



## 1. Sales Agreement

*Presented to*

**Humboldt County Public Health**  
10/21/2020

*Presented by*

**Patagonia Health, Inc.**

15100 Weston Parkway, Suite 204 Cary, NC 27513

Contact: Jason Suter

[jason@patagoniahealth.com](mailto:jason@patagoniahealth.com)

**SOFTWARE LICENSE AND SUPPORT SERVICES AGREEMENT  
BY AND BETWEEN  
COUNTY OF HUMBOLDT  
AND  
PATAGONIA HEALTH, INC.  
FOR FISCAL YEARS 2020-2021 THROUGH 2024-2025**

This Agreement, entered into this \_\_\_ day of \_\_\_\_\_, 2020, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Patagonia Health, Inc., a North Carolina corporation, hereinafter referred to as "COMPANY," is made upon the following considerations:

WHEREAS, COUNTY, by and through its Department of Health and Human Services – Public Health desires to retain a qualified professional firm to implement, support and maintain an electronic medical record and practice management software system for the purpose of providing diagnostic and other medical services to patients; and

WHEREAS, such work involves the performance of professional, expert and technical services of a temporary and occasional character; and

WHEREAS, COUNTY has no employees available to perform such services and is unable to hire employees for the performance thereof for the temporary period; and

WHEREAS, COMPANY has developed a subscription service ("Service") which provides services to enable medical professionals and their staffs to maintain their patient Electronic Medical Record / Practice Management System Software ("Software") through COMPANY's secure network ("Network") using COMPANY's database repository ("Repository").

WHEREAS, COMPANY represents that it is adequately trained, skilled, experienced and qualified to perform the services required by COUNTY.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. GRANT OF LICENSE AND DESCRIPTION OF SERVICES:

- A. Grant of License to Use Software. Subject to the terms and conditions of this Agreement, COMPANY hereby grants to COUNTY a non-exclusive, non-transferable and non-sublicensable license to access and use of COMPANY's Electronic Medical Record / Practice Management Systems ("Software") by COUNTY staff members for the purpose of the COUNTY providing diagnostic and other medical services to patients. COMPANY will use commercially reasonable efforts to provide COUNTY with access to the Software in accordance with the terms and conditions set forth in Exhibit A – Service Level Terms, which is attached hereto and incorporated herein by reference. In consideration of the payments made in accordance with this Agreement, COMPANY grants to COUNTY non-exclusive, royalty-free, personal, non-transferable rights to access and use during the term of this Agreement to allow its users to use the Software only in connection with the Service. COUNTY 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.

B. Technical Support Services.

Subject to the terms and conditions of this Agreement, COMPANY hereby agrees to provide technical support services via telephone during COMPANY's standard help desk hours, with COMPANY's recognized holidays excluded ("Support Hours"). Support Hours is defined as reasonable telephone support, which ranges from addressing simple application questions to providing in-depth technical assistance. COMPANY will respond to all tickets in accordance with Exhibit A, Service Level Terms.

2. SCOPE OF LICENSE:

A. Proprietary Rights. COMPANY shall own and retain all rights, title and interest in and to all of the following:

1. The Software and all improvements, enhancements, modifications, changes, translations, compilations and derivative works related thereto.
2. Any and all software, applications, inventions or other technology developed in connection with implementation and/or maintenance of the Software.
3. Any and all intellectual property rights related to any of the foregoing.

B. License Restrictions. COUNTY will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Software or other documentation or data related to or used to provide access to the Software; modify, translate or create derivative works based on the Software, except to the extent expressly permitted in writing by COMPANY; use the Software for timesharing or services bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.

C. Compliance with Export Laws. COUNTY shall not export or re-export, either directly or indirectly, the Software or any copies thereof in such a manner as to violate the export laws and regulations of the United States or any other applicable jurisdiction in effect from time to time, including, without limitation, when such export or re-export requires an export license or other governmental approval without first obtaining such license or approval. Without limiting the foregoing, COUNTY shall not permit any third parties to access or use the Software in violation of any United States export embargo, prohibition or restriction.

D. Monitoring and Suspension of Use. Although COMPANY has no obligation to monitor COUNTY's use of the Software, COMPANY may do so. COMPANY reserves the right, in its sole discretion, upon 60 days written notice to prohibit or suspend COUNTY's use of the Software at any time COMPANY believes such use to be in violation of this Agreement or otherwise harmful to the Software.

E. Maintenance of Equipment and Ancillary Services. COUNTY shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Software, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like ("Equipment"). COUNTY shall also be responsible for maintaining the security of the Equipment, COUNTY account,

passwords, including, but not limited to, administrative and user passwords, files, and for all uses of COUNTY's account or the Equipment with or without COUNTY's knowledge or consent.

3. TERM:

This Agreement shall begin upon execution by both parties and shall remain in full force and effect for a five-year term from upon execution by both parties unless sooner terminated as provided herein. The term may be optionally extended by one (1) year upon written agreement by both parties prior to expiration of initial term.

4. TERMINATION:

A. Termination for Cause. COUNTY may, in its sole discretion, immediately terminate this Agreement, if CONTRACTOR fails to adequately perform the services required hereunder, fails to comply with the terms or conditions set forth herein, or violates any local, state or federal law, regulation or standard applicable to its performance hereunder. Prior to such termination, COUNTY agrees to notify COMPANY in writing of a perceived violation and give COMPANY reasonable period of time, no less than thirty (30) business days, to remedy the violation prior to termination.

B. Termination due to Insufficient Funding. COUNTY's obligations under this Agreement are contingent upon the availability of local, state and/or federal funds. In the event such funding is reduced or eliminated, COUNTY shall, at its sole discretion, determine whether this Agreement shall be terminated. In the event that public funds are unavailable and not appropriated for the performance of COUNTY's obligations under this Agreement, then this Agreement shall expire, with a 3-month payment by COUNTY, upon written notice to COMPANY of the unavailability and non-appropriation of public funds. It is expressly agreed that COUNTY shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Agreement.

C. Compensation Upon Termination. Upon termination, COUNTY shall pay COMPANY all amounts incurred for Services performed prior to the effective date of termination.

D. Obligations Upon Termination. Upon termination or expiration of this Agreement, COUNTY's right to use the Service or access the COMPANY 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 and if COUNTY is current on payments, COMPANY will provide COUNTY their data in a federally defined Continuity of Care Document CCDA format, at no additional cost. If requested by COUNTY, COMPANY will provide additional data extraction services at additional cost.

