



**MASTER AGREEMENT**


This Master Agreement (“**Agreement**”) is effective as of the date last signed by the parties below (the “**Effective Date**”), between

<b>Netsmart Technologies, Inc.</b> 11100 Nall Avenue Overland Park, Kansas 66211 (“Netsmart”)	<b>El Dorado County</b> Health and Human Services Agency 3057 Briw Road Placerville, CA 95667 (“Client or Subscriber”)  EIN: 94-6000511 State tax exempt:
Attention: Joseph McGovern, EVP Telephone No: (631) 968-2012 E-mail Address: <a href="mailto:jmcgovern@ntst.com">jmcgovern@ntst.com</a> Legal notices to be sent to: <a href="mailto:Contracts_Notice@ntst.com">Contracts_Notice@ntst.com</a>	Attention: Nicole Ebrahimi-Nuyken Telephone No: (530) 621-6545 E-mail Address: <a href="mailto:nicole.ebrahimi-nuyken@edcgov.us">nicole.ebrahimi-nuyken@edcgov.us</a> Legal notices to be sent to (if different): <a href="mailto:hhsa-contracts@edcgov.us">hhsa-contracts@edcgov.us</a>

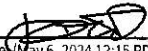
This Master Agreement for Software as a Service (SaaS) Licensed Software and Services sets forth the terms and conditions under which Netsmart shall license the software programs and provide support services described herein.

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 Business Associate Agreement (BAA) and Statement Of Work (SOW), and any subsequent mutually executed amendment(s) or addendum(s).

**REQUESTING CLIENT CONTRACT ADMINISTRATOR CONCURRENCE:**

By:  Date: 05/06/2024  
Nicole Ebrahimi-Nuyken (May 6, 2024 10:52 PDT)  
 Nicole Ebrahimi-Nuyken  
 Director of Behavioral Health  
 Health and Human Services Agency

**REQUESTING CLIENT DEPARTMENT HEAD CONCURRENCE:**

By:  Date: 05/06/2024  
Jim Diel (May 6, 2024 12:15 PDT)  
 Jim Diel Signing for Olivia Byron-Cooper, MPH  
 Director  
 Health and Human Services Agency



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

By: Wendy Thomas  
Chair  
Board of Supervisors  
"Client/Subscriber"

Dated: 5/21/24

Attest:  
Kim Dawson  
Clerk of the Board of Supervisors

By: Kyra Schaufultz  
Deputy Clerk

Dated: 5/21/24

- NETSMART TECHNOLOGIES, INC. -

By: Joseph McGovern  
Joseph McGovern (May 6, 2024 17:22 EDT)  
Joseph McGovern, EVP  
"Netsmart"

Dated: 05/06/2024

By: Lynn Marasco  
Lynn Marasco (May 6, 2024 17:02 CDT)  
"Corporate Secretary"

Dated: 05/06/2024

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**Master Agreement Expenditures**

Master Agreement Expenditures	Quantity	Term (Month)	June 1, 2024 - May 31, 2025	June 1, 2025 - May 31, 2026	June 1, 2026 - May 31, 2027	June 1, 2027 - May 31, 2028	June 1, 2028 - May 31, 2029
<b>Subscription and Maintenance Fees</b>							
AMA CPT Code Subscription		12	\$7,152.56	\$5,250.82	\$5,460.85	\$5,679.29	\$5,906.46
Avatar Electronic Signature Maintenance		12	\$2,763.40	\$2,873.94	\$2,988.90	\$3,108.45	\$3,232.79
Two Party Escrow Agreement		12	\$921.26	\$958.11	\$996.44	\$1,036.30	\$1,077.75
Avatar Plexus Cloud SaaS - Named Users	180	12	\$156,332.64	\$162,585.95	\$169,089.39	\$175,852.96	\$182,887.08
CareConnect HIE Connector (CCD Transactions) SaaS		12	\$8,389.31	\$8,724.88	\$9,073.87	\$9,436.83	\$9,814.30
CareConnect FHIR Interface SaaS		12	\$5,928.00	\$6,165.12	\$6,411.72	\$6,668.19	\$6,934.92
Netsmart ASAM Continuum Integration Subscription		12	\$3,466.69	\$3,605.36	\$3,749.58	\$3,899.56	\$4,055.54
Diagnosis Content on Demand Subscription		12	\$1,566.20	\$1,628.85	\$1,694.00	\$1,761.76	\$1,832.23
KPI Dashboard SaaS		12	\$16,510.00	\$17,170.40	\$17,857.22	\$18,571.50	\$19,314.36
POS Scanning Powered by Perceptive Maintenance		12	\$2,631.79	\$2,737.06	\$2,846.55	\$2,960.41	\$3,078.83
OrderConnect - ePrescribing Only - Prescriber Subscription	10	12	\$5,080.58	\$5,283.80	\$5,495.15	\$5,714.96	\$5,943.56
OrderConnect - Non-Prescribing User Subscription	16	12	\$1,642.25	\$1,707.94	\$1,776.26	\$1,847.31	\$1,921.20
OrderConnect Base Fee		12	\$1,776.47	\$1,847.52	\$1,921.43	\$1,998.28	\$2,078.21
myHealthPointe 2.0 Enterprise SaaS - Human Services		12	\$24,613.31	\$25,597.84	\$26,621.75	\$27,686.62	\$28,794.09
myLearningPointe - LMS Premier Named User		12	\$7,300.80	\$7,592.83	\$7,896.55	\$8,212.41	\$8,540.90
OrderConnect - EPCS Subscription	6	12	\$540.30	\$561.91	\$584.39	\$607.76	\$632.07
<b>Total By Year</b>			<b>\$246,615.56</b>	<b>\$254,292.34</b>	<b>\$264,464.04</b>	<b>\$275,042.60</b>	<b>\$286,044.30</b>
<b>Additional "Subscription Products and Services"</b>				<b>Total Year 1 through 5 (6/1/24-5/31/29)</b>			
Work Orders submitted in accordance with Section 3.f	N/A	N/A	\$350,000				
<b>Maximum Obligation</b>							<b>\$1,676,458.85</b>

