



## Sales Agreement

This Subscriber Sales Agreement (including HIPAA Business Associate Agreement, Subscriber Services Agreement and Order Form), effective as of this the 13<sup>th</sup> day of December, 2016 (“Service Effective Date”), is made by and between Patagonia Health, Inc. (“Business Associate” & “Vendor”), located at 15100 Weston Parkway, Suite 204, Cary, North Carolina 27513 (“Patagonia Health”) and, County of El Dorado, Health and Human Services Agency, Public Health Division (“Client”) Located at 931 Spring Street, Placerville, CA 95667.

### SUBSCRIBER SERVICES AGREEMENT

**Introduction:** Vendor has developed a subscription service as described herein (the “Service”) which provides services that enable medical professionals and their staffs to maintain their patient Electronic Medical Record / Practice Management Systems (the “Records”) within the Vendor Electronic Medical Record / Practice Management System Software (the “Software”) through Vendor’s secure network (the “Network”) using the Vendor database repository (the “Repository”). Subscriber is a Public Health Department which provides diagnostic and other medical services to patients. Subscriber and Vendor (the “Parties”) desire for Vendor to provide Services to Subscriber under the terms set forth herein.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

#### 1. Service Provisions

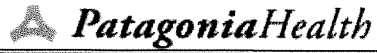
##### 1.1 Software.

- (a) Vendor grants to Client a non-exclusive, non-transferable license to use the Software, subject to the terms and conditions below.
- (b) In consideration of the payments made in accordance with this Agreement, Vendor grants to the Subscriber a non-exclusive, royalty-free, personal, non-transferable license during the term of this Agreement to allow its Users (as defined in Section 1.3(b)) to use the Software only in connection with the Service. Subscriber shall ensure that its Users do not, copy, reverse engineer, decompile or disassemble the Software or use it for any purposes other than those expressly authorized herein.

1.2 Internet Connection. Subscriber shall have sole responsibility to contract for, install, and maintain during the term of this Agreement an Internet connection which will enable the Records updated by Subscriber of its patients to be transmitted via the Internet to the Vendor Network (as defined in Sec. 1.3(c, d). The internet connection shall be established by installation date and shall be comparable with that specified and updated from time to time by Vendor.

1.3 Service. During the term of this Agreement, in consideration of Subscriber’s payment of the appropriate fees as set forth on the Order Form and Subscriber’s compliance with the provisions herein, Vendor shall provide the Service as follows:

- (a) Vendor shall provide services as for Subscriber’s personnel who are authorized by Subscriber in writing to Vendor (“Users”) in the use of the Software as it relates to the Services as set forth in the Order Form.
- (b) Vendor shall provide initial training for Subscriber’s personnel who are authorized by Subscriber in writing to Vendor (“Users”) in the use of the Software as it relates to the Services as set forth in the Order Form. Additional training requested by Subscriber shall be at the then-current hourly rate charged by Vendor. Subscriber shall allow only Users who have received proper training to utilize the Software and Vendor Network, and shall allow access only through passwords which comply with password requirements provided by Vendor. Subscriber shall protect, and ensure that its Users protect, the confidentiality of User passwords.
- (c) Users shall use the Software to transmit & update Records in the Vendor Repository via the internet connection through the Network.
- (d) Users shall use the Software to review Records in the Vendor Repository via the internet connection through the Network.



## Sales Agreement

1.4 Support. Vendor agrees to provide support subject to Subscriber's payment of the applicable support fees as follows:

- (a) Help desk support shall be provided during Vendor's standard help desk hours, with Vendor's recognized holidays excluded. "Help desk support" is defined as reasonable telephone support, which ranges from addressing simple application questions to providing in-depth technical assistance.
- (b) Vendor shall, in its sole discretion, provide periodic releases of the Software which include enhancements and corrections, as applicable.
- (c) Vendor shall be responsible for maintaining only the current and next most current release of the Software.
- (d) Vendor shall not be responsible for technical support, or liable for breaches of warranty, for issues caused by any third party hardware, software or connections, including the internet connection, by Subscriber's failure to maintain the most up-to-date anti-virus software.

