ICANS Agency Agreement

1. PARTIES.
   This Agency Agreement is entered into by and between:

   _________________________________ (name of agency/organization/individual),
   and the State of Idaho, Department of Health and Welfare, Division of Behavioral Health (DBH).

2. PURPOSE.
   ICANS is a novel, secure, electronic, internet-based, system developed by the State of Idaho and used
to administer and manage CANS assessments and information. This Agreement is entered into for
the purpose of allowing the Agency and its designated Authorized Users a limited license in
order to access and use ICANS.

   2.1. The Agency and DBH agree that they may create, maintain, use or disclose Protected
       Health Information on behalf of each other for the purpose of operations and collaboration
       for same or similar populations in conjunction with providing behavioral health care and/or
       “YES” program services.

   2.2. The Agency and DBH will comply with the Health Insurance Portability and
       Accountability Act of 1996 and its implementing regulations (45 CFR Parts 160 and 164),
       the requirements of 42 CFR Part 2, and other applicable State and Federal laws.

3. DEFINITIONS

   3.1. Agency. A Covered Entity (agency/organization/individual) or a Business Associate of a
       Covered Entity as defined under HIPAA; and an entity which is involved in same or similar
       populations and have an equal obligation to maintain confidentiality and requires
       collaborative staffing with DBH in conformance with IDAPA 16.05.01.100; and has entered
       and complied with an ICANS Agency Agreement with DBH.

   3.2. Agency ICANS Administrator (AIA). Individual(s) designated by an Agency who are the
       primary contacts for the Agency, “Train the Trainers” for the Agency, and are responsible
       to submit Authorized User access/revocation requests to DBH on behalf of the Agency in
       conformance with the Agency Agreement.

   3.3. Authorized Agency Agreement. A legally binding agreement between DBH and an
       Authorized Agency. Under the ICANS Authorized Agency Agreement, DBH registers the
       Authorized Agency in accordance with, and the Authorized Agency agrees to comply with,
       these Terms and Conditions.
3.4. **Authorized User.** Individual(s) designated by an authorized Agency or DBH as having job duties necessitating access to ICANS, and who have met all conditions and signed an Authorized Users agreement with DBH.

3.5. **Authorized User Agreement.** A legally binding agreement between DBH and an Authorized User. Under the ICANS Authorized User Agreement, DBH registers the Authorized User in accordance with, and the Authorized User agrees to comply with, these Terms and Conditions.

3.6. **Business Associate.** A party (agency/organization/individual) as defined under HIPAA.

3.7. **Electronic Health Record.** Protected digital health record housed in a secure digital space (web-hosted) accessible only by authorized persons.

3.8. **ICANS.** A secure, electronic, internet-based, EHR system used to administer and manage CANS assessments in Idaho.

3.9. **Privacy.** An individual’s desire to limit the disclosure of personal information.

3.10. **Protected Health Information.** Protected Health Information means any information created for or received from an Individual under the ICANS Informed Consent from which the identity of an Individual can reasonably be determined, and includes, but is not limited to, all information within the statutory meaning of “Protected Health Information” (45 CFR § 160.103). Protected Health Information includes information maintained or transmitted in any form, electronic or otherwise.

3.11. **Security.** Measures to protect the confidentiality, integrity and availability of information and the information systems used to access it.

3.12. **YES Program.** The Youth Empowerment Services Program (“YES” program) is a system of care for children offering an array of services to address the needs of children and youth with serious emotional disturbance (“SED”).

4. **AGENCY OPERATIONS AND RESPONSIBILITIES.**

4.1. **Agreement Required.** An Agency may access and use ICANS only if it is authorized by DBH to do so, including:

   4.1.1. entering into an ICANS Agency Agreement, in writing, with DBH;

   4.1.2. designating Authorized User(s) for the agency who have signed an ICANS Authorized User Agreement, in writing, with DBH;

   4.1.3. designating up to two (2) Agency ICANS Administrators; and

4.2. **Agency Type.** Each Agency shall be registered with DBH under the Agency Agreement to participate as one of the following types:

4.2.1. Idaho Medicaid Approved Agencies.

4.2.2. Idaho Medicaid/Optum Approved Agencies.

4.2.3. Idaho Department of Juvenile Corrections.

4.2.4. Other Entities as determined and approved by DBH.

4.3. **Changes to the Agency Agreement.** DBH may, consistent with this Agency Agreement, change or amend any Agency Agreement at any time, with Thirty (30) days prior written notice to the Agency. Any such change to an Agency Agreement is legally binding upon DBH and the Agency as of the effective date of the change.

