

SOFTWARE SUBLICENSE AGREEMENT

Between

KITSAP PUBLIC HEALTH DISTRICT

And

MASON COUNTY PUBLIC HEALTH

This Software Sublicense Agreement (“Agreement”) is made and entered into between the Kitsap Public Health District, a Health District organized pursuant to chapter 70.46 Revised Code of Washington and Section 9.52 Kitsap County Code, hereinafter referred to as “District,” and Mason County Public Health, hereinafter referred to as “MCPH.” The District and MCPH are hereinafter collectively referred to as the “Parties.” The Parties mutually agree as follows:

1. **Period of Performance:** The period of performance of this Agreement shall be from January 1, 2019 through December 31, 2021, unless terminated sooner or extended as provided for herein. This Agreement shall supersede all previous agreements concerning CHAMP Software and/or Nightingale Notes applications.
2. **Purpose:** The District and MCPH desire to enter into a software sublicense agreement to permit MCPH to use Health District Nightingale Notes licenses in their Public Health Programs. The District agrees to provide CHAMP Software’s Nightingale Notes program and that permission to subcontract these licenses from CHAMP has been granted. See **ATTACHMENT A**, hereto attached.
3. **Qualifications/Eligibility:** MCPH staff utilizing the Nightingale Notes program, and any associated software and/or applications shall comply with MCPH’s HIPAA training requirements.
4. **Compensation:** MCPH agrees to pay the pro-rata share of the Champ Software invoice for the support period beginning September 1 of the previous year. The pro-rata share is based on active users as of September 1st of the previous year. A minimum of two (2) users are required per year.

For example, the 2018 Champ Software invoice was \$14,287.72 and MCPH had 6 active users, JCPH had 8 active users, and the Health District had 18 active users. MCPH had 18.75% of the active users and their 2019 software license fee is \$2,678.94. See the 2018 annual invoice, attached hereto and incorporated hereinafter as **ATTACHMENT B**.

5. **Notices:**If to the District:

Kitsap Public Health District
 Attn: Yolanda Fong
 345 6th Street, Suite 300
 Bremerton, WA 98337
 (360) 728-2275
 yolanda.fong@kitsappublichealth.org

If to the Sublicensee:

Mason County Public Health
 Attn: Lydia Buchheit
 415 N. 6th Street
 Shelton, WA 98584
 (360) 427-9670 ext 404
 lydiab@co.mason.wa.us

6. **Billings:** Billings to the MCPH shall be submitted no more frequently than every 30 days, and shall be sent to:

Mason County Public Health
 Attn: Casey Bingham, caseyb@co.mason.wa.us
 415 N. 6th Street, Shelton, WA 98584
 (360) 427-9670 ext 562

7. **Independent Contractor:** MCPH and its employees or agents performing under this Agreement are not employees or agents of the District.
8. **Ownership of Materials:** The District retains the ownership of Nightingale Notes licenses.
9. **Defense and Indemnification:** MCPH shall defend, indemnify and hold harmless the District, its officers, officials, employees, and volunteers, from and against all claims, injuries, damages, liabilities, losses, suits, judgments, fines, assessments, penalties, awards, or other expenses, of any nature whatsoever, including without limitation, attorney's fees, expert witness fees, and costs of investigation, litigation, or dispute resolution, relating to or arising out of any breach of this Agreement by MCPH, its officers, officials, employees, volunteers, agents, or sub-contractors. Reimbursement for Costs Incurred Due to Breach: MCPH shall reimburse the District, without limitation, for all costs of investigation, dispute resolution, notification of individuals, the media, and the government, and expenses incurred in responding to any audits or other investigation relating to or arising out of a breach of unsecured protected health information by MCPH. Solely for the purposes of this section, MCPH waives its immunity under Title 51 (Industrial Insurance) of the Revised Code of Washington and acknowledges that this waiver was mutually negotiated by the Parties. This provision will survive the expiration or termination of this Agreement.

MCPH agrees to indemnify and hold the District harmless for any damages related to unauthorized use or disclosure of confidential information by MCPH, its officers, directors, employees, subcontractors, or agents.

