

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

25-26

SAP Number

## Department of Behavioral Health

<b>Department Contract Representative</b>	<u>Eric Williams</u>
<b>Telephone Number</b>	<u>(909) 388-0951</u>
<b>Contractor</b>	<u>Netsmart Technologies, Inc.</u>
<b>Contractor Representative</b>	<u>Blake Robinson</u>
<b>Telephone Number</b>	<u>(913) 272-2136</u>
<b>Contract Term</b>	<u>July 1, 2024 Through June 30, 2029</u>
<b>Original Contract Amount</b>	<u>\$22,479,308</u>
<b>Amendment Amount</b>	<u></u>
<b>Total Contract Amount</b>	<u>\$22,479,308</u>
<b>Cost Center</b>	<u>9204072200</u>
<b>Grant Number (If applicable)</b>	<u></u>

## IT IS HEREBY AGREED AS FOLLOWS:

**WHEREAS**, County requires to procure the Products and/or the Services that are the subject of this Contract, and

**WHEREAS**, County desires that such Products and/or Services be provided by Contractor and Contractor agrees to provide these Products and/or perform these Services as set forth below;

**NOW, THEREFORE**, the County and Contractor mutually agree to the following terms and conditions:

This Contract consists of these General Terms and the documents that are referenced and hereby incorporated as though fully set forth herein by a checked box below, and attachment hereto:

- ☒ Attachment A – NETSMART MASTER AGREEMENT
  - ☒ Attachment A-1 – Budget Schedule
  - ☒ Attachment A-2 – Third Party Pass Through Agreements
  - ☒ Attachment A-3 – Terms of Use Agreement
- ☒ Attachment B – SCOPE OF SERVICE (STATEMENT OF WORK)
  - ☒ Attachment B-1 – Source Code & Escrow Account Requirements
  - ☒ Attachment B-2 – Change Order Process
  - ☒ Attachment B-3 – Invoices
  - ☒ Attachment B-4 – Unapproved Work
  - ☒ Attachment B-5 – State of California Imposed Requirements
    - ☒ State Contract No. 21-10106 Exhibit D – Information Confidentiality and Security Requirements

- ☒ State Contract No. 22-20127 Exhibit F – Privacy Security Provisions
- ☒ State Contract No. 23-30118 Exhibit F – Business Associate Addendum
- ☒ Attachment C – BUSINESS ASSOCIATE AGREEMENT
- ☒ Attachment C-1 – Business Associate Addendum for Cloud Services
- ☒ Attachment D – CAMPAIGN CONTRIBUTION DISCLOSURE

In the event of any inconsistency between this Contract and any forms, attachments, statements of works, or specifications which may be incorporated into this Contract, the following order of precedence shall apply: (i) this Contract; (ii) Attachments to this Contract, as indicated above; and (iii) price lists, SOWs, SLAs and other documents attached hereto or incorporated herein.

## A. DEFINITIONS

Unless elsewhere defined in this Contract, the following capitalized terms shall have the meaning ascribed herein:

- A.1** “Affiliates”: collectively, municipalities, school districts, and other tax districts within County
- A.2** “County”: San Bernardino County
- A.3** “Contractor”: the individual or entity identified as providing the Products and/or Services
- A.4** “DRM”: County’s Department of Risk Management
- A.5** “Effective Date”: the date of execution of the Contract
- A.6** “EFT”: Electronic funds transfer.
- A.7** “P.O.”: a purchase order specifying the types and quantity of Products, Services or Software ordered, the method of delivery, the delivery date required and the location to which Products or Software are to be shipped or the Services are to be provided.
- A.8** “Products”: goods in the technology and consumer electronics category
- A.9** “Services”: professional consulting, which may include implementation, design, customization, maintenance, help desk or other services necessary or desired by County as specified in an SOW.
- A.10** “Software”: computer programs, procedures, rules, routines, or subroutines and any associated documentation pertaining to the operation of a computer system, including software designed to fill specific needs of a user; software that controls the execution of programs, and software that provides services such as resource allocation, scheduling, input/output control, and data management; application-independent software that supports the running of application software; software designed to facilitate the operation and maintenance of a computer system and its associated programs; and computer programs or routines designed to perform some general support function required by other application software, by the operating system, or by the system users, such as formatting electronic media, making copies of files, or deleting files.
- A.11** “SOW”: a statement of work or work order that identifies Services provided by Contractor, including a detailed task list or specifications, the estimated period of performance, the fixed price or hourly rate to be charged for the Services, together with any milestones, acceptance criteria and other information regarding the scope of work, as mutually agreed by the Parties.

## B. GENERAL CONTRACT REQUIREMENTS

### B.1 Recitals

The recitals set forth above are true and correct and incorporated herein by this reference.

### B.2 Contract Amendments

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.



**B.3 Contract Assignability**

Without the prior written consent of the County, the Contract is not assignable by Contractor either in whole or in part.