\* 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 El Dorado County Board of Supervisors Policy Manual: <https://www.edcgov.us/Government/BOS/Policies/Documents/D-1%20Travel%20Policy%20Amended%20-%202010-22-19.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, Netsmart shall not increase the maximum obligation amount due from Client under this Agreement for all Services and Deliverables during the term of this Agreement.

**Invoices are payable net forty five (45) days after invoice date for services and software rendered. The initial period for provision of support services for Licensed Programs will begin on June 1, 2024 through May 31, 2025, with the following June 1 thereafter being the anniversary date, ("Anniversary Date"). Unless prices are shown above for each successive annual period following the initial period, Contractor will give County not less than sixty (60) days written notice prior to any Anniversary Date of any revised schedule of support service prices. If prices for annual services are not fixed above, support service pricing will not be increased for any annual period by more than 4%. All renewal terms are at the County's option.**

## TERMS AND CONDITIONS

### 1. DEFINITIONS

Each capitalized term used in this Agreement shall have the following meaning:

- a. “**Confidential Information**” means all technical, financial and other information that is disclosed by either party to the other, whether orally or in writing, that is confidential or proprietary in nature, including reporting, Work Product, data (other than Protected Health Information which shall be protected in accordance with the Business Associate Agreement (BAA) included herein), Documentation, and any non-public information related to Netsmart products, services and methodologies that are confidential or proprietary in nature. “Confidential Information” does not include information (a) publicly available through no breach of this Agreement; (b) rightfully acquired from a third party having a bona fide right to disclose or make the same available; (c) independently developed or previously known by a party; or (d) Protected Communication.
- b. “**Data**” means all information collected, stored, processed or generated through Client’s use of the Software Services.
- c. “**Documentation**” means the description and features of the Licensed Software and Software Services as set forth on the Netsmart Wiki, which includes release notes. The Netsmart Wiki can be accessed via the application or the NetsmartConnect support portal.
- d. “**First Productive Use**” means the date that Data is being accessed or entered in the Software Services for processing or review in Client’s commercial environment.
- e. “**Force Majeure**” mean acts or events beyond its reasonable control, including but not limited to, acts of nature, governmental actions, acts of terrorism, fire, labor, civil disturbances, pandemics, transportation problems, interruptions of power supply or communications, breakdown of internet service provider and natural disasters, any of which makes performance impossible.
- f. “**Hardware Configuration**” means the hardware required to install and/or operate the Licensed Software or Software Services as set forth at <https://wikihelp.ntst.com/Special:Userlogin?returntotitle=Req#tab=login>, Username: Netsmart\_Prospect and Password: Netsmart1.
- g. “**Licensed Software**” means the Netsmart commercial computer software programs in object code form listed in a Work Order and their associated Documentation.
- h. “**Problem or Defect**” means any failure of the Licensed Software or Software Services to operate in substantial conformance with the Documentation.
- i. “**Protected Communication**” mean those communications protected under 45 CFR § 170.403, Communications, of the 21st Century Cures Act (the “Communications Rule”), regarding the usability, interoperability or security of the Netsmart Licensed Software or Software Services; relevant information regarding users’ experiences when using the Licensed Software or Software Services; Netsmart’s business practices related to exchanging electronic health information; and the manner in which a user uses the Licensed Software or Software Services.

- j. **“Work Order”** means a document executed by the parties (such as a quote or addendum) setting forth the items being purchased by Client, which will be subject to and incorporated into this Agreement, as set forth in section 3.f.
- k. **“Scope of Use”** means a metric used to define the limits of the products and services as provided for in the Agreement (i.e. number of concurrent users).
- l. **“Services”** means the implementation, training, Software Services, Support Services and other services to be provided by Netsmart under this Agreement.
- m. **“Software Services”** or **“SaaS”** means the right to access the Licensed Software and/or Third Party Products in a cloud computing environment in accordance with the SOW, together with the Support Services.
- n. **“Statement of Work”** or **“SOW”** means the scope for the implementation of the Software Services.
- o. **“Support Services”** means the application maintenance and support services provided by Netsmart for the Software Services.
- p. **“Third Party Products”** means any commercial software product acquired by Netsmart from an outside vendor on behalf of Client.
- q. **“Work Product”** means any documentation, technique, methodologies, inventions, reports, software, or procedures developed, conceived or introduced by Netsmart during the course of this Agreement, whether acting alone or in conjunction with Client or its employees, Users or others. Work Product does not include any Client Confidential Information or Data.