5. COMPENSATION:

A. Maximum Amount Payable. The maximum amount payable by COUNTY for the licenses and services provided pursuant to the terms and conditions of this Agreement is specified in Exhibit C. COMPANY agrees to provide all licenses and perform all services required by this Agreement for an amount not to exceed such maximum dollar amount. However, if local, state or federal funding or allowance rates are reduced or eliminated, COUNTY may, by amendment, reduce the maximum amount payable for the licenses and services provided

hereunder, or terminate this Agreement as provided herein.

- B. Schedule of Rates. The specific rates and costs applicable to this Agreement are set forth in Exhibit C – Schedule of Rates, which is attached hereto and incorporated herein by reference.
- C. Additional Licenses and Services. Any additional licenses and/or services not otherwise set forth herein shall not be provided by COMPANY, or compensated by COUNTY, without written authorization by COUNTY. All unauthorized costs and expenses incurred above the 5 year amount in Exhibit C shall be the responsibility of COMPANY. COMPANY shall notify COUNTY, in writing, at least six (6) weeks prior to the date upon which COMPANY estimates that the maximum payable amount will be reached.

6. PAYMENT:

- A. Invoices. COMPANY shall submit to COUNTY annual invoices itemizing all costs and expenses incurred, pursuant to the terms and conditions of this Agreement. COMPANY shall submit a final invoice for payment within thirty (30) days following the expiration or termination date of this Agreement. Payment for the licenses and services provided pursuant to the terms and conditions of this Agreement will be made within thirty (30) days after the receipt of approved invoices. All invoices submitted by COMPANY shall be sent to COUNTY at the following address:

COUNTY: Humboldt County Department of Health and Human Services  
Attention: Jessica Bradbury, Administrative Analyst  
507 F Street  
Eureka, California 95001

- B. Disputed Costs. COUNTY shall have the right to reasonably and in good faith dispute any portion of any amount billed by COMPANY. If COUNTY believes that COMPANY has billed COUNTY incorrectly, COUNTY must contact COMPANY's customer support department in order to receive an adjustment or credit.
- C. Nonpayment. If any material and undisputed amount payable to COMPANY is in arrears for more than thirty (30) days from the invoice due date, COMPANY reserves the right, without prejudice to any other remedy, to charge COUNTY a late fee of five percent (5%), or the maximum amount permitted by law, whichever is lower, per month, plus all expenses of collection.

7. NOTICES:

Any and all notices required to be given pursuant to the terms of this Agreement shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: Humboldt County Department of Health and Human Services  
Attention: Public Health Director  
529 I Street  
Eureka, California 95501

COMPANY: Patagonia Health, Inc.  
Attention: Ashok Mathur, CEO  
15100 Weston Parkway, Suite 204  
Cary, North Carolina 27513

8. REPORTS:

COMPANY agrees to provide COUNTY with any and all reports that may be required by any local, state and/or federal agencies for compliance with this Agreement. COMPANY shall submit one (1) hard copy and one (1) electronic copy of any and all reports required hereunder in a format that complies with the Americans with Disabilities Act and any other applicable accessibility laws, regulations and standards. Any and all reports required hereunder shall be submitted in accordance with any and all applicable timeframes using the format required by the State of California as appropriate.

9. RECORD RETENTION AND INSPECTION:

- A. Maintenance and Preservation of Records. COMPANY agrees to timely prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the licenses and services provided hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under this Agreement, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the licenses and services provided pursuant to the terms and conditions of this Agreement.
- B. Inspection of Records. Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of COMPANY, and its subcontractors, related to the licenses and services provided hereunder, shall be subject to the examination and audit of the California State Auditor and any other duly authorized agents of the State of California for a period of three (3) years after final payment under this Agreement. COMPANY hereby agrees to make all such records available during normal business hours to inspection, audit and reproduction by COUNTY and any duly authorized local, state and/or federal agencies. COMPANY further agrees to allow interviews of any of its employees who might reasonably have information related to such records by COUNTY and any duly authorized local, state and/or federal agencies. All examinations and audits conducted hereunder shall be strictly confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering this Agreement.
- C. Audit Costs. In the event of an audit exception or exceptions related to the licenses and services provided pursuant to the terms and conditions of this Agreement, the party responsible for not meeting the requirements set forth herein shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because COMPANY's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by COUNTY.

10. MONITORING:

COMPANY agrees that COUNTY has the right to monitor all activities related to this Agreement, including, without limitation, the right to review and monitor COMPANY's records, policies or procedures, at any time, as well as the overall operation of COMPANY's business functions, in order to ensure compliance with the terms and conditions of this Agreement. COMPANY will cooperate with a corrective action plan, if deficiencies in COMPANY's records, programs or procedures are identified by COUNTY. However, COUNTY is not responsible, and will not be held accountable, for overseeing or evaluating the adequacy of the results of COMPANY's performance hereunder.

11. CONFIDENTIAL INFORMATION:

- A. Use and Disclosure of Proprietary Information. In the performance of this Agreement, each party may receive information of the other party that is not generally known to the public, including, but not limited to, trade secrets, know-how, inventions, techniques, algorithms, programs, documentation and data which may be designated as being confidential, or which under the circumstances surrounding disclosure, ought to be treated as confidential (collectively, "Proprietary Information"). Each party shall use and disclose only the minimum amount of Proprietary Information necessary to accomplish the intended purpose of this Agreement. Each party further agrees to protect all Proprietary Information in accordance with any and all applicable local, state and federal laws, regulations, policies and standards.
- B. Use and Disclosure of Personally Identifiable Information. In the performance of this Agreement, COMPANY may receive personally identifiable information that is confidential under local, state or federal law. COMPANY hereby agrees to protect all personally identifiable information in accordance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards, including, but not limited to: California Welfare and Institutions Code Sections 827, 5328, 10850 and 14100.2; California Health and Safety Code Sections 1280.15 and 1280.18; the California Information Practices Act of 1977; the California Confidentiality of Medical Information Act ("CMIA"); the United States Health Information Technology for Economic and Clinical Health Act ("HITECH Act"); the United States Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any current and future implementing regulations promulgated thereunder, including, without limitation, the Federal Privacy Regulations contained in Title 45 of the Code of Federal Regulations ("C.F.R.") Parts 160 and 164, the Federal Security Standards contained in 45 C.F.R. Parts 160, 162 and 164 and the Federal Standards for Electronic Transactions contained in 45 C.F.R. Parts 160 and 162, all as may be amended from time to time.
- C. Collection and Use of De-Identified Data. Notwithstanding anything to the contrary, COMPANY shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Software and related systems and technologies, and COMPANY will be free during and after the term of this Agreement to:
1. Use such information and data to improve and enhance the Software and for other development, diagnostic and corrective purposes in connection with the Software and other related services.
  2. Disclose such data solely in aggregate or other de-identified form in connection with its business.

