

AGREEMENT FOR SERVICES # 465-S1211
Behavioral Health Information System - Avatar

THIS AGREEMENT made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as COUNTY) and Netsmart Technologies, Inc., a New York corporation duly qualified to conduct business in the State of California, whose principal place of business is 3500 Sunrise Highway, Suite D122, Great River, New York 11739 (hereinafter referred to as CONTRACTOR);

R E C I T A L S

WHEREAS, COUNTY previously utilized the Behavioral Health Information System known as “Avatar” as a participating member of the California Regional Mental Health System Coalition (JPA) via a contract between the JPA and Netsmart Technologies, Inc.; and

WHEREAS, COUNTY has determined that it is necessary to obtain a contractor to furnish, develop, implement, and provide ongoing support for, a Behavioral Health Information System specific to the County of El Dorado; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable Federal, State (hereinafter, all references to “State” shall mean the State of California) and local laws; and

WHEREAS, COUNTY has determined that the provision of these services provided by CONTRACTOR is in the public’s best interest, and that these services are more economically and feasibly performed by outside independent Contractors as well as authorized by County of El Dorado Charter, Section 210 (b) (6) and/or Government Code 31000;

NOW, THEREFORE, COUNTY and CONTRACTOR mutually agree as follows:

Article I. DEFINITIONS

The following terms as used throughout this Agreement shall have the meanings as set forth below.

Acceptance	A Notice from COUNTY to CONTRACTOR that a Deliverable or Service has conformed to its applicable Acceptance Criteria in accordance with the processes described in Article V.
Acceptance Criteria	The Specifications against which each Deliverable and Service shall be evaluated in accordance with Article V and which shall be described in DEDs for Deliverables and Services.
Acceptance Tests	The tests or reviews that are performed by COUNTY and that must be satisfied before Acceptance can occur as set forth in Article V.
Application Software	The Proprietary Software, Custom Software, and Third-Party Software included in the System.
Certification	COUNTY's receipt of Notice and written confirmation by a Senior Vice President or above that CONTRACTOR has, as applicable completed a Deliverable in accordance with its Acceptance Criteria or pre-tested the System or a Service for compliance with the Specifications; and confirmed the Deliverable, including but not limited to the System, or Service is ready for applicable Acceptance Tests.
Change Order	A written form, in response to a Change Request, that is mutually agreed to in writing by COUNTY and CONTRACTOR, that modifies, deletes or adds to the Deliverables or Services, in whole or in part, and that is made in accordance with the terms of Article XI.
Change Request	A written form used to modify, delete or add to the Deliverables or Services, in whole or in part, made in accordance with the terms of Article XI.
Charges	The amount(s) to be paid for Services authorized under this Agreement, in whole or in part, as described in Section 13.04.
Confidential Information	Various trade secrets and information of each party that either CONTRACTOR or COUNTY desires to protect against unrestricted disclosure, including without limitation; with respect to CONTRACTOR, the CONTRACTOR Technology; with respect to COUNTY, the Configuration and COUNTY non-publicly available Data; nonpublic Specifications; the Software; any nonpublic information or documentation concerning either party's business or future products or plans that are learned by the other party during the performance of this Agreement; and information that is designated as confidential by the disclosing party. The following are also hereby designated COUNTY Confidential Information client and employee personal information, including but not limited to names, addresses, Social Security numbers, email addresses,

	telephone numbers, financial profiles, credit card information, driver's license numbers, medical data and health information, law enforcement records, and such other Confidential Information as is described in this definition.
Configuration(s)	Set up and customization of COUNTY specific tables, screens, and reports for the Application Software.
CONTRACTOR	Netsmart Technologies, Inc., its employees, subcontractors and agents.
CONTRACTOR Project Manager	The individual chosen by CONTRACTOR and approved by COUNTY with management responsibilities for CONTRACTOR, as described in Section 3.01.
CONTRACTOR Technology	Intellectual property owned by CONTRACTOR prior to the Effective Date (including modifications, enhancements or improvements to such intellectual property developed hereunder), including CONTRACTOR's proprietary methodologies, project management and other tools, deliverable examples, procedures, processes, techniques, data models, templates, general purpose consulting and software tools, utilities, and routines; the Proprietary Software; and CONTRACTOR's Confidential Information.
Converted Data	The historical, demographic, and balance forward Data which has been successfully converted by CONTRACTOR for Processing by the System.
Cosmetic Deficiency	Any Deficiency in a Deliverable that is cosmetic or inconsequential or that fails to conform to reasonable commercial or industry standards for appearance, format and quality.
COUNTY	The County of El Dorado
COUNTY Project Executive	The person designated by COUNTY to be responsible for financial and contractual matters regarding the Agreement, including but not limited to, the person to whom COUNTY authorized has been delegated in writing. The term includes, except as otherwise provided herein, an authorized representative of the COUNTY Project Executive acting within the limits of his/her authority.
COUNTY Project Manager	The person designated by COUNTY to be responsible for day to day management of COUNTY resources for the Project and monitoring the status of CONTRACTOR's performed under the Agreement.
Custom Software	The modifications and changes to the Application Software, which are developed or produced by CONTRACTOR exclusively for COUNTY under this Agreement, if any.
Data	COUNTY records, files, forms, data, reports and other documents, including but not limited to Converted Data.

Days	Calendar days, unless otherwise indicated.
DED	A Deliverable Expectation Document, if any, which is a document that describes Acceptance Criteria for each Deliverable.
Deficiency	A failure of a Deliverable or an omission, defect or deficiency in a Deliverable, which causes a nonconformance with its Specifications.
Deliverables	CONTRACTOR's products which result from the Services and which are prepared for COUNTY (either independently or in concert with COUNTY or third parties) during the course of CONTRACTOR's performance under this Agreement, including without limitation deliverables which are described in Section 13.04 and in Change Orders.
Documentation	The documentation relating to the Application Software supplied to COUNTY by CONTRACTOR hereunder and more particularly identified in Exhibit A of this Agreement.
Enhancements	All updates, upgrades, additions, and changes to, and future releases for the Application Software in whole or in part, including without limitation (1) updated versions of the Application Software made available by CONTRACTOR to customers generally; and (2) updated versions of Application Software that encompass improvements, extensions, Maintenance updates, error corrections, or other changes that are generally offered to CONTRACTOR customers.
Equipment	The computer hardware on which the Software shall operate, all operating system software for use with the Equipment, and telecommunications facilities and services as listed in <u>Exhibit B – Equipment and Software Configuration</u> .
Fees	The amounts to be paid by COUNTY for the right to use the Application Software, for services provided to COUNTY for Deliverables that receive Acceptance, for Services performed by CONTRACTOR in accordance with the terms of the Agreement, and for Third Party Products acquired by COUNTY under the terms of this Agreement, as described in Section 13.04.
Final Acceptance	A notice from COUNTY to CONTRACTOR of the event when the System performs in accordance with the applicable Acceptance Criteria at the completion of Production Tests for the final Phase.
Function(s)	A discrete capability or function of the Software as described in the Documentation.
Go-Live	The event that occurs after Final Acceptance when the System goes into Production.
Implementation	The process for making the System fully Operational for Processing the Data in COUNTY's normal business

	operations. Implementation shall be completed when CONTRACTOR has completed the Implementation Services according to the Work Plan.
Interfaces	Software for transmitting Data between the System and other electronic data and communication systems.
Key Staff	CONTRACTOR's key personnel listed on Exhibit A.
Maintenance	Services which will be performed by CONTRACTOR and described as such in Exhibit D.
Maximum Amount (Not-to-Exceed Amount)	The maximum amount of liability for each of COUNTY and CONTRACTOR and the maximum amounts paid and payable by COUNTY to CONTRACTOR under this Agreement.
Milestone(s)	The event(s) listed as such in Section 13.04.
Notice	A written document given by a party to the other in accordance with Article XXVI.
Object Code	The binary code version of a Software program loaded into a computer's memory to enable it to complete the programming instructions.
Operational	The condition when the System is functioning in accordance with its Specifications in Production.
Performance Standards	The standards to which the System and Services shall perform and which Services will meet during Acceptance Tests and thereafter, as described in <u>Exhibit C –Performance Standards</u> .
Phase(s)	The Implementation rollouts, logical grouping of Project tasks, and time periods for the Project that encompass the implementation of Functions, as described in <u>Exhibit A – Preliminary Work Plan</u> .
Processing	The performance by the Software residing on the Equipment of logical operations and calculations on the Data.
Production	The use of Function(s) in COUNTY's production environment(s) and to perform its regular business operations.
Production Data Transfer	The Services for converting historical, demographic and balance forward Data for Processing by the Software and System as described in <u>Exhibit A – Preliminary Work Plan</u> .
Production Tests	The tests that will be conducted prior to Final Acceptance and that will test the System, with a limited population of Users, a limited number of patients, and in a Production environment. This will include time for submission, processing and preliminary adjudication of claims by applicable payer sources, e.g., Medi-Cal, and no more than twenty (20) Days for review by COUNTY to confirm this process was completed as required by applicable State and Federal laws and regulations.
Project	The planned undertakings regarding the activities during the Agreement.
Property	All COUNTY Equipment and other COUNTY real and

	personal property.
Proprietary Software	All computer programs and software code which were developed and owned by CONTRACTOR prior to the Effective Date, including but not limited to computer programs known as the Avatar™ software, and any subsequent modifications thereof and derivative works based thereon, and the documentation used to describe, maintain and use such Proprietary Software.
Schedule	The dates described in the Work Plan for deadlines for performance of Services and other Project events and activities.
Services	The tasks and services to be performed by CONTRACTOR on the Project, as described in the Agreement.
Site(s)	The location(s) for the COUNTY or CONTRACTOR Equipment and Software, as agreed to by COUNTY and CONTRACTOR.
Software	CONTRACTOR's computer programs in Object Code form and their associated documentation, Custom Software, if any and Third Party Software. Enhancements provided by CONTRACTOR prior to completion of the Project and during Support and Maintenance shall be included as part of the Software.
Source Code	The series of instructions to the computer for carrying out the various tasks that are performed by a computer program, expressed in a programming language that is comprehensible to persons knowledgeable with regard to the Software and that is capable of being compiled into Object Code which then directs the computer to perform its functions.
Specifications	The description of Software features and functions in CONTRACTOR's Documentation that define the Functions of its Proprietary Software as detailed in the Documentation; the Performance Standards; applicable Federal and State laws and regulations; and any additional requirements as listed in <u>Exhibit A – Preliminary Work Plan</u> and in Change Orders. The Specifications are, by this reference, made a part of this Agreement, as though completely set forth herein.
Staff	CONTRACTOR's employees, Subcontractors and agents who provide the Services on behalf of CONTRACTOR.
State	The State of California
Subcontractor	A person, partnership, or company, not in the employment of or owned by CONTRACTOR, which is performing Services under this Agreement under a separate agreement with or on behalf of CONTRACTOR.
Support	The technical and customer support Services which are described as such in Exhibit D Section I.9.

System	The complete collection of all Software integrated and functioning together and processing the Data in accordance with the applicable Specifications and on the Equipment.
System Testing	Functional and integration testing performed on the System by CONTRACTOR so that CONTRACTOR can provide Certification of the System's readiness for applicable Acceptance Tests by COUNTY.
Third Party Software	Software which is developed by third parties and generally distributed for commercial use, and not specifically designed or developed for COUNTY, including without limitation operating system software, tools, utilities, and commercial off the shelf software and which CONTRACTOR supplies to COUNTY pursuant to the terms of this Agreement.
Training	The training Services to be provided by CONTRACTOR to COUNTY.
Unauthorized Code	Any (i) virus, Trojan horse, worm or other software routines or equipment components designed to permit unauthorized access or to disable, erase, or otherwise harm Software, Equipment, or Data or to perform any other such actions; and (ii) back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Unauthorized Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g., remote access via modem) solely for purposes of Maintenance or Support or to limit the number of concurrent users who are logged onto the System at one time or real time operating instances of the Software in accordance with the license terms for that Software.