2. Payment. Subscriber shall pay Vendor for Service as indicated on the Order Form. Subscriber will pay monthly for Services via check. Vendor shall have the right to assess a late payment fee of 0.5% per month, or the lawful maximum, whichever is lower, on any past due balance. Vendor reserves the right to suspend Services upon five (5) days written notice to Subscriber until payment of overdue amounts is made in full. Vendor may adjust billing for actual user count first day of each (annual) anniversary from service effective date.

3. Limited Warranties.

3.1 Vendor Warranties. Vendor warrants to Subscriber:

- (a) That the Service will function during the term of this Agreement substantially in accordance with the Service specifications provided to Subscriber by Vendor from time to time. Subscriber shall promptly notify Vendor in writing (as defined in Section 9.4) of the details of any material non-conformance to such Service specifications, and Vendor shall use commercially reasonable efforts to promptly correct or re-perform any Services to remedy such non-conformance of which it is so notified at no charge to Subscriber.
- (b) That it has, and will have during the term of this Agreement, all necessary rights to enter into and perform its obligations under this Agreement and to provide the Services as set forth in this Agreement, and that the Services shall be performed in accordance with all applicable laws and regulations.
- (c) That it will comply with privacy requirements as listed in the HIPAA Business Associate Agreement.

3.2. Subscriber Warranties. Subscriber warrants to Vendor:

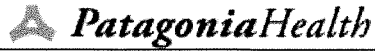
- (a) That Subscriber has, and will have during the term of this Agreement, all necessary rights, title and license to enter into and perform its obligations under this Agreement, including the rights to use all software, and connections, including the internet connection.
- (b) That Subscriber will comply with all applicable laws and regulations in the use of vendor's software, as well as Subscriber's clinical and ethical standards, policies and procedures, and industry standards, in handling Protected Health Information (PHI), as defined by Privacy Regulations issued pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") as they relate to individuals, and that Subscriber has all necessary rights and consents from individuals whose Records are transmitted over the Vendor Network for the purposes set forth herein.

4 Disclaimers. Subscriber acknowledges that factors beyond the reasonable control of Vendor, including without limitation, non-conformance with the Service functions by Subscriber or its personnel, or software, hardware, services or connections supplied by third parties, may have a material impact on the accuracy, reliability and/or timeliness of the compliance of the Services with the Service specifications. Notwithstanding any contrary provisions of this Agreement, in no event shall Vendor be responsible for any non-conformities, defects, errors, or delays caused by factors beyond the reasonable control of Vendor. The warranties expressly set forth in this section are the only warranties given by either party in connection with this agreement, and

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## Sales Agreement

no other warranty, express or implied, including implied warranties of merchantability, title, and fitness for a particular purpose, will apply.

5. Intellectual Property. Subscriber acknowledges and agrees that, between the parties, Vendor exclusively owns all rights to the Software, the Vendor Network, the Service, all materials, content and documentation provided by Vendor, and all derivatives to and intellectual property rights in any of the foregoing, including without limitation, patents, trademarks, copyrights, and trade secrets. Subscriber shall promptly advise Vendor of any possible infringement of which Subscriber becomes aware concerning the foregoing. Vendor acknowledges and agrees that, between the parties, Subscriber owns all data submitted by Subscriber or its personnel to Vendor or the Vendor Network.

6. Confidentiality. Each Party agrees: (a) that it will not disclose to any third party or use any confidential or proprietary information disclosed to it by the other Party (collectively, "Confidential Information") except as necessary for performance or use of the Services or as expressly permitted in this Agreement; and (b) that it will take all reasonable measures to maintain the confidentiality of all Confidential Information of the other Party in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance. "Confidential Information" shall include all non-public information of either Party disclosed hereunder, including without limitation, the Software, technical information, know-how, methodology, information relating to either Party's business, including financial, promotional, sales, pricing, customer, supplier, personnel, and patient information. "Confidential Information" will not include information that: (i) is in or enters the public domain without breach of this Agreement; (ii) the receiving Party lawfully receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation; (iii) the receiving Party knew prior to receiving such information from the disclosing Party; or (iv) develops independently without use of or resort to the other Party's Confidential Information. Subscriber consents in advance to the use of Subscriber's name and logo as a customer reference in Vendor marketing materials and other promotional efforts in connection with Service.

