



ORIGINAL

MASTER AGREEMENT FOR SAAS LICENSED SOFTWARE & SERVICES

Effective as of the date this Master Agreement is last signed by the parties (the "Effective Date")

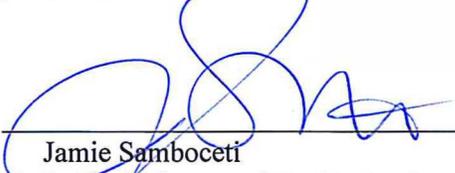
By and Between Netsmart Technologies, Inc. 4950 College Boulevard Overland Park, KS 66212 ("Netsmart")	And County of El Dorado Health and Human Services Agency 3057 Briw Road Placerville, CA 95667 ("Client or Subscriber") EIN: 94-6000511 State tax exempt: No
Attention: Joseph McGovern, EVP Telephone No: (631) 968-2012 E-mail Address: jmcgovern@ntst.com Notices to be sent to: Contracts_Notice@ntst.com	Attention: Jamie Samboceti Telephone No: (530)621-6339 E-mail Address: Jamie.samboceti@edcgov.us Notices to be sent to (if different): hhsa-contracts@edcgov.us

This Master Agreement for SAAS Licensed Software and Services sets forth the terms and conditions under which Netsmart shall license the software programs and provide support services described herein.

The term "Master Agreement" means this Signature Page, the attached Master Agreement Expenditures page, the attached Terms and Conditions, all Schedules and addendums attached hereto, the referenced BAA and SOW, and any subsequent mutually executed amendment(s) or addendum(s).

IN WITNESS WHEREOF, the parties hereto have executed this Master Agreement as of the date(s) written below.

REQUESTING CONTRACT ADMINISTRATOR CONCURRENCE:

By: 

Jamie Samboceti
Deputy Director of Health Services
Health and Human Services Agency

Dated: 3/9/17



REQUESTING DEPARTMENT HEAD CONCURRENCE:

By: Patricia Charles-Heathers Dated: 3-27-17
Patricia Charles-Heathers, Ph. D.,
Director
Health and Human Services Agency

-- COUNTY OF EL DORADO --

Dated: 4/18/17
By: Shiva E. Frentzen
Shiva Frentzen, Chair
Board of Supervisors
"County"

ATTEST:
James S. Mitrising
Clerk of the Board of Supervisors

By: [Signature] Dated: 4/18/17
Deputy Clerk

-- CONTRACTOR --

NETSMART TECHNOLOGIES, INC.

By: [Signature] Dated: 3/23/17
Joseph McGovern, Executive Vice President
"Contractor"

By: [Signature] Dated: 3/23/17
General Counsel & Acting Secretary

Table of Contents	
Title	Description
Master Agreement Expenditures	Charges and payment terms
Master Agreement Terms and Conditions	Governing terms and conditions of the Agreement
Schedule A	Support Services for Licensed Software
Schedule A-1	Hosting Service Level Agreement (SLA)
Schedule B	Hardware Configuration
Netsmart Subscription Addendum	Supplemental terms for Subscription Products
BAA	Business Associate Agreement

Master Agreement Expenditures

Master Agreement Expenditures	Quantity	Unit Type	Monthly Rate	Term (Month)	Total for Year 1	Total for Year 2	Total for Year 3	Total for Year 4	Total for Year 5
Software									
Avatar Plexus Cloud SaaS	180	Named	\$57.20	12	\$123,552.00	\$128,494.08	\$133,633.84	\$138,979.20	\$144,538.36
OrderConnect ePrescriber (Sub)	5	Named User/Mo	\$66.92	12	\$4,015.20	\$4,175.81	\$4,342.84	\$4,516.55	\$4,697.22
OrderConnect Non-Prescriber (Sub)	8	Named User/Mo	\$13.52	12	\$1,297.92	\$1,349.84	\$1,403.83	\$1,459.98	\$1,518.38
OrderConnect Base Fee (Sub)	1	Each/Mo	\$117.00	12	\$1,404.00	\$1,460.16	\$1,518.57	\$1,579.31	\$1,642.48
Diagnosis Content on Demand Subscription	1	Each/Mo	\$103.15	12	\$1,237.80	\$1,287.31	\$1,338.80	\$1,392.36	\$1,448.05
Two Party Escrow	1	Each/Mo	\$60.67	12	\$728.04	\$757.16	\$787.45	\$818.95	\$851.70
Total					\$132,234.96	\$137,524.36	\$143,025.33	\$148,746.35	\$154,696.20
Support Services									
Avatar Electronic Signature (eSig) (Mnt)	1	Each/Mo	\$182.00	12	\$2,184.00	\$2,271.36	\$2,362.21	\$2,456.70	\$2,554.97
POS Scanning Powered by Perceptive (Mnt)	1	Each/Mo	\$173.33	12	\$2,079.96	\$2,163.16	\$2,249.68	\$2,339.67	\$2,433.26
Total					\$4,263.96	\$4,434.52	\$4,611.90	\$4,796.38	\$4,988.23
Travel*					\$5,000.00				
Pro-rated Rate for 5/22/17	\$373.97	Each/Day		10(days)	\$3,739.70				
Total By Year					\$145,238.62	\$141,958.88	\$147,637.23	\$153,542.72	\$159,684.43

MAXIMUM
\$750,000.00

* Travel Expenses: Reimbursement for travel, including, but not limited to, travel/transportation, meals, lodging, etc. necessary for the performance of services under this Agreement shall be in accordance with "Board of Supervisors Policy D-1," which may be found in the Board of Supervisors Policy Manual: <http://www.edcgov.us/uploadedFiles/Government/BOS/Policies/D-1%20Travel%20Policy%20Amended%2012-13-16.pdf> and incorporated by reference herein, shall be requested in advance, and shall be authorized in writing by the Administrator as defined in the "Master Agreement Terms and Conditions under the Article titled "Administrator."



Unless otherwise authorized under this Agreement, Contractor shall not increase the maximum not-to-exceed amount due from County under this Agreement for all Services and Deliverables during the term of this Agreement.

The initial term for provision of support services for Licensed Programs will begin on contract signing through May 31, 2017, with the following June 1, 2018 being the Anniversary date. Unless prices are shown above for renewal terms after the initial term, Contractor will give County not less than sixty (60) days written notice prior to any Anniversary date (as defined in the Agreement for services) of any revised schedule of support service prices. If prices for renewal terms are not fixed above, support service pricing will not be increased for any renewal term by more than 4%. All renewal terms are at the County's option

**MASTER AGREEMENT TERMS AND
CONDITIONS**

1. SCOPE OF MASTER AGREEMENT

This Master Agreement states the terms and conditions under which Netsmart will:

- (a) Grant Subscriber the rights to use and operate certain proprietary computer programs and related documentation on a non-exclusive basis;
- (b) Provide services such as project management, installation, training and support services to Subscriber and;
- (c) Provide software SaaS services and permit Subscriber to load Data in the Netsmart SaaS Environment via a virtual private network ("VPN") or Secure Socket Layer ("SSL").