4.4. **Change Based on Legal Compliance Requirements.** Any change to this Agency Agreement or the ICANS eManual that DBH determines is required to comply with any federal, state, or local law or regulation shall take effect as of the effective date DBH determines is required.

4.5. **Termination of the Agreement.**

4.5.1. **Termination for Convenience.** DBH may terminate any Agency Agreement at any time without cause by sending notice to the Agency. Such termination will be effective thirty (30) days of the date of the notice of termination unless otherwise stated.

4.5.2. **Termination due to Failure to Follow Agreement.** DBH may terminate any Agency Agreement if the Agency fails to perform any material responsibility arising out of the Agency Agreement, ICANS eManual, ICANS Privacy Policy, and the ICANS Security Safeguards Policy, and such failure continues uncured for a period of thirty (30) days after DBH gives the Agency notice and requests the Agency cure that failure.

4.5.3. **Termination due to Event.** DBH may terminate any Agency Agreement when notified by the Agency they are no longer providing Children’s Mental Health Services for Idaho residents.

4.5.4. **Agency Withdrawal From ICANS.** The Agency may terminate this Agreement at any time without cause by sending written notice to DBH. Termination will be effective thirty (30) days after the date of the notice of termination.

4.5.5. **Effect of Termination.** Upon termination of a Agency’s Participation Agreement that party shall cease to be a registered Agency with DBH. After termination neither the former Agency nor their Authorized Users shall have any rights to use and access ICANS. All licenses or other rights to use ICANS granted to the Agency shall end automatically upon the termination of the Agency’s Agency Agreement.
5. AGENCY DESIGNATION OF AUTHORIZED USERS.

5.1. No Use by Other than Authorized Users. The Agency shall restrict access to and use of ICANS only to the Authorized Users registered or designated by the Agency to DBH in accordance with this Agreement. DBH and the Agency agree an Authorized User shall have no rights to access ICANS or any client data or other ICANS information independent from those of the agency and DBH.

5.2. Designation of Authorized Users. The authorized Agency shall designate an Authorized User(s) with DBH. Each Agency shall also designate up to two (2) Agency ICANS Administrators. The Agency is responsible to immediately notify DBH whenever an Authorized User leaves the employ of the Agency or is no longer a designated Authorized User for the Agency. DBH shall immediately cancel and de-activate the user ID, password and/or other security measure of any individual who is no longer an Authorized User.

5.3. Certification of Authorized Users by Agency. When an Agency designates an individual (requests access to ICANS) as an Authorized User they shall also certify the Authorized User:
   5.3.1. Will access ICANS only as reasonably necessary for the performance of the Agency’s activities.
   5.3.2. Has agreed not to disclose any user IDs, passwords and/or other security measures issued to them to any other individual, agency, entity, or organization.
   5.3.3. Has acknowledged in writing (signed the Authorized User Agreement) that failure to comply with the Agency and Authorized User Agreements may result in the withdrawal of ICANS use privileges.
   5.3.4. Has completed/received certification for a training program provided by DBH or another training program approved by DBH.
   5.3.5. Has complied with all other requirements as described in the User Agreement and ICANS eManual.

5.4. Authorized User Agreement Required. Authorized Users identified by an Agency shall be required to enter into an ICANS User Agreement, in writing with DBH, before they are granted access ICANS. If the Authorized Users refuse to enter into an ICANS User Agreement, or if the Authorized User Agreement of an individual is terminated, the Agency shall be required to designate a new individual who has entered into a new Authorized User Agreement in order to regain ICANS access.