**B.4 Contract Exclusivity**

This is not an exclusive Contract. The County reserves the right to enter into a contract with other contractors for the same or similar services. The County does not guarantee or represent that the Contractor will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

**B.5 Attorney's Fees and Costs**

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

**B.6 Background Checks for Contractor Personnel**

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the County; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the County and not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing Services. If requested by the County, Contractor shall provide the results of the background check of each individual to the County. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet the County's hiring criteria, in County's sole and reasonable discretion, shall not be assigned to work on County property or Services, and County shall have the right, at its sole option, to refuse access to any Contract personnel to any County facility.

**B.7 Change of Address**

Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

**B.8 Choice of Law**

This Contract shall be governed by and construed according to the laws of the State of California.

**B.9 Compliance with County Policy**

In performing the Services and while at any County facilities, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the Services, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor personnel or may be made available to Contractor or Contractor personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate. County shall have the right to require Contractor's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

**B.10 HIPAA Compliance**

Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, regulations have been promulgated governing the privacy of individually identifiable health information. The HIPAA Privacy Rule and Security Rule specify requirements with respect to contracts between a Covered Entity and its Business Associates. Contractor shall comply with the attached Business Associate Agreement (Attachment C). Contractor further agrees to comply with the requirements of other federal and state law that applies to the information collected and maintained by Contractor for Services performed pursuant to Contract.

#### **B.11 Primary Point of Contact**

Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor shall not change the primary contact without written acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

#### **B.12 County Representative**

The Board of Supervisors or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Contractor. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

#### **B.13 Damage to County Property**

Contractor shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence. If the Contractor fails to make timely repairs, the County may make any necessary repairs. The Contractor, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County, as determined at the County's sole discretion.

#### **B.14 Debarment and Suspension**

Contractor certifies that neither it nor its principals or subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

#### **B.15 Drug and Alcohol Free Workplace**

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

- B.15.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- B.15.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- B.15.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County. The County may terminate for default or breach of this Contract and any other Contract the Contractor has with the County, if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

#### **B.16 Duration of Terms**

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

#### **B.17 Employment Discrimination**

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair

Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

**B.18 Environmental Requirements**

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Contractor to use recycled paper for any printed or photocopied material created as a result of this Contract. Contractor is also required to use both sides of paper sheets for reports submitted to the County whenever practicable. To assist the county in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Contractor must be able to annually report the County's environmentally preferable purchases. Contractor must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form.

**B.19 Improper Influence**

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

**B.20 Improper Consideration**

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract. The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded. Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

**B.21 Informal Dispute Resolution**

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

**B.22 Legality and Severability**

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

**B.23 Licenses, Permits and/or Certifications**

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

**B.24 Material Misstatement/Misrepresentation**

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

## **B.25 Mutual Covenants**

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

## **B.26 Nondisclosure**

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

## **B.27 Notice of Delays**

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

## **B.28 Ownership of Documents**

All non-proprietary documents, data, products, graphics and reports prepared by Contractor pursuant to the Contract shall be considered property of the County upon payment for services (and products, if applicable). All such items shall be delivered to County at the completion of work under the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.

## **B.29 Air, Water Pollution Control, Safety and Health**

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

## **B.30 Records**

Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract. All records relating to the Contractor's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

## **B.31 Relationship of the Parties**

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

## **B.32 Release of Information**

No news releases, advertisements, public announcements or photographs arising out of the Contract or Contractor's relationship with County may be made or used without prior written approval of the County.

## **B.33 Representation of the County**

In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the San Bernardino County.

## **B.34 Strict Performance**

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.



**B.35 Subcontracting**

Contractor shall obtain County's written consent, which County may withhold in its sole and reasonable discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the Services to County. At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Section E. All approved subcontractors shall be subject to the provisions of this Contract applicable to Contractor Personnel. For any subcontractor, Contractor shall:

**B.35.1** Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and

**B.35.2** Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.

**B.35.3** Include in the subcontractor's subcontract substantially similar terms as are provided in Sections B. General Contract Requirements and Section E. Insurance and Indemnification.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with County.

**B.36 Subpoena**

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract 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 the other party in any lawful effort by 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 Contractor for County.

**B.37 Termination for Convenience**

The County reserves the right to terminate the Contract, for its convenience, with or without cause, with a thirty (30) day written notice of termination. Such termination shall include all of the services described herein. Upon such termination, payment will be made to the Contractor for services rendered, work in progress, and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all non-proprietary completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics and reports.

**B.38 Time of the Essence**

Time is of the essence in performance of this Contract and of each of its provisions.

**B.39 Venue**

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

**B.40 Conflict of Interest**

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons

does not result in increased costs over those associated with the employment of any other equally qualified applicant.

#### **B.41 Former County Administrative Officials**

Contractor agrees to provide, or has already provided information on former San Bernardino County administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

#### **B.42 Disclosure of Criminal and Civil Procedures**

The County reserves the right to request the information described herein from the Contractor. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Contractor also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination. Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail. In addition, the Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Contractor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail. For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

#### **B.43 Copyright**

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all non-proprietary reports, studies, information, data, statistics, forms, designs, plans, procedures and any other materials or properties developed for the County (if any) under this Contract and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the San Bernardino County as the funding agency and Contractor as the creator of the publication. No such materials, or properties produced in whole or in part under this Contract, excluding Contractors proprietary intellectual property and derivative works thereof, shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this Contract exclusively for the County must be filed with the County prior to publication.