2. DEFINITIONS

As used in this Master Agreement, the following definitions apply to capitalized terms:

- (a) "Charges" means the amounts to be paid by Subscriber and the payment terms for the right to use the Software Services, for all services provided to Subscriber and for hardware or other Third Party Products acquired by Subscriber under the terms of this Master Agreement. The Charges and payment terms are described on the Master Agreement Expenditures page attached hereto.
- (b) "Data" means all information acquired from Client that will reside on a Netsmart secure server and be maintained for Subscriber during the performance of this Master Agreement.
- (c) "Hardware Configuration" means the computer hardware required to install and operate the Software Services. A description of the recommended Hardware Configuration is set forth in Schedule B attached hereto.
- (d) "Month 1" means the first day of the first month after mutual contract execution.
- (e) "Netsmart Programs" means the Netsmart commercial computer programs in object code form and their associated documentation listed on the Master Agreement Expenditures page.
- (f) "Problem or Defect" means any failure of the Software Services to operate in substantial conformance with the Specifications.
- (g) "SaaS Environment" means the hardware and software in Netsmart's data center that are used to provide access to the Software Services as defined in this Master Agreement.
- (h) "Services" means the installation, training and other services to be provided by Netsmart as described in the SOW.

- (i) "SLA" is an abbreviation for Service Level Agreement. The SLA describes the functions, features and performance capabilities of the SaaS Environment as available at Client's site and is set forth in Schedule A-1.
- (j) "Software Services" means the right to access the Netsmart Programs and Third Party Products (if applicable) as installed in accordance with the SOW in the Netsmart SaaS Environment.
- (k) "Specifications" means the description and features of the Software Services as set forth in the (electronic or physical) commercial computer software documentation relating to the Software Services supplied to Subscriber by Netsmart hereunder.
- (l) "Support Services" means the maintenance and support services to be provided by Netsmart in accordance with Schedule A.
- (m) "Third Party Products" means any commercial software products acquired by Netsmart from an outside vendor on behalf of Subscriber under the terms of this Master agreement. Third Party Products consisting of software are called Third Party Programs.
- (n) "Year 1" means the period from the Effective Date through its one year anniversary.

3. SOFTWARE SERVICES

- a) Software Services. Netsmart hereby grants Subscriber a non-exclusive, royalty-free, non-transferable subscription license to use, for the term as described in Section 4(a), the Software Services in object code form only:
 - i) for Subscriber's internal business purposes and not to process the data of any other entity;
 - ii) to support the number of named users of the Software Services set forth on the Master Agreement Expenditures page;
 - iii) for the Initial Term and any subsequent Option Terms.

The foregoing license grant may be exercised by Subscriber and its employees and independent contractors (provided that such independent contractors undertake in writing to be bound by all applicable restrictions in this Master Agreement) on Subscriber's equipment for Subscriber's internal business purposes provided they are added as named users for the Software Services.

- b) SaaS Environment. Netsmart hereby grants Subscriber a non-transferable, non-exclusive right to access the SaaS Environment from Netsmart's data center for the Initial Term (and any Option Term).

- c) Except as expressly stated in this Master Agreement, no other rights, express, implied or otherwise are granted to Subscriber.
- d) The Third Party Programs are licensed subject to the same restrictions as are set forth in 3(a) above as well as such other restrictions as may be set forth in this Master Agreement.
- e) Nothing in this Master Agreement will be deemed to convey any title or ownership interest in the Software Services or the SaaS Environment to Subscriber. Subscriber acknowledges Netsmart's rights and the rights of the owner of the Third Party Programs in the Software Services and agrees that the Software Services are trade secrets and unpublished works on which Netsmart and such third party(s) hold and will hold the sole and exclusive copyright. Subscriber will not dispute the rights of Netsmart and the third party(s) in the Software Services and will not sell, disclose, lease, sublease, lend or otherwise make the Software Services or SaaS Environment available to others including third party hosting providers.
- f) No copies of the Software Services may be made by Subscriber without the prior written consent of Netsmart except for backup purposes in accordance with normal data processing practices. Subscriber agrees to reproduce any copyright notices and/or other proprietary legends, regardless of form, contained in, affixed to, or appearing on the Software Services.
- g) Subscriber will not disassemble or reverse engineer any of the Software Services nor attempt to access or modify the source code version of the Software Services and will not make any derivations, adaptations, or translations of the Software Services in whole or in part, nor use the Software Services to develop functionally similar computer software or to otherwise compete with Netsmart.
- h) If suggestions made by Subscriber are incorporated into subsequent versions of the Software Services, Subscriber hereby assigns to Netsmart all rights Subscriber may have in and to any suggestions, concepts, or improvements concerning the Software Services that may result from Subscriber communications to Netsmart.
- i) If certain Third Party Products are being licensed under this Agreement, Subscriber agrees to the pass through terms that apply to those Third Party Products at <http://www.ntst.com/passthroughterms/index.asp>
- x. Notwithstanding the foregoing, nothing contained in the third party pass through terms will diminish Netsmart's obligations under this

Agreement and as between Netsmart and Subscriber, in the event of a conflict of terms, the terms of this Agreement shall prevail.

- j) Protection of Subscriber's Data. Netsmart's data center facility is located in the United States. Netsmart will maintain the Data in accordance with generally accepted security standards applicable to protected health information and as required by law. Under no circumstance shall Netsmart attempt to access or permit access to Data that is not required for the performance of Netsmart's obligations under this Master Agreement. Upon termination of this Master Agreement, for any reason, Netsmart will make a machine readable copy of the Data available to Subscriber. Netsmart retains no rights or ownership to the Data.

4. TERM

- a) The Initial Term of this Master Agreement will be from May 22, 2017 through May 31, 2022 ("Initial Term") subject to earlier termination when permitted under Section 12.
- b) At the expiration of the Initial Term this Master Agreement will not automatically renew.

5. IMPLEMENTATION

The Implementation has already occurred under the agreement between the parties dated May 29, 2011.

6. CHARGES AND PAYMENT TERMS

- a) In consideration of the Software Services granted hereunder, Services to be performed and Third Party Products to be provided by Netsmart. Subscriber agrees to pay Netsmart the Charges at the times and in the amounts set forth in the Master Agreement Expenditures page attached hereto.
- b) Netsmart agrees that it will not revise the Charges during the first year of this Master Agreement. Thereafter any recurring Charges are subject to a 4% increase annually.
- c) With the exception of the initial invoice which is due upon Master Agreement signing, invoices are payable net thirty (30) days after invoice date. Failure to make timely payment is considered a material default of the Master Agreement. Delinquent accounts will be subject to Netsmart's Delinquent Account Escalation Policy set forth at <http://www.ntst.com/ARpolicy>.

