when the cost is determined, based on actual expense, e.g., travel time, airfare, airport parking, mileage and lodging, and per diems for meals. Every effort is made to conduct training virtually to avoid travel expenses and to better fit agency schedule.

D. **Payment.** Payment for Item II.A. and II.B. shall be as follows:

1. First subscription payment and Implementation & Training fee are due upon signing of Agreement. ($16,206.00 + $8,700 = $24, 906.00)

2. Future subscription payments due annually beginning 1 year from date training begins.

If payment has not been received by the Vendor within thirty (30) days from the due date, the Vendor will have, with ten (10) days written notice, the option of applying a service charge on the delinquent amounts equaling one percent (1%) per month from the listed due date.

E. **User Licenses**. This price includes the number of licenses stated in Item II.A. If the application is subsequently needed by additional users, Agency shall contact Vendor to determine the additional fee.

F. **New Software Products**. From time to time the Vendor will develop product upgrades or enhancements for Vendor's entire customer base. Vendor reserves the right to increase subscription fees when a set of enhancements is deemed significant due to a large investment of time and effort on the part of the vendor.

III. **VENDOR OBLIGATIONS.** Vendor will provide to Agency the following:

A. APPLICATION. Vendor will provide access to a public web server containing the application.

B. SETUP/TRAINING. Setup/Training includes the following:

1. Assistance by email, telephone, and virtual webinars developing customized dropdowns and initial Pathway design, and covering installation issues.

2. Basic training will be provided via online tutorials, virtual webinars and telephone conference. This training will cover all features available in the application at the time of installation. Onsite training is available at additional cost, when specifically requested by the Agency.

C. SUPPORT. Support will include but is not limited to the following:

1. Telephone, email, fax, and web-based support, to answer questions and assist in resolving problems. Support is available from 8 am to 5 pm CT, Monday through Friday.

2. Application updates, either to fix problems in the application, or, at the discretion of the Vendor, to provide additional application features.

3. Revisions to comply with changes in existing state and federal requirements, if the application currently contains functionality to meet those state and federal requirements.

4. Champ implements an annual minimum COLA of 3% or higher if the US Department of Labor Bureau of Labor Statistics defines the Cost of Living Increase for any given year, as greater than 3%.

5. The application provides a warning screen with a sign-off to protect an agency from inadvertently deleting a record. If the agency decides to delete the record and then wants it restored, Champ will restore it for the agency at a cost of $150 hourly for the hours incurred. This process could take 4 to 8 hours.

IV. WARRANTY AND INDEMNITY

A. Vendor warrants that the application was developed by Vendor and that it does not infringe upon a known copyright, patent or trade secret. Vendor's liability shall be limited to replacement or repair of any defective product. Both Vendor and Agency waive any claims for consequential damages.

B. Agency acknowledges that the application is of such complexity that it may contain inherent defects and agrees that as Vendor's liability and as Agency's remedy, Vendor will provide all reasonable programming services free of charge to correct documented code errors which diagnoses indicate were caused by defects in an unaltered version of the installed application.

V. TERMINATION

A. **Vendor Default**. In the event that Vendor should terminate this agreement and fail or refuse to provide support and maintenance for the application while Vendor offers such service to any of its customers or Vendor shall fail and/or refuse to offer support and maintenance services for the application to Agency whether for reasons of bankruptcy, receivership, termination of business or for any other reason, Agency shall be entitled to receive and use the source code and documentation for the application. This provision shall not apply in the event the current product becomes outdated, and Vendor develops a replacement product with superior technology.

B. **Material Breach**. In the event of a material breach or default by Vendor or Agency in the performance of this agreement, the aggrieved party shall give written notice to the other party specifying the nature and extent of the breach. The party in breach or default shall have 30 days thereafter to cure any such curable breach or default. If such breach or default is not cured within said 30-day period, the termination of this agreement shall become effective on the 45th day following said written notice.

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C. **Termination**. Agency may terminate this agreement at any time if not satisfied with Vendor's performance or for any other reason, by providing Vendor with 45 days written notice by certified mail.

D. **Agency Owns Their Data**. All parties understand that the Nightingale Notes application is the property of the Vendor. The Agency owns their data, which they have stored in the database. In the event of termination, a copy of the Agency's data will be provided by the Vendor to the Agency upon request. A $1,200 one-time fee will be invoiced to the Agency to cover the cost for creating the data file.

VI. GENERAL PROVISIONS

A. This agreement constitutes the entire understanding between the parties and supersedes all prior agreements, oral or written, as to the subject matter of this agreement. Neither party shall be bound by any conditions, warranties nor representations except as expressly provided in this agreement.

B. By this Agreement, the Agency is acquiring from Vendor a product in the form of a non-exclusive license to use certain software known as Nightingale Notes. The Vendor is not acting as a contractor for services and therefor is not subject to the Agency's standard and customary requirements for a contractor.

C. No provision of this agreement may be waived, altered, changed, modified, amended or extended unless in writing signed by both parties.

D. This agreement shall be binding upon the heirs, assigns and successors of Vendor and Agency.

E. If any provision of this agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions will remain in full force and effect.

F. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

G. Any notice required or permitted to be given by any party under this agreement will be made in writing and delivered by hand or by certified mail, postage prepaid, address as first set forth above or to such other address as a party shall designate in writing to the other party.

H. The headings used in this agreement are for convenience only and do not affect the substantive meaning of any provision.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, County and Contractor have executed this agreement on the dates set forth below, each signatory represents that they have the authority to execute this agreement and to bind the Party on whose behalf their execution is made.

CONTRACTOR: Champ Software, Inc.

Date: 3/7/2023

Scott Dunnewind, CEO

Date: 3/7/2023

Nicole Sowers, COO

License No.: N/A
    (Licensed in accordance with an act providing for the registration of contractors)

Note to Contractor: For corporations, the contract must be signed by two officers. The first signature must be that of the chairman of the board, president or vice-president; the second signature must be that of the secretary, assistant secretary, chief financial officer or assistant treasurer. (Civ. Code, Sec. 1189 & 1190 and Corps. Code, Sec. 313.)

TAXPAYER I.D. 41-1990445

COUNTY OF SISKIYOU

Angela Davis   3/13/2023

Angela Davis, County Administrator (Date)

APPROVED AS TO LEGAL FORM:

Dana Barton   3/9/2023

Edward J. Kiernan, County Counsel   (Date)

APPROVED AS TO ACCOUNTING FORM:

Fund	Org	Account	FY 22/23	FY 23/24
2121	401015	723000	$16,206.00	$0
2121	401015	729200	$ 8,700.00	$0

If not to exceed, include amount not to exceed: $24,906.00

Diane L. Olson   3/10/2023

Diane Olson, Auditor-Controller   (Date)

APPROVED AS TO INSURANCE REQUIREMENTS:

Melissa Cummins   3/13/2023

Melissa Cummins, Risk Management   (Date)

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