Uptime	The time that CONTRACTOR-hosted Software applications are Operational, as measured 24-hours-a-day, Monday through Sunday, on a monthly basis, except for mutually agreed upon scheduled maintenance activities. Uptime shall be as described in Exhibit C.
User(s)	Parties who will have use of access to the System and Services.
Warranty Period(s)	The six (6) month period following the Final Acceptance. The Warranty Period will run concurrently with the Maintenance and Support Services.
Warranty Services	The Services to be provided to COUNTY by CONTRACTOR during the Warranty Periods, as described in Section 9.02.
Work Plan	The overall plan of activities for the Project, and the delineation of tasks, activities and events to be performed and Deliverables to be produced with regard to the Project, attached as Exhibit A and as updated in accordance with Section 5.02 of this Agreement. Any revised Work Plan that is mutually agreed upon in writing by the parties shall be incorporated herein by reference.

Article II. TERM OF AGREEMENT

This Agreement shall become effective upon final execution by both parties hereto and shall cover the period of five (5) years from execution unless earlier terminated pursuant to the provisions under Article XXIV and Article XXV herein.

Article III. PROJECT MANAGEMENT

Section 3.01 CONTRACTOR Project Manager

- (a) CONTRACTOR shall propose a dedicated CONTRACTOR Project Manager, providing qualifications and resume to COUNTY for approval prior to assignment to the role. CONTRACTOR Project Manager shall possess the skill set and experience to ensure timely responses from all CONTRACTOR personnel and shall act as liaison for COUNTY Project Manager.
- (b) CONTRACTOR Project Manager shall possess the qualifications to perform all tasks required of the Project under this Agreement. CONTRACTOR Project Manager shall act as day to day representative for management and administrative matters not inconsistent with the Work Plan. Such decisions and Change Order approvals for CONTRACTOR that result in an increase in the Fees shall be made by CONTRACTOR’s Executive Vice President or Senior Vice President of Operations.
- (c) If the CONTRACTOR Project Manager is removed or replaced, CONTRACTOR will promptly provide Notice to COUNTY and submit the resume of another qualified candidate. CONTRACTOR must obtain approval of the replacement CONTRACTOR Project Manager from COUNTY, prior to his or her beginning work on the Project. CONTRACTOR shall temporarily fill the CONTRACTOR Project Manager within seven (7) Days and shall fill the position with a permanent replacement within forty-five (45)

days of the CONTRACTOR Project Manager's removal or departure.

Section 3.02 CONTRACTOR Staff

- (a) CONTRACTOR shall provide to COUNTY names and resumes for Key Staff for the Project and their positions during the Project, during Support and Maintenance. CONTRACTOR shall also provide to COUNTY job descriptions for Key Staff positions.
- (b) Except in the case of a legally required leave of absence, sickness, death, termination of employment or unpaid leave of absence, Key Staff shall not be changed during the Project from the people who were described in Exhibit A and until Acceptance of the System without the prior written approval of COUNTY, which will not be unreasonably withheld. During the term of the Agreement, COUNTY reserves the right, to approve or disapprove CONTRACTOR's and any Subcontractor's Key Staff assigned to this Agreement, to approve or disapprove any proposed changes in Key Staff, or to require the removal or reassignment of any CONTRACTOR or Subcontractor Staff found unacceptable by COUNTY, subject to COUNTY's compliance with applicable laws. CONTRACTOR shall provide COUNTY with a resume of any member of its Key Staff or a Subcontractor's Key Staff assigned to or proposed to be assigned to any aspect of the performance of this Agreement prior to commencing any Services. Delays resulting from COUNTY required removal or reassignment may result in changes to the previously agreed schedule for completion of Deliverables.
- (c) All Staff proposed by CONTRACTOR as replacements for other Staff shall have comparable or greater skills for performing the activities as performed by the Staff being replaced.
- (d) CONTRACTOR assumes sole and full responsibility for its acts and the acts of its personnel. CONTRACTOR understands and agrees that COUNTY does not assume liability for the actions of CONTRACTOR's Subcontractors or agents.
- (e) CONTRACTOR agrees that any claim on behalf of any person arising out of employment or alleged employment by CONTRACTOR (including, but not limited to, claims of discrimination against CONTRACTOR, its officers, or its agents) are the sole responsibility of CONTRACTOR and are not the responsibility of COUNTY. CONTRACTOR will indemnify and hold COUNTY harmless from any and all such claims asserted against COUNTY. Any person who alleges a claim arising out of employment or alleged employment by CONTRACTOR will not be entitled to any compensation, rights, or benefits from COUNTY (including, but not limited to, tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits).
- (f) **Reference and Background Checks**
Due to the confidential nature of the information and materials which will be accessible to CONTRACTOR, CONTRACTOR will, at COUNTY request, conduct a reference check and criminal background check on CONTRACTOR Staff to be used to provide the Services and remove any CONTRACTOR Staff who does not successfully pass the review and

check. COUNTY reserves the right in its sole discretion to reject any proposed Staff as a result of information produced by such reference checks, criminal background checks, or additional sources of information subject to compliance with legal requirements.

Section 3.03 COUNTY Project Manager

- (a) The COUNTY Project Manager shall serve as the primary point of contact in matters of Project management for the CONTRACTOR's Project Manager.
- (b) COUNTY will make all reasonable efforts to ensure that the primary point of contact assigned to this Project as the COUNTY Project Manager has the necessary skills and appropriate amount of time allocated to successfully manage this Project for COUNTY.
- (c) The COUNTY Project Manager or his or her designee or successor will manage this Agreement on behalf of COUNTY and will be the principal point of contact for the CONTRACTOR concerning CONTRACTOR's performance under this Agreement during Implementation.

Section 3.04 Reports and Meetings

- (a) The CONTRACTOR Project Manager and other Key Staff shall participate in status meetings with the COUNTY Project Manager and other members of COUNTY's Project team during the Project at times as mutually agreed upon or indicated in the Work Plan and in person or by telephone conference call, videoconference, and/or web conference. These status meetings shall follow a preset agenda jointly prepared by the CONTRACTOR Project Manager and COUNTY Project Manager, but will also allow both the CONTRACTOR and COUNTY Project Manager, but will also allow both CONTRACTOR and COUNTY to discuss other issues that may concern either party.
- (b) The CONTRACTOR Project Manager shall assist the COUNTY Project Manager in preparing reports, and shall prepare special reports and presentations related to Project management, as reasonably requested by COUNTY.
- (c) During Implementation, CONTRACTOR shall provide COUNTY with a monthly report that lists the Services performed during the prior month and Staff members providing said services. CONTRACTOR will provide this report within thirty (30) days of the end of each month in which the Services are performed. Backup documentation will be made available upon request.

Article IV. SERVICES AND RESOURCES

Section 4.01 Performance

CONTRACTOR shall begin to perform the Services as soon as reasonably practicable (but in no case later than fifteen (15) business Days) following the Effective Date. CONTRACTOR shall perform the Services as described in this Agreement and in accordance with the Work Plan.

- (a) **Necessary Resources**
Except as specifically provided herein, CONTRACTOR shall provide the personnel and all other materials and resources necessary for the performance of the Services.
- (b) **Ownership**
Title to all Property furnished by COUNTY shall remain in COUNTY. Title to all Property purchased by CONTRACTOR, for which CONTRACTOR has been reimbursed by COUNTY under this Agreement, shall pass to and vest in COUNTY upon the earlier of Acceptance of the applicable Deliverable in which the Property is included, or Final Acceptance, unless otherwise provided in the Agreement.
- (c) **Use of Property**
Any Property furnished to CONTRACTOR shall, unless otherwise provided herein, or approved in writing by the COUNTY Project Manager, be used only for the performance of its obligations under and subject to the terms of this Agreement.
- (d) **Damage to Property**
CONTRACTOR shall protect and be responsible for any loss, destruction, or damage to Property which results from or is caused by CONTRACTOR's willful misconduct or negligent acts or omissions or from the failure on the part of CONTRACTOR to maintain and administer that Property in accordance with sound management practices. Notwithstanding anything to the contrary herein, CONTRACTOR shall be liable to COUNTY for any damages resulting from damage to Property, which damages result from or are caused by CONTRACTOR's willful misconduct or negligence. CONTRACTOR shall ensure that the Property is returned to COUNTY in like condition to that in which it was furnished to CONTRACTOR, reasonable wear and tear excepted. CONTRACTOR shall repair or make good any such damage, destruction or loss at any COUNTY Site, and shall do so without requesting contribution or assistance from COUNTY.
- (e) **Notice of Damage**
Upon the loss of, destruction of, or damage to any of the Property, CONTRACTOR shall notify the COUNTY Project Manager thereof and shall take all reasonable steps to protect that Property from further damage.
- (f) **Surrender of Property**
CONTRACTOR shall surrender to COUNTY all Property upon the earliest of completion, termination, or cancellation of this Agreement.
- (g) **COUNTY Property and Facility**
COUNTY will provide CONTRACTOR access to and use of the COUNTY Equipment as described in Exhibit B. CONTRACTOR's use of the COUNTY Equipment shall be subject to COUNTY's security, administrative and other requirements.

Article V. DELIVERABLES

Section 5.01 General

- (a) CONTRACTOR shall provide COUNTY with the Deliverables according to the Work Plan and as described in the Specifications of this Agreement. CONTRACTOR shall utilize the Specifications, the Work Plan, CONTRACTOR's professional knowledge, and this Agreement as the basis of Deliverables. CONTRACTOR shall retain backup copies on electronic media, when practical, of all Deliverables until one hundred eighty (180) days after termination or expiration of this Agreement and shall (unless this Agreement has been terminated as a result of breach by COUNTY) provide COUNTY on its request with a copy thereof during that time.
- (b) All Deliverables shall be subject to COUNTY's Acceptance, including without limitation Deliverables provided pursuant to Change Orders. COUNTY's review of Deliverables shall be in accordance with the time frames therefore set forth in the Work Plan.

Section 5.02 Work Plan

- (a) The preliminary Work Plan is included as part of Exhibit A. CONTRACTOR shall work with COUNTY to update the Work Plan to reflect Project activities. CONTRACTOR will submit the Work Plan to the COUNTY Project Manager or review within thirty (30) Days after receipt of required information and input from COUNTY's Project Manager. The COUNTY Project Manager will complete review and accept or reject the amended Work Plan, specifying any area of disagreement. In the event of failure of the parties to agree upon this Work Plan and/or of COUNTY to give its Acceptance thereof within forty-five (45) Days of the submission of an amended Work Plan, COUNTY may invoke its right to immediately terminate this Agreement without liability for either party for such termination, and, in COUNTY's discretion, pursue negotiations with an alternative vendor. If CONTRACTOR has completed any part of the work prior to a termination for failure to agree on an amended Work Plan, CONTRACTOR will be entitled to reasonable compensation for Services provided in good faith, on the previously approved Work Plan up to termination, but such compensation shall be no greater than the Fees payable upon completion of the Work Plan.
- (b) CONTRACTOR shall provide updates to the Work Plan as necessary throughout the Project to accurately reflect the status of activities, tasks, events and Services. The Work Plan shall be inclusive of the mutual expectations and work to be performed by COUNTY and CONTRACTOR in order to complete the Project successfully. Any such update changes must be agreed upon in writing by the parties pursuant to the Change Order process prior to their final incorporation into the Work Plan.
- (c) The Schedule shall not change as a result of time required by CONTRACTOR to correct Deficiencies, unless otherwise agreed beforehand in writing by COUNTY. Each party will perform its obligations in accordance with Work Plan.

Section 5.03 General Acceptance Process for Deliverables.