7. TAXES

The Charges set forth in this Master Agreement do not include any taxes. Where applicable, there will be added to such Charges, and Subscriber will pay,

amounts equal to any taxes (however designated, levied, or based) on such Charges including, but not limited to, state and local sales, privilege, property, use or excise taxes, but not including taxes based on the net income of Netsmart. If Subscriber claims a tax exemption, Subscriber will provide to Netsmart a certificate of exemption from taxes, or other evidence sufficient to permit Netsmart to exclude taxes from Charges.

8. WARRANTIES

- a) Netsmart warrants that the Software Services will substantially conform in all material respects with their Specifications and the attached SOW. If a Problem or Defect occurs, Netsmart will correct the Problem or Defect in accordance with the Support Services provisions set forth in Schedule A.
- b) Netsmart further represents and warrants that it has the right to grant the subscription licenses granted to Subscriber hereunder and that to the best of Netsmart's knowledge the Software Services do not infringe upon or violate the United States patent rights of any third party and do not infringe upon or violate the copyright, or trade secret right of any third party.
- c) If any modifications, additions or alterations of any kind or nature are made to the Software Services by Subscriber or anyone acting with the consent of or under the direction of Subscriber, then (i) with respect to the warranty made under Section 8(a), Netsmart shall have no obligation or liability to Subscriber with respect to any Problem or Defect caused by such modifications, additions or alterations, and (ii) with respect to the representation and warranty under Section 8(b), Netsmart shall have no obligation or liability to Subscriber with respect to any third party claim of patent, copyright or trade secret infringement or misappropriation arising from such modifications, additions or alterations. Subscriber will have an affirmative obligation to immediately inform Netsmart in writing of any modifications, additions or alterations.
- d) The limited warranty described herein will not apply unless the Subscriber's hardware and software system components meet Netsmart's minimum requirements as described in Schedule B.

9. LIMITATION OF WARRANTY.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESS OR IMPLIED, WHETHER IN RELATION TO THE SOFTWARE SERVICES, HARDWARE OR THE PROVISION OF ANY SER-

VICES INCLUDING, BUT NOT LIMITED TO, THOSE CONCERNING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ARISING BY TRADE USAGE OR COURSE OF DEALING. SUBSCRIBER'S EXCLUSIVE REMEDY IN THE EVENT OF A BREACH OF THE SECTION 8(a) WARRANTY AND NETSMART'S SOLE OBLIGATION IS TO MODIFY THE SOFTWARE TO ELIMINATE THE PROBLEM OR DEFECT. IN THE EVENT NETSMART CANNOT MODIFY OR ELIMINATE THE PROBLEM OR DEFECT, SUBSCRIBER MAY TERMINATE THE MASTER AGREEMENT PURSUANT TO SECTION 11 AND MAY SEEK ALL AVAILABLE REMEDIES AT LAW AND IN EQUITY. SUBSCRIBER'S EXCLUSIVE REMEDY IN THE EVENT OF A BREACH OF THE SECTION 8(b) WARRANTY IS SET FORTH IN SECTION 11.

10. LIMITATION OF LIABILITY

a) LIMITATION ON SPECIFIED DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. EXCEPT AS SET FORTH IN SECTION 11, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY THIRD PARTY CLAIM.

b) LIMITATION ON CUMULATIVE LIABILITY. EXCEPT AS SET FORTH IN SECTION 11, THE CUMULATIVE LIABILITY OF NETSMART TO SUBSCRIBER FOR ANY ACTUAL OR ALLEGED DAMAGES ARISING OUT OF, BASED ON OR RELATING TO THIS MASTER AGREEMENT, WHETHER BASED UPON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR ANY OTHER LEGAL THEORY, WILL NOT EXCEED THE MOST RECENT TWELVE (12) MONTHS' SUBSCRIPTION FEES PAID TO NETSMART UNDER THIS MASTER AGREEMENT.

11. INDEMNIFICATION

a) In the event of any claim by a third party against Subscriber (the "Claim"), alleging that the use of the Software Services infringes upon any intellectual property rights of such third party, Subscriber will promptly notify Netsmart and Netsmart will defend such Claim, in Subscriber's name but at Netsmart's

expense, and will indemnify Subscriber against any liability paid by Subscriber, including but not limited to attorneys' fees and disbursements, arising out of such Claim. In the event such an infringement is found and Netsmart cannot either procure the right to continued use of the Software Services, or replace or modify the Software Services with a non-infringing program, then Netsmart or Client may terminate the Agreement but Netsmart will provide one-time data transition services to Subscriber at no cost to Subscriber. Netsmart will not have any liability under Section 8(b), and Netsmart will be indemnified by Subscriber with respect to any Claim, to the extent that the Claim is based upon (i) the use of the Software Services in combination with other products or services not made or furnished by Netsmart, provided that the Software Services alone are not the cause of such Claim; or (ii) the modification of the Software Services or any portion thereof by anyone other than Netsmart, provided that the Software Services in unmodified form are not the cause of such Claim.

b) Subscriber will indemnify and hold harmless Netsmart from and against all claims, suits or actions by any third party against Netsmart relating to, arising out of or resulting from Subscriber's misuse of the Software Services, or any claim by any party receiving services from Subscriber.

12. TERMINATION

- a) If either party is in default of any of its material obligations hereunder, and has not commenced cure within ten (10) days and effected cure within thirty (30) days of receipt of written notice of default from the other party (the "non-defaulting party"), then the non-defaulting party may terminate the Master Agreement on written notice to the defaulting party.
- b) Subscriber will, within thirty (30) days of the date of termination or expiration of this Master Agreement, erase from all computer storage any image or copies of the Software Services, related specifications and documentation it may have and will certify in writing to Netsmart that the original and all copies of such property have been destroyed.
- c) Notwithstanding any termination or expiration of this Master Agreement for any reason, the terms and conditions set forth in the following Sections of this Master Agreement will survive and will be binding on the representatives, successors, heirs and assignees of the parties:
 - i) Section 10 "Limitation of Liability"
 - ii) Section 11 "Indemnification"
 - iii) Section 12 "Termination"

- iv) Section 13 "Confidentiality"
- v) Section 14 "Non-Solicitation"
- vi) Section 16 "General Provisions"

