

**NIGHTINGALE NOTES
APPLICATION SUBSCRIPTION AGREEMENT
CHAMP SOFTWARE, INC.**

This Agreement is entered in to this 25 day of January, 2024, by and between Champ Software, Inc., PO Box 2246, North Mankato MN 56002, (hereinafter called "Vendor") and Sauk County Health Department, with its principal place of business at 505 Broadway, Baraboo WI 53913 (hereinafter called "Agency").

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.
 - 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.
 - A. **Annual Gold Subscription Fee.** The annual subscription fee for the application and support is \$30,813. This fee is for 31 named licenses. The 31 named licenses would temporarily become 50 named licenses immediately in the event of a public health crisis like we saw in 2020 with the COVID 19 pandemic, at no additional cost. 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 \$16,200. This fee is based on 31 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. ($\$30,813 + \$16,200 = \$47,013$)
 2. Future subscription payments due annually beginning 1 year from date training begins.
- If payment has not been received by the Vendor within forty five (45) 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.
- 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.
- 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 or 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.

Legal Notices. Any legal notice required by this Agreement shall be made in writing to the address specified below:

Agency: Sauk County Clerk
 505 Broadway
 Baraboo, WI 53913

With a copy to: MIS Director
 510 Broadway
 Baraboo, WI 53913

Vendor: Champ Software, Inc
 PO Box 2246
 North Mankato, MN 56002

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the parties.

Open Records Law Compliance. Vendor understands and agrees that, because Agency is party to this contract, provisions of the Wisconsin Open Records Law and other laws relating to public records may apply to records kept by Vendor and/or the Agency. Vendor agrees to fully comply with such laws, and to cooperate with Agency in its compliance with such laws. Cooperation shall include, but not be limited to, the provision of records, or copies of records Agency or others upon the request of Agency. Compliance and cooperation of Vendor shall be at its sole cost and expense. The software allows Agency access to their records and therefore complies. If Agency requests a full transmission of data records outside of the tool, there are additional costs the Agency would bear.

Insurance. During the term of this Agreement, Professional shall, at Professional's sole cost, maintain the following insurance:

Comprehensive General Liability Limits: \$1,000,000 bodily injury/property damage

Excess Umbrella Liability Limits: \$1,000,000.

Workers Compensation:

- a. Coverage A: Limits – Statutory
- b. Coverage B: Employer's Liability Limits
- c. Bodily Injury by Accident - \$100,000 each accident minimum
- d. Bodily Injury by Disease - \$100,000 each employee minimum
- e. Bodily Injury by Disease - \$500,000 policy limit minimum

Professional Liability Limits: \$1,000,000

Certificates of insurance are required for all policies. The Certificate of General Liability Insurance & Excess Umbrella Liability shall name the Client as an additional insured on the policy and must require that a thirty (30) day cancellation notice be given to the Client. An updated copy of the Certificate must be provided anytime a change is made to any policy. Vendor policy blanket additional insured is included per written contract or agreement per form 822-0001 08/19.

Governing Law, Jurisdiction and Venue. This contract is to be construed and interpreted in accordance with the laws of the State of Wisconsin, without giving any effect to any choice or conflict of laws provision or rule, whether of the State of Wisconsin or any other jurisdiction, that would cause the application of laws of any jurisdiction other than those of the State of Wisconsin. The parties hereby irrevocably submit to the jurisdiction of the state courts of the State of Wisconsin for the purpose of any suit, action or other proceeding arising out of or based upon this contract. The parties further agree that the venue for any legal proceedings related to this contract shall be Sauk County, Wisconsin. The foregoing is not intended to be construed to limit the rights of a party to enforce a judgment or order of the above court in any other jurisdictions.

IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed by their duly authorized representatives as of the date first above written.

VENDOR: Champ Software Inc

AGENCY: Sauk County Health Department

By:



Scott Dunnewind, CEO

BRENT R. MILLER ADMINISTRATOR
(Printed Name) (Title)