5.5. Approval of Authorized Users by DBH. DBH may approve each Authorized User designated by the Agency. The nature and extent of authorized access to ICANS shall be determined by:
   5.5.1. Legitimate need to fulfill job responsibilities.
   5.5.2. Local/state/federal/funding requirements.
5.5.3. Confidentiality requirements.

5.5.4. Security requirements.

5.5.5. Whether an Agency Agreement and Authorized Users Agreement has been signed.

5.5.6. Compliance of the proposed Authorized User with ICANS User Agreement, Privacy Policy, and Security Safeguards Policy.

5.6 **Access by Authorized Users.** The Agency shall implement security safeguards with respect to ICANS in accordance with this section and the ICANS eManual.

5.6.1. Upon approval, DBH shall issue a unique user ID, password and/or other security measure, as described in the ICANS eManual, to each Authorized User to permit the Authorized User to access the ICANS. DBH shall issue user IDs, passwords and/or other security measures based on the information given by the Agency, and such other information as DBH determines appropriate.

5.6.2. The unique user ID, password and/or other security measure shall be provided directly to the Authorized User. DBH shall notify the Agency’s AIA of the issuance of the user IDs, passwords and/or other security measures to their Authorized Users.

5.6.3. The Agency’s AIA shall inform DBH when an individual is removed from their list of Authorized Users. DBH will immediately cancel and de-activate the user ID, password and/or other security measure of any individual who is no longer an Authorized User.

5.7 **Restriction of ICANS Access.** If DBH determines the Agency or their Authorized User knowingly or willfully violated the Security policies, or failed to comply with the restrictions on the use of protected health information imposed under the laws of the United States of America and the State of Idaho, DBH may immediately restrict Agency access to ICANS.

5.8 **Responsibility for Conduct of Agency and their Authorized Users.** The Agency shall be solely responsible for all their acts and omissions and those of their Authorized Users. This includes all individuals who lawfully access or use ICANS either through the Agency or by through any user names and passwords and/or other security measures issued by DBH to the Agency’s Authorized Users. ICANS and/or client data or other confidential and/or other information accessed by user names and passwords and/or other security measures issued to the Agency or any of their Authorized Users, or received or obtained, directly or indirectly, from them, and all such acts and omissions shall be deemed to be the acts and omissions of the Agency.

5.9 **Training.** The Agency shall provide appropriate and adequate training to all their Authorized Users in the provisions of the Agency Agreement and Terms and Conditions, as well as applicable laws and regulations governing the confidentiality, privacy, and security of protected health information, including requirements imposed under HIPAA.
6. AGENCY USE OF ICANS.

6.1. **Grant of Limited License by DBH for an Agency.** DBH grants to each Agency, and each Agency accepts, a nonexclusive, personal, nontransferable, limited license to access and the use of ICANS. The Agency must have access to and use ICANS only for the purpose of improving the quality of behavioral health care treatment and collaborating with DBH for providing behavioral health services. The Agency must remain in full compliance with the Agency Agreement, ICANS eManual, ICANS Privacy Policy, and the ICANS Security Safeguards Policy. The ICANS eManual, ICANS Privacy Policy, and ICANS Security Safeguards Policy are available online at: [www.icans.dhw.idaho.gov](http://www.icans.dhw.idaho.gov), and the terms of each are incorporated herein by reference. DBH retains all rights to all the components of ICANS. No Agency shall obtain any rights to ICANS except for the limited rights expressly granted by these Terms and Conditions.

6.2. **Change or Termination of ICANS.** DBH may change ICANS, or may cease providing ICANS, at any time. DBH will give at least thirty (30) days advanced notice to Agencies/Authorized Users of such changes or cessation of service, unless circumstances beyond DBH’s control require the change or cessation.

6.3. **ICANS eManual.** The ICANS eManual sets forth the policies and procedures under which DBH shall provide ICANS, and shall be consistent with these Terms and Conditions. The ICANS eManual is incorporated by reference into, and thus is a part of, these Terms and Conditions.