7. Term and Termination. This Agreement shall be in effect for an initial five year term from service effective date. Upon termination or expiration of this Agreement, Subscriber's right to use the Service or access the Vendor Network shall cease and each Party shall return to the other Party or destroy, with the consent of the disclosing Party, all Confidential Information of the disclosing Party. Upon termination for any reason, Subscriber shall pay Vendor all amounts incurred for Services performed prior to the effective date of termination and all amounts due for remaining term of the agreement. All payments made are non-refundable.

8. Limitation of Liability. In no event will either party be liable for any damages for loss of use, lost profits, business loss or any incidental, special, or consequential damages whether or not such party has been advised of the possibility of such damages. except for each party's indemnification obligations herein, each parties rights with regard to intellectual property, confidentiality obligations pursuant to section 6, and excluding subscriber's payment obligations pursuant to this agreement, in no event shall either party's liability in connection with or arising out of this agreement or the services exceed the service fees for three (3) month paid to Vendor by subscriber prior to the date the claim arose. Subscriber shall indemnify Vendor and hold Vendor harmless against any and all claims, demands, actions, or causes of action arising from, related to, or alleging negligence or other wrongful conduct in the diagnosis or treatment of any patient.

### 9. General Provisions.

9.1 Assignment. Subscriber may not assign this Agreement, in whole or in part, without Vendor's prior written consent. Any attempt by Subscriber to assign this Agreement other than as permitted above will be null and void.

9.2 Force Majeure. Vendor will not be responsible for any failure to perform due to causes beyond its reasonable control, including, but not limited to, acts of God, war, riot, failure of electrical, internet or telecommunications service, acts of civil or military authorities, fire, floods, earthquakes, accidents, strikes, or fuel crises.

9.3 Arbitration and Governing Law. All claims, disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and finally decided by mandatory and binding arbitration to be conducted in Wake County, North Carolina in accordance with the Arbitration Rules of the American Arbitration Association currently in effect as of the date of filing of any claim for arbitration. This Agreement will be governed by and construed in accordance with the laws of the State of North Carolina without regard to its conflicts of law principles.



## Sales Agreement

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9.4 Notice. Any notice under this Agreement will be in writing and delivered by personal delivery, overnight courier, or certified or registered mail, return receipt requested, and will be deemed given upon personal delivery, two (2) days after deposit with overnight courier or five (5) days after deposit in the mail. Notices will be sent to the Parties to addresses stated in this Agreement, or such other address or designee provided in writing by Parties.

9.5 No Agency. The Parties are independent contractors and will have no power or authority to assume or create any obligation or responsibility on behalf of each other. This Agreement will not be construed to create or imply any partnership, agency, or joint venture.

9.6 Waiver. No failure or delay by any Party in exercising any right, power, or remedy under this Agreement, except as specifically provided herein, shall operate as any waiver of any such right, power, or remedy.

9.7 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way. The Parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

9.8 Survival. The following provisions shall survive any termination or expiration of this Agreement: All definitions, and Sections 4 and 5 through 9.

9.9 Entire Agreement. This Agreement, constitutes the complete and exclusive agreement between the Parties with respect to the subject matter hereof, superseding any prior agreements and communications (both written and oral) regarding such subject matter. This Agreement may only be modified, or any rights under it waived, by mutual agreement of both Parties.



## Sales Agreement

### ORDER FORM

**Term:** This Agreement will run for an initial term of five years from the Service Effective Date. All fees including monthly subscription fees will increase, at the beginning of each year, by either 4% or US CPI whichever is higher. All payments made are non-refundable. Vendor may adjust billing for actual user count at the beginning of each anniversary date. All professional service fees, after first year, charged at the then current rate.