## 2. SOFTWARE SERVICES LICENSE RIGHTS

- a. Software Services License. Netsmart hereby grants Client a non-exclusive, royalty-free, non-transferable subscription license to use the Software Services only:
  - i. for Client’s internal business purposes and not to process the data of any other entity; and
  - ii. to support the Scope of Use for the Software Services set forth on the applicable Work Order(s).
- b. License Rights. The license rights granted in this section may be exercised by Client, its employees and independent contractors (provided that such independent contractors are not competitors of Netsmart) (each a “User”). Client shall be responsible for each User(s) compliance with the terms of this Agreement.
- c. License Restrictions. Except as expressly stated in this Agreement, no other rights, express, implied or otherwise, are granted to Client and Netsmart reserves all rights not expressly granted herein. Client will not permit the Software Services or Third Party Products (i) to be disassembled or reverse engineered, (ii) to be sold, disclosed, leased, subleased, lended or otherwise made available to others including third party hosting providers, (iii) to be or attempted to be accessed, modified, make additions to or altered, (iv) make any derivations, adaptations, or translations in whole or in part, and/or (v) to be used to develop functionally similar computer software or to otherwise compete with Netsmart. No copies of the Software Services or Third Party Products may be made by Client without the prior written consent of Netsmart except for backup purposes in accordance with normal data processing practices. Client agrees to reproduce any copyright notices and/or other proprietary legends, regardless of form, contained in, affixed to, or appearing on the Software Services and Third Party Products.





- d. Third Party Products. Third Party Products are licensed subject to the same restrictions as are set forth in this Agreement. Third Party Products are also subject to and Client agrees to the pass through terms that apply to those Third Party Products at <https://www.ntst.com/lp/pass-through-terms>. Notwithstanding the foregoing, nothing contained in the third party pass through terms will diminish Netsmart's obligations under this Agreement.
- e. Software Title. The Software Services are proprietary to Netsmart and are based upon and contain trade secrets and other Confidential Information. Netsmart reserves title to the Software Services and all other rights not expressly granted herein.
- f. Scope of Use Audit. Client acknowledges that Netsmart has access to view Client's actual Scope of Use and will periodically verify Client's actual Scope of Use of the Software Services. Should this verification identify usage of the Software Services in excess of the Scope of Use contracted for, Client agrees to true-up the Scope of Use to the current usage levels.

### 3. SERVICES

- a. Implementation. The Statement of Work will set forth the tasks to be performed by each party, the time frames in which such tasks will be performed, and will identify the roles and responsibilities of the persons who will be provided by Client to support the implementation.
- b. Support Services. Netsmart agrees to provide Support Services in accordance with the terms set forth on Schedule A.
- c. Data Services. To the extent permitted by applicable law, Netsmart may (i) use and disclose Data as necessary to perform, analyze and improve the Services; (ii) use and disclose Data to provide data aggregation services as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B), including use for statistical compilations, reports and all other purposes allowed under applicable law HIPAA and (iii) deidentify PHI in accordance with the standards set forth in HIPAA and use and disclose such deidentified data.
- d. Data Security. Netsmart has a risk-based, independent third-party-audited Information Security Management System ("ISMS") designed to enable Software Services and Support Services to be delivered in a secure manner and protect against threats to the security or integrity of Client's Data. Netsmart aligns its ISMS with the National Institute of Standards and Technology (NIST) cybersecurity framework. Netsmart annually agrees to undergo SSAE18 SOC 2 Type 2 review of its data center operations and agrees to provide a summary of the report upon Client's request.
- e. Suspension of Services. Netsmart may, upon advance written notice to Client, suspend Services without liability to Client in the event of (i) a threat to the security of Netsmart's systems, the Services, or (ii) Client's undisputed invoices are overdue and written notice has been provided by Netsmart, in addition to any other rights or remedies, including termination of the Agreement.
- f. Additional "Subscription Products and Services". For each additional product or service requested by Subscriber, Netsmart shall provide a written Statement of Work/Quote to Subscriber. Upon receipt and approval of each Statement of Work/Quote, Subscriber will issue a separate written Work Order to Netsmart for each individual service enhancement identifying a description of the service enhancement, set-up, training, support, and any required deliverables, including materials, supplies, reports, certifications, or other documents to be supplied in connection with the work assignment, a specific



date by which the work shall be completed and a not-to-exceed cost to complete the work. Netsmart shall not commence work until receiving the written Work Order. No payment will be made for any work performed prior to issuance of a written Work Order or beyond the earlier of the expiration date of the Work Order or expiration for the underlying Agreement, and no payment will be made for amounts in excess of the not-to-exceed amount of the Work Order.