13. CONFIDENTIALITY

- a) Each party agrees that by reason of their engagement hereunder, they will acquire confidential information and trade secrets concerning the operations of the other party and their business methods and operations and each party (including its employees and agents) will use the same standard of care, but in no event less than reasonable care, that it uses to protect its own confidential information to protect any confidential information of the other party.
- b) During the implementation phase of the project, communications between the parties, such as status reports, scheduling updates, information Subscriber provides about workflows, forms, reporting will be kept confidential to provide a candid environment for continuing discussions.
- c) Netsmart recognizes and acknowledges the sensitive and confidential nature of information it may obtain with regard to Subscriber's clients and their treatment, and agrees that information with respect to Subscriber's clients and their treatment will be kept in strict confidence in perpetuity by Netsmart. Netsmart agrees to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d ("HIPAA") and any current and future regulations promulgated thereunder. The attached Business Associate Agreement ("BAA") is incorporated into this Master Agreement by reference.
- d) Subscriber will take adequate steps and security precautions to prevent unauthorized disclosure of information which is proprietary to Netsmart and/or the owner of the Third Party Programs including, without limitation the Software Services and to maintain the confidentiality of such information, including but not limited to: (i) instructing its employees having access to such information not to copy or duplicate the same or any part thereof and to withhold disclosure or access or reference thereto from unauthorized third parties; and (ii) effecting sufficient security measures including, at the reasonable request of Netsmart, non-disclosure agreements with its employees, to safeguard such information from theft or from access by unauthorized parties.

14. NON-SOLICITATION

During the term of this Master Agreement and for a period of one (1) year following its termination or

expiration, neither party will directly or indirectly solicit for employment or as a consultant, an employee or consultant of the other party, or any person who was an employee or consultant of the other party at any time during the twelve (12) month period immediately prior to the date such employee or consultant is solicited, hired or retained.

15. **FORCE MAJEURE**

Neither party will be responsible for delays or failures in performance resulting from acts or events beyond its reasonable control, including but not limited to, acts of nature, governmental actions, acts of terrorism, fire, labor difficulties or shortages, civil disturbances, transportation problems, interruptions of power supply or communications or natural disasters, provided such party takes reasonable efforts to minimize the effect of such acts or events.

16. **GENERAL PROVISIONS**

- (a) **Governing Law.** This Master Agreement will be construed in accordance with the laws of the State of California, without giving effect to the conflict of law rules thereof. Both parties agree this Master Agreement does not constitute a consumer transaction.
- (b) **Entire Master Agreement.** This Master Agreement and the schedules and exhibits attached hereto contain the entire understanding of the parties with respect to the matter contained herein. There are no promises, covenants or undertakings contained in any other writing or oral communication. In the event of any conflict between or among the documents comprising this Master Agreement, the latest dated document will prevail.
- (c) **Modifications.** This Master Agreement may not be modified except in writing signed by authorized representatives of the parties.
- (d) **Notices.** Any notices required or permitted to be sent hereunder will be in writing and will be sent, Certified Mail, Return Receipt Requested, or by a recognized international courier. Notices will be sent to the addresses first set forth above or to such other address as a party may designate by notice pursuant hereto. Notices to Netsmart will be sent "Attention: Corporate Counsel" and emailed to Contracts_Notice@ntst.com. Notices will be effective upon the date when delivery is either effected or refused.
- (e) **Waiver.** A waiver of a breach or default under this Master Agreement will not be a waiver of any subsequent breach or default. Failure of either party to enforce compliance with any term or condition of this Master Agreement will

not constitute a waiver of such term or condition.

- (f) **Insolvency.** In the event that either party will cease conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under a Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then (at the option of the other party) this Master Agreement will terminate and be of no further force and effect and any property or rights of such other party, whether tangible or intangible, will forthwith be returned to it.
- (g) **Assignment.** The subscription license granted hereunder to Subscriber may not be assigned, or sublicensed, or shared, nor may Subscriber use the Software Services to provide the software features as a service (Software as a Service) to a third party, whether for the benefit of Subscriber or others, without the written consent of Netsmart. Subscriber may, however, assign all of its rights under this Master Agreement to an assignee who acquires all or substantially all of the assets of Subscriber, is not a competitor of Netsmart and has financial resources at least equal to those of Subscriber. Any permitted assignee will assume in writing, all obligations of the assignor.
- (h) **Publicity.** Upon prior written approval, Subscriber authorizes Netsmart to identify Subscriber as a client, and to use Subscriber's name and logo in any of Netsmart's advertising copy, promotional material or press releases.
- (i) **Equitable Relief.** It is specifically agreed that the breach of this Master Agreement, and in particular the provisions concerning non-disclosure of proprietary information may result in irreparable injury and the party who claims such a breach will be entitled to seek specific performance and injunctive relief to correct and enjoin such breach in addition to all other remedies which might be available.
- (j) **Dispute Resolution.** The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement by negotiation. In the event they are unable to resolve the dispute, the parties agree to submit the dispute to confidential mediation under the then current CPR Mediation Procedure <http://www.cpradr.org> before resorting to litigation. If a trial results from any dispute not resolved by mediation, the parties waive their right to a jury trial. No action, regardless of

form, arising out of this Master Agreement will be brought more than one (1) year after the cause of action accrues.

- (k) Severability. If any provision of this Master Agreement is found to be invalid, illegal or unenforceable under any applicable statute or law, it is to that extent deemed to be omitted, and the remaining provisions of this Master Agreement will not be affected in any way.
- (l) This Master Agreement may be executed in two or more counterparts, each of which will be deemed an original.
- (m) Electronic Signature. This Master Agreement may be executed by electronic signature as follows:
 - (i) a fax copy of this Master Agreements with a signature page that displays the image of a handwritten signature; or
 - (ii) a digital file that is transmitted by one party to the other which, when displayed on an electronic video display terminal, presents an image of this Master Agreement with a signature page bearing the image of a handwritten signature.
- (n) Headings. The headings of the paragraphs and sections of this Master Agreement are for convenience only and will not control or affect the meaning or construction of any provision of this Master Agreement.
- (o) Compliance with Laws. Subscriber agrees to comply with all laws and regulations, including all United States and multilateral export laws and regulations, to assure that the Software Services are not exported, directly or indirectly, in violation of law.
- (p) Administrator: The County Officer or employee with responsibility for administering this Agreement is Jamie Samboceti, Deputy Director, or successor.
- (q) In the event of language conflict between Netsmart Master Agreement and Netsmart Subscription Products Addendum, and any other schedules, exhibits and addenda attached to it, the Netsmart Master Agreement shall prevail.

Schedule A: Support Services

The Support Services described in this Schedule will be performed by Netsmart as a part of the SaaS offering subject to the terms and conditions of this License and Service Master Agreement.