#### **B.44 Iran Contracting Act**

IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable. Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

#### **B.45 California Consumer Privacy Act**

To the extent applicable, if Contractor is a business that collects the personal information of a consumer(s) in performing Services pursuant to this Contract, Contractor must comply with the provisions of the California Consumer Privacy Act (CCPA). (Cal. Civil Code §§1798.100, et seq.). For purposes of this provision, "business," "consumer," and "personal information" shall have the same meanings as set forth at Civil Code section 1798.140. Contractor must contact the County immediately upon receipt of any request by a consumer submitted pursuant to the CCPA that requires any action on the part of the County, including but not limited to, providing a list of disclosures or deleting personal information. Contractor must not sell, market or otherwise disclose personal information of a consumer provided by the County unless specifically authorized pursuant to terms of this Contract. Contractor must immediately provide to the County any notice provided by a consumer to Contractor pursuant to Civil Code section 1798.150(b) alleging a violation of the CCPA, that involves personal information received or maintained pursuant to this Contract. Contractor must immediately notify the County if it receives a notice of violation from the California Attorney General pursuant to Civil Code section 1798.155(b).

#### **B.46 Executive Order N-6-22 Russia Sanctions**

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>), as well as any sanctions imposed under state law (<https://www.dgs.ca.gov/OLS/Ukraine-Russia>). The EO directs state agencies and their contractors (including by agreement or receipt of a grant) to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should it be determined that Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. Contractor shall be provided advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the County.

#### **B.47 Campaign Contribution Disclosure (SB 1439)**

Contractor has disclosed to the County using Attachment D- Campaign Contribution Disclosure Senate Bill 1439, whether it has made any campaign contributions of more than \$250 to any member of the Board of Supervisors or County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of Contractor's proposal to the County, or (2) 12 months before the date this Contract was approved by the Board of Supervisors or Purchasing Department. Contractor acknowledges that under Government Code section 84308, Contractor is prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or County elected officer for 12 months after the County's consideration of the Contract.

In the event of a proposed amendment to this Contract, the Contractor will provide the County a written statement disclosing any campaign contribution(s) of more than \$250 to any member of the Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment.

Campaign contributions include those made by any agent/person/entity on behalf of the Contractor or by a parent, subsidiary or otherwise related business entity of Contractor.

### **C. TERM OF CONTRACT**

This Contract is effective as of July 1, 2024, and expires June 30, 2029, but may be terminated earlier in accordance with provisions of this Contract.

### **D. FISCAL PROVISIONS**

**D.1** The maximum amount of payment under this Contract shall not exceed \$22,479,308 and shall be subject to availability of other funds to the County. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor's services and expenses incurred in the performance hereof, including travel and per diem.

**D.2** Invoices shall be issued with a net sixty (60) day payment term with corresponding Purchase Order number stated on the invoices.

**D.3** Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the

Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.

- D.4** County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.
- D.5** Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.
- D.6** Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Contractor shall not claim reimbursement or payment from County for, or apply sums received from County with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the County.
- D.7** Contractor shall adhere to the County's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the County. In addition, Contractor is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

## **E. INDEMNIFICATION AND INSURANCE REQUIREMENTS**

### **E.1 Indemnification**

Contractor will indemnify, defend, and hold harmless County and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against County, or County receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, County will use reasonable efforts to notify Contractor promptly of such lawsuit, claim or election. However, County's failure to provide or delay in providing such notice will relieve Contractor of its obligations only if and to the extent that such delay or failure materially prejudices Consultant's ability to defend such lawsuit or claim. County will give Contractor sole control of the defense (with counsel reasonably acceptable to County) and settlement of such claim; provided that Contractor may not settle the claim or suit absent the written consent of County unless such settlement (a) includes a release of all claims pending against County, (b) contains no admission of liability or wrongdoing by County, and (c) imposes no obligations upon County other than an obligation to stop using the goods or services that are the subject of the claim. In the event that Contractor fails to or elects not to defend County against any claim for which County is entitled to indemnity by Contractor, then Contractor shall reimburse County for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from County. After thirty (30) days, County will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by County to Contractor. This shall not apply to any judgment or settlement amount, which amounts County shall be entitled to notify, invoice or debit Contractor's account at any time; and County, at its sole discretion, may settle the claim or suit.

If, in Contractor's opinion, any goods or services become, or are likely to become, the subject of a claim of infringement of Intellectual Property Rights, Contractor may, at its option: (i) procure for County the right to continue using the goods or receiving the services; (ii) replace or modify the goods or services to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is feasible, in the reasonable judgment of Contractor, County shall cease use of the goods or services upon written notice from Contractor, and Contractor shall provide County with a pro-rata refund of the unearned fees paid by County to Contractor for such goods or services.

### **E.2 Additional Insured**

All policies, except for Cyber / Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent of the eligible proceeds provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.



### **E.3 Waiver of Subrogation Rights**

The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

### **E.4 Policies Primary and Non-Contributory**

All policies required herein are to be primary (where applicable under the policy) and non-contributory with any insurance or self-insurance programs carried or administered by the County.