**Cancellation:** This agreement is for an initial minimum term of five years. After initial five year term, the agreement will automatically renew for the next year. Client may cancel the agreement with a three month written notice prior to the expiration of the current term.

**Marketing:** Client provides permission for use of client name in company's marketing material including videos and case studies.

Topic	Description	Rate	Units	Total Price
<b>Software Services: Monthly Charges (Minimum \$550/month)</b>				
	Pricing includes software of federally certified Electronic Medical Record, Practice Management and public health Billing software.			....\$3,815.....See attached Exhibit A Ver. 3.0 for pricing
	Includes Immunization Inventory app with Bar code scanning software, Pharmacy app, Communicator app and FPAR reports. Includes MU compliant patient portal with secure messaging to patients.			
	Includes federal Meaningful Use MU Stages 1, 2 and Stage 3 (2016+) upgrade.			
	Includes all clearinghouse charges for connectivity to numerous commercial and government payers including Medicaid, Medicare, BCBS etc.			
	Includes 0 Electronic Fax with unlimited faxing i.e. no per page fee.			
	Pricing is for up to...55.. users.			
	Additional users may be added at any time for an additional fee.			
<b>Initial Set Up: One Time Charge only</b>				
	Includes set up, configuration of software. Includes Data Migration from current system to new EHR. Patagonia Health will import & map customer provided patient demographic and clinical data into the new EHR. Customer is responsible to ensure that data is extracted from exiting system, data is received in a format acceptable to Patagonia Health and data mapping is correct and complete. Customer understands that not all data can be migrated seamlessly and successfully.			....\$45,000.....See attached Exhibit A Ver. 3.0 for pricing
	Includes interface to state immunization registry.			
	Additional interfaces and apps, electronic fax available at additional cost. Custom IT effort at \$150/hr.			
<b>Training</b>				
	Training: On site at \$2,250/day including travel costs and time. (All training during normal business hours: 9am to 5 pm local time. After business hours training at 1.5 times rates indicated. Travel time at rate of training). Additional hours at \$160/hr.	On site: \$2,250/day Incl. travel cost/time	..10 Days...	.....\$22,500.....
	Remote Training: Additional on line training available within first year of install. Remote training at \$80/hr: minimum 1 hour.	\$80/hour	....6 HRS....	\$.....Included.....
	Video Training: Unlimited, on demand, video training.	Included	NA	Included
	Incentive Assistance Service: Training and support for Meaningful Use incentive application registration and attestation. Payable each year at the beginning of contract anniversary.	\$1250/EP/yr.	.....2.....	...\$2,500.....
	Discount for first year of the Incentive Assistance Service training/assistance.	\$1250/EP/yr.	.....2.....	- \$2,500.....
<b>Total Payments</b>				
	<b>1. Monthly On-going subscription fee Payments: First two months are free. Monthly payments start 1<sup>st</sup> day of third month from the contract sign date.</b>			....\$3,815.....
	<b>2. Initial Start Up Payment ( \$45,000+ \$22,500+ \$3,815) payable upon contract signing: Includes initial Set up and first month payment.</b>			.....\$71,315.....





# Sales Agreement

## SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative.

SIGNATURES:

**Vendor (Patagonia Health, Inc.)**

Signature: 

Name: Ashok Mathur

Title: CEO

Email: ashok@patagoniahealth.com

Phone: 919 622 6740

**Client**

Signature:

Name:

Title:

Phone:

Fax:

Email:

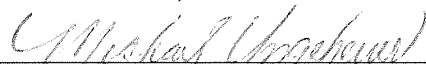
Cell:

Email for Invoices:

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Michael Ungeheuer, RN MN PHN, Community Public Health Nursing Division Manager, Health and Human Services Agency, or successor.