- (a) Upon delivery of a Deliverable and receipt of Certification from CONTRACTOR that the

Deliverable meets its Specifications, COUNTY will, with CONTRACTOR's assistance and in accordance with the Work Plan, review or perform Acceptance Tests on the Deliverable, as applicable, to determine whether the Deliverable conforms to its Acceptance Criteria. COUNTY will provide Acceptance for a Deliverable if it has no Deficiencies. (except for Cosmetic Deficiencies). However, if a Deficiency (except for Cosmetic Deficiencies) is found, COUNTY will notify CONTRACTOR in an email or other document of Deficiencies used as the grounds for COUNTY's decision not to give Acceptance. CONTRACTOR shall correct Deficiencies and resubmit a corrected Deliverable to COUNTY which will review or perform Acceptance Tests on the Deliverable to verify whether the Deliverable lacks Deficiencies (except for Cosmetic Deficiencies) and in writing shall either give its Acceptance or reject it following such review or Acceptance Tests. CONTRACTOR's times for correcting Deficiencies and COUNTY's review of Deliverables shall be in accordance with the timeframes therefor set in the Work Plan. If time periods for correcting Deficiencies by CONTRACTOR and reviewing and retesting corrected Deliverables are not in the Work Plan, each such time period shall be fifteen (15) business Days from Scheduled Acceptance.

- (b) If CONTRACTOR is unable to correct all Deficiencies (except for Cosmetic Deficiencies) within the number of Days indicated in the Work Plan following the Deliverable's scheduled Acceptance, or if no such date is in the Work Plan, within 60 Days from such scheduled Acceptance, COUNTY may, at its option: (a) continue reviewing or performing Acceptance Tests on the Deliverable and require CONTRACTOR to continue until Deficiencies (except for Cosmetic Deficiencies) are corrected or eliminated; (b) request CONTRACTOR to provide, at its expense, a replacement Deliverable for further review or Acceptance Tests; or (c) after completion of the process set forth in this Section 5.03 and providing Notice of default to CONTRACTOR, terminate this Agreement, in whole or in part as provided in Section 25.02.

Section 5.04 Phase Acceptance Tests.

(a) **Performance**

Following receipt of notice from CONTRACTOR that Certification has occurred for a Phase, COUNTY shall begin to perform Acceptance Tests on the Phase to determine whether the Phase performs without Deficiency. (except for Cosmetic Deficiencies). For purposes of this Section 5.04, Acceptance Tests on a later Phase will include Acceptance Tests of a prior Phase or prior Phases integrated together and into the System to the extent that the Phase relies on the performance of a Deliverable from a prior Phase to operate in accordance with the Specification. CONTRACTOR will assist COUNTY as requested in performing such Acceptance Tests consistent with the Work Plan.

(b) **Acceptance**

COUNTY will provide Acceptance for the Phase if it has no Deficiencies (except for Cosmetic Deficiencies) during these Acceptance Tests. However, if a Deficiency (except for Cosmetic Deficiencies) occurs during these Acceptance Tests, COUNTY shall give CONTRACTOR Notice of its non-acceptance of the Phase, with such Notice delineating Deficiencies used as the grounds for COUNTY's decision. CONTRACTOR shall promptly

correct Deficiencies (except for Cosmetic Deficiencies) provided to CONTRACTOR in any notice(s) of non-acceptance from COUNTY.

(c) **Retesting and Correction**

After CONTRACTOR has corrected such Deficiencies, COUNTY shall verify whether the Phase satisfies the Acceptance Tests and in writing shall either accept or not accept the Phase following such re tests. If CONTRACTOR corrects all Deficiencies (except for Cosmetic Deficiencies) in the Phase, which then successfully performs the Acceptance Tests without Deficiencies, COUNTY shall give CONTRACTOR Acceptance therefor.

(d) **Inability to Correct Deficiencies**

If CONTRACTOR is unable to correct all Deficiencies (except for Cosmetic Deficiencies) in the Phase within the number of days of the Phase's Certification as required in the Work Plan, or if no such date is in the Work Plan, within sixty (60) Days from such Certification, COUNTY may, at its option: (a) immediately terminate the Agreement, in whole or in part, as provided in Section 25.02 without penalty to COUNTY and, at COUNTY's option, require CONTRACTOR to remove the applicable Software, in whole or in part, from the Equipment, (b) request CONTRACTOR to provide replacement Software for further Acceptance Tests; or (c) continue performing Acceptance Tests on the Phase and require CONTRACTOR to continue until Deficiencies (except for Cosmetic Deficiencies) are corrected.

Section 5.05 Production Tests.

(a) **Performance**

After certification of readiness for testing, COUNTY shall begin to perform Production Tests on the Phase to determine whether it performs without Deficiency (except for Cosmetic Deficiencies). CONTRACTOR will assist COUNTY as requested in performing such Production Tests in accordance with the Work Plan.

(b) **Acceptance**

COUNTY will provide Acceptance for the Phase and Service if they have no Deficiencies (except for Cosmetic Deficiencies) during these Production Tests. However, if a Deficiency (except for Cosmetic Deficiencies) occurs during these Production Tests, COUNTY shall give CONTRACTOR Notice of its non-acceptance, with such Notice delineating Deficiencies used as the grounds for COUNTY's decision. CONTRACTOR shall promptly correct Deficiencies provided to CONTRACTOR in any notice(s) of non-acceptance from COUNTY.

(c) **Retesting and Correction**

After CONTRACTOR has corrected such Deficiencies, COUNTY shall verify whether the Deliverable for that Phase satisfy the Production Tests and in writing shall either accept or not accept them following such retests. If CONTRACTOR corrects all Deficiencies (except for Cosmetic Deficiencies) in the Deliverable for the Phase, which then successfully perform the Production Tests without Deficiencies, COUNTY (except for Cosmetic Deficiencies), shall give CONTRACTOR Acceptance therefor.

(d) **Inability to Correct Deficiencies**

If CONTRACTOR is unable to correct all Deficiencies (except for Cosmetic Deficiencies) in the Deliverables in the Phase within the number of days as required in the Work Plan, or if no such date is in the Work Plan, within ninety (90) Days from COUNTY notice of non-acceptance, COUNTY may, at its option: (a) immediately terminate the Agreement, in whole or in part, as provided in Section 25.02 without penalty to COUNTY and, at COUNTY's option, require CONTRACTOR to remove the Software from the System, in whole or in part, (b) request CONTRACTOR to provide replacement Software for further Production Tests or (c) continue performing Production Tests and require CONTRACTOR to continue until Deficiencies are corrected.

Section 5.06 Final Acceptance and Go-Live.

(a) COUNTY shall grant Final Acceptance if the System receives Acceptance at the completion of Production Tests for the final Phase.

(b) Go-Live shall occur after Final Acceptance.

Section 5.07 Source Code.

CONTRACTOR shall use the terms of Exhibit E to allow COUNTY to obtain access to Application Software Source Code and Object Code under conditions described in Exhibit E. At its option and expense, COUNTY may request that the completeness and accuracy of any such Application Source Code, Object Code, and/or associated technical Documentation be verified. Such verification will be conducted by the escrow agent at its testing location. In the event the Source Code and/or associated technical Documentation in escrow is not accurate or complete, CONTRACTOR shall promptly correct such inaccuracies or incomplete escrow.

Section 5.08 Protection from Damage.

CONTRACTOR shall continuously protect all Deliverables and backups therefor prior to their Acceptance and while in CONTRACTOR's possession or control from damage, destruction or loss resulting from or caused by the acts or omissions of CONTRACTOR in connection with the Services. After COUNTY provides Acceptance for a Deliverable, the risk of loss or damage shall be borne by COUNTY, except loss or damage attributable to CONTRACTOR's acts or omissions.

Section 5.09 Interpretation of Deliverables.

In the event of a contradiction, conflict, ambiguity or inconsistency in or between the Specification for a Deliverable(s) and other documents comprising this Agreement, including, a Deliverable that has already received Acceptance, any such contradiction, conflict, ambiguity or inconsistency shall be resolved in favor of the latest COUNTY approved Specification or accepted Deliverable. No requirements can be omitted from the Specifications or DEDs without the written consent of the COUNTY Project Manager.

Section 5.10 Knowledge Transfer.

During the term, including but not limited to the configuration and implementation of the System, CONTRACTOR shall demonstrate and provide information to COUNTY staff and management,

including but not limited to keeping the Project Manager informed, about the Functions and operations of all such Software in accordance with the Specifications and the Work Plan.

Section 5.11 Licenses.

- (a) CONTRACTOR hereby grants COUNTY a non-exclusive, nontransferable (except as provided in Article XXI) perpetual (subject only to termination under Section 20) license to use the Application Software in Object Code form (unless the Source Code is obtained pursuant to Exhibit E) only for COUNTY's internal business purposes for use by COUNTY internal departments, and contractors which provide mental health, substance abuse treatment and prevention, and similar services to the public:
 - (i) to support the number of concurrent users of the Application Software as provided for in Section 13.04;
 - (ii) on the number of servers, operating systems and for access by the maximum number of concurrent users or other such restrictions of the Third Party Software as set forth in Section 13.04.
- (b) Except as expressly stated in this Agreement, no other rights, express, implied or otherwise are granted to COUNTY. The Third Party Software programs are licensed subject to the same restrictions as are set forth in Section 5.11 above.
- (c) Nothing in this agreement will be deemed to convey any title or ownership interest in the Application Software to COUNTY. COUNTY acknowledges CONTRACTOR's rights and the rights of the owner of the Third Party Software in the Licensed Programs and agrees that the Application Software are trade secrets and unpublished works on which CONTRACTOR and such third party(s) hold and will hold the sole and exclusive copyright. COUNTY will not dispute the rights of CONTRACTOR and the third party(s) in the Application Software and will not sell, disclose, lease, sublease, lend or otherwise make the Application Software available to others.
- (d) COUNTY will not disassemble or reverse engineer any of the Application Software nor attempt to access or modify the source code version of the Application Software and will not make any derivations, adaptations, or translations of the Application Software in whole or in part, nor use the Application Software to develop functionally similar computer software or to otherwise compete with CONTRACTOR.
- (e) If suggestions made by COUNTY are incorporated into subsequent versions of the Application Software, COUNTY hereby assigns to CONTRACTOR all rights COUNTY may have in and to any suggestions, concepts, or improvements concerning the Application Software, or other products and services that may result from COUNTY communications to CONTRACTOR.
- (f) If COUNTY receives the Source Code for the Application Software, following the occurrence of a Release Condition under the escrow agreement, CONTRACTOR hereby grants to COUNTY a nonexclusive, perpetual license to use, modify, and reproduce such Application Software for COUNTY's internal purposes as described above in Section 5.11.

Section 5.12 Term

The license in Section 5.11 is granted on the Effective Date, subject to the conditions subsequent of CONTRACTOR receiving full payment, subject to the exercise of COUNTY's remedies, for the System as provided in Section 13.04. The License will terminate upon the occurrence of any of the following: COUNTY returns the Software and CONTRACTOR Technology and copies thereof to CONTRACTOR, erases such Software and CONTRACTOR Technology from its Equipment's storage media and terminates the Agreement or this Agreement is terminated by CONTRACTOR for breach as provided under Article XXV. The licenses in Section 5.11 will be granted to CONTRACTOR Source Code only upon an escrow release under the Escrow Agreement and will continue until COUNTY returns the Software and copies thereof to CONTRACTOR, erases such Software from its Equipment's storage media.

Section 5.13 Title

CONTRACTOR holds all right, title and interest, in the Application Software and CONTRACTOR Technology, or, in the case of Third Party Software, holds the right to distribute, or sublicense Third Party Software.

Section 5.14 Documentation.