   6.3.1. **Changes to the ICANS eManual.** DBH may amend, repeal and replace these Terms and Conditions and/or the ICANS eManual at any time. Any changes to these Terms and Conditions or the ICANS eManual shall automatically be incorporated by reference into each Agency and User Agreement. The changes are legally binding upon DBH and the Agency, as of the effective date of the change.

6.4. **ICANS Privacy Policy.** The ICANS Privacy Policy is incorporated by reference into, and thus is a part of, these Terms and Conditions. DBH may amend, repeal and replace at any time. Any changes shall automatically be incorporated by reference into each Agency and User Agreement. The changes are legally binding upon DBH and the Agency, as of the effective date of the change.

6.5. **ICANS Security Safeguards Policy.** The ICANS Security Safeguards Policy is incorporated by reference into, and thus is a part of, these Terms and Conditions. DBH may amend, repeal and replace at any time. Any changes shall automatically be incorporated by reference into each Agency and User Agreement. The changes are legally binding upon DBH and the Agency, as of the effective date of the change.
7. DATA.

7.1. Measures to Assure Accuracy of Data. Each Agency shall, in accordance with the requirements described in the ICANS eManual assure that all client data entered in ICANS is accurate, free from serious error, reasonably complete, and provided in a timely manner.

7.2. License. DBH has sole ownership of ICANS data and information obtained through conducting normal business practices.

7.3. Uses Prohibited by Law. The Agency shall not use ICANS in any way that is prohibited by the laws of the United States of America or of the State of Idaho.

8. PROTECTED HEALTH INFORMATION (PHI).
The Agency, their agents, and employees shall comply with the standards for the confidentiality, security, and use of client health information as listed in the Agency Agreement and the privacy laws the United States of America and of the State of Idaho, including HIPAA and 42 CFR Part 2. Each Agency shall comply with such standards as a Covered Entity under HIPAA. Each Agency acknowledges their respective rights, duties, and responsibilities to abide by HIPAA independent of this Agreement.

9. DBH OPERATIONS AND RESPONSIBILITIES.

9.1. Compliance with Laws and Regulations. DBH shall adhere in all respects to the provisions of these Terms and Conditions, in compliance with applicable federal, state, and local laws, ordinances and regulations.

9.2. Compliance with Terms and Conditions. DBH shall require that all Agency’s enter into an Agency Agreement, or other legally binding agreement, to comply with these Terms and Conditions as DBH determines is appropriate.

9.3. Maintenance of ICANS. DBH shall maintain the functionality of ICANS. DBH shall, in a timely manner, provide such service, security, and other updates as are commercially appropriate. DBH shall implement security measures with respect to ICANS as described in ICANS eManual.

9.4. Policies and Standards. DBH will implement and comply with policies and standards that reasonable and appropriate to ensure that all Data Exchanges are authorized, and to protect data from improper access, tampering or unauthorized disclosure. Such policies and standards will include administrative, physical and technical safeguards, that are reasonably necessary to secure the data. DBH and Agency will comply with the security policies and standards established by DBH.

9.5. Training of DBH Personnel. DBH shall provide appropriate and adequate training to all their personnel. This includes DBH Authorized Users. Training will include the provisions of applicable laws and regulations governing the confidentiality, privacy, and security of protected health information, including requirements imposed under HIPAA.
9.6. **Responsibility for Conduct of DBH and DBH Authorized Users.** DBH shall be solely responsible for all its acts and omissions and those of DBH Authorized Users. This includes any individuals who access or use ICANS using any user names and passwords and/or other security measures issued to or used by any DBH Authorized User, or issued by DBH to any individual other than an Authorized User, lawfully or unlawfully. ICANS and/or client data or other confidential and/or other information accessed in connection with user names and passwords and/or other security measures issued to or used by any DBH Authorized User, and all such acts and omissions, shall be deemed to be the acts and omissions of DBH.

