# NoteAffect

## NoteAffect, LLC Licensing Agreement

This **Licensing Agreement** (the "Agreement") which shall be effective as of the date last signed ("Effective Date") is entered into by and between NoteAffect, LLC, a limited liability company organized under the laws of the State of Delaware, with offices located at 37232 Lighthouse Road #114, Selbyville, DE 19975 ("NoteAffect") and the Client ("Licensee). (together, the "parties"). Intending to be legally bound, the parties agree to all of the terms and conditions set forth in this Agreement. This Agreement may be updated from time to time and supersedes any previous Contracts or Agreements between the parties. If you have an active NoteAffect Work Order, we will notify you of such an update via email.

### PREAMBLE

NoteAffect develops software and applications that run on computers, smartphones and/or other widely used communication devices that allow for the targeted distribution, collection, and analysis of information among identified populations of consumers, partners, instructors and students who interact with Licensee (collectively "End Users").   Licensee desires to have access to the software and applications developed by NoteAffect and for NoteAffect to provide Licensee with related services, and NoteAffect wishes to provide such goods and services. In consideration of the forgoing and the mutual covenants, promises and agreements set forth herein, the undersigned parties hereby agree as follows:

1. **License, Ownership and Restrictions.**

1.1. Incorporation of Preamble.  The statements set forth in the "Preamble" of this Agreement are, by this reference, incorporated into and deemed part of this Agreement.

1.2. Grant of License.  NoteAffect hereby grants Licensee a nonexclusive revocable license ("License") for use and distribution of the software (the "Software") described on a written Work Order(s) that is signed and submitted by Licensee to NoteAffect, and which is accepted by NoteAffect (hereinafter "Work Order(s)"). Licenses granted under this Agreement are subject to revocation upon termination of this Agreement and/or the Work Order's defined timeline.  For ease of reference, Work Order(s) shall be substantially in the form of the Work Order(s) and shall be subject to the terms and conditions of this Agreement.

1.3. Ownership.

   1.3.1. NoteAffect shall own all independently developed property (including without limitation, the Software, and all copyrights, patents, and marketing materials associated with the Software) and all Content that NoteAffect independently develops or owns as of the effective date of the Agreement ("NoteAffect Content").  Licensee shall have no rights therein other than the limited right to use such Content as

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permitted under the License. "Content" shall mean information, names, images, pictures, logos, documents, materials, information, photographs, animation, video, HTML and other code, audio, music, text and applets contained therein. The term "Content" also includes information which may be "Confidential Information" as defined below in Section 3.1. Provided however, that each party shall remain the owner of its Confidential Information.

1.3.2. Licensee shall own all Content that it independently develops or owns and NoteAffect shall have no rights therein other than the limited right to use such Content to provide services in accordance with this Agreement ("Licensee Content").

1.3.3. Licensee shall have for the duration of the License granted pursuant to this Agreement and the Work Order(s) full rights to access and analyze Content maintained by the Software listed on a Work Order(s).

1.3.4. NoteAffect shall maintain all rights of ownership and be the sole owner of the Software and all other software, code, processes, and/or system functionality of any kind developed for purposes of or related to this Agreement and Licensee shall have no right, title, or interest of any kind in the Software, code, processes, and/or system functionality unless NoteAffect agrees in writing to give Licensee such interest, title, and/or ownership for valuable consideration. Any permission NoteAffect may provide to Licensee to distribute the Software through any online applications store, i.e. Apple Computer, Inc.'s ("Apple") App Store, Google Play, or Amazon Appstore for Android, or by any other means or method, either electronic or non-electronic, does not confer on Licensee any rights of ownership of any intellectual property owned by NoteAffect, including, but not limited to, any copyright, patents, trademarks, service marks, or trade dress owned by or licensed to NoteAffect.

1.4. Restrictions. Licensee shall not, and to the best of Licensee's knowledge, shall not permit any other party to: disassemble, decompile, decrypt, or reverse engineer, or in any way attempt to discover or reproduce source code for any part of the Software; adapt, modify, or prepare derivative works or inventions based on the Software, use the Software to create any computer program, or by any means sell, transform, translate, assign, pledge, mortgage, encumber, or otherwise dispose of or any of the rights or obligations granted or imposed on hereunder. In no event shall this license, or any rights or privileges hereunder, be an asset of Licensee under any bankruptcy, insolvency, or reorganization proceedings; provided, however, this license and the transactions provided for herein shall be binding upon and inure to the benefit of the parties, their legal representatives, and permitted transferees, successors, and assigns.