CONTRACTOR will make Documentation available to COUNTY online. Upgrades and revisions to this Documentation shall be posted online while CONTRACTOR is providing Services therefor. There shall be no additional charge for the Documentation or updates thereto, in whatever form provided. CONTRACTOR's Documentation shall be comprehensive, well structured, and indexed for easy reference. If CONTRACTOR maintains its technical, maintenance and installation documentation on a web site, CONTRACTOR may fulfill the obligations set forth in this Section 5.14 by providing COUNTY access to its web based Documentation information. CONTRACTOR grants COUNTY a nonexclusive, perpetual right to use, modify, prepare derivative works based on, and reproduce the Documentation furnished pursuant to this Section for its internal purposes at no additional charge. COUNTY will include the copyright and other proprietary notices and product identifications provided by CONTRACTOR on any permitted copies of the Documentation, in whole or in part, or on any form of the Application Software, CONTRACTOR Technology and the Documentation. COUNTY will maintain records of all copies it makes of the Proprietary Software.

Section 5.15 Restrictions.

Except as otherwise permitted in this Agreement, COUNTY agrees not to: otherwise copy, display, transfer, adapt, modify, reverse engineer, decompile, disassemble, or distribute to any third party or lease the Software or any copy of it.

Section 5.16 Replacements.

COUNTY shall be entitled to exercise its rights to Application Software on the Equipment or any replacement equipment used by COUNTY, without payment of additional Fees, or other amounts. The foregoing does not apply to a change by COUNTY from the initial platform chosen (e.g. UNIX) to a different vendor platform (e.g. Microsoft).

Section 5.17 Third Party Software Licenses.

CONTRACTOR shall ensure that COUNTY will have all rights in Third Party Software necessary

for the full use and enjoyment of the System upon System Acceptance and throughout the term of this Agreement. Upon request of COUNTY, CONTRACTOR will provide to COUNTY, the terms (other than price related terms between CONTRACTOR and such Third Party Software vendor) of the license agreement for any Third Party Software as mutually agreed to by CONTRACTOR and COUNTY.

Section 5.18 Versions.

Unless otherwise mutually agreed to in writing, CONTRACTOR shall, during the Project, maintain any and all Third Party Software products at their most current version or no more than one version back from the most current version at no additional charge for such Services excluding Crystal Reports which shall be licensed directly by COUNTY.

Section 5.19 License Grants to CONTRACTOR Technology.

CONTRACTOR hereby grants to COUNTY a nonexclusive, perpetual license to use, modify, and reproduce the CONTRACTOR Technology (including templates, deliverable examples, and forms, but excluding CONTRACTOR proprietary methodologies, project management and other tools, procedures, processes, techniques, general purpose consulting and software tools, and CONTRACTOR's Confidential Information) for COUNTY's internal purposes as described above in Section 5.11.

Article VI. OWNERSHIP.

Section 6.01 All documents, records, data, memoranda, and other materials provided to CONTRACTOR by COUNTY remain the property of COUNTY and COUNTY will retain ownership rights to and in any pre-existing processes or methodologies that may be implemented in software work flows by CONTRACTOR, and such processes and methodologies shall be COUNTY's Confidential Information. Title to any Custom Software modifications or enhancements of CONTRACTOR's Application Software or third party software that are made by CONTRACTOR or its Subcontractors will belong to CONTRACTOR (or the Subcontractor, as applicable), and will be licensed to COUNTY under the terms of this Agreement.

Section 6.02 COUNTY shall also own all right, title and interest in and to its Confidential Information, COUNTY's intellectual property, the COUNTY Equipment (if any), the Work Plan, and any configured content unique to COUNTY, e.g., treatment plans or Statements of Work, provided by CONTRACTOR, and the Configuration. CONTRACTOR shall at COUNTY expense, take all actions necessary to transfer ownership of the Configuration to COUNTY upon their Acceptance. As between the parties, the Configuration shall be deemed a work made for hire of COUNTY for all purposes of copyright law, and copyright shall belong solely to COUNTY. In the event that the Configuration is adjudged to be not a work made for hire, CONTRACTOR agrees to assign, and hereby assigns, all copyright in such work to COUNTY. CONTRACTOR shall, at the expense of COUNTY, assist COUNTY or its nominees to obtain copyrights, for the Configuration in the United States.

Section 6.03 COUNTY shall also own reports, tools, and software that COUNTY develops and that are not derivative works based on the Application Software.

Section 6.04 The parties acknowledge that, as of the Effective Date, no Custom Software shall be produced by CONTRACTOR. If any such Custom Software is produced by CONTRACTOR during the Agreement term, CONTRACTOR shall own Custom Software that is produced by CONTRACTOR and is a derivative work based on the Application Software or logical enhancements and upgrades of the Application Software.

Article VII. IMPLEMENTATION.

Section 7.01 Tasks

CONTRACTOR shall complete Tasks as described in Exhibit A - Preliminary Work Plan.

Section 7.02 Production Data Transfer

CONTRACTOR shall participate in and perform Services for Production Data Transfer as described in Exhibit A - Preliminary Work Plan.

Section 7.03 Training

CONTRACTOR shall provide Training Services as described in Exhibit A - Preliminary Work Plan.

Article VIII. WARRANTIES

Section 8.01 Deliverables

CONTRACTOR represents and warrants that each Deliverable, including without limitation the Licensed Programs, each Phase and the System, shall meet their Specifications as provided herein following each Acceptance and during each **Maintenance and Support term**. CONTRACTOR shall promptly repair or replace each of the above that does not meet its Specifications as provided herein.

Section 8.02 Services

CONTRACTOR represents and warrants that:

- (a) It shall perform all Services required pursuant to this Agreement in a professional manner;
- (b) Time shall be of the essence in connection with performance of the Milestones in Section 13.04 and tasks described in Exhibit A - Preliminary Work Plan;
- (c) The Services will comply with the Performance Standards;
- (d) CONTRACTOR shall promptly re perform Services which are not in compliance with such representations and warranties at no cost to COUNTY; and
- (e) CONTRACTOR represents and warrants that it has the right to grant the licenses granted to COUNTY hereunder and that the Licensed Programs and other Deliverables do not infringe upon or violate the United States enforceable patent rights and the copyright, trade secret, or other intellectual property rights of any third party.

Section 8.03 Legal and Regulatory Compliance.

- (a) CONTRACTOR represents and warrants that it shall comply with all Federal and State and local laws and regulations applicable to the general operation of its business. In addition, CONTRACTOR will ensure that its software is compliant with any Federal or State of California laws or regulations that govern the form and maintenance of health records, and will further comply with specific County or local laws and regulations applicable to the form and maintenance of health records and health related information that are agreed to and set forth in the Work Plan.
- (b) CONTRACTOR warrants that the Software (other than Third Party Software) is fully certified for Meaningful Use Stage 1 criteria, based upon the finalized specifications from the Office of the National Coordinator for Health Information Technology (ONC). CONTRACTOR further warrants that as additional certification criteria and processes are defined and finalized for Meaningful Use Stages 2 and 3, CONTRACTOR will fully certify the Software accordingly. Notwithstanding the foregoing, however, COUNTY recognizes that COUNTY is responsible for establishing the overall environment and meeting the other conditions necessary to meet the Meaningful Use standards under laws and regulations. However, if COUNTY develops and implements a Configuration for the Software in accordance with the Specifications and CONTRACTOR's training and guidance, such Configuration shall meet the finalized specifications from the ONC for Meaningful Use.

Section 8.04 No Unauthorized Code

CONTRACTOR warrants that it shall not introduce Unauthorized Code as defined in Article I into the System and that it has tested for such Unauthorized Code using industry standard tests and has not found any such Unauthorized Code. CONTRACTOR warrants to COUNTY that the Software and CONTRACTOR Technology under this Agreement shall contain no Unauthorized Code. CONTRACTOR further warrants that CONTRACTOR shall not introduce, via modem or otherwise, any code or mechanism that electronically restricts COUNTY's use of or access to the Software, Data, or Services, in whole or in part, based on any type of limiting criteria, except for CONTRACTOR's OrderConnect Subscription Service or the Software if implemented in an InterSystems, non-Cache-Softkey manner.

Section 8.05 Authorization

CONTRACTOR represents and warrants that:

- (a) CONTRACTOR is a corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation and has all requisite power and authority to execute, deliver and perform its obligations under this Agreement;
- (b) It has the full power and authority to grant to COUNTY the rights described in this Agreement without violating any rights of any third party and that there is currently no actual or threatened suit by any such third party based on an alleged violation of such rights by CONTRACTOR;

- (c) The execution, delivery and performance of this Agreement has been duly authorized by CONTRACTOR and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for CONTRACTOR to enter into this Agreement and perform its obligations under this Agreement;
- (d) The person executing this Agreement for CONTRACTOR has actual authority to bind CONTRACTOR to each and every term, condition and obligation to this Agreement, and that all requirements of CONTRACTOR have been fulfilled to provide such actual authority;
- (e) CONTRACTOR is duly authorized to conduct business in and is in good standing in each jurisdiction in which CONTRACTOR will conduct business in connection with this Agreement;
- (f) CONTRACTOR has obtained all licenses, certifications, permits, and authorizations necessary to perform the Services under this Agreement and currently is in good standing with all regulatory agencies that regulate any or all aspects of CONTRACTOR's performance of the Services; and
- (g) It shall comply with all applicable local, State, and federal licensing, accreditation and registration requirements necessary in the performance of the Services; and CONTRACTOR will maintain all required certifications, licenses, permits, and authorizations required for CONTRACTOR to provide Services during the term of this Agreement at its own expense.

Section 8.06 Ability to Perform

CONTRACTOR represents and warrants that:

- (a) CONTRACTOR has the financial stability to carry out at least six months of Services, including Support and Maintenance during any period of this Agreement without reimbursement for the Services or expenses;
- (b) CONTRACTOR has the financial resources to fund the capital expenditures required under the Agreement without advances by COUNTY or assignment of any payments by COUNTY to a financing source;
- (c) To the best of its knowledge, each Subcontractor providing a substantial amount of the Services under this Agreement has the financial resources to carry out its duties under this Agreement; and
- (d) CONTRACTOR's methods of accounting are consistent with generally accepted accounting principles.

Section 8.07 Compatibility

CONTRACTOR warrants that the System, including but not limited to the Custom Software, if any, shall perform in accordance with the Specifications during the Warranty Period and, if the

Software, in whole or in part, is replaced or upgraded by CONTRACTOR with replacement or upgraded Software components provided by CONTRACTOR, the Software as upgraded shall operate with the rest of the Software, including without limitation, Custom Software and Third Party Software and enhancements thereto, without loss of any functionality, as provided in the Specifications. If CONTRACTOR requires COUNTY to upgrade any of its Third Party Software which is used with the Software with new versions or releases, Contractor shall, at no additional cost to COUNTY, install and maintain the Software to operate in accordance with its Specifications and to be compatible with the Enhancements and new versions or releases of the Third Party Software. CONTRACTOR warrants that it shall maintain the Software to perform in accordance with the Specifications with the current version or one version back of all Third Party Software that CONTRACTOR requires COUNTY to license or use with the Software.

Section 8.08 Disclaimers

WARRANTIES EXPRESSLY MADE IN THIS AGREEMENT ARE CONTRACTOR'S ONLY WARRANTIES CONCERNING THE SERVICES AND DELIVERABLES, AND ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

Article IX. WARRANTY SERVICES.

Section 9.01 General

During the Warranty Period, CONTRACTOR shall provide Services as described in Exhibit D at the charges described in Section 13.04. CONTRACTOR's Service responsibilities shall include promptly repairing or replacing the System, or any portion thereof, that has Deficiencies.

Article X. DISPUTE RESOLUTION.

Section 10.01 The parties shall attempt in good faith to promptly resolve any dispute, controversy or claim arising out of or relating to this Agreement, including but not limited to payment disputes, through negotiations between senior management of the parties and their designees. If the dispute cannot be resolved within fifteen (15) Days of initiating such negotiations or such other time period mutually agreed to by the parties in writing, either party may terminate the dispute resolution negotiations.