9.7. **Training of Agency’s and Their Authorized Users.** DBH shall provide, or arrange for, the initial training to each Agency, their “Train the Trainer Designee (AIA),” and their Authorized Users at no additional cost to the Agency. Training will cover the Agency’s and the Authorized User’s rights and obligations under their Participation Agreement and these Terms and Conditions. Training will include the access and use of ICANS, including such user manuals and other resources DBH determines appropriate to support ICANS. Subsequent training and training materials will be provided by the Train the Trainer Designee including training for new or additional Authorized Users added by the Agency. Such training can be provided by the DBH at the request of the Agency, on a time and materials basis.

9.8. **Help Desk Support.** DBH shall provide, or arrange for, technical assistance in resolving difficulties in accessing and using ICANS. The Agency acknowledges and accepts that DBH Help Desk services are not sold but are provided as a free service for the convenience of the Agency, without representation or warranty of any kind, and as such no liability will be taken for advice and assistance given to the Agency where the Agency or representatives deem that advice to be inappropriate or incorrect. DBH and the Help Desk accept no responsibility for any loss that may be suffered by any Agency who relies totally or partially on information imparted by the Help Desk to make the service workable in the Agency’s environment. DBH and the Help Desk will not be liable to the provider or any other persons or entity with respect to any liability, loss or damage caused or alleged to be caused either directly or indirectly by ICANS or the Help Desk. DBH reserves the right to protect Help Desk staff from any form of abuse by withdrawing the Help Desk service from the Agency or Authorized User at any time deemed fit by DBH.

9.9. **Audits and Reports.** DBH shall monitor audit trails to ensure Authorized Users are following policies and procedures and adhering to privacy and confidentiality standards.

9.10. **Malicious Software, Viruses, and Other Threats.** DBH shall use reasonable efforts to ensure their connection to and use of ICANS does not include any program, routine, subroutine, or data which will disrupt the proper operation of ICANS or any part of ICANS, or any hardware or software used by DBH in connection with ICANS. This includes the medium containing any data or other information provided to ICANS. DBH shall use reasonable efforts to ensure that any method of transmitting their data will not introduce any program, routine, subroutine, or data which will disrupt the proper operation of ICANS. DBH shall use reasonable efforts to ensure ICANS or any part thereof or any hardware, software or data used by DBH, or any Agency in connection with ICANS, is not destroyed, damaged, or rendered inoperable.
10. DISCLAIMERS, EXCLUSIONS OF WARRANTIES AND INDEMNIFICATIONS.

10.1. Carrier Lines. The Agency and DBH acknowledge that access to ICANS is provided over various facilities and communications lines. Information is transmitted over local exchange and Internet backbone carrier lines and through routers, switches, and other devices owned, maintained, and serviced by third-party carriers, utilities, and Internet service providers. These carrier lines are beyond the control of DBH or the Agency. Neither DBH nor the Agency assumes any liability for, or relating to, the integrity, privacy, security, confidentiality, or use of any information while it is transmitted on the carrier lines. This includes any delay, failure, interruption, interception, loss, transmission, or corruption of any data or other information attributable to transmission on the carrier lines. Use of the carrier lines is solely at the Agency’s risk and is subject to all applicable local, state, national, and international laws.

10.2. No Warranties. Access to ICANS, and the information obtained by an Authorized User under ICANS are provided “as is” and “as available” without any warranty of any kind, expressed or implied except as set forth in this paragraph. This includes implied warranties of merchantability, fitness for a particular purpose and, except as provided to the contrary in a vendor agreement, non-infringement. Notwithstanding the foregoing, DBH represents and warrants that (i) it has obtained the rights from those third party vendors necessary to vest in or grant to the Agency the various rights necessary in and to this Agreement; (ii) any services performed by DBH pursuant to this Agreement shall be performed in a professional manner, consistent with best practices in the industry and in a diligent, workmanlike, and expeditions manner; and (iii) it will use its best efforts to correctly transmit Data Exchanges on a timely basis. The Agency shall be solely responsible for any and all acts or omissions taken or made in reliance on the system or the information in the system, including inaccurate or incomplete information. DBH and each Agency disclaim any and all liability for erroneous transmissions and loss of service resulting from communication failures by telecommunication service providers or the system.