- i. The period of performance for Work Orders shall be in accordance with dates specified in each Work Order. No payment will be made for any work performed before or after the period of performance in the Work Order, unless Subscriber and Netsmart amend the Work Order. No Work Order will be written which exceeds the cumulative total of the not-to-exceed dollar amount of this Agreement. No Work Order will be written which extends beyond the expiration date of this Agreement.
- ii. Netsmart shall provide initial training for Subscriber's personnel who are authorized by Subscriber in writing to Netsmart ("Users") in the use of the Software as it relates to the Services as set forth in the Order Form. Additional training requested by Subscriber shall be at the then-current hourly rate charged by Netsmart. Subscriber shall allow only Users who have received proper training to utilize the Software and Netsmart's Network, and shall allow access only through passwords which comply with password requirements provided by Netsmart. Subscriber shall protect, and ensure that its Users protect, the confidentiality of User passwords.

#### 4. PAYMENTS

- a. Payments. Invoices are payable net forty five (45) days after invoice date for services and software rendered. At no time shall Client be held responsible for payment of services prior to implementation of those services. Client will pay a finance charge on all undisputed amounts past due at a rate of 18% per annum or the highest interest rate permitted by law. Failure to make timely payment is considered a material breach of the Agreement.
- b. Annual Increases. Master Agreement Expenditure fees as shown in the Master Agreement Expenditures table above shall not be increased in excess of the annual fees as shown therein. For other recurring fees not reflected in the Master Agreement Expenditure table, Netsmart agrees that it will not revise any recurring fees during the first year of this Agreement. Thereafter, any recurring fees will be increased annually at a rate of 5% or the most recent increase in the US Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) - Medical Care, whichever is greater. Netsmart may further increase recurring fees for Third Party Products, if such increase from Netsmart's third party supplier exceeds the amount permitted under this Section. Netsmart agrees any such additional increase shall be at the same rate charged by the third party supplier.
- c. Taxes. The fees set forth in this Agreement do not include any taxes. Where applicable, taxes will be added to the fees, and Client will pay amounts equal to any taxes (however designated, levied, or based) on such fees 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 Client is tax exempt, Client will provide Netsmart a certificate of exemption from taxes.

#### 5. WARRANTIES

- a. Functionality Warranty. Netsmart warrants that the Software Services will substantially conform in all material respects with the Documentation, provided Client is on the most current or next to most current version of the Software Services and no modifications, additions or alterations of any kind have been



made. In the event of a breach of the foregoing warranty and provided Client is receiving Support Services, Netsmart will (i) correct any reproducible Problems or Defects in the Software Services which prevent it from operating in substantial conformance with the Documentation; or (ii) provide a commercially reasonable alternative that will substantially conform with the Documentation in accordance with the Support Services provisions set forth in Schedule A. The foregoing warranty will only apply if Client meets the Hardware Configuration. CLIENT'S EXCLUSIVE REMEDY UNDER THIS SECTION AND NETSMART'S SOLE OBLIGATION IS TO MODIFY THE SOFTWARE SERVICES TO ELIMINATE THE PROBLEM OR DEFECT. IN THE EVENT NETSMART CANNOT MODIFY OR ELIMINATE THE PROBLEM OR DEFECT, CLIENT MAY TERMINATE THE AGREEMENT PURSUANT TO THE TERMINATION SECTION AND SEEK ALL AVAILABLE REMEDIES AT LAW AND IN EQUITY.

- b. Services Warranty. Netsmart warrants that the Services will be performed in a professional manner in accordance with the terms in this Agreement.
- c. Disclaimer Of All Other Warranties. 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 SERVICES INCLUDING, BUT NOT LIMITED TO, THOSE CONCERNING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ARISING BY TRADE USAGE OR COURSE OF DEALING.

## 6. LIMITATION OF LIABILITY

- a. LIMITATION ON DAMAGES. EXCEPT FOR A BREACH OF THE LICENSE RESTRICTIONS, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES.
- b. LIMITATION ON CUMULATIVE LIABILITY. EXCEPT FOR INFRINGEMENT INDEMNIFICATION OBLIGATIONS, THE MAXIMUM AGGREGATE LIABILITY OF NETSMART TO CLIENT FOR ANY ACTUAL OR ALLEGED DAMAGES ARISING OUT OF, BASED ON OR RELATING TO THIS AGREEMENT, WHETHER BASED UPON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR ANY OTHER LEGAL THEORY, WILL NOT EXCEED THE FEES PAID TO NETSMART FOR THE IMPACTED PRODUCTS AND SERVICES DURING THE PRIOR TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CAUSE OF ACTION.

## 7. INDEMNIFICATION

- a. Infringement Indemnification. Netsmart will defend, indemnify and hold harmless Client and its officer, directors, employees and agents from and against third party claims, liabilities, obligations, judgements, causes of action (the "**Claim**"), and associated costs and expenses (including reasonable attorneys' fees) to the extent arising out of an allegation that the use of the Software Services infringes a third party's U.S. patent, trademark, copyright or other third party intellectual property right. In the event such an infringement is found, Netsmart will at its option and expense, and as Client's sole and exclusive remedy, procure the right to continued use of the Software Services, replace or modify the Software Services with a non-infringing program, or terminate the license of the Software Services, and will refund to Client a pro rata refund of fees prepaid for Software Services not yet provided. Netsmart's indemnification obligations will not apply to the extent the Claim is based upon Client's (i)

use of the Software Services in violation with the terms of this Agreement; (ii) 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; (iii) modification, additions or alterations 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; or (iv) use of Software Services not updated to the latest version offered by Netsmart, where such version cures the infringement.