Signature Block for Board Approval:

**Requesting Contract Administrator Concurrence:**

By:   
Michael Ungeheuer, RN MN PHN,  
Community Public Health Nursing Division Manager  
Health and Human Services Agency

Dated: 12/30/2016



Sales Agreement

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative.

SIGNATURES:

**Vendor (Patagonia Health, Inc.)**

Signature:

Name: Ashok Mathur

Title: CEO

Email: ashok@patagoniahealth.com

Phone: 919 622 6740

**Client**

Signature:

Name: Michael Ungeheuer, RN MN PHN

Title: Public Health Nursing Director

Phone: 530-621-6129

Fax: 530-642-0892

Email: michael.ungeheuer@edcgov.us

Cell:

Email for Invoices:

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Michael Ungeheuer, RN MN PHN, Community Public Health Nursing Division Manager, Health and Human Services Agency, or successor.

Signature Block for Board Approval:

**Requesting Contract Administrator Concurrence:**

By: Michael Ungeheuer for  
Michael Ungeheuer, RN MN PHN,  
Community Public Health Nursing Division Manager  
Health and Human Services Agency

Dated: 11/21/16





# Sales Agreement

**Requesting Department Head Concurrence:**

By:   
Patricia Charles-Heathers, Ph.D.  
Director  
Health and Human Services Agency

Dated: 11/2/16

**COUNTY OF EL DORADO, a political subdivision of the State of California**

By   
Ron Mikulaco, Chair  
Board of Supervisors  
"County"

Date: 12/13/16

*ATTEST:*  
James S. Mitrison  
Clerk of the Board of Supervisors

By:

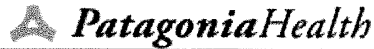
Dated: 12/13/16

**FORM INSTRUCTIONS**

**1. Please review the agreement and sign as appropriate. Signed agreements can be either:**

- Fax to Patagonia Health Inc, at F: 919 238 7920
- Or email to [sales@patagoniahealth.com](mailto:sales@patagoniahealth.com).
- Or Mail to Patagonia Health Inc, 202, Midenhall Way, Cary, NC 27513  
(Note Business address is: 15100 Weston Parkway, Suite 204, Cary, NC 27513)

**Please call your local representative with any questions.**



## Sales Agreement

**Exhibit A Version 3**

Exhibit A: Five Year Costs: El Dorado County Public Health Department, California  
 Patagonia Health Confidential Information: Not to be shared by outside agency.

Ver 3.0 6/1/2016

Number of Users	55	User is defined as anyone who has login
Number of Incentives Eligible Providers EP (NP, MD or	2	
Number of Incentives Eligible Providers EP (Dentists)	0	
Number of On Site Training Days	10	Large number of onsite training and go-live support days are included to maximize new EHR learning.
<b>Payments to Patagonia Health (Refer to Sales Agreement for details. Price valid if contract executed within 90 days.)</b>		
First Year Initial Set Up (implementation/training)	\$ 67,500	
Monthly Subscription Fees (Note 1)	\$ 3,815	

Annual Cash Flow						
	1st Year	2nd Year	3rd Year	4th Year	5th Year	Total 5 Years
CMS EMR Incentives						
EMR Incentive/Eligible Provider	\$ 21,250	\$ 8,500	\$ 8,500	\$ 8,500	\$ 8,500	\$ 55,250
EMR Incentive Payment to Business (for Medical EP)	\$ 42,500	\$ 17,000	\$ 17,000	\$ 17,000	\$ 17,000	\$ 110,500
EMR Incentive Payment to Business (for Dentist EP)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total CMS EMR Incentives Each Year (Medical + Dental)</b>	<b>\$ 42,500</b>	<b>\$ 17,000</b>	<b>\$ 17,000</b>	<b>\$ 17,000</b>	<b>\$ 17,000</b>	<b>\$ 110,500</b>
Payments to Patagonia Health	\$ 105,654	\$ 47,616	\$ 49,521	\$ 51,502	\$ 53,562	\$ 307,855
<b>Net Cash Flow to Organization (Positive Number means Net Savings)</b>	<b>(\$ 63,154)</b>	<b>(\$ 30,616)</b>	<b>(\$ 32,521)</b>	<b>(\$ 34,502)</b>	<b>(\$ 36,562)</b>	<b>(\$ 197,355)</b>