- D. Use and Disclosure of Unrestricted Information. The prohibitions contained in this provision shall not apply to information which:
1. Is known by recipient prior to its receipt from the disclosing party or is, or becomes, public knowledge without the fault of the recipient.
  2. Is received from a source other than a party to this Agreement.
  3. Is independently developed by a party without causing a breach of the terms of this Agreement.
  4. Is required to be disclosed by court order or applicable law, including, but not limited to, the California Public Records Act, provided that advance notice of the disclosure is provided to other party.
- E. Continuing Compliance with Confidentiality Laws. The parties acknowledge that local, state and federal laws, regulations and standards pertaining to confidentiality, electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. Each party agrees to promptly enter into negotiations concerning an amendment to this Agreement embodying written assurances consistent with the standards and requirements of any applicable local, state and federal laws, regulations or standards.
- F. HIPAA Business Associate Requirements. COMPANY hereby agrees to adhere to the terms and conditions set forth in Exhibit D – County of Humboldt HIPAA Business Associate Agreement, which is attached hereto and incorporated herein by reference as if set forth in full.

12. NON-DISCRIMINATION COMPLIANCE :

- A. Professional Services and Employment. In connection with the execution of this Agreement, COMPANY, and its subcontractors, shall not unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of race, religion or religious creed, color, age (over forty (40) years of age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service, denial of family care leave or any other classifications protected by local, state or federal laws or regulations. Nothing herein shall be construed to require the employment of unqualified persons.
- B. Compliance with Anti-Discrimination Laws. COMPANY further assures that it, and its subcontractors, will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, et seq.; California Government Code Sections 4450, et seq.; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies



and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state and/or federal laws and regulations, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in Chapter 5, Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

13. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

COMPANY certifies by its signature below that it is not a Nuclear Weapons Contractor, in that COMPANY is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components, as defined by the Nuclear Free Humboldt County Ordinance. COMPANY agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if COMPANY subsequently becomes a Nuclear Weapons Contractor.

14. DRUG-FREE WORKPLACE CERTIFICATION:

By executing this Agreement, COMPANY certifies that it will comply with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code Sections 8350, et seq.) and will provide a drug-free workplace by doing all of the following:

- A. Drug-Free Policy Statement. Publish, as required by California Government Code Section 8355(a)(1), a Drug-Free Policy Statement which notifies employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited, and specifies the actions to be taken against employees for violations.
- B. Drug-Free Awareness Program. Establish, as required by California Government Code Section 8355(a)(2), a Drug-Free Awareness Program which informs employees about the following:
  1. The dangers of drug abuse in the workplace;
  2. COMPANY's policy of maintaining a drug-free workplace;
  3. Any available counseling, rehabilitation and employee assistance programs; and
  4. Penalties that may be imposed upon employees for drug abuse violations.
- C. Drug-Free Employment Agreement. Ensure, as required by California Government Code Section 8355(a)(3), that every employee who provides services pursuant to the terms and conditions of this Agreement will:
  1. Receive a copy of COMPANY's Drug-Free Policy Statement; and
  2. Agree to abide by COMPANY's Drug-Free Policy as a condition of employment.

- D. Effect of Noncompliance. Failure to comply with the above-referenced requirements may result in suspension of payments under this Agreement and/or termination thereof, and COMPANY may be ineligible for award of future contracts if COUNTY determines that the foregoing certification is false or if COMPANY violates the certification by failing to carry out the above-referenced requirements.

15. INDEMNIFICATION:

- A. General Indemnification. Each party hereto shall hold harmless, defend and indemnify the other party and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, the negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of the other party or its agents, officers, officials, employees or volunteers.
- B. Comparative Liability. Notwithstanding anything to the contrary, in the event that both parties are held to be negligently or willfully responsible, each party will bear their proportionate share of liability as determined in any such proceeding. In such cases, each party will bear their own costs and attorney's fees.
- C. Effect of Insurance. Acceptance of the insurance required by this Agreement shall not relieve COMPANY from liability under this provision. This provision shall apply to all claims for damages related to the licenses and services performed by COMPANY pursuant to the terms and conditions of this Agreement regardless of whether any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided by COMPANY hereunder.

16. INSURANCE REQUIREMENTS:

This Agreement shall not be executed by COUNTY, and COMPANY is not entitled to any rights hereunder, unless certificates of insurance, or other proof that the following provisions have been complied with, are filed with the Clerk of the Humboldt County Board of Supervisors.

- A. General Insurance Requirements. Without limiting COMPANY's indemnification obligations provided for herein, COMPANY shall, and shall require that all subcontractors hereunder, take out and maintain, throughout the entire period of this Agreement, and any extended term thereof, the following policies of insurance, placed with insurers authorized to do business in the State of California with a current A.M. Bests rating of no less than A: VII or its equivalent against personal injury, death and property damage which may arise from, or in connection with, the activities of COMPANY and its agents, officers, directors, employees, licensees, invitees, assignees or subcontractors:
1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001), in an amount of One Million Dollars (\$1,000,000.00) per occurrence for any one (1) incident, including, but not limited to, personal injury, death and property damage,

and Two Million Dollars (\$2,000,000.00) in aggregate. If a general aggregate limit is used, such limit shall apply separately hereto or shall be twice the required occurrence limit.