Section 10.02 CONTRACTOR and COUNTY agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities and obligations under this Agreement and shall have the right to exercise their rights and remedies; provided, however that each party continues to honor its obligations with regard to any Services or Deliverables that are not subject to dispute and that this provision is subject to COUNTY's exercise of its remedies.

Article XI. CHANGES

Section 11.01 Changing Government Programs.

- (a) The parties acknowledge that the government programs supported by this Agreement will be subject to continuous change during the term of this Agreement. CONTRACTOR will provide for adequate resources, to reasonably accommodate such changes during the term, subject to the Change Order process of this Article XI, Section 11.03
- (b) The Parties also acknowledge that CONTRACTOR was selected, in part, because of its expertise, experience, and knowledge concerning applicable federal and State laws, regulations, codes, policies, or guidelines that affect the performance of the Services and System.
- (c) In keeping with COUNTY's reliance on CONTRACTOR's knowledge, experience and expertise, CONTRACTOR will be responsible to implement any changes in applicable Federal or State legislative enactments and regulations and the impact of such changes on the performance of the Services or Deliverables or COUNTY's use of the Services or Deliverables. CONTRACTOR must timely notify COUNTY of such changes and must work with COUNTY to identify the impact of such changes on how COUNTY uses the Services or Deliverables. The COUNTY understands the importance of the exchange of said information at the California User Group (CAUG) and commits to the attendance at all meetings.
- (d) CONTRACTOR will be responsible for and shall indemnify COUNTY against any fines, penalties, sanctions, or disallowances which are imposed on COUNTY or CONTRACTOR up to two times the Not to Exceed Amount of the Agreement as defined in Section 13.04, to the extent they result from a failure of the Licensed Software or Services to meet Specifications and provided that such failure would not have come to COUNTY's attention during the ordinary of use of the Services and System in time to prevent such fines, penalties, sanctions, or disallowances.
- (e) In the ordinary course of business, if COUNTY becomes aware of any material changes in applicable Federal and State laws, regulations, codes, policies, or guidelines affecting the Agreement, COUNTY will promptly notify CONTRACTOR of the changes.

Section 11.02 Issuance of Change Requests

The parties shall mutually develop and agree upon a policy during the Project to refine the concept of obligations in and out of the scope of the Agreement. COUNTY may, at any time by a written Change Request, request changes within the scope of the Agreement. Such changes may include, without limitation, revisions to Deliverables or Services.

Section 11.03 CONTRACTOR Response to Change Request

CONTRACTOR shall respond in writing to a Change Request within twenty (20) Days of receipt, advising COUNTY of any cost and Schedule impacts. When there is a cost impact, i.e., increase or decrease in Fees, CONTRACTOR shall advise COUNTY in writing of the increase or decrease

involved, including a breakdown of the number of Staff hours by level of CONTRACTOR and COUNTY personnel needed to effect this change.

Section 11.04 Agreement on Change Order

The CONTRACTOR Project Manager and the COUNTY Project Executive shall negotiate in good faith and in a timely manner as to the price for amounts over the limitations specified in Section 13.04 and the impact on the Schedule of any Change Request. If the parties reach an agreement on a Change Order in writing, and the Change Order is executed by authorized representatives of the parties, the terms of this Agreement shall be modified accordingly. The parties will execute a formal Agreement amendment for any Change Order that increases or decreases the Maximum Amount. Non-financial Change Orders may be approved in writing by the COUNTY Project Manager. However, all other Change Orders must be executed by the COUNTY Project Executive. In no event shall the Fees be increased nor shall the Schedule be extended in a Change Order to correct warranty issues, errors or omissions in the System.

Section 11.05 Legal Changes

If laws, rules, regulations, codes, policies or guidelines for COUNTY are adopted, promulgated, judicially interpreted or changed, the effect of which is to alter the ability of either party to fulfill its obligations under this Agreement, the parties will promptly negotiate in good faith appropriate modifications or alterations to the Agreement and any appropriate Change Orders for amounts over the limitations specified in Section 13.04.

Section 11.06 Disagreement

If COUNTY submits to CONTRACTOR a Change Request to comply with such laws, rules, regulations, codes, policies or guidelines, if CONTRACTOR is the only party technically able to implement and perform the Change Request, and if the parties are unable to reach an agreement in writing within fifteen (15) Days of CONTRACTOR'S response to such a Change Request, including CONTRACTOR's quotation for the Change Request, the parties will retain an independent qualified third party ("Appraiser") with expertise in the healthcare software IT field, to set a price and schedule. The parties will equally share the cost of the Appraiser's services. CONTRACTOR shall proceed with the work according to the price and Schedule fixed by the Appraiser which shall be included in the resulting Change Order. Nothing in this Section 11.06 shall in any manner excuse CONTRACTOR from proceeding diligently with the Agreement as changed by the Change Order.

Section 11.07 Termination

If CONTRACTOR fails or refuses to perform its Services in accordance with this Agreement without a bona fide business justification or to complete an agreed and executed Change Order which impacts the scope and functioning of the System, CONTRACTOR shall be in material breach of this Agreement, and COUNTY shall have the right to terminate the Agreement for such a breach in accordance with Section 25.01, except that the time period to cure such breach shall be fifteen (15) Business Days.

Section 11.08 CONTRACTOR Submission of Change Request

CONTRACTOR may also submit a Change Request to COUNTY to propose changes that should

be made within the scope of the Agreement. Any such Change Request shall include proposed costs and Schedule impacts, including a breakdown of the number of Staff hours by level of CONTRACTOR and COUNTY personnel needed to effect this change. COUNTY will respond to such Change Requests from CONTRACTOR within twenty (20) Days of receipt. If the parties reach an agreement on a Change Order in writing, and the Change Order is executed by authorized representatives of the Parties, the terms of this Agreement shall be modified accordingly. If the parties are unable to reach an agreement in writing on a Change Request submitted by CONTRACTOR, the COUNTY Project Executive will be deemed to have rejected the requested Change Request.

Article XII. ADDITIONAL RIGHTS AND REMEDIES.

Section 12.01 Withholding Payments.

If CONTRACTOR fails to deliver Deliverables or to provide Services which satisfy CONTRACTOR's obligations hereunder and fails to correct such failures, COUNTY shall have the right to withhold any and all payments due hereunder. COUNTY may withhold any and all such payments due hereunder to CONTRACTOR, without penalty or work stoppage by CONTRACTOR, until such failure to perform is cured.

Section 12.02 Reductions in Payments Due.

Amounts due COUNTY by CONTRACTOR, including but not limited to liquidated damages, and claims for or other actual damages, that are not the subject of a bona fide dispute by CONTRACTOR, may be deducted or set off by COUNTY from any money payable to CONTRACTOR pursuant to this Agreement. If CONTRACTOR disagrees with COUNTY's deductions or set-offs, CONTRACTOR can pursue the dispute resolution process described in this Agreement.

Section 12.03 Liquidated Damages.

The parties agree that delay or failure by CONTRACTOR to timely perform its obligations by the dates in the Work Plan and in accordance with the Performance Standards may interfere with the proper and timely Implementation of the System and Services, to the loss and damage of COUNTY. The parties understand and agree that the liquidated damages CONTRACTOR shall pay to COUNTY as a result of nonperformance hereunder by CONTRACTOR are described in Exhibit C and that these amounts are reasonable estimates of COUNTY's damages in accordance with applicable State law. The parties also acknowledge and agree that COUNTY could incur liquidated damages for more than one event if CONTRACTOR fails to timely perform or meet Milestones by each due date therefor.

- (a) The assessment of liquidated damages shall not constitute a waiver or release of any other remedy COUNTY may have under this Agreement for CONTRACTOR's breach of this Agreement, including without limitation, COUNTY's right to terminate this Agreement, and COUNTY shall be entitled in its discretion to recover actual damages caused by CONTRACTOR's failure to perform its obligations under this Agreement.
- (b) Amounts due COUNTY as liquidated damages may be deducted by COUNTY from any money payable to CONTRACTOR under this Agreement, or COUNTY may bill CONTRACTOR as a separate item therefor and CONTRACTOR shall promptly make

payments on such bills. However, COUNTY will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages.

- (c) Prior to the imposition of liquidated damages, COUNTY will provide a written notice of assessment of damages to CONTRACTOR specifying with reasonable detail, the Deficiency that will result in liquidated damages; and
- (d) CONTRACTOR will have fifteen (15) Days from receipt of the notice to cure the Deficiency, or, if cure is not possible in fifteen (15) days, present a remediation plan that is acceptable to COUNTY to remedy or eliminate the Deficiency before the liquidated damages begin to be imposed.
- (e) The aggregate liquidated damages for which CONTRACTOR is liable will not exceed:
 - (i) Ten percent (10%) of the Maximum Amount prior to Final Acceptance; and after Final Acceptance
 - (ii) Twenty-five percent (25%) of the amount payable for annual service and support in each calendar year of the Maintenance and Support term;
- (f) CONTRACTOR shall be entitled to deduct the cumulative amount of liquidated damages paid to COUNTY from any subsequent damages that may be awarded to COUNTY.
- (g) If CONTRACTOR cures the Deficiency within the fifteen (15) Day cure period, or COUNTY accepts CONTRACTOR's plan to remedy the Deficiency, then the notice of assessment will be considered rescinded. Any subsequent notice of assessment will comply with the procedures provided above.
- (h) If at any time during the term of the Agreement, the total liquidated damages for which CONTRACTOR is liable equals or exceeds the percentage applicable under either Section 12.03(e)(i) or Section 12.03(e)(ii), as the case may be, then COUNTY may terminate this Agreement and COUNTY may pursue legal or equitable remedies available to it for such termination.

Section 12.04 Suspension for Convenience.

COUNTY shall have the right at any time to order the Services of CONTRACTOR fully or partially stopped for its own convenience prior to Final Acceptance of the System for up to thirty (30) Days per year of the term. CONTRACTOR will receive Notice of the reasons for such an order. The Schedule shall be delayed for a reasonable period of time taking into account CONTRACTOR's ability to reallocate resources but no less than a day for day basis to the extent COUNTY has issued a stop work order to CONTRACTOR and such stop work order is causing delays in completing Services in accordance with the Schedule. In the event the stop work order results in revisions to the Preliminary Work Plan in Exhibit A, the parties shall proceed to formulate a revised Work Plan in accordance with Section 5.02 (b) of this Agreement.

Section 12.05 Suspension Due to Breach.

- (a) In the event COUNTY determines that CONTRACTOR is not in substantial compliance with the conditions of this Agreement or if COUNTY has reason to believe that fraud, abuse, malfeasance, misfeasance or nonfeasance has occurred on the part of CONTRACTOR under this Agreement, i.e. a compliance breach and the situation is deemed by COUNTY to merit corrective action, the following sequential suspension procedure may be implemented by COUNTY:
- (b) COUNTY will notify CONTRACTOR in writing by certified mail to CONTRACTOR's last known address with a return receipt to COUNTY of a perceived compliance breach describing COUNTY's concerns.
- (c) CONTRACTOR will respond to COUNTY's concerns by letter describing proposed corrective actions and proposing completion dates for bringing the Agreement into compliance. Such response will be sent by certified mail and delivered to the COUNTY within ten (10) Days of the date of receipt of COUNTY's letter.
- (d) COUNTY will notify CONTRACTOR in writing by certified mail to CONTRACTOR's last known address with a return receipt to COUNTY as to the COUNTY's final disposition of COUNTY's concerns.
- (e) Unless CONTRACTOR fails to cure the breach or refuses to cooperate with COUNTY's information request, upon receipt of notice of final disposition by CONTRACTOR, COUNTY will either remove the suspension, or, if warranted under Section 25.01 terminate the Agreement in accordance with Section 25.01 below.