### **E.5 Severability of Interests**

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

### **E.6 Proof of Coverage**

The Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. **Acceptability of Insurance Carrier**

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

### **E.7 Deductibles and Self-Insured Retention**

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

### **E.8 Failure to Procure Coverage**

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

### **E.9 Insurance Review**

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

### **E.10 Types and Limits**

The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so. Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

**E.10.1 Workers' Compensation/Employer's Liability** – A program of Workers' Compensation insurance or a

state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this contract. If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management. With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

**E.10.2 Commercial/General Liability Insurance** – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

**E.10.3 Automobile Liability Insurance** – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

**E.10.4 Cyber Liability Insurance** - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

**E.10.5 Umbrella Liability Insurance** – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

**E.10.6 Professional Liability** – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

or

Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for Contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the County.

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the state of the contract work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after contract completion.

## **F. RIGHT TO MONITOR AND AUDIT**

**F.1** The County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements

established by the County.

- F.2** All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under this Contract or until all pending County, State and Federal audits are completed, whichever is later.

**G. CORRECTION OF PERFORMANCE DEFICIENCIES**

- G.1** Failure by Contractor to comply with any of the material provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.
- G.2** In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- G.2.1** Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or
  - G.2.2** Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach; and/or
  - G.2.3** Withhold funds pending duration of the breach; and/or
  - G.2.4** Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to Item "b" of this paragraph; and/or
  - G.2.5** Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor.

**H. NOTICES**

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

San Bernardino County  
Department of Behavioral Health - Program Support  
Services, Deputy Director  
303 Vanderbilt Way  
San Bernardino, CA 92415

Netsmart Technologies, Inc.  
Joseph McGovern, EVP  
11100 Nall Avenue  
Overland Park, KS 66211  
[jmcgovern@ntst.com](mailto:jmcgovern@ntst.com)  
[Contracts\\_Notice@ntst.com](mailto:Contracts_Notice@ntst.com)

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

**I. ENTIRE AGREEMENT**

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

**K. ELECTRONIC SIGNATURES**

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the San Bernardino County and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

► 

Dawn M. Rowe, Chair, Board of Supervisors

Dated:

JAN 14 2025

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD



Lynna Monell  
Clerk of the Board of Supervisors  
of San Bernardino County

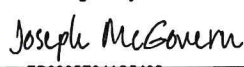
B  
y

Deputy

Netsmart Technologies, Inc.

(Print or type name of corporation, company, contractor, etc.)

By

► 

(Authorized signature - sign in blue ink)

Name

Joseph McGovern

(Print or type name of person signing contract)

Title

Executive Vice President

(Print or Type)

Dated:

1/7/2025

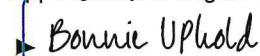
Address

11100 Nall Avenue

Overland Park, KS 66211

**FOR COUNTY USE ONLY**

Approved as to Legal Form

► 

Bonnie Uphold, Supervising Deputy County Counsel

Date 1/7/2025

Reviewed for Contract Compliance

► 

Michael Shin, Contracts Manager

Date 1/7/2025

Reviewed/Approved by Department

► 

Georgina Yoshioka, Director

Date 1/7/2025

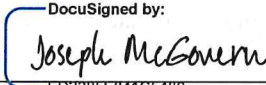



# ATTACHMENT A MASTER AGREEMENT

This Master Agreement (“**Agreement**”) is effective July 1, 2024 (the “**Effective Date**”), between

<b>Netsmart Technologies, Inc.</b> 11100 Nall Avenue Overland Park, KS 66211 (“ <b>Netsmart</b> ”)	San Bernardino County (“ <b>Client</b> ”) State tax exempt: No
Attention: Joseph McGovern, EVP Telephone No: (631) 968-2012 E-mail Address: <a href="mailto:jmcgovern@ntst.com">jmcgovern@ntst.com</a> Legal notices to be sent to: <a href="mailto:Contracts_Notice@ntst.com">Contracts_Notice@ntst.com</a>	Attention: DD Julie Hale Telephone No: (909) 388-0900 E-mail Address: dbh-contracts-reports@dbh.sbcounty.gov Legal notices to be sent to (if different): Department of Behavioral Health Deputy Director, Program Support Services 303 E. Vanderbilt Way San Bernardino, CA 92415-0026  <a href="mailto:dbh-contracts-reports@dbh.sbcounty.gov">dbh-contracts-reports@dbh.sbcounty.gov</a>

This Agreement sets forth the terms and conditions for the licenses, solutions, hardware and services provided by Netsmart to Client.