- b. Client Indemnification. Client will indemnify, defend and hold harmless Netsmart and its officer, directors, employees and agents from and against all Claims, and associated costs and expenses (including reasonable attorneys' fees) to the extent arising out of or resulting from Client's misuse of the Software Services, or any claim by any party receiving services from Client.
- c. Indemnification Process. Upon becoming aware of any matter which is subject to the provisions of the Indemnification Section, the party seeking indemnification must (i) give prompt written notice of such Claim to the other party; (ii) provide the indemnifying party with the authority, information and assistance to defend or settle the Claim; and (iii) not materially prejudice the indemnifying party's ability to defend or settle the Claim. The indemnifying party has the right to control and defend the Claim at its own expense and with its own counsel and to settle the Claim so long as such settlement does not require the indemnified party to pay any money or admit any liability without the indemnified party's prior written consent. The indemnified party will have the right, at its option, to participate in the defense of the Claim with its own counsel at its own expense.

## 8. TERM AND TERMINATION

- a. Term. The Initial Term of this Master Agreement will be from June 1, 2024 through May 31, 2029 ("Initial Term") subject to earlier termination when permitted under Section 8.

At the expiration of the Initial Term this Master Agreement will not automatically renew.

- b. Termination. Either party may terminate this Agreement or a Work Order, if the other party is in material breach by sending a written notice specifying each breach with reasonable detail, unless (i) the breaching party has cured the breach within thirty (30) days of receipt of written notice, or (ii) with respect to a breach which may not be reasonably cured within the 30-day period, the breaching party is diligently pursuing cure of, and cures the breach as soon as practicable. In the event this Agreement is terminated due to a breach by Client, within thirty (30) days of the date of termination of this Agreement, Client will erase from all computer storage any image or copies of the Software Services, related documentation and will certify in writing to Netsmart that the original and all copies of such property have been destroyed. In the event of termination, Client shall be responsible for all fees related to software and Services rendered through the effective date of such termination.
- c. Copy of Data upon Termination. Upon termination of the Agreement, Netsmart will make a machine readable backup copy of the Data available to Client at no additional cost, in an SQL backup file (.bak) format. The backup file will be delivered via Secure FTP or on an encrypted disc as requested by Client. Netsmart retains no rights or ownership to the Data.
- d. Survival. Notwithstanding any termination of this Agreement for any reason, the terms and conditions set forth in the following Sections of this Agreement will survive and will be binding on the representatives, successors, heirs and assignees of the parties: Limitation of Liability, Indemnification (with respect to claims arising prior to termination), Confidentiality, and General Provisions.



## 9. CONFIDENTIALITY

- a. Confidential Information. Except as permitted in this Agreement, neither party will, nor will they permit their employees, agents, attorneys or independent contractors to, disclose, use, copy, distribute, sell, license, publish, reproduce, or otherwise make available Confidential Information of the other party. Each party agrees to secure and protect the other party's Confidential Information using the same standard of care, but in no event less than reasonable care, that it uses to protect its own Confidential Information. Each party agrees to require their respective employees, agents, attorneys, and independent contractors who have a need to access Confidential Information to be bound by confidentiality obligations sufficient to protect the Confidential Information. Either party may disclose the other party's Confidential Information to the extent required by applicable law or regulation, provided that, as permitted, it notifies the other party in writing as soon as practicable prior to such disclosure. Notwithstanding the foregoing, Netsmart shall not prohibit or restrict or engage, nor shall anything contained herein be construed to permit or allow Netsmart to engage in a practice that prohibits or restricts Client from any Protected Communications that are entitled to unqualified protection as defined and required under the ONC Final Rules (45 C.F.R. Parts 170 and 171). Client recognizes that Netsmart has a legitimate interest in the Protected Communications and that if Netsmart is not made aware of the issues that may be detailed in a Protected Communication, Netsmart is not able to resolve, correct or explain them. Netsmart encourages Client to report all such issues included in Protected Communications through Netsmart's standard support process. Netsmart reserves all rights to assert that any prohibition or restriction imposed by Netsmart on Protected Communications is permitted because it is not entitled to unqualified protection under 45 C.F.R. 170.403(a)(2)(ii).
- b. HIPAA. The parties agree to comply with the Business Associate Agreement ("BAA") attached hereto and incorporated by reference. As a condition of Netsmart providing SaaS services to the Client, Netsmart shall execute the BAA.

## 10. INTELLECTUAL PROPERTY

Netsmart retains all right, title and interest, including intellectual property rights and all other rights in the Licensed Software, Software Services, Services and Work Product. Netsmart grants to Client a non-exclusive, non-transferable license to use Work Product for Client's own internal business purposes in conjunction with the Software Services during the Term and for no other purpose.

## 11. FORCE MAJEURE

Except for obligations to pay for Services performed or products delivered, neither party will be responsible for delays or failures in performance resulting from an event of Force Majeure. The delayed party will perform its obligations within a reasonable time after the cause of the failure has been remedied, and the other party will accept the delayed performance.