- a) Netsmart will maintain the then-current version of the Software Services in substantial conformance with its Specifications as amended from time to time by Netsmart, and with applicable Federal regulatory requirements and laws. Netsmart will use commercially reasonable efforts to either:
 - (i) Correct any reproducible Problems or Defects in the then current release of Software Services by Netsmart which prevent it from operating in substantial conformance with the Specifications and applicable Federal regulatory requirements; or
 - (ii) Provide a commercially reasonable alternative that will substantially conform with the Specifications and applicable Federal regulatory requirements and laws.
- b) Priority 1 issues must be called in directly to the Netsmart Support department. Subscriber will make requests for Support Services by giving Netsmart written notice specifying a Problem or Defect in the Software Services. In making a verbal request for Support Services, Subscriber will provide Netsmart within twenty four (24) hours after such verbal notice with such written information and documentation as may be reasonably prescribed by Netsmart.
- c) Subscriber will provide and maintain, at its expense, hardware and/or software to allow Netsmart to access Subscriber's system remotely. Subscriber will provide Netsmart with appropriate access credentials.
- d) On a timely basis Netsmart will also provide Subscriber with:
 - (i) such updates as are distributed without charge to other similar Subscribers which reflect modifications and incremental improvements made to the Software Services by Netsmart;
 - (ii) an opportunity to obtain enhancements to the Software Services for which charges are imposed on the same terms as such enhancements are generally made available to other Subscribers.
- e) Netsmart will make technical support personnel available from 9:00 a.m. to 6:00 p.m., EST Monday through Friday, exclusive of Netsmart holidays.
- f) Netsmart will ensure all connectivity to Subscriber's system is through the NetsmartCares single point of connectivity utility which records and audits Netsmart's activity on Subscriber's system(s) when Netsmart is connected to Subscriber's system(s). These recordings are retained for 90 days.
- g) If reasonable analysis by Netsmart indicates that a reported Problem or Defect is caused by a problem related to Hardware used by Subscriber, the hardware's system software, or applicable software other than Software Services, or Subscriber's misuse or modification of the Software Services, Netsmart's responsibility will be limited to the correction of the portion, if any, of the problem caused by a Problem or Defect in the Software Services. Subscriber will, at Netsmart's option, pay Netsmart for the cost of analyzing the reported problem at Netsmart's then prevailing time-and-materials rate.
- h) Absent a bona fide dispute, if Subscriber fails to pay for Charges when due, Netsmart may refuse to provide Support Services until Subscriber makes payment of all Charges due.
- i) The Guardian™ software diagnostic tool is included at no additional charge provided Client is up to date with its Charges. The Guardian software monitors the health of Client's instance of the Software Services, and provides information technology personnel with the ability to review technical configuration and metric data including: configuration changes, support case activities, system usage, application events, licensing, user activity, and installed updates in a dashboard view.
- j) If analysis by Netsmart indicates that a reported problem is caused by a reproducible Problem or Defect, Netsmart will use commercially reasonable efforts to provide Support Services in accordance with the following prioritization of reported problems:

(Continued on next page)

Priority	Definition
1 - Critical	<p>Priority 1: will be assigned when the Netsmart Program or a material Netsmart Program Function component is non-operational as a result of a defect [in Production environment only] such as the Production system cannot be accessed or utilized in any capacity, a direct patient safety issue is present, or a HIPAA compliance violation as a result of a server incident or Netsmart application defect. Best efforts will be made to correct Priority 1 problems, or to provide a plan for such correction, within two (2) business days.</p> <p><u>Client's Commitment:</u></p> <ul style="list-style-type: none"> • This case Priority must be called in directly to the Netsmart Support department. • Client provides specific, detailed information required for troubleshooting/investigation. • Client provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate client resources, the case will be downgraded to Priority 2 after three business days.
2 – High	<p>Priority 2: will be assigned to Production defects that result in functions that have a significant negative impact on daily operations but do not constitute as a “System Down”. A workaround may be available and/or the capacity to maintain daily business functionality. Commercially reasonable efforts will be made to correct Priority 2 problems, or to provide a plan for such correction, within five (5) business days.</p> <p><u>Client's Commitment:</u></p> <ul style="list-style-type: none"> • Client provides specific, detailed information required for troubleshooting/investigation. • Client provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate client resources, the case will be downgraded to Priority 3 after six business days.
3-Medium	<p>Priority 3: will be assigned for system defects that result in functions that have no major impact on daily operations. An issue that allows the continuation of function, including issues in which a reasonable workaround is available. Commercially reasonable efforts will be made to correct Priority 3 problems, or to provide a plan for such correction, within ten (10) business day.</p> <p><u>Client's Commitment:</u></p> <ul style="list-style-type: none"> • Client provides specific, detailed information required for troubleshooting/investigation. • Client provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate client resources, the case will be downgraded to Priority 4 after eleven (11) business days.
4 – Low	<p>Priority 4: will be assigned to cosmetic defects that do not affect system usability or non-defect related requests including, but not limited to, system set up/configuration, training, functionality questions, documentation, portal access, and upgrade requests. Commercially reasonable efforts will be made to address Priority 4 issues, or to provide a plan for such correction, within fifteen (15) business day.</p> <p><u>Client's Commitment:</u></p> <ul style="list-style-type: none"> • Client provides specific, detailed information required for troubleshooting/investigation. • Client provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate client resources, the case will be closed following our Case Closure Notification policy.

Schedule A-1: Service Level Agreement for SaaS or Hosting Services

1. Coverage; Definitions

This Section sets forth the System Availability commitments for SaaS. If monthly System Availability (as defined below) falls below 99.9%, Netsmart will provide a credit against the Client’s next monthly recurring Charges for software services to account for the downtime. The appropriate credit percentage (%) will be determined based on the following table.

System Uptime %	Credit %
>= 99.0% and < 99.9%	5%
98.0 to 98.9%	10%
96.0 to 97.9%	15%
< 95.9 or below	25%

2. System Availability Calculation

- a) Netsmart will calculate System Availability as set forth below for each month during the Term of this Netsmart Contract Addendum.
- b) System Availability will be calculated as follows (and will be rounded to up to the next one tenth of a percentage point):

$$\text{System Availability} = [(\text{Base Time} - \text{Unscheduled Downtime}) / (\text{Base Time})] \times 100$$

“Base Time” equals the product of the number of days in the applicable month times 24 hours times 60 minutes.

“Unscheduled Downtime” equals the time (in minutes) during which the Production System is not operational (excluding “Scheduled Downtime”) from Netsmart’s hosting facility internet connection based on the measuring methodology documented below.