Netsmart Technologies Inc.	San Bernardino County
<b>BY:</b>  <div> DocuSigned by:    ED3385E841C54B0...  (SIGNATURE) </div>  <div> Joseph McGovern  (PRINTED NAME) </div>  <div> Executive Vice-President  TITLE </div>  <div> 1/7/2025  DATE </div>	<b>BY:</b>  <div>   (SIGNATURE) </div>  <div> Dawn M. Rowe  (PRINTED NAME) </div>  <div> Chair, Board of Supervisors  TITLE </div>  <div> JAN 14 2025  DATE </div>

## TERMS AND CONDITIONS

1. **DEFINITIONS**

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

- a. **"Confidential Information"** means all nonpublic information, whether disclosed by a party or its Affiliates or their respective employees or contractors, that is designated in writing as confidential and falls within a recognized exemption to the San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code 54950, and California Public Records Act (Government Code Section 7920.005). Confidential Information may include: technical, financial and other information that is disclosed by either party to the other, whether orally or in writing, any disputes, status reports, scheduling updates, workflows, forms, reporting, Work Product, data (other than Protected Health Information which is protected in accordance with the BAA), Documentation, all non-public information related to Netsmart products, services and methodologies. "Confidential Information" does not include information (a) publicly available through no breach of this Agreement; (b) rightfully acquired from a third party having a bona fide right to disclose or make the same available; (c) independently developed or previously known by a party; or (d) Protected Communication.
- b. **"Data"** means all information collected, stored, processed or generated through Client's use of the Software Services.
- c. **"Documentation"** means the description and features of the Licensed Software and Software Services as set forth on the Netsmart Wiki, which includes release notes. The Netsmart Wiki can be accessed via the application or the NetsmartConnect support portal.
- d. **"First Productive Use"** means the date that Data is being accessed or entered in the Software Services for processing or review in Client's commercial environment.
- e. **"Force Majeure"** mean acts or events beyond its reasonable control, including but not limited to, acts of nature, governmental actions, acts of terrorism, fire, labor, civil disturbances, pandemics, transportation problems, interruptions of power supply or communications, breakdown of internet service provider and natural disasters, any of which makes performance impossible.
- f. **"Hardware Configuration"** means the hardware required to install and/or operate the Licensed Software or Software Services as set forth at <https://wikihelp.ntst.com/Special:Userlogin?returntotitle=Req#tab=login>, Username: Netsmart\_Prospect and Password: Netsmart1.
- g. **"Licensed Software"** means the Netsmart commercial computer software programs in object code form listed in a Purchase Agreement and their associated Documentation.
- h. **"Problem or Defect"** means any failure of the Licensed Software or Software Services to operate in substantial conformance with the Documentation.
- i. **"Protected Communication"** mean those communications protected under 45 CFR § 170.403, Communications, of the 21st Century Cures Act (the "Communications Rule"), regarding the usability, interoperability or security of the Netsmart Licensed Software or Software Services; relevant information regarding users' experiences when using the Licensed Software or Software Services; Netsmart's business practices related to exchanging electronic health information; and the manner in which a user uses the Licensed Software or Software Services.
- j. **"Purchase Agreement"** means a document executed by the parties (such as a quote or addendum) setting forth the items being purchased by Client, which will be subject to and incorporated into this Agreement.
- k. **"Scope of Use"** means a metric used to define the limits of the products and services as provided for in the Agreement (i.e. number of concurrent users).
- l. **"Services"** means the implementation, training, Software Services, Support Services and other services to be provided by Netsmart under this Agreement.
- m. **"Software Services" or "SaaS"** means the right to access the Licensed Software and/or Third Party Products in a cloud computing environment in accordance with the SOW, together with the Support Services.



- n. **“Statement of Work”** or **“SOW”** means the scope for the implementation of the Software Services.
- o. **“Support Services”** means the application maintenance and support services provided by Netsmart for the Software Services.
- p. **“Third Party Products”** means any commercial software product or infrastructure acquired by Netsmart from an outside vendor on behalf of Client.
- q. **“Work Product”** means any documentation, technique, methodologies, inventions, reports, software, or procedures developed, conceived or introduced by Netsmart during the course of this Agreement, whether acting alone or in conjunction with Client or its employees, Users or others. Work Product does not include any Client Confidential Information or Data.

## **2. SOFTWARE SERVICES LICENSE RIGHTS**

- a. **Software Services License.** Netsmart hereby grants Client a non-exclusive, royalty-free, non-transferable subscription license to use the Software Services only:
  - i. for Client’s internal business purposes and not to process the data of any other entity; and
  - ii. to support the Scope of Use for the Software Services set forth on the applicable Purchase Agreement(s).
- b. **License Rights.** The license rights granted in this section may be exercised by Client, its employees and independent contractors (provided that such independent contractors are not competitors of Netsmart) (each a **“User”**). Client shall be responsible for each User(s) compliance with the terms of this Agreement.
- c. **License Restrictions.** Except as expressly stated in this Agreement, no other rights, express, implied or otherwise, are granted to Client and Netsmart reserves all rights not expressly granted herein. Client will not permit the Software Services or Third Party Products (i) to be disassembled or reverse engineered, (ii) to be sold, disclosed, leased, subleased, lent or otherwise made available to others including third party hosting providers, (iii) to be or attempted to be accessed, modified, make additions to or altered, (iv) make any derivations, adaptations, or translations in whole or in part, (v) Client shall not transmit malware including but not limited to malicious codes, viruses, Trojan horses or similar mechanisms, and/or (vi) to be used to develop functionally similar computer software or to otherwise compete with Netsmart. No copies of the Software Services or Third Party Products may be made by Client without the prior written consent of Netsmart except for backup purposes in accordance with normal data processing practices. Client agrees to reproduce any copyright notices and/or other proprietary legends, regardless of form, contained in, affixed to, or appearing on the Software Services and Third Party Products.
- d. **Third Party Products.** Third Party Products are licensed subject to the same restrictions as are set forth in this Agreement. Third Party Products are also subject to and Client agrees to the pass through terms that apply to those Third Party Products at <https://www.ntst.com/lp/pass-through-terms>. Notwithstanding the foregoing, nothing contained in the third party pass through terms will diminish Netsmart’s obligations under this Agreement.
- e. **Software Title.** The Software Services are proprietary to Netsmart and are based upon and contain trade secrets and other Confidential Information. Netsmart reserves title to the Software Services and all other rights not expressly granted herein.
- f. **Scope of Use Audit.** Client acknowledges that Netsmart has access to view Client’s actual Scope of Use and will periodically verify Client’s actual Scope of Use of the Software Services. Should this verification identify usage of the Software Services in excess of the Scope of Use contracted for, Client agrees to true-up the Scope of Use to the current usage levels.