2. As stated in Exhibit A – Service Level Terms, COMPANY will not drive an automobile in the performance of the services required pursuant to the terms and conditions of this Agreement. If that changes, COMPANY will take out and maintain Automobile/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000.00) combined single limit coverage. Such insurance shall include coverage of all owned, hired and non-owned vehicles. Said coverage shall be at least as broad as Insurance Service Offices Form Code 1 (any auto).
  3. Workers' Compensation Insurance, as required by the Labor Code of the State of California, with statutory limits, and Employers Liability Insurance with a limit of no less than One Hundred Thousand Dollars (\$500,000.00) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY, its agents, officers, officials, employees and volunteers.
  4. Professional Liability Insurance – Error and Omission Coverage including coverage in an amount no less than Five Million Dollars (\$5,000,000.00) for each occurrence and aggregate. Said insurance shall be maintained for the statutory period during which COMPANY may be exposed to liability. COMPANY shall require that such coverage be incorporated into its professional services agreements with any other entities.
- B. Special Insurance Requirements. Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:
1. The Comprehensive or Commercial General Liability Policy shall provide that COUNTY, and its agents, officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by, or on behalf of, COMPANY. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY, its agents, officers, officials, employees and volunteers. Said policy shall also contain a provision stating that such coverage:
    - a. Includes contractual liability.
    - b. Does not contain exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to as "XCU Hazards."
    - c. Is the primary insurance with regard to COUNTY.
    - d. Does not contain a pro-rata, excess only and/or escape clause.
    - e. Contains a cross liability, severability of interest or separation of insureds clause.
  2. The above-referenced policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY in accordance with the notice provisions set forth herein. It is further understood that

COMPANY shall not terminate such coverage until COUNTY receives adequate proof that equal or better insurance has been secured.

3. The inclusion of more than one (1) insured shall not operate to impair the rights of one (1) insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one (1) insured shall not operate to increase the limits of the insurer's liability.
  4. For claims related to this Agreement, COMPANY's insurance is the primary coverage to COUNTY, and any insurance or self-insurance programs maintained thereby are excess to COMPANY's insurance and will not be used to contribute therewith.
  5. Any failure to comply with the provisions of this Agreement shall not affect coverage provided to COUNTY, its agents, officers, officials, employees and volunteers.
  6. COMPANY shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement. The endorsements shall be on forms approved by the Humboldt County Risk Manager or County Counsel. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000.00) shall be disclosed to, and approved by, COUNTY. If COMPANY does not keep all required policies in full force and effect, COUNTY may, in addition to other remedies under this Agreement, take out the necessary insurance, and COMPANY agrees to pay the cost thereof. COUNTY is also hereby authorized with the discretion to deduct the cost of said insurance from the monies owed to COMPANY under this Agreement.
  7. COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered, and COMPANY shall be required to purchase additional coverage to meet the above-referenced aggregate limits.
- C. Insurance Notices. Any and all insurance notices required to be given pursuant to the terms of this Agreement shall be sent to the addresses set forth below in accordance with the notice provisions described herein.

COUNTY: County of Humboldt  
Attention: Risk Management  
825 Fifth Street, Room 131  
Eureka, California 95501

COMPANY: Patagonia Health, Inc.  
Attention: Ashok Mathur, CEO  
15100 Weston Parkway, Suite 204  
Cary, North Carolina 27513

17. LIMITATION OF LIABILITY:

- A. Warranty and Disclaimer. COMPANY shall use reasonable efforts consistent with prevailing industry standards to maintain the Software in a manner which minimizes errors and interruptions in service, and shall perform the implementation and technical support services required hereunder in a professional and workmanlike manner. The Software may be

temporarily unavailable for scheduled or unscheduled emergency maintenance, either by COMPANY or by third-party providers, or because of other causes beyond COMPANY's reasonable control, but COMPANY shall provide COUNTY with 30 days advance written notice of any scheduled service disruption. However, COMPANY does not warrant that the Software will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the Software or the services provided hereunder. Except as expressly set forth in this Section, the Software, Analytics, and implementation and technical support services are provided "as is" and COMPANY disclaims all warranties, express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose and non-infringement.

- B. Limitation of Damages. Notwithstanding anything to the contrary, except for bodily injury of a person, COMPANY and its suppliers, including, but not limited to, all equipment and technology suppliers, officers, affiliates, representatives, contractors and employees shall not be responsible or liable, with respect to any terms or conditions of this Agreement, or terms or conditions related thereto, under any contract, negligence, strict liability or other theory for:
1. Any interruption of use.
  2. Any indirect, exemplary, incidental, special or consequential damages.
  3. Any matter beyond COMPANY's reasonable control.

18. RELATIONSHIP OF PARTIES:

It is understood that this Agreement is by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or any other similar association. Both parties further agree that COMPANY shall not be entitled to any benefits to which COUNTY employees are entitled, including, but not limited to, overtime, retirement benefits, leave benefits or workers' compensation. COMPANY shall be solely responsible for the acts or omissions of its agents, officers, employees, assignees and subcontractors.

19. COMPLIANCE WITH APPLICABLE LAWS AND LICENSURE REQUIREMENTS:

COMPANY agrees to comply with any and all local, state and federal laws, regulations, policies and procedures applicable to the licenses and services provided pursuant to the terms and conditions of this Agreement. COMPANY further agrees to comply with any and all applicable local, state and federal licensure and certification requirements.

20. PROVISIONS REQUIRED BY LAW:

This Agreement is subject to any additional local, state and federal restrictions, limitations, or conditions that may affect the provisions, terms or funding of this Agreement. This Agreement shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is not correctly stated, the parties agree to amend the pertinent section to make such insertion or correction.

21. REFERENCE TO LAWS AND RULES:

In the event any law, regulation, policy or procedure referred to in this Agreement is amended during the term hereof, the parties agree to comply with the amended provision as of the effective date of such amendment.

22. SEVERABILITY:

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

23. ASSIGNMENT:

Neither party shall delegate its duties nor assign its rights hereunder, either in whole or in part, without the other party's prior written consent, unless one party becomes part of another entity. Any assignment in violation of this provision shall be void, and shall be cause for immediate termination of this Agreement. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by either party to obtain supplies, technical support or professional services.

24. AGREEMENT SHALL BIND SUCCESSORS:

All provisions of this Agreement shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and permitted assigns.

25. WAIVER OF DEFAULT:

The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement. In no event shall any payment by COUNTY constitute a waiver of any breach of this Agreement or any default which may then exist on the part of COMPANY. Nor shall such payment impair or prejudice any remedy available to COUNTY with respect to any breach or default. COUNTY shall have the right to demand repayment of, and COMPANY shall promptly refund, any funds disbursed to COMPANY which in the judgment of COUNTY were not expended in accordance with the terms of this Agreement.