“Scheduled Downtime” equals the aggregate total of all minutes of planned and scheduled maintenance performed during the month to perform any necessary hardware, operating system, network, database, application software maintenance, repair, upgrades, and updates. Netsmart will work with Client to determine and use commercially reasonable efforts to Schedule Downtime after regular business hours, during times that minimize the disruption to operations. The amount of scheduled downtime may vary from month to month depending on the level of change to the system such as the project implementation phase, adding new products, upgrading products, etc.

- c) Client is permitted to audit the Unscheduled Downtime based on the methodology established below. Netsmart agrees to cooperate with Client in connection with any audit of the Unscheduled Downtime. This audit must take place within 30 days of the month end.
- d) Netsmart recommends that Client implement, on a timely basis, the Service Packages that will be provided to Client by Netsmart on a periodic basis. Netsmart will advise Client on Service Packages that may enhance performance and availability and will advise Client of the advantages of implementing the Service Packages as well as the implication of electing not to implement the Service Packages. Netsmart will perform the technical requirements needed for Client to use the Service Packages that Client elects to implement, at no additional charge and as part of the recurring SaaS fees. Client and Netsmart will work together to establish a mutually agreeable implementation schedule for the Service Packages. Upon notice to Client that the System’s performance and availability will be adversely affected if Client elects not to implement a Service Package, Client will waive any credits set forth above, until such time as Client performs its obligations as necessary to implement the required Service Packages.



- e) Client must allow Netsmart to implement the latest Netsmart supported layered software version (i.e. OS, DBMS, etc.) and patches within six (6) months of the general support announcement from Netsmart. Netsmart will advise Client regarding the layered software enhancements as well as the implications of electing not to implement the layered software enhancements. Netsmart will perform the technical requirements needed for Client to use the layered software enhancements that Client elects to implement as part of the Service fees. Client and Netsmart will work together to establish an implementation schedule for the layered software enhancements. If Netsmart provides notice to Client that the System's performance and availability will be adversely affected if Client elects not to implement the layered software enhancements, Client waives its right to any credits set forth above until Client implements the required layered software enhancements.
- f) If Client is operating beyond the Scope of Use limits, Client waives its right to any credits set forth above until Client is in compliance with Scope of Use.
- g) The System will be considered in a System Stabilization Period during the seventy-two (72) hour window following the First Productive Use and following a Major System Change. During a System Stabilization Period, changes to the System may be required to achieve optimal performance and Unscheduled Downtime or Scheduled Downtime minutes do not apply.

3. Exceptions

Client shall not receive any credits under this SLA in connection with any failure or deficiency of System Availability caused or associated with:

- a. Circumstances beyond Netsmart's reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, virus attacks or hackers, failure of third party software (including, without limitation, web server software, FTP Servers, or statistics) or inability to obtain supplies, or power used in or equipment needed for provision of services;
- b. Failure of access circuits to the Netsmart Network, unless such failure is caused solely by Netsmart;
- c. Scheduled maintenance, scheduled backups, scheduled restores and emergency maintenance and upgrades;
- d. Issues with FTP, POP, or SMTP Client access;
- e. Client's acts or omissions (or acts or omissions of others engaged or authorized by Client), including, without limitation, custom scripting or coding (e.g., CGI, Perl, Java, HTML, ASP, etc), any negligence, willful misconduct, or misuse of the Services;
- f. E-mail or webmail delivery and transmission;
- g. Outages elsewhere on the Internet that hinder access to your account. Netsmart is not responsible for browser or DNS caching that may make your site appear inaccessible when others can still access it. Netsmart will guarantee only those areas considered under the control of Netsmart: Netsmart server links to the Internet, Netsmart's routers, and Netsmart's servers.
- h. Use of a VPN or similar connection which is not exclusively within Netsmart's control at both ends of such connection, and where the problem occurs in the part of the VPN which is not under Netsmart's control.



4. Scheduled Maintenance

Netsmart reserves the right to establish a monthly maintenance window for the purpose of upgrading, patching, modifying, and repairing portions or the entire Netsmart system environment. The monthly window is generally scheduled on the 3rd Sunday of the month, from 2:00AM – 5:30AM EST.

5. Credit Request and Payment Procedures

In order to receive a credit, Client must submit a request for credit to Netsmart Technologies, Inc. Accounting at AR@ntst.com, within ten (10) business days after the incident supporting the request. Each request must include Client's account number (per Netsmart's invoice) and the dates and times of the unavailability of the services. If the unavailability is confirmed by Netsmart as an incident eligible for credit, credits will be applied within two billing cycles after Netsmart's receipt of Client's request. Credits are not refundable and can be used only towards future billing charges.

Notwithstanding anything to the contrary herein, the total amount credited to Client in a particular month under this SLA cannot exceed the total SaaS fees paid by Client for the month in which Services were impacted. Credits are exclusive of any applicable taxes charged to Client or collected by Netsmart and are Client's sole and exclusive remedy with respect to any failure or deficiency in level of services described in this SLA if Client applied for and received a credit. Nothing in this SLA precludes Client from pursuing an alternate contract remedy for any future incident that may occur.

Schedule B: Desktop Hardware Configuration

Licensee is not purchasing hardware from Netsmart.

If Licensee is acquiring their own hardware, Netsmart will require a detailed description of the intended server configuration for Netsmart’s approval prior to purchase to ensure the hardware meets the below requirements.

Technical Requirements may change over the course of the Master Agreement and as such, Netsmart shall notify Client of any change in which Client is expected to reasonably adopt to meet then-current technical requirements.

User's Computer (Minimum)

Processor	1 gigahertz (GHz) or faster 32-bit (x86)
Operating System	Windows 7, 8 (8.1), Windows 8RT-not supported
RAM	1 GB or greater
Hard Disk Space	1 GB or greater
Monitor	VGA or higher (1024 x 768 pixels) *Monitors with resolution known as 1080p or (1920x1080) and K / Ultra HD (3840 x 2160), 2K / QHD (2560 x 1440) is not supported. This includes all high resolution and retina displays such as (Microsoft Surface and HP Spectre) Avatar will show very small. Support will be targeted post the release of Java 9 with an estimated release of March 2017
Mouse	Microsoft Mouse, or compatible pointing device
Browser	IE 9 (Windows 7), IE 10 (Windows 7, 8), IE 11 (Windows 7, 8.1, 10) (IE 32 bit only in compatibility mode), Chrome (16-48), Firefox (10-44)
Java Requirement	JRE 1.6.0_22 -49(32-bit only) JRE 1.7.0_45 (32-bit only) JRE 1.7.0 u51 (RADplus 2011 or higher + MW Build 2014.01.00.1276 or higher) JRE 1.7 u55 to u80 (RADplus 2011 or higher + MW Build 2014.01.00.1276 or higher) JRE 1.8 u5 to u71,73* (RADplus 2011 or higher + MW Build 2014.01.00.1276 or higher) JRE 1.8 u77 - u102),Requires MW Build 2016.01.00 build 1735