10. **Insurance:** MCPH shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by MCPH, its agents, representatives, or employees.

No Limitation. MCPH's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of JPCH to the coverage provided by such insurance, or otherwise limit the District's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance

MCPH shall obtain insurance of the types described below:

1. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury.
2. Workers' Compensation coverage as required by the Industrial Insurance laws of the state of Washington.
3. Professional Liability insurance appropriate to MCPH's profession. MCPH shall provide the District with proof of liability insurance or professional errors and omissions coverage as appropriate.

B. Minimum Amounts of Insurance

MCPH shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

2. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
3. Privacy Breach Response Coverage MCPH must maintain insurance to cover costs incurred in connection with a Breach, or potential Breach, including:

Computer forensics assistance to assess the impact of the Breach or potential Breach, determine root cause, and help determine whether and the extent to which notification must be provided to comply with Breach notification laws.

Notification and call center services for individuals affected by a Breach.

Breach resolution and mitigation services for individuals affected by a Breach, including fraud prevention, credit monitoring and identity theft assistance.

Regulatory defense, fines and penalties from any claim in the form of a regulatory proceeding resulting from a violation of any applicable privacy or security law(s) or regulations(s).

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. MCPH's insurance coverage shall be primary insurance as respect the District. Any insurance, self-insurance, or insurance pool coverage maintained by the District shall be excess of MCPH's insurance and shall not contribute with it.
2. MCPH's insurance coverage must be maintained for the term of this Agreement.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

MCPH shall furnish the District with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of MCPH before commencement of the work.

11. **Safeguarding of Information:** The use or disclosure by MCPH of any information or documents obtained by MCPH in the course of contract performance for any purpose not directly connected with MCPH's responsibilities under this Agreement is prohibited except as may be required by law. MCPH shall implement physical, technical, and managerial safeguards.
12. **Statutory and Regulatory Compliance:** MCPH shall comply with all applicable federal, state, and local laws, regulations, guidelines, and standards in the performance of this Agreement.
13. **Compliance with State and Federal Confidentiality Laws:** MCPH shall not use or disclose any protected health information (PHI) or personally identifiable information (PII) created or shared under this Agreement for any purpose not directly connected with this Agreement or in any manner that would constitute a violation of the Health Information Portability and Accountability Act, commonly known as HIPAA, and any regulations enacted pursuant to its provisions. Any PHI or PII collected, used, or acquired in connection

with this Agreement shall be subject to RCW 42.56.590 and Chapter 70.02 RCW, as well as any other applicable federal and state statutes and regulations. MCPH agrees not to release, divulge, publish, transfer, sell, or otherwise make known to unauthorized persons PHI or PII without the express written consent of the District. For the purpose of this section, PII means information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, or mother's maiden name, etc. MCPH shall sign a Business Associate Agreement which is incorporated into this Agreement as **ATTACHMENT C**.

14. Notification of Breach or Potential breach of Protected Information:

- A. If MCPH discovers or is notified of a breach or potential breach of security systems protecting PHI or PII under this Agreement, it shall notify the District's Privacy Officer at (360) 728-2262 within 24 hours of that discovery or notification.
- B. MCPH will take all steps necessary to mitigate any potentially harmful effects of the security breach or unauthorized access to PHI or PII, including, but not limited to, sanctioning employees and taking steps necessary to stop further unauthorized access.
- C. If notification of the breach or possible Breach must (in the judgment of the District) be made under the HIPAA Breach Notification rule, or RCW 42.56.590 or RCW 19.255.010, or other law or rule, then:

The District may choose to make any required notifications to the individuals, to the U.S. Department of Health and Human Services Secretary (DHHS) Secretary, and to the media, or direct MCPH to make them or any of them.

In any case, MCPH will pay the reasonable costs of notification to individuals, media, and governmental agencies and of other actions the District reasonably considers appropriate to protect the District's clients (such as paying for regular credit watches in some cases).

Any breach of this clause may result in termination of the Sublicense Contract and the demand for return or disposition of all confidential information.

MCPH's obligations regarding Breach notification survive the termination of this Agreement and continue for as long as MCPH maintains the confidential information and for any breach or possible breach at any time.