## 12. GENERAL PROVISIONS

- a. Governing Law. This Agreement will be interpreted and enforced in accordance with the laws of the State of California, without giving effect to the conflict of law rules thereof. Both parties agree this Agreement does not constitute a consumer transaction.

- b. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the matter contained herein. There are no promises, covenants or undertakings contained in any other written or oral communication. In the event of any conflict between or among the documents comprising this Agreement, the latest dated agreement will prevail. This Agreement may not be modified except in writing and signed by authorized representatives of the parties.
- c. Notices. Any notices required or permitted to be sent hereunder will be in writing and will be sent, deposited with the U.S. Postal Service (certified mail, return receipt requested). Notices to Client and Netsmart will be sent to the addresses first set forth on the first page of this Agreement. 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.
- d. Waiver. A waiver or consent to any term, condition, right or remedy under this Agreement must be in writing to be effective. Failure of either party to enforce any term or condition of this Agreement will not constitute a waiver of such term or condition. No waiver or consent for any one matter will be a waiver or consent for any subsequent or different matter.
- e. 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, which is not discharged within ninety (90) days, then (at the option of the other party) this 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.
- f. Assignment. Client may not assign this Agreement or any of the licenses herein, without the prior written consent of Netsmart, except to an assignee who acquires all or substantially all of the assets of Client, is not a competitor of Netsmart and has financial resources at least equal to those of Client. Any permitted assignee will assume in writing, all obligations of the assignor.
- g. Exclusion. Netsmart acknowledges that to the best of its knowledge neither Netsmart nor its employees providing services hereunder are listed on the Office of Inspector General (OIG) List of Excluded Individuals/Entities (LEIE) as ineligible to participate in any federal health care program.
- h. Medicare Access to Records Clause. If this Agreement is deemed subject to 42 U.S.C. § 1395x(v)(1)(I) and 42 C.F.R. Part 420, Subpart D 420.300 et seq., then in accordance with such law, Netsmart shall, until the expiration of four (4) years after the furnishing of any Medicare reimbursable services pursuant to this Agreement, upon written request, allow the Comptroller General of the United States, the Secretary of Health and Human Services, and their duly authorized representatives access to this Agreement and to Netsmart's books, documents and records necessary to certify the nature and extent of costs of Medicare reimbursable services provided under this Agreement.
- i. Publicity. Upon prior written approval, Client authorizes Netsmart to identify Client as a client, and to use Client's name and logo in any of Netsmart's advertising copy, promotional material or press releases.
- j. Arbitration and Injunctive Relief. Netsmart and Client will work cooperatively to resolve any dispute arising out of or relating to this Agreement ("Dispute") amicably at appropriate management levels. If a Dispute remains unresolved and a party wishes to initiate a formal dispute, the party will submit the Dispute to binding arbitration in the State of Kansas under the Federal Arbitration Act ("FAA") and



under the then-current Commercial Arbitration Rules of the American Arbitration Association, Inc. (“AAA”). The arbitrator will follow the Federal Rules of Evidence. The provisions of this Agreement will control over both the rules and procedures of the FAA, AAA and the Federal Rules of Evidence. Each party will bear their own fees, expenses and costs incurred in connection with the arbitration, but the parties will share equally the fees and expenses of the arbitrator. Judgement on any arbitration award may be entered and enforced in any court of competent jurisdiction. No action, regardless of form, arising out of this Agreement will be brought more than one (1) year after the cause of action accrues. Each party acknowledges that any breach of its obligations with respect to the other party’s confidentiality and intellectual property rights may result in irreparable injury for which monetary damages will not be adequate and the non-breaching party is entitled to seek injunctive relief in addition to any other relief a court may deem proper.

- k. Practice of Medicine and Accuracy of Information. Client acknowledges and agrees that the Software Services and Services are information management tools, many of which contemplate and require the involvement of professional medical personnel. The duty to diagnose and treat a patient lies solely with Client and use of information provided by Netsmart, in no way replaces or substitutes for the professional judgment or skill of Client.
- l. Severability. If any provision of this 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 Agreement will not be affected in any way.
- m. Execution. This Agreement may be executed in two or more counterparts, each of which will be deemed an original. This Agreement may be executed and delivered by facsimile or other electronic signature (whether digital or encrypted), which shall be considered an original signature for all purposes and shall have the same force and effect as an original signature.
- n. Headings. The headings of the paragraphs and sections of this Agreement are for convenience only and will not control or affect the meaning or construction of any provision of this Agreement.
- o. Contract Administrator. The Client Officer or Employee with responsibility for administering this Agreement is Nicole Ebrahimi-Nuyken, LMFT, Director, El Dorado County (County) Behavioral Health, Health and Human Services Agency (HHSA), or successor. In the instance where the named Contract Administrator no longer holds this title with County and a successor is pending, or HHSA has to temporarily delegate this authority, County Contract Administrator’s Supervisor shall designate a representative to temporarily act as the primary Contract Administrator of this Agreement and HHSA Administration shall provide the Contractor with the name, title and email for this designee via notification in accordance with the Article titled “Notice to Parties” herein.
- p. Electronic Signatures. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic visual symbol or signature attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17) as amended from time to time.
- q. Levine Act Compliance: Pursuant to Government Code section 84308 (SB 1439, the Levine Act), Contractor shall complete and sign the attached Exhibit A, marked “California Levine Act Statement,” incorporated herein and made by reference a part hereof, regarding campaign contributions by Contractor, if any, to any officer of County.