26. NON-LIABILITY OF COUNTY OFFICIALS AND EMPLOYEES:

No official or employee of COUNTY shall be personally liable for any default or liability under this Agreement.

27. AMENDMENT:

This Agreement may be amended at any time during the term of this Agreement upon the mutual consent of both parties. No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

28. STANDARD OF PRACTICE:

COMPANY warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. COMPANY's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

29. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395. 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 Humboldt County, California 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. Any disputes or differences (and prior to arbitration), which cannot be settled by the contact persons for this Agreement, and prior to arbitration, such dispute or difference shall be referred to the Parties' respective CEOs (or equivalents) who shall review and meet with a view to resolving the same within a period of not more than 30 days from the date of the submission. This Agreement will be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of law principles.

30. ADVERTISING AND MEDIA RELEASE:

All informational material related to this Agreement shall receive approval from COUNTY prior to being used as advertising or released to the media, including, but not limited to, television, radio, newspapers and internet. COMPANY shall inform COUNTY of all requests for interviews by the media related to this Agreement before such interviews take place; and COUNTY shall be entitled to have a representative present at such interviews. All notices required by this provision shall be given to the Humboldt County Administrative Officer or a designee thereof.

31. SUBCONTRACTS:

Any and all subcontracts shall be subject to the terms and conditions and confidentiality requirements set forth in Section 11 – Confidential Information and the County of Humboldt HIPAA Business Associate Agreement in Exhibit D. COMPANY shall remain legally responsible for the performance of all terms and conditions of this Agreement, including work performed by third parties under subcontracts, whether approved by COUNTY or not.

32. ATTORNEYS' FEES:

If either party shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any provision of this Agreement to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees, including the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal, if applicable. As used herein, "prevailing party" means the party who dismisses an action or proceeding in exchange for payment

of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

33. SURVIVAL:

The duties and obligations of the parties set forth in Section 4(D) – Compensation Upon Termination, Section 9 – Record Retention and Inspection, Section 11 – Confidential Information and Section 15 – Indemnification shall survive the expiration or termination of this Agreement.

34. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in this Agreement, the terms and conditions set forth herein shall have priority.

35. INTERPRETATION:

This Agreement, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one (1) party on the basis that the other party prepared it.

36. INDEPENDENT CONSTRUCTION:

The titles of the sections, subsections and paragraphs set forth in this Agreement are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

37. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

38. ENTIRE AGREEMENT:

This Agreement contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto. In addition, this Agreement shall supersede in their entirety any and all prior agreements, promises, representations, understandings and negotiations of the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this Agreement are hereby ratified.

39. COUNTERPART EXECUTION:





<http://www.patagoniahealth.com>

**SALES AGREEMENT**

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the first date written above.

**TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:**

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
- (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER.

**PATAGONIA HEALTH, INC.:**

By: 

Date: 10/22/2020

Name: Ashok Mathur

Title: CEO & President

By: 

Date: 10/22/2020

Name: Madhur Mathur

Title: Secretary

**COUNTY OF HUMBOLDT:**

By:   
Virginia Bass

Date: 1/5/2021

Chair, Humboldt County Board of Supervisors

**INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:**

By:   
Risk Management

Date: 12/17/2020

**LIST OF EXHIBITS:**

- Exhibit A – Services Level Terms
- Exhibit B – Order Form
- Exhibit C – Schedule of Rates
- Exhibit D – Business Associate Agreement

This Agreement, and any amendments hereto, may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. A signed copy of this Agreement, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement and any amendments hereto.

40. AUTHORITY TO EXECUTE:

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.

[Signatures on Following Page]

**EXHIBIT A  
SERVICE LEVEL TERMS**

Patagonia Health, Inc.  
Fiscal Years 2021-2022 through 2024-2025

Patagonia Health, Inc., herein referred to as "COMPANY" has developed a subscription services as described herein (the "Software"), which provides services that enable medical professionals and their staff to maintain their patient Electronic Medical Record / Practice Management Systems (the "records") within the COMPANY's Electronic Medical Record / Practice Management System Software (the "Software") through COMPANY's secure network (the "network") using COMPANY database repository (the "Repository"). DHHS – Public Health, "COUNTY," is an organization which provides diagnostic and other medical services to patients. COUNTY and COMPANY (the "Parties") desire for COMPANY to provide Software to COUNTY under the terms set forth in the body of this Agreement, and in this Exhibit A.

1. SERVICE PROVISIONS

A. Internet Connection

COUNTY 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 COUNTY of its patients to be transmitted via the Internet to the COMPANY network. The internet connection shall be established by installation date and shall be comparable with that specified and updated from time to time by COMPANY.

B. Service

During the term of this Agreement, in consideration of COUNTY's payment of the appropriate fees as set forth in Exhibit C – Schedule of Rates, and COUNTY's compliance with the provisions herein, COMPANY shall provide the service as follows:

- a. COMPANY shall provide services as for COUNTY's personnel who are authorized by COUNTY in writing to COMPANY ("Named Users") in the use of the Software as it relates to the services as set forth in Exhibit B - Order Form.
- b. COMPANY shall provide initial training for COUNTY's personnel who are authorized by COUNTY in writing to COMPANY ("Named Users") in the use of the Software as it relates to the services as set forth in Exhibit B - Order Form. Additional training requested by COUNTY shall be at the then-current hourly rate charged by COMPANY. COUNTY shall only allow Named Users who have received proper training to utilize the Software and COMPANY network, and shall allow access only through passwords which comply with password requirements provide by COMPANY. COUNTY shall protect, and ensure, that its Named Users protect, the confidentiality of User passwords.
- c. Users shall use the software to transmit and update records in the COMPANY Repository via the internet connection through the network.
- d. Users shall use the Software to review records in the COMPANY Repository via the internet connection through the network.

C. Support

COMPANY agrees to provide support subject to COUNTY's payment of the applicable support fees as follows:

- a. Help desk support shall be provided during COMPANY's standard help desk hours, with COMPANY's recognized holidays excluded. "Help desk support" is defined as reasonable support, which ranges from addressing simple application questions to providing in-depth technical assistance.
  - Help desk support available via:
    1. Feedback button in the software. Click on the Feedback (left hand side of all screens) in the software.
    2. Email to [support@patagoniahealth.com](mailto:support@patagoniahealth.com) available twenty-four (24) hours, seven (7) days a week.
    3. Patagonia Health support line: 919-238 4780. Support is available Monday – Friday 8:00am – 5:00pm Eastern Standard Time.
- b. COMPANY shall, in its sole discretion, provide periodic releases of the Software which include enhancements and corrections, as applicable.
- c. COMPANY shall be responsible for maintaining only the current release of the Software.
- d. COMPANY 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 COUNTY's failure to maintain the most up-to-date anti-virus software.