Section 12.06 Cover.

If, in the reasonable judgment of COUNTY, a default by CONTRACTOR is not so substantial as to require termination, reasonable efforts to induce CONTRACTOR to cure the default are unavailing, CONTRACTOR fails to cure such default within fifteen (15) business Days of receipt of Notice from COUNTY, and the default is capable of being cured by COUNTY or by another resource without unduly interfering with continued performance by CONTRACTOR COUNTY and CONTRACTOR shall work together in good faith to provide or procure the services at a price and within a timeframe that is mutually agreeable. In the event that both parties cannot agree, the parties will retain an independent third party appraiser with expertise in healthcare software IT field to establish a reasonable price and timeframe. In addition, CONTRACTOR must cooperate with these resources in allowing access to the Software.

Article XIII. COMPENSATION FOR SERVICES

Section 13.01 Invoices

CONTRACTOR shall submit monthly invoices no later than thirty (30) days following the end of a "service month" except in those instances where CONTRACTOR obtains written approval from COUNTY Assistant Director, Health Services Department or Assistant Director's designee granting an extension of the time to complete billing for services or expenses. For billing

purposes, a “service month” shall be defined as a calendar month during which CONTRACTOR provides services in accordance with this Agreement.

Incorrect or incomplete invoices will be returned by COUNTY to CONTRACTOR for correction and reissue. The Agreement number must appear on all invoices, bills of lading, packages, and correspondence relating to this Agreement. Invoices must provide detailed information and be in a format as requested by COUNTY including, but not limited to:

- CONTRACTOR name, address, telephone number and Federal tax identification number;
- An itemization of each Deliverable;
- The Deliverable for which payment is sought, and the acceptance date triggering payment;
- Applicable Deliverable and other Fees;
- Date of delivery and/or date of installation, as applicable;
- Any other Project expenses or costs with a detailed itemization of such expenses and costs if applicable;
- Sales or use tax, if applicable;
- Credits, if any; and
- Total amount due.

Section 13.02 Invoices / Remittance shall be addressed as indicated in the table below or to such other location as COUNTY or CONTRACTOR may direct per Article XXVI – Notice to Parties.

Mail invoices to:	Mail remittance to:
Health & Human Services Agency – Finance Unit 929 Spring Street Placerville, CA 95667	Netsmart Technologies, Inc. 3500 Sunrise Highway, Suite D122 Great River, NY 11739 Attn: Accounts Receivable

Section 13.03 Taxes

COUNTY shall pay for any sales or use taxes imposed on the Deliverables if COUNTY received an invoice from CONTRACTOR for such taxes within one year of the due date. CONTRACTOR must pay all other applicable taxes including, but not limited to, taxes based on CONTRACTOR’s income or revenue or personal property taxes levied or assessed on CONTRACTOR’s personal property to which COUNTY does not hold title.

Section 13.04 Fees and Charges

Payment for Services and Deliverables are conditioned on written Final Acceptance by the County Project Manager of the deliverables and services set forth in this section, said Final Acceptance in accordance with Section 5.06.

The Deliverables, Services, Fees and Charges for which invoices may be rendered are as follows:

Milestones	Type	Monthly Rate	Rate Discounted by 10% for 5-year term	Total for 5-year term
Setup of a separate El Dorado SaaS Environment and Data Transfer	Deliverable			\$20,000.00
Escrow Agreement (per Exhibit E) @\$700 x 5 years	Service			\$3,500.00
Avatar Upgrades System to My Avatar: Fiscal, Project Management, Clinical and Clinical Work Station modules.	Service			\$21,600.00
· Configuration assistance				
· Training				
· Trouble Shooting				
Modeling / Table Training	Service			\$15,800.00
Go-Live Support	Service			\$6,400.00
Point Of Service Installation / Training	Service			\$1,800.00
Info Scriber (E-Prescription) Installation / Training	Service			\$4,900.00
Project Management of 12.5 days at \$1,800 per day	Service			\$22,500.00
Total				\$96,500.00
Licenses				
150 Named SaaS Users @ \$55/month		\$8,250.00		\$495,000.00
Total				\$495,000.00
Info Scriber Users (3rd party vendor)				
Licenses				
Annual Base Fee			\$1,350.00	\$6,750.00
Named Users (7)		\$500.50	\$5,405.40	\$27,027.00
Non-prescribing Users (13)		\$169.00	\$1,825.20	\$9,126.00
Total			\$8,580.60	\$42,903.00
Licenses				
Point of Service Scanning License	One Time Cost			\$7,500.00
Total				\$7,500.00
Annual Maintenance				
POS Annual Support Fee per Year			\$2,000.00	\$10,000.00
Total				\$10,000.00
Travel				\$9,800.00
NOT TO EXCEED AMOUNT				\$661,703.00

*Note: Monthly rates listed are for reference only and do not reflect discount of ten percent (10%) in consideration of a five (5) year term to this Agreement.

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.

COUNTY shall pay CONTRACTOR for each service or deliverable as described herein subject to COUNTY's receipt of the correct invoice, COUNTY's exercise of remedies set forth in this Agreement and CONTRACTOR's performance of its obligations in accordance with the Work Plan in Exhibit A.

Section 13.05 CONTRACTOR Expenses

COUNTY shall pay CONTRACTOR's reasonable out-of-pocket travel expenses in accordance with Exhibit G – Board of Supervisors Policy D-1, which are pre-approved in writing and which are incurred in connection with providing the Services, within thirty (30) days of receipt of such an invoice for such expenses incurred in the previous month. However, CONTRACTOR shall be responsible for payment of all expenses related to salaries, benefits, employment taxes, insurance, for its Staff. Travel associated with the performance of services under this Agreement shall be in accordance with Exhibit G – Board of Supervisors Policy D-1, attached hereto and incorporated by reference herein, and shall not exceed \$98,000.

Section 13.06 Hourly rates for Change Orders shall not exceed \$200 per hour.

Section 13.07 Fee Increases

CONTRACTOR may increase its charges at the end of the initial five-year term or at the end of each successive one-year term, upon ninety (90) days prior notice to COUNTY. Such charge increases shall be no more than three percent (3%) per year for the term(s) of this Agreement.

Section 13.08 Payment

COUNTY approved invoices shall be paid within forty-five (45) days following COUNTY's receipt and approval in accordance with this section.

(a) Overpayments to CONTRACTOR

CONTRACTOR shall promptly, but in all cases within thirty (30) Days, pay to COUNTY the full amount of any erroneous payment or overpayment upon Notice of an erroneous payment or overpayment to which CONTRACTOR is not entitled.

(b) **Credits**

Any credits due COUNTY under this Agreement may be applied against CONTRACTOR's invoices with appropriate information attached, upon giving of Notice required herein, if any by COUNTY to CONTRACTOR.

(c) **Advance Payment**

Except for payment of maintenance and support services, Fees and subscription based Products, no advance payment shall be made to CONTRACTOR pursuant to this Agreement.

Article XIV. RECORD RETENTION AND ACCESS REQUIREMENTS

Section 14.01 CONTRACTOR shall agree to the conditions of all applicable County, State and Federal regulations, which are incorporated herein by this reference, regarding retention and access requirements relating to all financial and programmatic records, supporting documents, statistical records, and other records of this Agreement. In addition, CONTRACTOR shall agree to the following terms regarding retention of records and access for County, State and Federal government officials.

Section 14.02 CONTRACTOR and its Subcontractors shall maintain books, records, documents and other evidence which sufficiently and properly reflects the accuracy of amounts billed to COUNTY during the performance of this Agreement and shall retain all such records for six years after the expiration or termination of this Agreement. Records involving matters in litigation related to this Agreement shall be kept for one (1) year following the termination of litigation, including all appeals if the litigation has not terminated within six years from the date of expiration or termination of this Agreement.

Section 14.03 All such records shall be subject at reasonable times and upon prior Notice to examination, inspection, copying, or audit by personnel so authorized by the Project Director and/or County, State and Federal officials so authorized by law, rule, regulation or contract, when applicable at CONTRACTOR's place of business. Notwithstanding anything to the contrary herein, COUNTY shall on its behalf (but without limiting other government agencies) agree to audit CONTRACTOR in accordance with the terms of the Agreement no more often than semi-annually.

Section 14.04 The records retention and review requirements of this Section shall be included by CONTRACTOR in any of its subcontracts with Subcontractors. COUNTY's personnel shall be accompanied by CONTRACTOR personnel at all times during any examination, inspection, review or audit. CONTRACTOR shall make no charges for services rendered in connection with an audit requested by COUNTY.

Section 14.05 CONTRACTOR shall provide right of access to its facilities to COUNTY, or any of COUNTY's officers or to any other authorized agent or official of the County and/or the State of California and/or the Federal government, at all reasonable times, in order to monitor and evaluate performance, compliance and/or quality assurance under this Agreement.

Article XV. ACCOUNTING REQUIREMENTS

CONTRACTOR shall establish and maintain an accounting system with procedures and practices in accordance with generally accepted accounting principles. The accounting system shall maintain records pertaining to the Services and all other costs and expenditures made under this Agreement, and the costs properly applicable to the Agreement shall be readily ascertainable there from.

Article XVI. SUPPLEMENTAL CONTRACTS

COUNTY may undertake or award supplemental contracts for work related to this Agreement, or any portion thereof. CONTRACTOR shall cooperate with such other CONTRACTORS and COUNTY in all such cases. In the event that services are required to support the activities of such other CONTRACTORS, CONTRACTOR will submit and COUNTY will review a Change Order to cover the work. If COUNTY does not approve the Change Order, CONTRACTOR will have no obligation to provide such services. CONTRACTOR shall ensure that all Subcontractors shall abide by this provision. It is understood and agreed by the parties hereto that CONTRACTOR shall not be responsible for the acts or failures to act of any such other CONTRACTORS or for any delays which may be caused by any such other CONTRACTORS, except that CONTRACTOR shall be responsible for delays of, or acts or failures to act of, such other CONTRACTORS to the extent such delays, or acts or failures to act are caused by or due to the fault of CONTRACTOR (subject to Section 19.03).

Article XVII. CONFIDENTIAL INFORMATION

Section 17.01 Protection Obligations.

Access and Protection - During the term of the Agreement, CONTRACTOR and COUNTY will have access to and become acquainted with each party's Confidential Information. COUNTY and CONTRACTOR, and each of their officers, employees, and authorized CONTRACTORS and agents, shall maintain all Confidential Information of the other party in confidence and at least to the extent as it protects the confidentiality of its own proprietary information of like kind, but in no event with less than reasonable care. Neither party will at any time use, publish, reproduce or disclose any Confidential Information, except to authorized officers, employees, CONTRACTORS and agents requiring such information under confidentiality requirements no less restrictive than this Section 17.01, as authorized in writing by the other party, as otherwise specifically permitted herein, or to perform its obligations as authorized hereunder. Both parties shall take all steps necessary, including without limitation oral and written instructions to all staff to safeguard, in accordance with applicable Federal, State and County law, regulation, codes, and this Article XVII, the other party's Confidential Information against unauthorized disclosure, reproduction, publication or use, and to satisfy their obligations under this Agreement. Each party agrees that, prior to disclosing any Confidential Information of the other party to any third party, it will obtain from that third party a written acknowledgment that such third party will be bound by the same terms as specified in this Section with respect to the Confidential Information. In addition to the requirements expressly stated in this Section 17.01, CONTRACTOR and its Subcontractors will comply with any applicable policy, rule, or reasonable requirement of the County, the State and the Federal government that relates to the safeguarding or disclosure of information relating to applicants and recipients of COUNTY's Services, CONTRACTOR's operations, or the Services

performed by CONTRACTOR under this Agreement, including without limitation the terms of Exhibit F which is incorporated herein by this reference.