- Note 1:** Patagonia Health monthly subscription fees goes up, at each annual anniversary, by either US CPI rate or 4% whichever is greater.
- Note 2:** In the first year, first two months are free. Monthly charges begin on the first day of the third month from the contract sign date.
- Note 3:** Patagonia Health Inc. provides a unique Incentive Assistance Service to help customers understand eligibility, register and attest for the CMS EHR
- Note 4:** 2016 is the last year to be included in the CMS EHR incentives program. EHR incentives go on for 6 years. Sixth year at same rate as 5th year. EHR incentives in approx. 4 months from application. To be eligible for Medicaid Incentives, one needs to start the installation process and have valid for a federally certified EHR. To maximize EHR incentives, it is strongly recommended to sign an agreement well ahead of 1st Oct 2016.
- Note 5:** Includes federally certified Meaningful Use stage 2 EHR. Includes future upgrade to Stage 3 Meaningful Use (2016+) at no additional cost.
- Note 6:** Includes future upgrade to all CPT and ICD codes including ICD 10.
- Note 7:** Includes import of (customer provided) existing patient demographic data into Patagonia Health.
- Note 8:** Patagonia Health connects to 5000+ payers (including Medicaid, Blue Cross etc.) electronically. Includes all charges related to all billing and
- Note 9:** Includes unlimited real time insurance eligibility with 5000+ payers. Typically, get a response from payer within seconds.
- Note 10:** Includes Surescript certified Electronic Prescription software. Either print or send electronic prescription to any pharmacy.
- Note 11:** Patagonia Health solution works out of the box on day 1. Part of initial implementation includes customization of clinical forms, if needed.
- Note 12:** Patagonia Health solution includes comprehensive solution for public health, behavioral health and medical clinics. For complete feature list, go to <http://patagoniahealth.com/solutions/integrated-ehr-features/>
- Note 13:** Includes complete family planning capability and FPAR report. Excludes electronic interface to Ahlers: available at additional cost of \$3000 (one and \$150/month).
- Note 14:** Includes patient portal and secure messaging to patients via a meaningful use compliant patient portal.
- Note 15:** Includes connectivity to the state Immunization Registry.
- Note 16:** Includes Pharmacy app including medication tracking and inventory management.
- Note 17:** Includes Immunization Inventory app with Bar code scanning software.
- Note 18:** Includes Communicator app. Communicator app allows you to reach out to patients via either voice or text or email.
- Note 19:** Optional Dashboard app available at additional cost of Upfront: \$500 and \$50/user/month.
- Note 20:** Optional Electronic Fax available at additional cost of Upfront: \$700 and \$70/month.
- Note 21:** Includes built in CDC and WHO growth charts. Denver Assessment capability price TBD. We will need to do a workflow study and scope this
- Note 22:** Additional interfaces and optional apps at additional cost. Custom IT development available at \$150/hour.

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## Sales Agreement

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**Note 23:** Includes UB 04 Billing 1 provider only. Additional providers available at additional cost.

**Note 24:** Includes MSSP forms only. Does not include additional capabilities such as case management. Additional custom development at \$150/hour.

**Note 25:** Includes Two Factor Authentication.



## Sales Agreement

**Exhibit B**  
**HIPAA Business Associate Agreement**

This Business Associate Agreement is made part of the base contract (“Underlying Agreement”) to which it is attached, as of the date of commencement of the term of the Underlying Agreement (the “Effective Date”).