2. LIMITED WARRANTIES

A. Company Warranties

COMPANY warrants to the COUNTY:

- a. That the Software will function during the term of this Agreement substantially in accordance with the specifications provided to COUNTY by COMPANY from time to time. COUNTY shall promptly notify COMPANY in writing (as defined in Section 7, NOTICES in the main body of this Agreement) of the details of any material non-conformance to such Software specifications, and COMPANY 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 COUNTY.
- 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 Software 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 Business Associate Agreement (Exhibit D).

B. County Warranties

COUNTY warrants to COMPANY:

- a. That COUNTY 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 COUNTY will comply with all applicable laws and regulations in the use of COMPANY's Software, as well as COUNTY'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 COUNTY has all necessary rights and consents from individuals whose records are transmitted over the COMPANY network for the purposes set forth herein.

**EXHIBIT B  
ORDER FORM**

Patagonia Health, Inc.  
Fiscal Years 2021-2022 through 2024-2025

All fees including monthly subscription fees will increase, at the beginning of each year, by either 4% or US CPI whichever is higher.

Item / Description	Quantity	One-Time Upfront Charge	Monthly Subscription Fee
<p>Includes: Named Users</p> <p>Includes: Base System: complete, end to end, patient registration, electronic charting, billing and reporting system. Enter data once and it auto-populates throughout the system.</p> <p>Includes Federally certified Electronic Health Records (EHR). Ensures EHR meets all the federal standards including, but not limited to, stringent privacy, security requirements and clinical quality measures. No separate or additional charge for meaningful use certification upgrade.</p> <p>Web based (Software as a Service (SaaS)) EHR eliminates the need for cost and maintenance of servers on customer premises.</p> <p>Includes Electronic Prescription (Surescript gold certified), no separate or additional per provider charges</p> <p>Connectivity to clearinghouse, no separate or additional clearinghouse EDI charges.</p> <p>Includes upgrade to ICD, CPT and DSM billing codes, no separate or additional charges for codes or upgrades</p> <p>Patient portal (meaningful use compliant), no separate or additional charges for users</p> <p>Secure Messaging (staff to staff and agency to patient).</p>	20	Included	Included

<b>System Setup and Configuration:</b> Patagonia Health will set up customer complete EHR (including any calendar, sliding fee scale, programs, clinical templates, billing and connectivity to clearinghouse) based on customer need.		Included	NA
<b>Data Migration:</b> Import of customer provided Patient Demographic data.		Included	NA
<b>Data Migration:</b> Import of customer provided select Clinical data		Included	NA
<b>Interface:</b> CA. State Immunization Registry (CAIR).		Included	Included
<b>Interface:</b> Quest Lab: (Results Only).		Included	Included
<b>Immunization Inventory App.</b> (vaccine tracking and inventory management).		Included	Included
<b>Pharmacy App.</b> (Designed for local health departments to automate medication dispensing, tracking, audit and inventory control).		Included	Included
<b>Electronic Patient Consent Forms with Editor Tool.</b> (Allows patients to sign all of your county's consent forms electronically. Patagonia Health will setup the initial 10 consents provided during implementation and train you to use the consent editor tool, allowing for unlimited number of patient consents to be generated).	10	Included	Included
<b>Communicator App.</b> (Automated patient appointment reminders via text, voice and/or email).		Included	Included
<b>Institutional 837i (UB 04) Billing.</b> (per rendering National Provider Identifier (NPI)).	1	Included	Included
<b>Patient ID Scanning Feature.</b> Directly scan patient driver license and/or insurance card information into patient demographics (Scanner to be purchased by the Health Department) (Monthly price is per scanner).	1	Included	Included
<b>Worker's Comp Insurance:</b> One-time cost to meet Humboldt County's insurance requirements.		Included	N/A
<b># of Onsite Training Days:</b> (Note: Days quoted are per person days).	4	Included	NA

<b>Training (Videos):</b> Unlimited, on-demand, access by each user to built-in training videos.		Included	NA
<b>Remote Training via Web Meeting:</b> Includes 8 hours base.  Additional hours sold in 2-hour increments (4 hours min) at \$100/hour.		Included	NA



**EXHIBIT C  
SCHEDULE OF RATES**

Patagonia Health, Inc.  
Fiscal Years 2021-2022 through 2024-2025

COUNTY shall compensate COMPANY for the licenses and technical support services provided pursuant to the terms and conditions of this Agreement based on the maximum rates set forth herein.

**FIVE YEAR PRICE:**

<b>Payments</b>	<b>1st Year</b>	<b>2nd Year</b>	<b>3rd Year</b>	<b>4th Year</b>	<b>5th Year</b>	<b>Total 5 Years</b>
Payments to Patagonia Health	\$59,800.00	\$22,588.80	\$23,492.35	\$24,432.04	\$25,409.33	\$155,722.52

Optional 6<sup>th</sup> Year Payment: \$26,425.70

Total for 6 Years: \$182,148.22\*

\* This is the maximum amount the County will pay Patagonia Health provided no other optional items are selected. Should any other services / fees be needed, both parties agree to enter into a separate, Add-on Agreement, specifying the additional fees and services to be provided.

**SIGN-UP DISCOUNT CALCULATION**

<b>Total Pricing Summary</b>	
<b>Item/Type</b>	<b>Total Charges</b>
Subscription Fees: Monthly, Ongoing	\$1,810.00
Implementation: One-Time Upfront Charges	\$31,300.00
Training: One-Time Upfront Charges	\$10,000.00
Additional Insurance Requirements (One-Time)	\$400.00
<b>Totals</b>	<b>\$42,110.00</b>

<b>Total Payments</b>	
1. Monthly On-going subscription fee Payments: Monthly payments start 1st day of 3rd month from the contract sign date.	\$1,810.00
2. Initial Start Up Payment payable upon contract signing: Includes initial Set up (\$31,300.00) + Training (\$10,000.00) + first monthly subscription fees (1 * \$1,810.00/month) + Additional Insurance (\$400.00) = \$43,510.00	\$43,510.00

**Payment and Pricing Notes:**

- The above Total Pricing Summary table does not include items quoted as "optional." See

- Table 4 "Optional Functionality & Interfaces" below for further details.
2. Monthly On-going subscription fee Payments:
    - a. First 2 months are free.
    - b. Monthly payments start 1st day of 3rd month from the contract sign date. This includes a time limited discount for signing an agreement by an assigned date.
  3. Initial Start-up Payment payable upon contract signing: Includes initial Implementation charges, initial Training charges, and first monthly subscription fees.