### 3. SERVICES

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

### 4. PAYMENTS

- a. Payments. Invoices are payable net sixty (60) days after invoice date. Additionally, Netsmart should only submit invoices for Services/Deliverables agreed to in the payment document or applicable executed change order. The invoices must be correct and complete, include the deliverable, contract number, date of delivery.
- b. Taxes. The fees set forth in this Agreement do not include any taxes. Where applicable, taxes will be added to the fees, and Client will pay amounts equal to any taxes (however designated, levied, or based) on such fees including, but not limited to, state and local sales, privilege, property, use or excise taxes, but not including taxes based on the net income of Netsmart. If Client is tax exempt, Client will provide Netsmart a certificate of exemption from taxes.

### 5. WARRANTIES

- a. Functionality Warranty. Netsmart warrants that the Software Services will substantially conform in all material respects with the Documentation, provided Client is on the most current or next to most current version of the Software Services and no modifications, additions or alterations of any kind have been made. In the event of a breach of the foregoing warranty and provided Client is receiving Support Services, Netsmart will (i) correct any reproducible Problems or Defects in the Software Services which prevent it from operating in substantial conformance with the Documentation; or (ii) provide a commercially reasonable alternative that will substantially conform with the Documentation in accordance with the Support Services provisions set forth in Schedule A. The foregoing warranty will only apply if Client meets the Hardware Configuration. CLIENT'S EXCLUSIVE REMEDY UNDER THIS SECTION AND NETSMART'S SOLE OBLIGATION IS TO MODIFY THE SOFTWARE SERVICES TO ELIMINATE THE PROBLEM OR DEFECT. IN THE EVENT NETSMART CANNOT MODIFY OR ELIMINATE THE PROBLEM OR DEFECT, CLIENT MAY TERMINATE THE AGREEMENT PURSUANT TO THE TERMINATION SECTION AND SEEK ALL AVAILABLE REMEDIES AT LAW AND IN EQUITY.
- b. Services Warranty. Netsmart warrants that the Services will be performed in a professional manner in accordance with the terms in this Agreement.



- c. Disclaimer Of All Other Warranties. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESS OR IMPLIED, WHETHER IN RELATION TO THE SOFTWARE SERVICES, HARDWARE OR THE PROVISION OF ANY SERVICES INCLUDING, BUT NOT LIMITED TO, THOSE CONCERNING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ARISING BY TRADE USAGE OR COURSE OF DEALING.

## 6. LIMITATION OF LIABILITY

- a. LIMITATION ON DAMAGES. EXCEPT FOR A BREACH OF THE LICENSE RESTRICTIONS, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES.
- b. LIMITATION ON CUMULATIVE LIABILITY. EXCEPT FOR INDEMNIFICATION OBLIGATIONS FOR PERSONAL BODILY INJURY, TANGIBLE PERSONAL PROPERTY, AND COSTS OF DEFENDING INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT OR BREACHES OF CONFIDENTIALITY OR BUSINESS ASSOCIATE AGREEMENT, SAFEGUARDING CUSTOMER DATA AND PROTECTION OF SENSITIVE INFORMATION, LIABILITY ARISING FROM NETSMART'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR VIOLATION OF LAW, OR OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE MAXIMUM AGGREGATE LIABILITY OF NETSMART TO CLIENT FOR ANY ACTUAL OR ALLEGED DAMAGES ARISING OUT OF, BASED ON OR RELATING TO THIS AGREEMENT, WHETHER BASED UPON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR ANY OTHER LEGAL THEORY, WILL NOT EXCEED AN AMOUNT EQUAL TO ONE AND ONE-HALF TIMES THE FEES PAID BY CLIENT TO NETSMART DURING THE PRIOR TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CAUSE OF ACTION.

