

This Subscriber Sales Agreement (including HIPAA Business Associate Agreement, Subscriber Services Agreement and Order Form), effective as of this the 9th day of Apr, 2014 ("Service Effective Date"), is made by and between Patagonia Health, Inc. ("Business Associate" & "Vendor"), located at 1915, Evans Rd, Cary, North Carolina 27513 ("Patagonia Health") and, Winnebago County Public Health Department ("Client")

Located at 401, Division St, Rockford, Illinois

HIPAA BUSINESS ASSOCIATE AGREEMENT

WITNESSETH

WHEREAS, in connection with the goods and/or services provided to Client, Business Associate may be given or otherwise have access to Protected Health Information ("PHI"), as that term is defined in 45 CFR Part 160.103; and

WHEREAS, Business Associate and Client intend to protect the privacy and provide for the security of any PHI disclosed to Business Associate, or to which Business Associate may have access, in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated there under by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

WHEREAS, as part of the HIPAA Regulations, the Privacy Rule that is codified at 45 CFR Parts 160 and 164 requires Client to enter into a contract containing specific requirements with Business Associate prior to the disclosure of or providing access to PHI as set forth in the Privacy Rule, including without limitation 45 CFR Sections 164.502(e) and 164.504(e).

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, Client and Business Associate agree as follows:

1. Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms as set forth in HIPAA and the HIPAA Regulations.

2. Requirements

- (a) Business Associate agrees to not use or further disclose Protected Health Information received from Client other than as permitted or required by this Agreement, or as required by law.
- (b) Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of any Protected Health Information other than as provided for by this Agreement, and to maintain the integrity and confidentiality of any Protected Health Information created, received, maintained or transmitted by Business Associate on behalf of Client.
- (c) Business Associate agrees to report to Client immediately any and all security incidents resulting in a breach of security involving Protected Health Information.
- (d) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement or applicable law.
- (e) Business Associate agrees to report to Client any use or disclosure, or improper or unauthorized access, of the Protected Health Information not provided for by this Agreement.
- (f) Business Associate agrees that any agent, including a subcontractor, to whom it provides Protected Health Information, received from, or created or received by Business Associate on behalf of Client, shall be subject to obligations of confidentiality with respect to such information at least as protective of the Protected Health Information as provided under this Agreement.
- (g) Business Associate agrees to provide access, at the request of Client, during normal business hours, to Protected Health Information in a Designated Record Set, to Client or, as directed by Client, to an Individual in order to meet the requirements under 45 CFR Part 164.524.
- (h) Upon written request, Business Associate agrees to make any internal practices, books, and records maintained in the ordinary course of business and relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Client available to Client, or at the

request of Client, to the Secretary of Health and Human Services, or its designee, in a time and manner designated by Client or the Secretary, for purposes of the Secretary determining Client's compliance with applicable law, including without limitation, HIPAA and HIPAA Regulations.

- (i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Client to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR Part 164.528.
- (j) Business Associate agrees to provide to Client or an Individual, in the time and manner designated by Client, information collected in accordance with this Agreement, to permit Client to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR Part 164.528.
- (k) Business Associate agrees to report to Client any security incidents of which Business Associate becomes aware regarding Electronic Protected Health Information.

3. Permitted Uses and Disclosures by Business Associate

Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to Client, as permitted under this Agreement. In addition:

- (a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration or to carry out any present or future legal responsibilities of Business Associate.
- (b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration and to fulfill any present or future legal responsibilities of Business Associate, provided that disclosures are required by law, or provided that Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or only for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (c) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services as permitted by 42 CFR Part 164.504 (e)(2)(i)(B).
- (d) The provisions of this Agreement shall not apply to Protected Health Information that Business Associate may receive from any source outside the scope of this Agreement or independent of its relationship with Client.

4. Term and Termination

- (a) Term. The Term of this Agreement shall become effective the date of execution by Client, and shall terminate when all of the Protected Health Information provided by Client to Business Associate, or created or received by Business Associate on behalf of Client, or otherwise in Business Associate's possession, is destroyed or returned to Client, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information in accordance with the termination provisions in this Section.
- (b) Termination for Cause. Upon Client's knowledge of a material breach by Business Associate, Client shall provide a reasonable time for Business Associate to cure the breach. If Business Associate does not cure the breach or end the violation within such reasonable time, Client may terminate this Agreement, or if termination is not possible, report the problem to the Secretary of Health and Human Services.

5. Effect of Termination

- (a) Except as provided in paragraph (b) of this Section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Client, or created or received by Business Associate on behalf of Client, or otherwise in Business Associate's possession. Business Associate shall retain no copies of the Protected Health Information in any form.
- (b) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Client notification of the conditions that make return or destruction infeasible. Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit any further uses and disclosures of such Protected Health Information to only those purposes that make the return or destruction infeasible.

6. Miscellaneous

- (a) Regulatory References. A reference in this Agreement to a section in HIPAA or the HIPAA Regulations means the section as in effect or as amended, and for which compliance is required.
- (b) Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the parties to comply with the requirements of HIPAA and the HIPAA Regulations.
- (c) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Client to comply with HIPAA and the HIPAA Regulations.

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.

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 Service via automatic bank debit. Subscriber will provide necessary details on Debit Authorization Form. Vendor shall withdraw agreed to subscription fees on a recurring monthly basis. Vendor shall have the right to assess a late payment fee of 1.5% 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 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. The term of this agreement shall automatically renew for subsequent one-year periods unless either Party notifies the other in writing at least three months prior to the end of the then-current term of its intent not to renew. 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 One Hundred Fifty Thousand Dollars (\$150,000.00). 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 Winnebago county, Rockford, Illinois 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 Illinois without regard to its conflicts of law principles.