Section 17.02 Security Requirements.

Each party, and its officers, employees, Subcontractors and agents shall at all times comply with all security standards, practices, and procedures which are reasonable in scope, consistent with accepted industry practice for protection of protected health information or required by law, as well as for protection of COUNTY's other Confidential Information.

Section 17.03 Audit.

COUNTY reserves the right to monitor, audit or investigate CONTRACTOR's use of COUNTY Confidential Information collected, used, or acquired by CONTRACTOR under this Agreement.

Section 17.04 Return.

Subject to record retention laws, each party shall promptly return to the disclosing party, on termination or expiration, all of the disclosing party's Confidential Information, including copies thereof.

Section 17.05 Injunctive Relief.

- (a) CONTRACTOR shall immediately report to COUNTY any and all unauthorized disclosures or uses of COUNTY's Confidential Information of which it or its Staff is aware or has knowledge. CONTRACTOR acknowledges that any publication or disclosure of COUNTY's Confidential Information to others may cause immediate and irreparable harm to COUNTY. If CONTRACTOR should publish or disclose such Confidential Information to others without authorization, COUNTY shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.
- (b) COUNTY will immediately report to CONTRACTOR any and all unauthorized disclosures or uses of CONTRACTOR's Confidential Information of which COUNTY is aware or has knowledge. COUNTY acknowledges that any publication or disclosure of CONTRACTOR's Confidential Information to others may cause immediate and irreparable harm to CONTRACTOR. If COUNTY should publish or disclose such Confidential Information to others without authorization, CONTRACTOR shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.

Section 17.06 Exceptions.

The following information shall not be considered Confidential Information for the purposes of this Agreement: information previously known when received from the other party; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach hereof; information which is developed by one party independently of any disclosures made by the other party of such information; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

Section 17.07 Public Records.

- (a) Notwithstanding the above, CONTRACTOR acknowledges that this Agreement shall be a public record under State law. Any specific information that is claimed by CONTRACTOR to be Confidential Information must be clearly identified as such by CONTRACTOR. To the extent consistent with State law, COUNTY will maintain the confidentiality of all such information marked Confidential Information. If a request is made to view CONTRACTOR's Confidential Information, COUNTY will notify CONTRACTOR of the request and of the date that any such records will be released to the requester unless CONTRACTOR obtains a court order enjoining that disclosure. If CONTRACTOR fails to obtain the court order enjoining disclosure, COUNTY will release the identified requested information on the date specified.
- (b) CONTRACTOR considers all of the Schedules and Exhibits to this Agreement to be Confidential and not a public record, but the parties acknowledge that Section 17.01 above shall apply to the Agreement.

Section 17.08 Survival.

The provisions of this Section shall remain in effect for a period of three (3) years following the termination or expiration of this Agreement or the longest period required by law whichever is greater.

Section 17.09 Additional Indemnifications.

- (a) Intellectual Property.
 - (i) CONTRACTOR shall, at its expense, defend, indemnify, and hold harmless COUNTY and its employees, officers, directors, CONTRACTORS and agents from and against any third party claim or action against COUNTY which is based on a claim that any Deliverable or any part thereof under this Agreement infringes a United States patent, copyright, trademark, or other proprietary right or misappropriates a trade secret, and CONTRACTOR shall pay all losses, liabilities, damages, penalties, costs, fees (including reasonable attorneys' fees) and expenses caused by or arising from such claim. COUNTY shall promptly give CONTRACTOR notice of any such claim and shall cooperate in the defense of such claims at CONTRACTOR's expense.
 - (ii) In case the Deliverables, or any one or part thereof, are in such action held to constitute an infringement or misappropriation, or the exercise of COUNTY's rights thereto is enjoined or restricted, CONTRACTOR shall, at its own expense and in the following order of priorities: (i) procure for COUNTY the right to continue using the Deliverables; (ii) modify the Deliverables to comply with the Specifications and to not violate any intellectual property rights; or (iii) retrieve any or all Deliverables upon receipt of notice from COUNTY and refund the Fees paid by COUNTY for such Deliverables. CONTRACTOR will be entitled to reduce the refund amount by one sixtieth for each month elapsed from Final Acceptance until the termination of the License under this section.
 - (iii) CONTRACTOR will have no obligation to indemnify COUNTY for any claim

that any of the Deliverables infringes the intellectual property rights of a third party, to the extent that such claim arises as a result of; (i) COUNTY's unauthorized modification of the Deliverables, provided that in the absence of the unauthorized modification, the Deliverables are not the cause of such Claim.

- (iv) The foregoing states CONTRACTOR's sole obligation and COUNTY's exclusive remedy with respect to any alleged infringement by all or part of the Deliverables.
- (v) CONTRACTOR shall not be liable to the extent claims of misappropriation of infringement arise from: (i) CONTRACTOR's compliance with any designs, Specifications or written instructions of COUNTY; or (ii) any changes made by COUNTY or any third party authorized by COUNTY to make changes unless CONTRACTOR authorized such changes or gave instructions on how to make the changes.

(b) General

CONTRACTOR shall, at its expense, indemnify, defend, and hold harmless COUNTY, its employees, officers, directors, CONTRACTORS and agents from and against any losses, liabilities, damages, penalties, costs, fees, including without limitation reasonable attorneys' fees, and expenses from any claim or action caused by or arising from: (i) the negligent acts or omissions or willful misconduct of CONTRACTOR, its officers, employees, agents, or Subcontractors, including but not limited to damages for property damage, bodily injury or death; and (ii) a breach or alleged breach of its obligations in Article XVII.

Article XVIII. DAMAGES DISCLAIMERS AND LIMITATIONS

Section 18.01 COUNTY's Disclaimer of Damages.

COUNTY SHALL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES.

Section 18.02 COUNTY's Limitation of Liability.

IN NO EVENT SHALL COUNTY'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT, EXCEED THE MAXIMUM AMOUNT.

Section 18.03 CONTRACTOR's Disclaimers of Damages.

EXCEPT AS PROVIDED IN Section 18.05, CONTRACTOR SHALL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES

Section 18.04 CONTRACTOR's Limitation of Liability.

EXCEPT AS PROVIDED IN Section 18.05, IN NO EVENT SHALL CONTRACTOR'S AGGREGATE LIABILITY TO COUNTY UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT, EXCEED THE MAXIMUM AMOUNT.

Section 18.05 Exceptions to Damages Limitations.

THE DISCLAIMERS OF CERTAIN DAMAGES AND THE DAMAGES LIMITATIONS IN SECTION 18.04 AND SECTION 18.04 SHALL NOT APPLY TO DAMAGES, EXPENSES, LOSSES, FEES, LIABILITIES, COSTS OR OTHER AMOUNTS ARISING FROM CONTRACTOR'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT PROVIDED, HOWEVER, THAT WITH RESPECT TO CONFIDENTIAL PHI ONLY, ABSENT NEGLIGENCE, OMISSIONS OR WILLFUL MISCONDUCT ON THE PART OF THE CONTRACTOR, ITS AGENTS, SERVANTS, EMPLOYEES AND REPRESENTATIVES, CONTRACTOR'S MAXIMUM LIABILITY FOR BREACH OR INDEMNITY RELATED TO SAME WILL NOT EXCEED THE MAXIMUM AMOUNT OF THIS AGREEMENT.

Article XIX. SPECIAL TERMS AND CONDITIONS

Section 19.01 Anti Trust Violations.

CONTRACTOR and COUNTY recognize that overcharges resulting from antitrust violations are in actual economic practice usually borne by COUNTY. Therefore, CONTRACTOR hereby assigns to COUNTY any and all claims for such overcharges as to goods and services purchased in connection with this Agreement, except as to overcharges not passed on to COUNTY resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Fees under this Agreement.

Section 19.02 Compliance with Civil Rights Laws.

No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any program provided by this Contract because of race, color, creed, marital status, religion, sex, sexual orientation, national origin, Vietnam era or disabled veteran's status, age, the presence of any sensory, mental or physical disability, or political affiliation or belief.

- (a) During the performance of this Agreement, CONTRACTOR shall comply with all Federal and applicable State nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. § 12101, et seq.; the Americans with Disabilities Act (ADA); and the provisions of the Fair Employment and Housing Act (Government Code Section 12900, et seq.) and the applicable regulations promulgated thereunder in the California Code of Regulations (Title 2, Section 7285.0, et seq.). In the event of CONTRACTOR's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part under Section 25.01 (Termination for Default), and CONTRACTOR may be declared ineligible for further contracts with COUNTY. CONTRACTOR shall be given a

reasonable time in which to cure noncompliance. In addition to the cancellation of this Contract, CONTRACTOR may be subject to penalties under federal and State law.

- (b) CONTRACTOR shall promptly notify the Equal Opportunity Office of COUNTY of any administrative enforcement actions or lawsuits filed against it by an employee of CONTRACTOR who performs any work pursuant to this Agreement, alleging discrimination on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief. The Equal Opportunity Office will notify the Director, Directorate of Civil Rights, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor.

Section 19.03 Force Majeure.

Neither CONTRACTOR nor COUNTY shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except Subcontractors).

Section 19.04 Headings

The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

Section 19.05 Nonwaiver

Except as otherwise specifically provided herein, any failure or delay by either party to exercise or partially exercise any right, power or privilege under the Agreement shall not be deemed a waiver of any such right, power, or privilege under the Agreement. Any waivers granted by a party for breaches hereof shall not indicate a course of dealing of excusing other or subsequent breaches. One party's pursuit or non-pursuit of a remedy under this Agreement for the other party's breach of its obligations will neither constitute a waiver of any such remedies or any other remedy that a party may have at law or equity for any other occurrence of the same or similar breach, not estop a party from pursuing such remedy.

Section 19.06 Notice of Delay

When either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party shall, within five (5) working days, give notice thereof, including all relevant information with respect thereto, to the other party.

Section 19.07 Remedies

Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provisions of the Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given

hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

Section 19.08 Severability

If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

Section 19.09 Sovereign Immunity

The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver by COUNTY of any immunities from suit or from liability that COUNTY may have by operation of law.

Section 19.10 Subcontractors

- (a) CONTRACTOR is engaged by COUNTY for its unique qualifications and skills as well as those of its personnel. CONTRACTOR shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of COUNTY. In the event COUNTY agrees in writing that CONTRACTOR may subcontract for services under this Agreement, CONTRACTOR shall require that all subcontractors comply with all terms and conditions of this Agreement, and all pertinent federal and State statutes and regulations.
- (b) CONTRACTOR may, with prior written permission from the COUNTY Project Manager, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of CONTRACTOR'S duties and obligations. Subject to the other provisions of this Section, COUNTY expressly consents to CONTRACTOR's use of the Subcontractors designated in the Work Plan. Any such approval may be rescinded in COUNTY's sole discretion upon such notice and following an amount of time as may reasonably be required for CONTRACTOR to obtain substitute Services.
- (c) CONTRACTOR is responsible and liable for the proper performance of and the quality of any work performed by any and all Subcontractors and their compliance with the Agreement and the subcontract terms and conditions. In no event shall the existence of a subcontract operate to release or reduce the liability of CONTRACTOR to COUNTY for any breach in the performance of CONTRACTOR's duties. In addition, CONTRACTOR's use of any Subcontractor shall not cause the loss of any warranty from CONTRACTOR. All subcontracts will be made in writing and copies provided to COUNTY upon request. COUNTY has the right to refuse reimbursement for obligations incurred under any subcontract that do not comply with the terms and conditions of this Agreement.