10.3. Indemnification.

10.3.1. Agency shall indemnify, defend, and save harmless the State, its officers, agents, employees, and volunteers from and against any and all liability, claims, damages, losses, expenses, actions, settlements, attorneys’ fees, and suits whatsoever caused by, arising out of, or in connection with Agency’s acts or omissions under this Agreement or Agency’s failure to comply with any state or federal statute, law, regulation, or rule.

10.3.2. Upon receipt of the State’s tender of indemnity and defense, Agency shall immediately take all reasonable actions necessary, including, but not limited to, providing a legal defense for the State, to begin fulfilling its obligation to indemnify, defend, and save harmless the State. Agency’s indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in whole or in part to any act or omission of the State under this Agreement. However, if it is determined by a final judgment that the State’s negligent act or omission is the sole proximate cause of a suit or claim, the State shall not be entitled to indemnification from the Agency with respect to such suit or claim, and the State, in its discretion, may reimburse the Agency for reasonable defense costs attributable to the defense
10.3.3. Any legal defense provided by the Agency to the State under this section must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code Sections 67-1401(13) and 67-1409(1).

10.4. Other Agencies. By using ICANS, each Agency acknowledges that other Agencies/Authorized Users have access to ICANS. Under these Terms and Conditions, other Agency’s shall agree to comply with these Terms and Conditions concerning use of the information made available through ICANS. The actions of such other parties are beyond the control of DBH. Accordingly, DBH does not assume any liability for, or relating to, any impairment of the privacy, security, confidentiality, integrity, availability, or restricted use of any information on ICANS resulting from any action or failure to act of any Agency or other party other than DBH; provided, however, DBH shall not be excused from liability to the extent that DBH has failed to redress, pursuant to the terms of this Agreement, patterns of misbehavior or misconduct by an Agency.

10.5. Agency’s Actions. Each Agency shall be solely responsible for any damage to a computer system, loss of data, and any damage to ICANS caused by that Agency or any party using a user ID assigned to the Agency/Authorized User or a member of their workforce.

10.6. Accuracy of Data. Each Agency shall be solely responsible for validating the accuracy of all output and reports, and protecting their data and programs from loss, by implementing appropriate security measures, including routine backup procedures. DBH is not responsible for the content of any information transmitted or received through DBH provision of ICANS.

10.7. Inaccurate Data. By using ICANS, each Agency acknowledges that all data accessed through ICANS originates from Agency’s and not from DBH. All such data is subject to change arising from numerous factors. These include changes to client health information made at the request of the client, changes in the client’s health condition, the passage of time and other factors. DBH neither initiates the transmission of any data nor monitors the specific content of data being transmitted. Without limiting any other provision of these Terms and Conditions, DBH shall have no responsibility for, or liability related to, the accuracy, content, currency, completeness, or delivery of any data either entered by a Data Agency, or used by an Authorized User, under these Terms and Conditions.

10.8. Client Care. Each Agency and their Authorized Users are solely responsible for all decisions and actions taken, or not taken, involving client care, utilization management, and quality management for their respective clients and clients resulting from, or in any way related to, the use of ICANS or the data made available thereby. No Agency or Authorized User shall have any recourse against, and through the respective User Agreements that apply thereto, each shall waive, any claims against DBH for any loss, damage, claim, or cost relating to or resulting from its own use or misuse of ICANS or the data made available thereby.
11. EFFECTIVE DATE AND TERM OF THE AGENCY AGREEMENT.

11.1. Effective Date. This Agreement is effective when it is signed by DBH and the Agency, or at a later date as specified in an amendment.

11.2. Agreement End Date. This Agreement shall automatically continue year to year thereafter unless terminated by either party under any of the provisions in section 4.5 in this Agreement.

The undersigned have read and understand this ICANS Agency Agreement, and agree to be bound by its terms;

Idaho Department of Health and Welfare, Division of Behavioral Health:

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<th>Ross Edmunds</th>
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