**RECITALS**

**WHEREAS**, County and Contractor (hereinafter referred to as Business Associate (“BA”) entered into the Underlying Agreement pursuant to which BA provides services to County, and in conjunction with the provision of such services, certain Protected Health Information (“PHI”) and Electronic Protected Health Information (“EPHI”) may be disclosed to BA for the purposes of carrying out its obligations under the Underlying Agreement; and

**WHEREAS**, the County and BA intend to protect the privacy and provide for the security of PHI and EPHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act, Pub. L. No. 104-191 of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH” Act), and regulation promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws as may be amended from time to time; and

**WHEREAS**, County is a Covered Entity, as defined in the Privacy Rule and Security Rule, including but not limited to 45 CFR Section 160.103 ; and

**WHEREAS**, BA, when a recipient of PHI from County, is a Business Associate as defined in the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 USC Section 17938 and 45 CFR Section 160.103; and

**WHEREAS**, “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.202(g);

**WHEREAS**, “Breach” shall have the meaning given to such term under the HITECH Act under 42 USC Section 17921; and

**WHEREAS**, “Unsecured PHI” shall have the meaning to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to 42 USC Section 17932(h).

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. **Definitions.** Unless otherwise provided in this Business Associate Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.



## Sales Agreement

2. Scope of Use and Disclosure by BA of County Disclosed PHI
- A. BA shall not disclose PHI except for the purposes of performing BA's obligations under the Underlying Agreement. Further, BA shall not use PHI in any manner that would constitute a violation of the minimum necessary policies and procedures of the County, Privacy Rule, Security Rule, or the HITECH Act.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Business Associate Agreement or required by law, BA may:
- (1) use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
  - (2) disclose the PHI in its possession to a third party for the purpose of BA's proper management and administration or to fulfill any legal responsibilities of BA, or as required by law
  - (3) disclose PHI as necessary for BA's operations only if:
    - (a) prior to making a disclosure to a third party, BA will obtain written assurances from such third party including:
      - (i) to hold such PHI in confidence and use or further disclose it only for the purpose of which BA disclosed it to the third party, or as required by law; and,
      - (ii) the third party will immediately notify BA of any breaches of confidentiality of PHI to extent it has obtained knowledge of such breach.
  - (4) aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
  - (5) not disclose PHI disclosed to BA by County not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by County.
  - (6) de-identify any and all PHI of County received by BA under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.
- C. BA agrees that it will neither use nor disclose PHI it receives from County, or from another business associate of County, except as permitted or required by this Business Associate Agreement, or as required by law, or as otherwise permitted by law.
3. Obligations of BA. In connection with its use of PHI disclosed by County to BA, BA agrees to:
- A. Implement appropriate administrative, technical, and physical safeguards as are necessary to prevent use or disclosure of PHI other than as permitted by the Agreement that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI in accordance with 45 CFR 164.308, 164.310, 164.312, and 164.504(e)(2). BA shall comply



## Sales Agreement

with the policies and procedures and documentation requirements of the HIPAA Security Rule.

- B. Report to the Privacy Officer of County any Unauthorized Use or Disclosure of PHI of which BA becomes aware. The initial report shall be made by either telephone call or email to the Privacy Officer of County within five (5) business days after discovery by BA of such unauthorized use or disclosure. BA shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. To the extent the Breach is solely a result of BA's failure to implement reasonable and appropriate safeguards as required by law, and not due in whole or part to the acts or omissions of the County, BA may be required to reimburse the County for notifications required under 45 CFR 164.404 and CFR 164.406.
- C. The telephone or email report shall be followed by a written report to the Privacy Officer which shall be made as soon as reasonably possible but in no event more than thirty (30) business days after discovery by BA of such unauthorized use or disclosure. This reporting obligation shall include unauthorized uses or disclosures by BA, its employees, subcontractors and/or agents. Each such report of an unauthorized use or disclosure shall include to the extent possible: (i) identify each individual whose PHI has been or is reasonably believed to have been used, accessed, acquired, or disclosed as a result of such unauthorized uses or disclosures; (ii) identify the nature of the unauthorized uses or disclosures, including the date of Discovery and Date of the unauthorized uses or disclosures; (iii) identify the types of PHI used or disclosed (e.g., whether an individual's full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved); (iv) identify who made the unauthorized uses or disclosures; (v) identify who received the unauthorized PHI; (vi) identify what corrective action Business Associate took or will take to prevent further unauthorized uses or disclosures and any other steps individuals should take to protect themselves from potential harm resulting from the Unauthorized Use or Disclosure; (vii) describe what Business Associate is doing to investigate the unauthorized uses or disclosures and identify what Business Associate did or will do to mitigate any deleterious effect of the unauthorized uses or disclosures
- D. BA shall not use or disclose PHI for fundraising or marketing purposes. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. BA shall not directly or indirectly receive remuneration in exchange of PHI, except with the prior written consent of the County and as permitted by the HITECH Act, 42 USC Section 17935(d)(2); however, this prohibition shall not affect payment by County to BA for services provided pursuant to the Agreement.
4. PHI Access, Amendment and Disclosure Accounting. BA agrees to:
- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable