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.

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 by either US CPI or 4% whichever is greater, at the beginning of each anniversary date. Professional services fees (including training and implementation), after initial quoted prices, will be charged at the then applicable rate. All payments made are non-refundable.

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.

Topic	Description	Rate	Units	Total Price
Software Services: Monthly Charges (Minimum \$250/month)				
	Pricing includes software of federally certified Electronic Medical Record, Practice Management and public health Billing software.			\$..4,981.....
	Includes local health department Pharmacy App, Dashboard App (4 users), Communicator App and GIS Health Mapping app.			
	Includes federal Meaningful Use MU Stage 2 and Stage 3 (2016) upgrade.			
	Includes upgrade to all CPT and ICD codes including ICD 10.			
	Includes all clearinghouse charges for connectivity to numerous commercial and government payers including Medicaid, Medicare, BCBS etc.			
	Includes 1 optional Electronic Fax.			
	Pricing is for the staff currently comprising of ...75 users.			
	Additional users may be added at any time for an additional fee at the then current applicable rate. One time initial set up charge and monthly fees apply.			
Initial Set Up: One Time Charge only				
	Includes set up, configuration of software for the customer and uploading of patient demographic information (xls or csv) file provided by the client.			\$....134,695.....
	Includes one commercial lab interface (e.g. Labcorp, Solstas) and State lab. Charges apply for additional interfaces and device integration not specified elsewhere.			
	Includes installation/set up of 1 Electronic Fax on 3 computers each fax			
Training				
	Training: On site at \$1250/day. All training during normal business hours: 9am to 5 pm local time. After business hours training at 1.5 times rates indicated. Additional hours at \$160/hr. All travel related costs to be paid by customer upon submittal of invoice by Patagonia Health	On site: \$1,250/day14.....	\$....17,500.....
	Remote Training: Additional on line training available within first year of install. Remote training at \$80/hr: minimum 1 hour.	6 Hours included	NA	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.0.....	\$.....
	Discount for first year of the Incentive Assistance Service training/assistance.	\$1250/EP/yr.0.....	Discount
Total Payments				
	1. Monthly On-going subscription (maintenance) Fee Payments: Due each month from the phase 1 go live or 4 months whichever is earlier.			\$....4,981....
	2. Initial Start Up Payment payable upon contract signing: Includes initial Set up (\$134,695) + Training (\$...17,500...) + Incentive Assurance Service (\$...0.. - \$0.....) = \$...152,195... and first month of monthly subscription fees (1*\$..4,981.... /month) = \$..157, 176....)			\$...157, 176.....

NOTES: This price is valid only if contract is executed (signed and payment made) within 90 days. This price is based on the Patagonia Health proposal dated 22nd Oct 13 and in response to the WCHD EHR RFP. Includes interfaces as defined in proposal section 8.4. Includes "Dashboard App", "Pharmacy App", "Communicator App" (comprising Voice/Email/Text patient reminder system + Facebook™ like quick/easy secure messaging) and "GIS Health Mapping App". Optional "School Health App" available at additional cost.
First WHCD fiscal year payments to 30th Sep14 not to exceed \$145,000. Any remaining balance payable after 1st Oct 2014.

ACH PREAUTHORIZED PAYMENTS (DEBITS)

Starting from date ___TBD___/___/ 201___, I hereby authorize Patagonia Health Inc to initiate debit entries or such adjusting entries, either debit or credit which are necessary for corrections, to my **Checking** **Or Savings** _____ account indicated below and the financial institution named below to credit (or debit) the same to such account.

Riverside Community Bank

Rockford, IL

FINANCIAL INSTITUTION NAME

CITY, STATE

071925554

161001425

TRANSIT/ROUTING NUMBER

ACCOUNT NUMBER

I understand that this ACH authorization will be in effect until I notify my financial institution in writing that I no longer desire ACH, allowing it reasonable time to act on my notification. I also understand that if corrections in the debit amount are necessary, it may involve an adjustment (credit or debit) to my account.

I have the right to stop payment of a debit entry by notifying my financial institution before the account is charged. If an erroneous debit entry is charged against my account, I have the right to have the amount of the entry credited to my account by my financial institution. I agree to give my financial institution a written notice identifying the entry, stating that it is in error, and requesting credit back to my account. I will provide this written notice within 45 days after posting.

Michelle Jahr, CPA

NAME

Winnebago County Health Department

PRACTICE NAME



SIGNATURE

4/9/2014

DATE

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: 

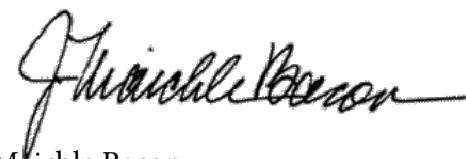
Name: Ashok Mathur

Title: CEO

Email: ashok@patagoniahealth.com

Phone: 919 622 6740

Client

Signature: 

Name: J. Maichle Bacon

Title: Public Health Administrator

Phone: 815-720-4210

Fax: 815-720-4002

Email: mbacon@wchd.org

Cell: 815-703-2463

Email address for sending invoices: Bonnie Duich, bduich@wchd.org

FORM INSTRUCTIONS

1. Please review the agreement. Fill out information on page 1, 9 and 10. Signed agreements can be either:

- Fax to Patagonia Health Inc, at F: 919 238 7920
- Or email to sales@patagoniahealth.com.
- Or Mail to Patagonia Health Inc, 202, Midenhall Way, Cary, NC 27513
(Note Business address is: 1915, Evans Rd, Cary, NC 27513)

Please call your local representative with any questions.