- 15. Records Inspection and Retention:** MCPH shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein. The District may, at reasonable times, inspect the books and records of MCPH relating to the performance of the Agreement. MCPH will retain for audit purposes all Contract-related records for at least six (6) years after termination of the Agreement. If any litigation, claim or audit is started before the expiration of the six-year period, the records shall be retained until all litigation, claims, or audit finding involving the records have been resolved.

- 16. Right of Inspection:** MCPH shall provide right of access to its facilities to the District, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable time, in order to monitor and evaluation performance, compliance, and or quality assurance under this Agreement.

- 17. Subcontracting:** MCPH shall not enter into subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval of the District.

18. Successors and Assigns: The District, to the extent permitted by law, and MCPH each bind themselves, their partners, successors, executors, administrators and assigns to the other party to the Agreement and to the partners, successors, administrators and assigns of such other party in respect to all covenants to the Agreement.

19. Non-Discrimination: MCPH shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin, creed, marital status, age, Vietnam era or disabled veteran status, sexual preference, or the presence of any sensory mental or physical handicap.

20. Amendment: This Agreement may be modified only by a written amendment executed by authorized representatives of both parties. In order to be effective, any agreement, renewal, amendment, or modification must be in writing, be signed by both parties, and be attached to the Agreement.

21. Termination:

- A. For Convenience: Either party may terminate this Agreement upon giving at least 30-days advance written notice to the other.
- B. For Funding: If funding for the Agreement or matter is withdrawn, reduced or limited in any way after the Agreement is signed or becomes effective, the Parties may summarily terminate the Agreement notwithstanding any other termination provision in the Agreement. Termination under this provision will be effective upon the date specified in the written notice of termination. No costs incurred after the effective date of the termination will be paid.
- C. For Cause: If the either party fails to perform in the manner called for in the Agreement, or if either party fails to comply with any other provision of the Agreement and fails to correct such noncompliance with thirty (30) days written notice thereof, the aggrieved party may terminate the Agreement for cause. Termination shall be affected by serving a notice of termination on the party setting forth the manner in which the party is in default.

In the event of termination, MCPH shall settle all outstanding liabilities and all claims arising out of such termination of orders, with the approval or ratification of the District to the extent the District may require, which approval or ratification shall be final for all the purposes of this clause.

22. Dispute Resolution: In the event that a dispute or conflict arises under the Agreement that the Parties are unable to resolve with good faith efforts, they shall allow the dispute to be decided by a Dispute Panel in the following manner: A Mediator shall be mutually appointed by both parties, and each party shall appoint an additional member to the Dispute Panel. The Dispute Panel shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Panel shall be final and binding on the Parties hereto. The Parties shall equally share the costs, if any, for the services of the Dispute Panel.

23. Choice of Law: The Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that the Agreement shall be governed by the laws of the State of Washington, both as to its interpretation and performance. Any action at law, suit in equity, or judicial proceeding arising out of the Agreement shall be instituted and maintained only in any of the courts of competent jurisdiction in Kitsap County, Washington.

24. No Waiver: The Parties agree that the excuse or forgiveness of performance, or waiver of any provisions of the Agreement, does not constitute a waiver of such provision or future performance, or prejudice the right of the waiving party to enforce any of the provisions of the Agreement at a later time.

25. Severability: If a court of competent jurisdiction holds any provision of the Agreement to be illegal, invalid, or unenforceable, in whole or in part, the validity of the remaining provisions will not be affected,

and the Parties' rights and obligations will be construed and enforced as if the Agreement did not contain the particular provision held to be invalid. If any provision of the Agreement conflicts with any statutory provision of the State of Washington, the provision will be deemed inoperative to the extent of the conflict or modified to conform to statutory requirements.