**PAYMENT SCHEDULE:**

**Annual Payment Plan** (All Annual Payments, each year, paid in advance):

Initial to Accept: \_\_\_\_\_

(a) Total Year 1 Contract Amount: \$59,800.00  
 (b) Discount on only first year total payment (2%) ~~-\$1,188.00~~

(c) Total Payment after discount for Year 1: **\$58,612.00**  
*(Due within 30 days of invoice/contract)*

Optional Items: Initial to Purchase	Quantity	One-Time Upfront Charge	Monthly Subscription Fee	Initial to Purchase
Interface: Quest Lab: (Results & Orders).	0	\$5,000.00	\$75.00	N/A
Interface: Health Information Exchange - North Coast Health Improvement and Information Network	0	\$7,500.00	\$125.00	N/A
<b>Immunization Barcode Scanning Software.</b> (Barcode Scanning Software to support Immunization Inventory App. Increase speed and accuracy of immunization inventory). Barcode Scanner to be purchased separately by the Health Department	0	\$3,000.00	\$50.00	N/A
<b>Electronic Fax.</b> (Allows for paperless inbound faxes with quick and easy outbound faxing. Unlimited number of fax pages) (Price is per 1 fax	0	\$700.00	\$70.00	N/A

**NOTES:**

*Pricing of optional items is guaranteed for 12 months from contract signing and can be added at any time.*

**EXHIBIT D  
 COUNTY OF HUMBOLDT HIPAA BUSINESS ASSOCIATE AGREEMENT  
 Patagonia Health, Inc.**

Fiscal Years 2021-2022 through 2024-2025

**RECITALS:**

**WHEREAS**, COUNTY, as a "Covered Entity" (defined below) wishes to disclose certain information to CONTRACTOR, hereafter known as the "BUSINESS ASSOCIATE" pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI").

**WHEREAS**, COUNTY and BUSINESS ASSOCIATE intend to protect the privacy and provide for the security of PHI disclosed to BUSINESS ASSOCIATE pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information and Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

**WHEREAS**, pursuant to HIPAA Regulations, the Privacy Rule and Security Rule (defined below) COUNTY is required to enter into an Agreement containing specific requirements with BUSINESS ASSOCIATE prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e), and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this Agreement.

**NOW THEREFORE**, the parties hereto mutually agree as follows:

1. **DEFINITIONS:**

- A. **Breach**. As used herein, the term "Breach" shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402].
- B. **Breach Notification Rule**. As used herein, the term "Breach of Notification Rule" shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.
- C. **Business Associate**. As used herein, the term "Business Associate" shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- D. **Covered Entity**. As used herein, the term "Covered Entity" shall have the meaning given to such term under the Privacy and Security Rules, including, without limitation, 45 C.F.R. Section 160.103.
- E. **Designated Record Set**. As used herein, the term "Designated Record Set" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- F. **Electronic Protected Health Information**. As used herein, the term "Electronic Protected Health Information" means Protected Health Information that is maintained in or transmitted by electronic media.

- G. **Electronic Health Record.** As used herein, the term "Electronic Health Record" shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- H. **Health Care Operations.** As used herein, the term "Health Care Operations" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- I. **Privacy Rule.** As used herein, the term "Privacy Rule" shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- J. **Protected Health Information.** As used herein, the term "Protected Health Information" ("PHI") means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- K. **Protected Information.** As used herein, the term "Protected Information" shall mean PHI provided by COUNTY to BUSINESS ASSOCIATE or created, maintained, received, or transmitted by BUSINESS ASSOCIATE on COUNTY's behalf.
- L. **Security Incident.** As used herein, the term "Security Incident" shall have the same meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.
- M. **Security Rule.** As used herein, the term "Security Rule" shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- N. **Unsecured PHI.** As used herein, the term "Unsecured PHI" shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.
2. **OBLIGATIONS OF BUSINESS ASSOCIATE:**
- A. **Permitted Uses.** BUSINESS ASSOCIATE shall use Protected Information only for the purpose of performing BUSINESS ASSOCIATE's obligations under the Agreement and as permitted or required under the Agreement, or as required by law. Further, BUSINESS ASSOCIATE shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by COUNTY. However, BUSINESS ASSOCIATE may use Protected Information as necessary (i) for the proper management and administration of BUSINESS ASSOCIATE; (ii) to carry out the legal responsibilities of BUSINESS ASSOCIATE; or (iii) as required by law. [45 C.F.R. Sections 164.504(e)(2), 164.504(e)(4)(i)].
- B. **Permitted Disclosures.** BUSINESS ASSOCIATE shall disclose Protected Information only

for the purpose of performing BUSINESS ASSOCIATE's obligations under the Agreement and as permitted or required under the Agreement, or as required by law. BUSINESS ASSOCIATE shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by COUNTY. However, BUSINESS ASSOCIATE may disclose Protected Information as necessary (i) for the proper management and administration of BUSINESS ASSOCIATE; (ii) to carry out the legal responsibilities of BUSINESS ASSOCIATE; or (iii) as required by law. If BUSINESS ASSOCIATE discloses Protected Information to a third-party, BUSINESS ASSOCIATE must obtain, prior to making any such disclosure, (i) reasonable *written* assurances from such third-party that such Protected Information will be held confidential as provided pursuant to this Agreement and used or disclosed only as required by law or for the purposes for which it was disclosed to such third-party, and (ii) a written agreement from such third-party to immediately notify BUSINESS ASSOCIATE of any breaches, suspected breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2.I. of the Agreement, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)].