User's Computer (Recommended)

Processor	2 gigahertz (GHz) or faster 32-bit (x86) or 64-bit
Operating System	Windows 7, 8 (8.1)
RAM	2 GB or greater
Hard Disk Space	2 GB or greater
Monitor	VGA or higher (1024 x 768 pixels) *Monitors with resolution known as 1080p or (1920x1080) and K / Ultra HD (3840 x 2160), 2K / QHD (2560 x 1440) is not supported. This includes all high resolution and retina displays such as (Microsoft Surface and HP Spectre) Avatar will show very small. Support will be targeted post the release of Java 9 with an estimated release of March 2017
Mouse	Microsoft Mouse, or compatible pointing device
Browser	IE 10 (Windows 7, 8), IE 11 (Windows 7, 8.1, 10) (IE 32 bit only in compatibility mode), Chrome (48), Firefox (44)
Java Requirement (32-bit only)	JRE 1.8 u77-102 Requires MW Build 2016.01.00 build 1735



Netsmart Subscription Products Addendum (“Addendum”)

1. **Subscription Products and Services Descriptions.** This Addendum is a supplement to the Master Agreement whereas the terms and conditions of this Addendum will apply to “Subscription Products and Services” identified in Section 2.
2. Subscription Products and Services will include all generic versions, corrections, enhancements and improvements developed by Netsmart during the Term of this Addendum:

<input checked="" type="checkbox"/>	OrderConnect	<input type="checkbox"/>	Not Included
<input type="checkbox"/>	CareConnect	<input checked="" type="checkbox"/>	Not Included
<input type="checkbox"/>	CarePathways Measures Reporting	<input checked="" type="checkbox"/>	Not Included
<input type="checkbox"/>	myHealthPointe Portal	<input checked="" type="checkbox"/>	Not Included
<input type="checkbox"/>	ProviderConnect	<input checked="" type="checkbox"/>	Not Included

3. **Supplemental Definitions**

Any capitalized term not defined below but used in this Addendum will have the meaning given to that term in the Master Agreement.

“Agent” means any person who is authorized under applicable law and regulations to transmit or relay prescription authorization information between a Prescriber and a pharmacy. An Agent is typically a nurse who is authorized by a physician to communicate with a pharmacy or laboratory on behalf of a Prescriber.

“Anniversary Date” means the annual calendar anniversary of the Effective Date.

“Care Provider” means an organization that provides medical or health services and any other person or organization that furnishes, bills, or is paid for health care in the normal course of business including a hospital, critical access hospital, skilled nursing facility, or comprehensive outpatient rehabilitation facility.

“Consumer” means an individual who is receiving services from a Care Provider, and who has the right to access specific portions of their electronic health record and the ability to exchange messages with their Care Provider through a Subscription Services Product.

“Drug Information Data” or **“DID”** means context-relevant drug database products licensed from one of the following publishers: Cerner Multum, Inc. (“VantageRx”), First DataBank Evaluations of Drug



Interactions (“EDI”) or Thompson Reuters, Inc. (“UltiMedex”) that provides drug and allergy interaction and dosage information (collectively, “DID Publishers”).

“Non-Prescribing User” means any person who is granted limited access to OrderConnect for the purpose of editing information that is not required to be entered or modified by a Prescriber or Agent under applicable law and regulations. A Non-Prescribing User typically generates reports without modification of the information in the reports, and can update basic demographic information,

“Patient Data” or “Consumer Data” means names, addresses, social security numbers, medical records and any other information concerning or relating to Consumers which is deemed to be protected health information under the rules and regulations of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). Deidentified Data (as such term is defined by HIPAA) shall not be considered to be Patient Data.

“Prescriber” means any person who possesses a DEA number and who is authorized by law to write prescriptions.

“User” means an individual or entity, other than a Consumer, that has been granted access with a user ID and password to a Subscription Product or Service by the Licensee.

4. License Terms and Conditions

- A. The Subscription Products and Services are specifically included within the grant of license and term of license as “Licensed Programs” under the Master Agreement.
- B. Licensee grants to Netsmart a non-exclusive, non-transferable license (the “Usage License”) to use all Patient Data for the sole purpose of operating the Subscription Products and Services for the benefit of Licensee and its clients and for maintaining the Subscription Products and Services (for example, creating backups of the Patient Data or moving it between servers) so long as Netsmart has a bona fide need to do so subject to and for the sole purpose required by this Addendum and the Master Agreement. The Usage License does not confer on Netsmart any right to share Patient Data with third parties other than Netsmart employees or consultants who are bound by agreements that contain confidentiality provisions equivalent to those contained in the Master Agreement. The foregoing restriction on Netsmart’s use of Patient Data does not prohibit Netsmart from making use of Deidentified Data as described and permitted under HIPAA.
- C. Licensee shall pay Netsmart the Charges identified for the Subscription Products and Services on the Master Agreement Expenditure page for the initial term and any associated optional renewal term(s).
- D. If certain Third Party Products are being licensed under this Addendum, Licensee agrees to the pass through terms that apply to those Third Party Products at <http://www.ntst.com/passthroughterms/index.aspx>. Notwithstanding the foregoing, nothing contained in the third party pass through terms will diminish Netsmart’s obligations under this Addendum and as between Netsmart and Licensee, in the event of a conflict of terms, the terms of this Addendum shall prevail.

5. Term and Termination

- A. Netsmart will make the Subscription Products and Services available and Charges will apply, during the term shown on the Master Agreement Expenditures page for each Subscription Product or Service (“Initial Term”). Subscription(s) will be made available concurrent with initial payment.
- B. In the event that Licensee discontinues using the Subscription Products and Services for any reason, Licensee shall be entitled to the return of all Data entered into the Subscription Product. In the event Netsmart ceases doing business, Licensee shall also be entitled to the return of all data entered into



the Subscription Product. In the event data is returned to Licensee, it will be provided in comma delimited file format or another format mutually agreed to by both parties.

- C. Either party may terminate this Addendum in the event the other is in material breach of the terms of this Addendum, or as permitted under the Master Agreement.