- 26. **Notices:** Any notices will be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in the Notices provision of the Agreement. Notice will be deemed to be given three days following the date of mailing, or immediately if personally served.
- 27. **Survival:** Those provisions of the Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive. Those provisions include but are not necessarily limited to the following: Indemnification, Termination, Disputes, Confidentiality, Choice of Law, No Waiver, Records Inspection and Retention, and Severability.
- 28. **Assignment, Delegation, and Subcontracting:** MCPH will perform under the Agreement using only its bona fide employees or agents, and the obligations and duties of MCPH under the Agreement will not be assigned, delegated or subcontracted to any other person or firm without the prior express written consent of the District.
- 29. **Personnel Removal:** MCPH agrees to remove immediately any of its subcontractors, employees, agents, or representatives from assignment to perform services under the Agreement upon receipt of a written request to do so from the District's contract representative or designee.
- 30. **Entire Agreement:** This Agreement constitutes the entire agreement between the Parties regarding its subject matter. Any oral or written representations not expressly incorporated in this Agreement are specifically excluded.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth below.

KITSAP PUBLIC HEALTH DISTRICT

MASON COUNTY PUBLIC HEALTH

By: 
Keith Grellner, Administrator

By: 
David Windom, Director

Date: 8/2/19

Date: 6/11/19

Champ
Software

RECEIVED

DEC 06 2010

KITSAP COUNTY
HEALTH DISTRICT

December 2, 2010

Lydia Buchhelt R.N., BSN
Community & Family Health Manager
Contracts Coordinator
NFP Program Supervisor
Mason County Public Health

Suzanne M. Plemmons, MN, RN
Kitsap County Health District
Community Health Director
345 6th Street, Suite 300
Bremerton, WA 98337

Dear Lydia and Suzanne:

This letter confirms our willingness to support the arrangement you have proposed, whereby Mason County will purchase Nightingale Notes licenses from Kitsap County. We understand that Mason County will be sharing the Kitsap County database, but you will keep data separate by use of cost centers, programs, and permissions (roles). We further understand that you will put in place an appropriate HIPAA business associate agreement.

Regards,



David Rosebaugh, CEO
Champ Software, Inc.

RECEIVED
 JUL 09 2018
 KITSAP PUBLIC
 HEALTH DISTRICT
 INVOICE

Champ Software, Inc.
 PO Box 2246
 North Mankato, MN 56002
 (507)388-4141
 Accounting@champssoftware.com
 http://champssoftware.com

Alp# 330427

BILL TO

Kitsap Public Health District
 Attn: Katie Eilers
 345 6th St., Suite 300
 Bremerton, WA 98337

INVOICE # 5010
 DATE 07/03/2018
 DUE DATE 08/31/2018

ACTIVITY	QTY	RATE	AMOUNT
WA Nightingale Notes Support Annual support for 20 Nightingale Notes concurrent licenses from 9-1-18 to 8-31-19.	1	13,108.00	13,108.00T

We are transitioning you into Nightingale Notes Silver, effective on your 2017 renewal. This means that as of your 9-1-17 renewal you will have all of the Silver features available to you but you will not immediately be paying Silver pricing. Champ has been serving the public health field for over 30 years, and fully understands your budget limitations. To facilitate the transition to NN Silver, we are phasing in the financial impact over a period of several years rather than all at once. There will be a training fee when a feature is turned on.

Thank you for choosing Nightingale Notes by Champ Software!

SUBTOTAL 13,108.00
 TAX (9%) 1,179.72
 TOTAL 14,287.72
 BALANCE DUE **\$14,287.72**

OKAY TO PAY	
\$ 14,287.72	(required)
Signature <i>[Signature]</i>	Date 7/19/18
Charge To:	
Attach packing slip, etc., if available, & forward to Accounting	

**ATTACHMENT C
HIPAA BUSINESS ASSOCIATE AGREEMENT**

This Agreement (“Agreement”) is entered into by and between the Kitsap Public Health District (“Covered Entity”) and Mason County Public Health (“Business Associate”).

Section I: Purpose

Performance of the Underlying Agreement may require Business Associate to use or disclose protected health information that is subject to provisions of the Health Insurance Portability and Accountability Act of 1996, set forth in 45 C.F.R. Parts 160 and 164 (commonly known as the “HIPAA Rules”).

The purpose of this Agreement is to set forth the obligations of the Parties with regard to the way in which protected health information is created, used, disclosed, maintained, provided or received on behalf of Covered entity by the Business Associate.

Section II. Definitions

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Health Information, and Use.