- r. Health Insurance Portability and Accountability Act (HIPAA) Compliance: As a condition of Contractor performing services for County, Contractor shall execute Exhibit B, marked "HIPAA Business Associate Agreement," incorporated herein and made by reference a part hereof.



#### **Schedule A: Application Support Services**

The following is a description of the Support Services to be performed by Netsmart during the time period in which Client is purchasing Support Services.

1. Netsmart will support and maintain the most current version of the Licensed Software in substantial conformance with applicable State and Federal laws including those requiring data capture, reporting, claiming. Client acknowledges and agrees that, in the event Client has chosen to utilize a less than current version of the Licensed Software or has missed any mandatory upgrades, Client will bring the Licensed Software up to Netsmart's then-current version in order for Client to maintain compliance with applicable Federal law.
2. Priority1 issues must be called in directly to the Netsmart Support department. For all other concerns Client can call or use Netsmart's designated online support system to log issues specifying a Problem or Defect in the Licensed Software.
3. If self-hosted, Client will provide and maintain, at its expense, hardware and/or software to allow Netsmart to access Client's system remotely.
4. Netsmart will also provide Client with:
  - a. updates that are distributed without charge to other similar clients which reflect modifications and incremental improvements made to the Licensed Software by Netsmart;
  - b. an opportunity to obtain enhancements to the Licensed Software for which fees are imposed on the same terms as such enhancements are generally made available to other clients
5. Netsmart will provide a toll-free problem-reporting and support telephone line available 8:00 a.m. to 5:00 p.m., Central time Monday through Friday, exclusive of Federal holidays.
6. Client agrees to grant Netsmart access to the Licensed Software on Client's system(s) for the sole purpose of performing Netsmart's obligations under this Agreement. Netsmart will ensure all connectivity to Client's system is through a single point of connectivity utility which audits Netsmart's activity on Client's system(s) when Netsmart is connected to Client's system(s). These audit logs are retained for 90 days.
7. If reasonable analysis by Netsmart indicates that a reported Problem or Defect is caused by a problem related to hardware used by Client, the hardware's system software, or applicable software other than Licensed Software, or Client 's misuse or modification of the Licensed Software, 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 Licensed Software.
8. 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:

Priority	Definition
<p style="text-align: center;"><b>1 - Critical</b></p>	<p><b>Priority 1:</b> will be assigned when the Licensed Software or a material functional component thereof is non-operational as a result of a defect, in the 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. Notwithstanding the above, Netsmart will work continuously toward resolution.</p> <p><u>Client's Commitment:</u></p> <ul style="list-style-type: none"> <li>• This case Priority must be called in directly to the Netsmart Support department.</li> <li>• Client provides specific, detailed information required for troubleshooting/investigation.</li> <li>• Client provides appropriate staff and resources to sustain continuous communication and work effort as required.</li> <li>• Without appropriate client resources, the case will be downgraded to Priority 2 after three business days.</li> </ul>
<p style="text-align: center;"><b>2 - High</b></p>	<p><b>Priority 2:</b> will be assigned to defects in the live production environment that have a significant negative impact on daily operations but do not cause 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"> <li>• Client provides specific, detailed information required for troubleshooting/investigation.</li> <li>• Client provides appropriate staff and resources to sustain continuous communication and work effort as required.</li> <li>• Without appropriate client resources, the case will be downgraded to Priority 3 after six business days.</li> </ul>
<p style="text-align: center;"><b>3 - Medium</b></p>	<p><b>Priority 3:</b> 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"> <li>• Client provides specific, detailed information required for troubleshooting/investigation.</li> <li>• Client provides appropriate staff and resources to sustain continuous communication and work effort as required.</li> <li>• Without appropriate client resources, the case will be downgraded to Priority 4 after eleven (11) business days.</li> </ul>

<p><b>4 - Low</b></p>	<p><b>Priority 4:</b> 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"><li>• Client provides specific, detailed information required for troubleshooting/investigation.</li><li>• Client provides appropriate staff and resources to sustain continuous communication and work effort as required.</li></ul>
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**Schedule A-1: Service Level Agreement for Software Services**

**1. Definitions.**

- a. **Major System Change** means a material change to the system, including a backend upgrade, operating system upgrade, new release upgrade, SAN upgrade, database upgrade.
- b. **Service Package** means software designed to fix identified Problems or Defects in the Software Services, including documentation and release notes made available with such patch or service pack.
- c. **System Stabilization Period** is the period during the seventy-two (72) hour window following the First Productive Use and following a Major System Change.

**2. Coverage.**

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

For the absence of doubt, Software Services include 24x7x365 Support Services for Priority 1 issues.

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%

**3. System Availability Calculation**

- a. Netsmart will calculate System Availability as set forth below for each month during the Term.
- 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 the Netsmart-provided 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 Unscheduled Downtime based on the methodology established below. Netsmart agrees to cooperate with Client in connection with any audit of 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/Hosting 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 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. 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.