- (d) For purposes of this Agreement, CONTRACTOR agrees to indemnify, defend, and hold COUNTY harmless from and against any and all claims, actions, losses, liabilities, damages, costs and expenses (including reasonable attorney fees) arising out of or related to acts or omissions of CONTRACTOR's Subcontractors, their agents, or employees to the same extent that CONTRACTOR would be liable to defend, indemnify or hold COUNTY harmless under this Agreement.
- (e) For any Subcontractor, CONTRACTOR shall include in the Subcontractor's subcontract substantially similar terms as are provided in Section 3.02(f) (Reference and Background Checks), Section 4.01(b) (Ownership), Article XIV (Records Retention and Access Requirements), Article XVII (Confidential Information), and Article XXX (Insurance).
- (f) Upon expiration or upon termination of this Agreement COUNTY will have the right to enter into direct agreements with any of the Subcontractors. CONTRACTOR agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct agreements with COUNTY.

Section 19.11 Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Deliverables or Services provided pursuant to this Agreement is served upon CONTRACTOR or COUNTY, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. CONTRACTOR and COUNTY further agree to cooperate with each other in any lawful effort by the such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by one party to another as provided in Section 17.09(a) (Intellectual Property).

Section 19.12 Survival

All Services performed and Deliverables provided pursuant to the authority of this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive, In addition, the terms of, Section 4.01(b)(Ownership), Section 5.11(b), Section 11.01(d), Article XII (Additional Rights and Remedies), Article XIV (Records Retention and Access Requirements), and Article XV (Accounting Requirements) shall survive the termination of this Agreement.

Article XX. CHANGES TO AGREEMENT

This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

Article XXI. ASSIGNMENT AND DELEGATION

Section 21.01 CONTRACTOR may not assign or transfer this Agreement or any of its rights hereunder, or delegate any of its duties hereunder, without the prior written consent of the COUNTY Project Manager, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, CONTRACTOR may assign its rights and obligations under this Agreement without COUNTY consent: (1) to an affiliate; (2) incident to the transfer of all or substantially all of its business, assets or stock; (3) as a result of a merger or (4) as security to a lender in the ordinary course of CONTRACTOR's business.

Section 21.02 COUNTY may assign this Agreement and may delegate its duties in whole or in part without the consent of CONTRACTOR to another municipal corporation with jurisdiction over El Dorado County, another governmental jurisdiction such as a State agency, or to a private entity which assumes the obligations of COUNTY to provide these services to the residents of El Dorado County. Any attempted assignment, transfer or delegation in contravention of this Section of the Agreement shall be null and void. This Agreement shall inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

Article XXII. CONTRACTOR TO COUNTY

It is understood that the services provided under this Agreement shall be prepared in and with cooperation from COUNTY and its staff. It is further agreed that in all matters pertaining to this Agreement, CONTRACTOR shall act as Contractor only to COUNTY and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with CONTRACTOR's responsibilities to COUNTY during term hereof.

Article XXIII. INDEPENDENT CONTRACTOR/LIABILITY

CONTRACTOR is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. CONTRACTOR exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

CONTRACTOR shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. COUNTY shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to CONTRACTOR or its employees.

Article XXIV. FISCAL CONSIDERATIONS

The parties to this Agreement recognize and acknowledge that COUNTY is a political subdivision of the State of California. As such, County of El Dorado is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of COUNTY business, COUNTY will

adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, COUNTY shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and COUNTY released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any COUNTY department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the COUNTY, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

Article XXV. DEFAULT, TERMINATION, AND CANCELLATION

Section 25.01 Default

Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, COUNTY reserves the right to take over and complete the work by contract or by any other means.

Section 25.02 Rejection of Deliverables

If prior to Acceptance of Deliverable, CONTRACTOR is unable to correct Deficiencies, COUNTY shall have the right to immediately terminate this Agreement, in whole or in part, without penalty or liability to COUNTY, and return any software and other materials to CONTRACTOR. To the extent COUNTY terminates this Agreement, CONTRACTOR shall, within twenty (20) Days thereafter, refund to COUNTY all payments made to CONTRACTOR for the returned Deliverable and Services rendered. Any and all disputed claims of payment will be resolved through the use of the Dispute and Resolution, Section 10.01 of the Agreement.

Section 25.03 Bankruptcy

This Agreement, at the option of the COUNTY, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of CONTRACTOR.

Section 25.04 Ceasing Performance

COUNTY may terminate this Agreement in the event CONTRACTOR ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.

Section 25.05 Termination or Cancellation without Cause

COUNTY may terminate this Agreement in whole or in part upon thirty (30) calendar days written notice by COUNTY without cause. If such prior termination is effected, COUNTY will pay for satisfactory services actually rendered prior to the effective dates as set forth in the Notice of Termination provided to CONTRACTOR, and for such other services, which COUNTY may agree to in writing as necessary for contract resolution. In no event, however, shall COUNTY be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, CONTRACTOR shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

Section 25.06 Turnover Assistance

Upon expiration of the Agreement or CONTRACTOR's receipt of notice of termination of the Agreement by COUNTY, CONTRACTOR will provide any turnover assistance Services reasonably necessary to enable COUNTY or its designee to effectively close out the Agreement and move the work to another vendor or to perform the work by itself. COUNTY shall pay on a time and materials basis at rates in the Agreement for turnover assistance, subject to mutual written agreement on such work to be performed, and Contractor agrees that any of its out-of-pocket costs, which will be reimbursed by COUNTY, will not be marked up to include profits. Within thirty (30) Days of receipt of the Notice of termination, CONTRACTOR shall provide, in machine readable form, an up to date, usable copy of the Data (if CONTRACTOR is hosting the repository for such Data) and a copy of all documentation readily available that may assist COUNTY to utilize the Data.

Article XXVI. NOTICE TO PARTIES

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to COUNTY shall be addressed as follows:

COUNTY OF EL DORADO
HEALTH AND HUMAN SERVICES AGENCY
3057 BRIW ROAD, SUITE A
PLACERVILLE, CA 95667
ATTN: DANIEL NIELSON, M.P.A., DIRECTOR

or to such other location as the COUNTY directs.

Notices to CONTRACTOR shall be addressed as follows:

NETSMART TECHNOLOGIES, INC.
3500 SUNRISE HIGHWAY, SUITE D122
GREAT RIVER, NY 11739
ATTN: JOSEPH MCGOVERN, EXECUTIVE VICE PRESIDENT

or to such other location as the CONTRACTOR directs.

Article XXVII. HIPAA COMPLIANCE

By signing this Agreement, CONTRACTOR agrees to comply with Exhibit F - Business Associate Agreement, attached hereto and incorporated by reference herein.

Article XXVIII. DEBARMENT

Debarment and Suspension Certification: By signing this agreement, the CONTRACTOR agrees to comply with applicable Federal suspension and debarment regulations and CONTRACTOR further certifies to the best of its knowledge and belief that it and its principals or affiliates or any sub-contractor utilized under the agreement:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
- B. Have not within a three year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in the above Paragraph B;
- D. Have not within a three (3)-year period preceding this Agreement had one or more public transactions (Federal, State or local) terminated for cause or default;
- E. Shall not knowingly enter in to any lower tier or subrecipient covered transaction with any person(s) who are proposed for debarment under Federal regulations or are debarred, suspended, declared ineligible or voluntarily excluded from participation in such transactions, unless authorized by the State; and

F. Shall include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier or subrecipient covered transactions.

The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.

If the CONTRACTOR knowingly violates this certification, in addition to other remedies available to the Federal and State Governments, County may immediately terminate this Agreement for cause or default.

Article XXIX. INSURANCE

Section 29.01 CONTRACTOR shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that CONTRACTOR maintains insurance that meets the following requirements:

- (a) Full Workers' Compensation and Employers' Liability Insurance covering all employees of CONTRACTOR as required by law in the State of California; and
- (b) Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage;
- (c) Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by the CONTRACTOR in the performance of the Agreement.

Section 29.02 In the event CONTRACTOR is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000 per occurrence.

Section 29.03 CONTRACTOR shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.

Section 29.04 The insurance will be issued by an insurance company reasonably acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.

Section 29.05 CONTRACTOR agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, CONTRACTOR agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and CONTRACTOR agrees that no work or services shall be performed prior to the giving of such approval. In the event the CONTRACTOR fails to keep in effect at all times insurance coverage as herein provided, COUNTY may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

Section 29.06 The certificate of insurance must include the following provisions listed under (a) below and (b) (including an endorsement page for the “additional insured” language pursuant to(b)), stating that:

- (a) The insurer will provide notice to an additional insured at least thirty (30) days (ten days in the event of non-payment of premium) in advance of the policy cancellation date. Any failure by the carrier to notify an additional insured, however, will not impose any liability or obligation of any kind upon the carrier or invalidate the cancellation.
- (b) The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.

Section 29.07 The CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

Section 29.08 Any deductibles or self-insured retentions must be declared to and approved by the COUNTY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the COUNTY, its officers, officials, employees, and volunteers; or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. COUNTY acknowledges that CONTRACTOR has retention of \$100,000 on its professional liability insurance.

Section 29.09 Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or volunteers.

Section 29.10 The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

Section 29.11 CONTRACTOR's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.

Section 29.12 In the event CONTRACTOR cannot provide an occurrence policy, CONTRACTOR shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

Section 29.13 Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for the protection of the COUNTY.

Article XXX. INTEREST OF PUBLIC OFFICIAL

No official or employee of COUNTY who exercises any functions or responsibilities in review or approval of services to be provided by CONTRACTOR under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of COUNTY have any interest, direct or indirect, in this Agreement or the proceeds thereof.

Article XXXI. INTEREST OF CONTRACTOR

CONTRACTOR covenants that CONTRACTOR presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. CONTRACTOR further covenants that in the performance of this Agreement no person having any such interest shall be employed by CONTRACTOR.

Article XXXII. CONFLICT OF INTEREST

The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. CONTRACTOR attests that it has no current business or financial relationship with any COUNTY employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. COUNTY represents that it is unaware of any financial or economic interest of any public officer or employee of CONTRACTOR relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Default, Termination and Cancellation".

Article XXXIII. CALIFORNIA RESIDENCY (FORM 590)

All independent Contractors providing services to the COUNTY must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. The CONTRACTOR will be required to submit a Form 590 prior to execution of an Agreement or COUNTY shall withhold seven (7) percent of each payment made to the CONTRACTOR during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

Article XXXIV. TAXPAYER IDENTIFICATION NUMBER (FORM W-9)

All independent Contractors or corporations providing services to the COUNTY must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

Article XXXV. COUNTY BUSINESS LICENSE

It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of County of El Dorado without possessing a County business license unless exempt under County Code Section 5.08.070.

Article XXXVI. ADMINISTRATOR

The County Officer or employee with responsibility for administering this Agreement is Joan Meis Wilson, Assistant Director of Health Services, or successor.

Article XXXVII. AUTHORIZED SIGNATURES

The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

Article XXXVIII. PARTIAL INVALIDITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

Article XXXIX. VENUE

Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in County of El Dorado, California, and shall be resolved in accordance with the laws of the State of California.

Article XL. WAIVER

Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified or deleted except by a written instrument signed by the parties hereto.

Article XLI. ENTIRE AGREEMENT

This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

REQUESTING CONTRACT ADMINISTRATOR CONCURRENCE:

By: _____ Dated: _____
Joan Meis Wilson, Assistant Director, Health Services Department
Health and Human Services Agency

REQUESTING DEPARTMENT HEAD CONCURRENCE:

By: _____ Dated: _____
Daniel Nielson, M.P.A., Director
Health and Human Services Agency

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

--COUNTY OF EL DORADO--

By: _____ Dated: _____
John R. Knight, Chair
Board of Supervisors
COUNTY

*Attest: Terri Daly
Acting Clerk of the Board of Supervisors*

Deputy Date

-- CONTRACTOR --

NETSMART TECHNOLOGIES, INC.

By: _____ Dated: _____
JOSEPH MC GOVERN, EXECUTIVE VICE PRESIDENT
CONTRACTOR

By: _____ Dated: _____
Corporate Secretary

kgj