Specific Definitions:

1. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to this Agreement shall mean Mason County Public Health.
2. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” in 45 CFR 160.103, and in reference to the party in this Agreement shall mean the Kitsap Public Health District.
3. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and 164.

Section III. Obligations and Activities of Business Associate

Business Associate agrees to:

1. Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law.

2. Use appropriate safeguards, and comply with Subpart C of 45 CFR, Part 164 with respect to protected electronic health information and to prevent use or disclosure of protected health information other than as provided for by this Agreement.
3. Report to Covered Entity any use or disclosure of protected health information not provided for by this Agreement of which it becomes aware, including breaches of unsecured protected health information as required by 45 CFR 164.410, and any security incident of which it becomes aware.

Business Associate agrees to promptly notify Covered Entity following the discovery of a Breach of unsecured PHI. A Breach is considered “discovered” as of the first day on which the Breach is known, or reasonably should have been known, to Business Associate or any employee, officer or agent of Business Associate, other than the individual committing the Breach. Any notice of a Security Incident or Breach of Unsecured PHI shall include the identification of each Individual whose PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Security Incident or Breach as well as any other relevant information regarding the Security Incident or Breach.

4. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.
5. Business Associate agrees to mitigate, to the extent possible, any harmful resulting from use or disclosure of PHI by Business Associate or its agents or subcontractors, in violation of the requirements of this Agreement.
6. Maintain and make available protected health information in a designated record set to the Covered Entity as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.524.

If an Individual makes a request for access to the protected health information directly to Business Associate, business associate shall notify covered entity within three (3) business days of such request and shall cooperate with the Covered Entity to send the response to the Individual.

7. Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.526.

If an Individual makes a request for amendment to the protected health information directly to Business Associate, Business Associate shall notify Covered Entity within three (3) business days of such request and shall cooperate with the Covered Entity to send the response to the Individual.

8. Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528.

If an Individual makes a request for accounting of disclosures directly to Business Associate, Business Associate shall notify Covered Entity within three (3) business days of such request and shall cooperate with the Covered Entity to send the response to the Individual.

9. To the extent the Business Associate is to carry out one or more of Covered Entity's obligations(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s); and
10. Make its internal practices, books, and records available to the Secretary of Health and Human Services for purposes of determining compliance with the HIPAA Rules.

Section IV. Permitted Uses and Disclosures by Business Associate

1. Business Associate may only use or disclose protected health information as necessary to perform the services as outlined in the underlying agreement.
2. Business Associate is not authorized to use protected health information to de-identify the information in accordance with 45 CFR 164.514(a)-(c).
3. Business Associate may use or disclose protected health information as required by law.
4. Business Associate agrees to make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures.

Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity except for the specific used and disclosures set forth below:

Business Associate may disclose protected health information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes 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.

Section V. Termination

1. Term. The Agreement shall terminate on December 31, 2021 or on the date Covered Entity terminates for cause, whichever is sooner.
2. Termination for Cause. Business Associate authorizes termination of the Agreement if Covered Entity determines Business Associate has violated a material term of the Agreement and has not cured the breach or ended the violation within the time specified by Covered Entity.
3. Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason Business Associate shall return or destroy all protected health information received from Covered Entity, or created or received by Business Associate on behalf of Covered entity. This provision shall apply to protected health information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the protected health information.

In the event that Business Associate determines that returning or destroying the protected health information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of protected health information is infeasible, Business Associate shall extend the protections of this Agreement to such protected health information and limit further uses and disclosures of such protected health information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such protected health information.

4. The obligations of Business Associate under this section shall survive the termination of this Agreement.


Section VI. Miscellaneous

1. A reference in this agreement to a section in the HIPAA Rules means the section as in effect or amended.
2. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the HIPAA Rules and any other applicable law.
3. Any ambiguity in this Agreement shall be resolved to permit compliance with the HIPAA Rules.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above.

KITSAP PUBLIC HEALTH DISTRICT

BUSINESS ASSOCIATE

By:  _____

Name: Keith Grellner

Title: Administrator

Date: 8/2/2019

By:  _____

Name: David Windom

Title: Director

Date: 8/13/19