## 7. INDEMNIFICATION AND INSURANCE

- a. Infringement Indemnification. Netsmart will defend, indemnify and hold harmless Client and its officer, directors, employees and agents from and against third party claims, liabilities, obligations, judgements, causes of action (the "**Claim**"), and associated costs and expenses (including reasonable attorneys' fees) to the extent arising out of an allegation that the use of the Software Services infringes a third party's U.S. patent, trademark, copyright or other third party intellectual property right. In the event such an infringement is found, Netsmart will at its option and expense, and as Client's sole and exclusive remedy, procure the right to continued use of the Software Services, replace or modify the Software Services with a non-infringing program, or terminate the license of the Software Services, and will refund to Client a pro rata refund of fees prepaid for Software Services not yet provided. Netsmart's indemnification obligations will not apply to the extent the Claim is based upon (i) the use of the Software Services in violation with the terms of this Agreement; (ii) the use of the Software Services in combination with other products or services not made or furnished by Netsmart, provided that the Software Services alone are not the cause of such Claim; (iii) the modification, additions or alterations of the Software Services or any portion thereof by anyone other than Netsmart, provided that the Software Services in unmodified form are not the cause of such Claim; or (iv) the use of Software Services not updated to the latest version offered by Netsmart, where such version cures the infringement.
- b. Intentionally omitted
- c. Indemnification Process. Upon becoming aware of any matter which is subject to the provisions of the Indemnification Section, the party seeking indemnification must (i) give prompt written notice of such Claim to the other party; (ii) provide the indemnifying party with the authority, information and assistance to defend or settle the Claim; and (iii) not materially prejudice the indemnifying party's ability to defend or settle the Claim. The indemnifying party has the right to control and defend the Claim at its own expense and with its own counsel and to settle the Claim so long as such settlement does not require the indemnified party to pay any money or admit any liability without the indemnified party's prior written consent. The indemnified party will have the right, at its option, to participate in the defense of the Claim with its own counsel at its own expense.

- d. Without in anyway affecting the indemnity herein provided and in addition thereto, Netsmart shall secure and maintain throughout the Agreement term the types of insurance with limits as shown and under the requirements set forth in Section E.11 of the contract, as attached hereto and incorporated herein.

## 8. TERM AND TERMINATION

- a. Term. The Term of the Service(s) is set forth in the Contract.
- b. Termination. Either party may terminate this Agreement or a Purchase Agreement, if the other party is in material breach by sending a written notice specifying each breach with reasonable detail, unless (i) the breaching party has cured the breach within thirty (30) days of receipt of written notice, or (ii) with respect to a breach which may not be reasonably cured within the 30-day period, the breaching party is diligently pursuing cure of, and cures the breach as soon as practicable. In the event this Agreement is terminated due to a breach by Client, within thirty (30) days of the date of termination of this Agreement, Client will erase from all computer storage any image or copies of the Software Services, related documentation and will certify in writing to Netsmart that the original and all copies of such property have been destroyed. In the event of termination, Client shall be responsible for all fees related to software and Services rendered through the effective date of such termination.
- c. Survival. Notwithstanding any termination of this Agreement for any reason, the terms and conditions set forth in the following Sections of this Agreement will survive and will be binding on the representatives, successors, heirs and assignees of the parties: Limitation of Liability, Indemnification (with respect to claims arising prior to termination), Confidentiality, and General Provisions.

## 9. CONFIDENTIALITY

- a. Confidential Information. This Agreement is a public record under California state law. Any specific information that is claimed by Netsmart to be Confidential Information must be clearly identified as such by Netsmart. To the extent consistent with State law, Client will maintain the confidentiality of all such information marked Confidential Information. If a request is made to view Netsmart's Confidential Information, Client will notify Netsmart of the request and of the date that any such records will be released to the requestor unless Netsmart obtains a court order enjoining that disclosure. If Netsmart fails to obtain the court order enjoining disclosure, Client will release the identified requested information on the date specified. Except as permitted in this Agreement, neither party will, nor will they permit their employees, agents, attorneys or independent contractors to, disclose, use, copy, distribute, sell, license, publish, reproduce, or otherwise make available Confidential Information of the other party. Each party agrees to secure and protect the other party's Confidential Information using the same standard of care, but in no event less than reasonable care, that it uses to protect its own Confidential Information. Each party agrees to require their respective employees, agents, attorneys, and independent contractors who have a need to access Confidential Information to be bound by confidentiality obligations sufficient to protect the Confidential Information. Either party may disclose the other party's Confidential Information to the extent required by applicable law or regulation, provided that, as permitted, it notifies the other party in writing as soon as practicable prior to such disclosure. Notwithstanding the foregoing, Netsmart shall not prohibit or restrict or engage, nor shall anything contained herein be construed to permit or allow Netsmart to engage in a practice that prohibits or restricts Client from any Protected Communications that are entitled to unqualified protection as defined and required under the ONC Final Rules (45 C.F.R. Parts 170 and 171). Client recognizes that Netsmart has a legitimate interest in the Protected Communications and that if Netsmart is not made aware of the issues that may be detailed in a Protected Communication, Netsmart is not able to resolve, correct or explain them. Netsmart encourages Client to report all such issues included in Protected Communications through Netsmart's standard support process. Netsmart reserves all rights to assert that any prohibition or restriction imposed by Netsmart on Protected Communications is permitted because it is not entitled to unqualified protection under 45 C.F.R. 170.403(a)(2)(ii).
- b. HIPAA. The parties agree to comply with the Business Associate Agreement ("BAA") attached as Attachment C to the contract executed by the parties on July 1, 2024, and incorporated by reference.