6. Licensee Obligations

In addition to the obligations under the Master Agreement Licensee agrees:

- A. That it has no ownership rights in data or information in the DID services or content.
- B. To restrict use of Drug Information Data to licensed healthcare professional directly connected with the Licensee, either as an employee or an authorized affiliate. Such use shall be made only under the supervision of, and reliance upon, the clinical discretion and judgment of a licensed physician. As between the Licensee and the publisher of the Drug Information Data, Licensee assumes full responsibility for ensuring the appropriateness of using and relying upon the information supplied by the Drug Information Data publisher, in view of all attendant circumstances, indications and contraindications. Except as provided above, it will not otherwise make the DID content available to any person, or entity including the government, whether affiliated or not, except as required by subpoena or other legal process and after notice to the owner of the content.
- C. To maintain accurate and up to date Patient Data in all systems covered by the Master Agreement. Client hereby represents and warrants that it has obtained from its patients all authorizations and consents required under all applicable laws in order for Client to provide Data to Netsmart (and its third party vendors if applicable) and for Netsmart and its vendors to use Data to provide the Services in accordance with this Addendum.
- D. To provide support to its Users and Consumers related to their use of the Subscription Products and Services.
- E. To notify Netsmart in the event Licensee becomes aware of or suspects misuse, unauthorized access, data corruption or any other threat to the security of the Subscription Products system and related data or if Licensee receives a subpoena or other legal process requiring disclosure of Netsmart confidential information or DID content.

7. Netsmart Obligations

In addition to the obligations of the Master Agreement, Netsmart will be responsible for:

- A. Establishing SSL connectivity between the Consumer's computing device and the Care Provider's firewall;
- B. Meeting the Service Levels Agreement as stated in the Master Agreement;
- C. Keeping Patient Data confidential in accordance with the terms of the Master Agreement and as required by law.

8. Limitation on Cumulative Liability for Subscription Products

EXCEPT FOR A CONTRACTUAL OBLIGATION TO INDEMNIFY LICENSEE, THE CUMULATIVE LIABILITY OF NETSMART TO LICENSEE FOR ANY ACTUAL OR ALLEGED DAMAGES ARISING OUT OF, BASED ON OR RELATING TO THE SUBSCRIPTION PRODUCTS AND SERVICES COVERED BY THIS ADDENDUM, WHETHER BASED UPON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR ANY OTHER LEGAL THEORY, WILL NOT EXCEED THE AMOUNT OF THE CHARGES PAID TO NETSMART FOR THE SUBSCRIPTION PRODUCTS AND SERVICES UNDER THIS ADDENDUM FOR THE PRIOR TWELVE (12) MONTHS.

BUSINESS ASSOCIATE AGREEMENT

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

RECITALS

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

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

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

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

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

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

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

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

1. Definitions. Unless otherwise provided in this Business Associate Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.
2. Scope of Use and Disclosure by BA of County Disclosed PHI

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

- B. Report to County within 24 hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
 - C. Report to County in writing of any access, use, or disclosure of PHI not permitted by the Underlying Agreement and this Business Associate Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five (5) days. To the extent the Breach is solely a result of BA's failure to implement reasonable and appropriate safeguards as required by law, and not due in whole or part to the acts or omissions of the County, BA may be required to reimburse the County for notifications required under 45 CFR 164.404 and CFR 164.406.
 - D. BA shall not use or disclose PHI for fundraising or marketing purposes. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. BA shall not directly or indirectly receive remuneration in exchange of PHI, except with the prior written consent of the County and as permitted by the HITECH Act, 42 USC Section 17935(d)(2); however, this prohibition shall not affect payment by County to BA for services provided pursuant to the Agreement.
4. PHI Access, Amendment, and Disclosure Accounting. BA agrees to:
- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable County to fulfill its obligations under the HITECH Act, including, but not limited to, 42 USC Section 17935(e).
 - B. Within ten (10) days of receipt of a request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in BA's possession constitutes a Designated Record Set.
 - C. To assist the County in meeting its disclosure accounting under HIPAA:
 - (1) BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosure from Electronic Health Record for treatment, payment, or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At the minimum, the information collected shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed and; (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy

of the individual's authorization, or a copy of the written request for disclosure.

- (2) Within in 30 days of notice by the County, BA agrees to provide to County information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.

D. Make available to the County, or to the Secretary of Health and Human Services (the "Secretary") , BA's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining BA's compliance with the Privacy Rule, subject to any applicable legal restrictions. BA shall provide County a copy of any PHI that BA provides to the Secretary concurrently with providing such information to the Secretary.

5. Obligations of County.

- A. County agrees that it will promptly notify BA in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- B. County agrees that it will promptly notify BA in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- C. County agrees that it will promptly notify BA in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect BA's use of disclosure of PHI.
- D. County shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.
- E. County will obtain any authorizations necessary for the use or disclosure of PHI, so that BA can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.

6. Term and Termination.

- A. Term. This Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the County to BA, or created or received by BA on behalf of the County, is destroyed or returned to the County, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Termination for Cause. Upon the County's knowledge of a material breach by the BA, the County shall either:
 - (1) Provide an opportunity for the BA to cure the breach or end the violation and terminate this Agreement if the BA does not cure the breach or end the violation within the time specified by the County.
 - (2) Immediately terminate this Agreement if the BA has breached a material term of this Agreement and cure is not possible; or
 - (3) If neither termination nor cures are feasible, the County shall report the violation to the Secretary.

C. Effect of Termination.

- (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the BA shall, at the option of County, return or destroy all PHI that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI.
- (2) In the event that the County determines that returning or destroying the PHI is infeasible, BA shall provide to the County notification of the conditions that make return or destruction infeasible, and BA shall extend the protections of this Agreement to such PHI to those purposes that make the return or destruction infeasible, for so long as the BA maintains such PHI. If County elects destruction of the PHI, BA shall certify in writing to County that such PHI has been destroyed.

7. Indemnity

- A. BA shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (collectively "County") from any liability whatsoever, based or asserted upon any services of BA, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to BA's negligent performance or willful misconduct under this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever to the extent arising from the performance of BA, its officers, agents, employees, subcontractors, agents or representatives under this Business Associate Agreement. Further and without limitation, Contractor will fully indemnify County for:
- i. County's actual out of pocket costs of notice, mitigation or remediation of any privacy breach caused by any act or omission of BA.
 - ii. Fines or penalties that are assessed against County by a state or federal regulatory agency for an act or omission of BA or by its employees, directors, officers, subcontractors, or agents on a theory of agency or vicarious liability.

BA shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards against the County in any claim or action based upon such alleged acts or omissions.

- B. With respect to any action or claim subject to indemnification herein by BA, BA shall, at its sole cost, have the right to use counsel of its choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes BA's indemnification of County as set forth herein. BA's obligation to defend, indemnify and hold harmless County shall be subject to County having given BA written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and

reasonable assistance, at BA's expense, for the defense or settlement thereof. BA's obligation hereunder shall be satisfied when BA has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

- C. The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe BA's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Business Associate Agreement.
 - D. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code Section 2782. Such interpretation shall not relieve the BA from indemnifying the County to the fullest extent allowed by law.
 - E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.
8. Amendment. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
9. Survival. The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
10. Regulatory References. A reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
11. Conflicts. Any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.