- C. **Prohibited Uses and Disclosures.** BUSINESS ASSOCIATE shall not use or disclose PHI other than as permitted or required by the Agreement, or as required by law. BUSINESS ASSOCIATE shall not use or disclose Protected Information for fundraising or marketing purposes. BUSINESS ASSOCIATE shall not disclose Protected Information 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 PHI solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(vi)]. BUSINESS ASSOCIATE shall not directly or indirectly receive remuneration in exchange for Protected Information, except with prior written consent of COUNTY and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however, this prohibition shall not affect payment by COUNTY to BUSINESS ASSOCIATE for services provided pursuant to the Agreement.
- D. **Appropriate Safeguards.** BUSINESS ASSOCIATE shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including but not limited to, 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BUSINESS ASSOCIATE shall comply with the policies, procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931].
- E. **Business Associate's Subcontractors and Agents.** BUSINESS ASSOCIATE shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of COUNTY, agree in writing to the same restrictions and conditions that apply to COUNTY with respect to such Protected Information and implement the safeguards required by paragraph 2(D) above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BUSINESS ASSOCIATE shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).

- F. **Access to Protected Information.** If BUSINESS ASSOCIATE maintains a designated record set on behalf of COUNTY, BUSINESS ASSOCIATE shall make Protected Information maintained by BUSINESS ASSOCIATE or its agents or subcontractors in Designated Record Sets available to COUNTY for inspection and copying within five (5) days of a request by COUNTY to enable COUNTY to fulfill its obligations under California Health and Safety Code Section 123110 and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(e)]. If BUSINESS ASSOCIATE maintains Protected Information in electronic format, BUSINESS ASSOCIATE shall provide such information in electronic format as necessary to enable COUNTY to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. Section 164.524.
- G. **Amendment of PHI.** If BUSINESS ASSOCIATE maintains a designated record set on behalf of COUNTY, within ten (10) business days of a request by COUNTY for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BUSINESS ASSOCIATE and its agents and subcontractors shall make such Protected Information available to COUNTY for amendment and incorporate any such amendment or other documentation to enable COUNTY to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If an individual requests an amendment of Protected Information directly from BUSINESS ASSOCIATE or its agents or subcontractors, BUSINESS ASSOCIATE must notify COUNTY in writing within ten (10) business days of the request and of any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors [45 C.F.R. Section 164.504(e)(2)(ii)(F)].
- H. **Accounting of Disclosures.** BUSINESS ASSOCIATE and its agents and subcontractors agrees to provide COUNTY an accounting of disclosures of Protected Information, and shall make available to COUNTY the information required to provide an accounting of disclosures to enable COUNTY to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), and in a time and manner determined by COUNTY. BUSINESS ASSOCIATE agrees to implement a process that allows for an accounting to be collected and maintained by BUSINESS ASSOCIATE and its agents and subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an 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 BUSINESS ASSOCIATE maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information 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. If a patient submits a request for an accounting directly to BUSINESS ASSOCIATE or its agents or subcontractors, BUSINESS ASSOCIATE shall forward it to COUNTY in writing in a time and manner designated by COUNTY in order to respond to a request in accordance with 45 C.F.R. Section 164.528.
- I. **Governmental Access to Records.** BUSINESS ASSOCIATE shall make its internal practices, books and records relating to the use and disclosure of Protected Information

available to COUNTY and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BUSINESS ASSOCIATE's compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BUSINESS ASSOCIATE shall concurrently provide COUNTY with copies of any Protected Information and other records that BUSINESS ASSOCIATE provides to the Secretary.

- J. **Minimum Necessary.** BUSINESS ASSOCIATES and its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)]. BUSINESS ASSOCIATE understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- K. **Data Ownership.** BUSINESS ASSOCIATE understands that BUSINESS ASSOCIATE has no ownership rights with respect to the Protected Information.
- L. **Notification of Possible Breach.** BUSINESS ASSOCIATE shall notify COUNTY within five (5) business days of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Agreement; any security incident (i.e., any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by BUSINESS ASSOCIATE or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the BUSINESS ASSOCIATE to have been accessed, acquired, used, or disclosed, as well as any other available information that COUNTY is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.1408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BUSINESS ASSOCIATE shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]. Any and all notices required pursuant to the terms and conditions of this provision shall be submitted to COUNTY at the following address:

**COUNTY:** Humboldt County DHHS Compliance and Quality Assurance Office  
Attention: Compliance and Quality Assurance Administrator & Privacy Officer  
507 F Street  
Eureka, California 95501  
(707) 441-5410

- M. **Breach Pattern or Practice by Business Associate's Subcontractors and Agents.** Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(ii), if BUSINESS ASSOCIATE knows of a pattern or activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Agreement or other arrangement, BUSINESS ASSOCIATE must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, BUSINESS ASSOCIATE

must terminate the Agreement or other arrangement if feasible. BUSINESS ASSOCIATE shall provide written notice to COUNTY of any pattern of activity or practice of a subcontractor or agent that BUSINESS ASSOCIATE believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Agreement or other arrangement within five (5) days of discovery and shall meet with COUNTY to discuss and attempt to resolve the problem as one (1) of the reasonable steps to cure the breach or end the violation.

- N. **Audits, Inspection and Enforcement.** Within thirty (30) business days of a request by COUNTY, BUSINESS ASSOCIATE and its agents and subcontractors shall allow COUNTY or its agents or subcontractors to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Agreement for the purpose of determining whether BUSINESS ASSOCIATE has complied with this Agreement or maintains adequate security safeguards. BUSINESS ASSOCIATE shall notify COUNTY within thirty (30) days of learning that BUSINESS ASSOCIATE has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights or other state or federal government entity if the audit, compliance review or complaint investigation by Office of Civil Rights or other state or federal government entity is in relation to COUNTY PHI.

3. **TERMINATION:**

- A. **Material Breach.** A breach by BUSINESS ASSOCIATE of any provision of this Business Associate Agreement, Exhibit D, as determined by COUNTY, shall constitute a material breach of the Agreement and shall provide grounds for *immediate* termination of the Agreement, any provision in the Agreement to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].
- B. **Effect of Termination.** Upon termination of the Agreement for any reason, BUSINESS ASSOCIATE shall, at the option of COUNTY, return or destroy all Protected Information that BUSINESS ASSOCIATE or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by COUNTY, BUSINESS ASSOCIATE shall continue to extend the protections of Section 2 of this Agreement to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(ii)(2)(J)]. If COUNTY elects destruction of the PHI, BUSINESS ASSOCIATE shall certify in writing to COUNTY that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.

4. **INTERPRETATION:**

Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, and the HIPAA regulations.