**2. NoteAffect and Licensee's Responsibilities.**

2.1. Licensee will be responsible for providing NoteAffect with specific information, as specified on the Work Order(s), needed by NoteAffect to configure the Software for Licensee.

2.2. Licensee shall take all appropriate actions specified in Work Order(s) to publicize or promote aspects of the Software and its functionality to staff and users. Licensee shall provide appropriate access to Licensee's website, LMS, or menu where the NoteAffect application may reside for the purposes described in Work Order(s).

2.3. NoteAffect shall provide a working order of the Software consistent with the specifications set forth in the Work Order(s). No other warranty to Licensee from NoteAffect is expressly made or to be implied. NoteAffect specifically disclaims the implied warranties of merchantability and fitness for a particular purpose. Unless otherwise specified in a Work Order(s). NoteAffect shall not be responsible for the manual entry of any content specific to Licensee's curriculum or the maintenance of information in the Software.

**3. Proprietary and Confidential Information.**

3.1. During the term of this Agreement, either party may receive information that the other party regards as confidential and proprietary. The parties agree that all information that a reasonable person should assume to be confidential or which is clearly marked to indicate its confidential and proprietary status, if disclosed by one party to the other in written, graphic, or any machine readable form, or disclosed orally shall be considered "Confidential Information".

3.2. A party receiving Confidential Information (the "Receiving Party") shall hold such information in strict confidence and shall not use, disclose or duplicate such information except for the purpose of performing this Agreement, provided however, that the receiving party may, after notice to the sending party, disclose the Confidential Information pursuant to a court or government agency request, subpoena, or order that is lawfully made.

**4. Limitation of Liability.** In no event shall either party be liable to the other party for any indirect, incidental, special or consequential damages arising out of either party's performance or failure to perform in accordance with the terms hereof including lost profits, lost revenues, loss of the use of equipment or facilities, or for substitute equipment or facilities regardless of whether the claim or claims therefore sound in contract or tort (including negligence), strict liability, or otherwise and regardless of whether the party to be charged has been notified of the possibility or should have foreseen the possibility of such damages. This provision shall not apply to a breach of Article 3 (Proprietary and

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Confidential Information).  In the event of such breach, the non-breaching party shall be entitled to all remedies available including, but not limited to attorney's fees and the reasonable costs of the investigation into and litigation of such matter.

## 5.  Payment.

Payment to NoteAffect for fees defined in the Work Order(s**).**

5.1   Payment for each invoice is due thirty (30) days from the date of each invoice unless otherwise mutually agreed upon in writing on the Work Order(s). For subsequent years of any Term, payment of the Work Order(s) is invoiced and due 90 days after the conclusion of the previous corresponding event. In the event any invoice is outstanding for more than forty-five (45) days, the charges on such bill are subject to a service charge of 1.5% per month on the outstanding balance due in excess of forty-five (45) days.

## 6.  Term and Termination.

6.1. The term of the Work Order(s) and Licensing Agreement shall commence on the effective signed date set forth on the Work Order(s), (the "Effective Date").  All components of a Work Order(s) that are signed by Licensee and accepted by NoteAffect, including pricing are valid for the term of this Agreement unless amended by the Parties as stated in Article 11 ("Amendments").

6.2. In the event of a breach of contract by the Licensee, the Work Order(s) and Licensing Agreement may be terminated for cause before expiration by NoteAffect effective ninety (90) days after written notice of the Party's intent to terminate is given in accordance with the requirements of Article 13 ("Notices") of this Agreement. If NoteAffect terminates the Agreement before expiration is due to Licensee breach of contract the Licensee agrees to satisfy all outstanding invoices issued by NoteAffect for services rendered under the terms of the Work Order(s). Such payments shall be due and owing to NoteAffect within thirty (30) days of the date NoteAffect notice of termination is received by Licensee.

6.5. In the event of a breach of contract by NoteAffect, the Licensee may terminate the Work Order(s) and Licensing Agreement prior to their expiration effective ninety (90) days after written notice of the Party's intent to terminate is given in accordance with the requirements of Article 13 ("Notices") of this Agreement. The Licensee agrees to satisfy all outstanding invoices issued by NoteAffect for services rendered under the terms of the Work Order(s). Such payments shall be due and owing to NoteAffect within thirty (30) days of the date Licensee notice of termination is received by NoteAffect.