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County to fulfill its obligations under the HITECH Act, including, but not limited to, 42 USC Section 17935(e).

- B. Within ten (10) days of receipt of a request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in BA's possession constitutes a Designated Record Set.
  - C. To assist the County in meeting its disclosure accounting under HIPAA:
    - (1) BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosure from Electronic Health Record for treatment, payment, or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At the minimum, the information collected shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if know, the address of the entity or person; (iii) a brief description of PHI disclosed and; (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
    - (2) Within in 30 days of notice by the County, BA agrees to provide to County information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.
  - D. Make available to the County, or to the Secretary of Health and Human Services (the "Secretary") , BA's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining BA's compliance with the Privacy Rule, subject to any applicable legal restrictions. BA shall provide County a copy of any PHI that BA provides to the Secretary concurrently with providing such information to the Secretary.
5. Obligations of County.
- A. County agrees that it will promptly notify BA in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
  - B. County agrees that it will promptly notify BA in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
  - C. County agrees that it will promptly notify BA in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect BA's use of disclosure of PHI.



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- D. County shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.
- E. County will obtain any authorizations necessary for the use or disclosure of PHI, so that BA can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.
6. Term and Termination.
- A. Term. This Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the County to BA, or created or received by BA on behalf of the County, is destroyed or returned to the County, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Termination for Cause. Upon the County's knowledge of a material breach by the BA, the County shall either:
- (1) Provide an opportunity for the BA to cure the breach or end the violation and terminate this Agreement if the BA does not cure the breach or end the violation within the time specified by the County. County will provide BA at least sixty (60) business days to cure the breach or end the violation.
  - (2) Immediately terminate this Agreement if the BA has breached a material term of this Agreement and cure is not possible; or
  - (3) If neither termination nor cures are feasible, the County shall report the violation to the Secretary.
- C. Effect of Termination.
- (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the BA shall, at the option of County, return or destroy all PHI that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI.
  - (2) In the event that the County determines that returning or destroying the PHI is infeasible, BA shall provide to the County notification of the conditions that make return or destruction infeasible, and . BA shall extend the protections of this Agreement to such PHI to those purposes that make the return or destruction infeasible, for so long as the BA maintains such PHI. If County elects destruction of the PHI, BA shall certify in writing to County that such PHI has been destroyed.





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7. Indemnity
- A. BA shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (collectively "County") from any liability whatsoever, based or asserted upon any services of BA, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to BA's performance under this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever to the extent arising from the performance of BA, its officers, agents, employees, subcontractors, agents or representatives under this Business Associate Agreement. BA shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards against the County in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by BA, BA shall, at its sole cost, have the right to use counsel of its choice, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes BA's indemnification of County as set forth herein. BA's obligation to defend, indemnify and hold harmless County shall be subject to County having given BA written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at BA's expense, for the defense or settlement thereof. BA's obligation hereunder shall be satisfied when BA has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
- C. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code Section 2782. Such interpretation shall not relieve the BA from indemnifying the County to the fullest extent allowed by law.
- D. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.
8. Amendment The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
9. Survival The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
10. Regulatory References A reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.



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11. Conflicts Any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.