#### **4. Exceptions**

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

- a. an event of Force Majeure;
- 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 Software 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; and
  - 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.
5. **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 cloud computing environment. The monthly window is generally scheduled on the 3<sup>rd</sup> Sunday of the month, from 2:00AM – 5:30AM EST.
6. **Credit Request and Payment Procedures.**  
In order to receive a credit, Client must submit a request for credit to Netsmart Accounting at AR@ntst.com, within thirty (30) 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 fees.  
Notwithstanding anything to the contrary herein, the total amount credited to Client in a particular month under this Schedule 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 Schedule if Client applied for and received a credit. Nothing in this Schedule precludes Client from pursuing an alternate contract remedy for any future incident that may occur.

**Netsmart Technologies, Inc.**  
**Exhibit A**  
**California Levine Act Statement**

California Government Code section 84308, commonly referred to as the "Levine Act," prohibits any officer of El Dorado County from participating in any action related to a contract if he or she accepts, solicits, or directs any political contributions totaling more than two hundred and fifty dollars (\$250) within the previous twelve (12) months, and for twelve (12) months following the date a final decision concerning the contract has been made, from the person or company awarded the contract. The Levine Act also requires disclosure of such contribution by a party to be awarded a specific contract. An officer of El Dorado County includes the Board of Supervisors, any elected official, and the chief administrative officer (collectively "Officer"). It is the Contractor's responsibility to confirm the appropriate "Officer" and name the individual(s) in their disclosure.

Have you or your company, or any agent on behalf of you or your company, made any political contribution(s), or been solicited to make a contribution by an Officer or had an Officer direct you to make a contribution of more than \$250 to an Officer of the County of El Dorado in the twelve months preceding the date of the submission of your proposals or the anticipated date of any Officer action related to this contract?

YES  NO

If yes, please identify the person(s) by name:  
If no, please type N/A.

N/A

Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contribution(s) of more than \$250 to an Officer of the County of El Dorado in the twelve months following any Officer action related to this contract?

YES  NO

If yes, please identify the person(s) by name:  
If no, please type N/A.

N/A

Answering YES to either of the two questions above does not preclude the County of El Dorado from awarding a contract to your firm or any taking any subsequent action related to the contract. It does, however, preclude the identified Officer(s) from participating in any actions related to this contract.

05/06/2024

Date

Netsmart Technologies, Inc.

Type or write name of company

*Joseph McGovern*  
Joseph McGovern (May 6, 2024 17:22 EDT)

Signature of authorized individual

Joseph McGovern

Type or write name of authorized individual

**Netsmart Technologies, Inc.**  
**Exhibit B**  
**HIPAA Business Associate Agreement**

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

**RECITALS**

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

**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;

**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;

**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;

**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:



- I. 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.
- II. 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:
        - (1) 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
        - (2) The third party will immediately notify BA of any breaches of confidentiality of PHI to the 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.
- III. 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 Title 45 of the Code of Federal Regulations, Part 160 and Part 164, Subparts A and C (the "HIPAA Privacy Rule" and the "HIPAA Security Rule") in effect or as may be amended, including but not limited to 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 without unreasonable delay and in no case later than ten (10) days any Security Incident, as defined in 45 CFR 164.304, of which BA becomes aware.. BA shall mitigate, to the extent practicable, any harmful effects of a Security Incident and take any commercially reasonable steps to reduce the chance of future Security Incidents.
- 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 ten (10) days after discovery. 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.

IV. PHI Access, Amendment, and Disclosure Accounting. BA agrees to:

- A. Provide access, at the request of County, within five (5) business 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.
- V. 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.
- VI. 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, upon written notice to 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 BA 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, subject to County review and approval, 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.

VII. Indemnity

- A. Subject to the limitation of liability in the Underlying Agreement, 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") against any and all claims, losses, damages, suits, costs (including reasonable attorney fees and costs), to the extent arising out of a claim brought by a third party due to a Breach of Unsecured PHI to the extent caused by any negligent act or omission of BA, its employees, and agents. The referenced limitation of liability will not apply to: (i) County's actual out of pocket costs of notice, mitigation or remediation of any Breach of Unsecured PHI to the extent arising out of any negligence of Business Associate; or (ii) fines or penalties that are assessed against Covered Entity by a state or federal regulatory agency due to a Breach of Unsecured PHI to the extent arising out of any negligence by Business Associate.
- B. With respect to any action or claim subject to indemnification herein by BA, BA shall, at its sole cost, have the right to use counsel of its choice, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes BA's indemnification of County as set forth herein. BA's obligation to defend, indemnify and hold harmless County shall be subject to County having given BA written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at BA's expense, for the defense or settlement thereof.
- 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.

- VIII. 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.
- IX. Survival. The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
- X. 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.
- XI. 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.

### Approval and Signatures

By: Joseph McGovern  
Joseph McGovern (May 6, 2024 17:22 EDT)  
Name  
"BA Representative"

Dated: 05/06/2024

By: Nicole Ebrahimi-Nuyken  
Nicole Ebrahimi-Nuyken (May 6, 2024 10:52 PDT)  
Name  
"HHS Representative"

Dated: 05/06/2024