## 7.  Force Majeure.

7.1. Should events beyond the reasonable control of NoteAffect , Licensee, and Licensee's users, including (1) acts of God, (2) war, including armed conflict, (3) strikes or labor disputes or other civil disturbances affecting the Licensee's or Licensee users computer network, phone network, Wi-Fi network, or in the metropolitan area in which the institution is located, (4)

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public health emergency due to the outbreak of communicable disease, (5) government regulation or advisory, or (6) acts of terrorism (collectively "Events of Force Majeure"), cause the cancellation or interruption of the Software performance neither NoteAffect nor Licensee shall be considered in breach of this Agreement to the extent that performance of their respective obligations (excluding payment obligations) is prevented by an Event of Force Majeure that arises after the Effective Date.

7.2. For NoteAffect and Licensee, the party prevented from performing its obligations hereunder shall promptly give written notice to the other party of the Event of Force Majeure.

7.3. If and to the extent that NoteAffect is prevented from performing the services set forth on a Work Order(s) by the event of Force Majeure, NoteAffect shall be relieved of its obligations to provide the services but Licensee agrees to satisfy all outstanding invoices issued by NoteAffect and to make payment for all work performed by NoteAffect including all applicable fees as set forth in the Work Order(s) as of the date Licensee's notice of the Event of Force Majeure is received by NoteAffect. Such payments shall be due and owing to NoteAffect within thirty (30) days of the date Licensee's notice of the Event of Force Majeure is received by NoteAffect.

8. **Training Maintenance and Support.** NoteAffect shall provide services related to initial training, maintenance, and support for the Software as set forth on a Work Order(s). Unless otherwise provided in Work Order(s), any additional Licensee employee training beyond the initial training provided at commencement of the project shall be provided following the execution of a separate Work Order between NoteAffect and Licensee that shall set forth the cost of the additional training requested.

9. **Assignment.** Neither party shall be entitled to assign this Agreement or its rights or obligations under this Agreement, whether voluntarily or by operation of law, without prior written notice to be given ten (10) days before the effective date of the assignment, to the other party. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

10. **Waiver.** A failure by either party to assert its rights under this Agreement shall not be deemed to be a waiver of such rights nor shall any waiver be implied from any act or omission. All waivers to be effective must be in writing. No waiver by either party with respect to any right shall extend its effect to any subsequent breach of this Agreement or like of different kind unless such waiver explicitly provides otherwise.

11. **Amendments.** This Agreement may be altered, modified, or amended only by a written agreement duly executed by both parties. Any material changes in the agreed process will be agreed by the parties.

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12. **Indemnification.**  NoteAffect and Licensee each shall indemnify and hold the other harmless, including, without limitation its officers, directors, employees and agents from and against any and all loss liability, damage or expenses (including reasonable attorneys' fees and expenses), whether arising out of a claim involving any third party or between the parties to this Agreement, that either party may suffer as a result or a breach or any representation or warranty of the indemnifying party under this Agreement.

13. **Notices.**  Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (a) by personal delivery when delivered personally; (b) by overnight courier upon written verification of receipt; (c) by email transmission upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to Executive at the address set forth below and to the Company at its principal place of business, or such other address as either party may specify in writing**.**

> If to NoteAffect:
>
>> Jay Tokosch
>> 37232 Lighthouse Rd #114
>> Selbyville, DE 19975
>> jay@noteaffect.com (email)

> Licensee notices will be emailed to the Company Point of Contact using the billing address on file with NoteAffect.

14. **Attorneys Fees.**   Notwithstanding the provisions in Article 4 (Limitation of Liability), in the event any dispute between the parties results in litigation or other proceeding, the prevailing party shall be reimbursed by the party not prevailing for all reasonable costs and expenses, including, without limitation, reasonable attorneys' and experts' fees and costs incurred by the prevailing party in connection with such litigation or other proceeding, and any appeal thereof.  Such costs, expenses and fees shall be included in and made a part of the judgment recovered by the prevailing party.

15. **Governing Law.** This Agreement shall in all respects be governed by and construed under the laws of the State of Delaware as applied to agreements made and the Parties submit to the jurisdiction of the Courts of the State of Delaware as well as the Federal Courts located within the State of Delaware with regard to any dispute arising out of this Agreement.

16. **Entire Agreement.**  This Agreement including all attachments and Work Order(s) shall be deemed entered into in the State of Delaware and constitutes the entire agreement between the Parties and supersedes and renders null and void all prior License Agreements, whether oral or written, between the parties relating to the subject matter of this Agreement including,

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but not limited to, all prior agreements dealing with the exchange of information between the Parties.

IN ACKNOWLEDGEMENT through signing the Work Order(s) within the electronic signature process, the Parties have executed this Agreement as of the date specified through the electronic signature.  Each party represents and warrants that its respective signatory is duly authorized to execute the Agreement on its behalf.

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