## 10. INTELLECTUAL PROPERTY

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

## 11. FORCE MAJEURE

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

## 12. GENERAL PROVISIONS

- a. Governing Law. This Agreement will be interpreted and enforced in accordance with the laws of the State of California, without giving effect to the conflict of law rules thereof. Both parties agree this Agreement does not constitute a consumer transaction. The parties agree that the venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance.
- b. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the matter contained herein. There are no promises, covenants or undertakings contained in any other written or oral communication. In the event of any conflict between or among the documents comprising this Agreement, the latest dated agreement will prevail. This Agreement may not be modified except in writing and signed by authorized representatives of the parties.
- c. Notices. Any notices required or permitted to be sent hereunder will be in writing and will be sent, deposited with the U.S. Postal Service (certified mail, return receipt requested). Notices to Client and Netsmart will be sent to the addresses first set forth on the first page of this Agreement. Notices to Netsmart will be sent "Attention: Corporate Counsel" and emailed to Contracts\_Notice@ntst.com. Notices will be effective upon the date when delivery is either effected or refused.
- d. Waiver. A waiver or consent to any term, condition, right or remedy under this Agreement must be in writing to be effective. Failure of either party to enforce any term or condition of this Agreement will not constitute a waiver of such term or condition. No waiver or consent for any one matter will be a waiver or consent for any subsequent or different matter.
- e. Allocation of Risk. Each party represents and warrants that it is a sophisticated party. The prices paid, warranties, warranty disclaimers, limitations of liability, remedy limitations and all other provisions of this Agreement were negotiated to reflect and support an informed and voluntary allocation of risks between Client and Netsmart. Client and Netsmart waive all protection of any federal or state trade practices statutes and expressly release any and all claims Client or Netsmart could bring or file against the other party seeking to assert a claim for relief under a federal or state trade, merchandising practices or consumer protection act statute.
- f. Insolvency. In the event that either party will cease conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under a Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, which is not discharged within ninety (90) days, then (at the option of the other party) this Agreement will terminate and be of no further force

and effect and any property or rights of such other party, whether tangible or intangible, will forthwith be returned to it.

- g. Assignment. Client may not assign this Agreement or any of the licenses herein, without the prior written consent of Netsmart, except to a public agency, commission, board, or the like, within the political boundaries of Client and may delegate its duties in whole or in part without the consent of Netsmart. Netsmart may assign this Agreement, in whole as part of a corporate reorganization, consolidation, merger, or sale of all of its assets, provided that Netsmart provides Client with ten (10) days' prior written notice of such assignment, or if legally prohibited from providing prior notice, within 10 days after the effective date of the assignment, and Client has the right to terminate this Agreement, if required by applicable law. Any permitted assignee will assume in writing, all obligations of the assignor.
- h. Exclusion. Netsmart acknowledges that to the best of its knowledge neither Netsmart nor its employees providing services hereunder are listed on the Office of Inspector General (OIG) List of Excluded Individuals/Entities (LEIE) as ineligible to participate in any federal health care program.
- i. Medicare Access to Records Clause. If this Agreement is deemed subject to 42 U.S.C. § 1395x(v)(1)(I) and 42 C.F.R. Part 420, Subpart D 420.300 et seq., then in accordance with such law, Netsmart shall, until the expiration of four (4) years after the furnishing of any Medicare reimbursable services pursuant to this Agreement, upon written request, allow the Comptroller General of the United States, the Secretary of Health and Human Services, and their duly authorized representatives access to this Agreement and to Netsmart's books, documents and records necessary to certify the nature and extent of costs of Medicare reimbursable services provided under this Agreement.
- j. Publicity. Upon prior written approval, Client authorizes Netsmart to identify Client as a client, and to use Client's name and logo in any of Netsmart's advertising copy, promotional material or press releases.
- k. Intentionally omitted.
- l. Practice of Medicine and Accuracy of Information. Client acknowledges and agrees that the Software Services and Services are information management tools, many of which contemplate and require the involvement of professional medical personnel. The duty to diagnose and treat a patient lies solely with Client and use of information provided by Netsmart, in no way replaces or substitutes for the professional judgment or skill of Client. Client is solely responsible for the accuracy, quality and legality of the content and Data it uploads and any liabilities in connection therewith (including reasonable attorneys' fees and disbursements).
- m. Severability. If any provision of this Agreement is found to be invalid, illegal or unenforceable under any applicable statute or law, it is to that extent deemed to be omitted, and the remaining provisions of this Agreement will not be affected in any way.
- n. Execution. This Agreement may be executed in two or more counterparts, each of which will be deemed an original. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.
- o. Headings. The headings of the paragraphs and sections of this Agreement are for convenience only and will not control or affect the meaning or construction of any provision of this Agreement.
- p. Executive Order N-6-22 Russia Sanctions. On March 4, 2022, California Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>), as well as any sanctions imposed under state law (<https://www.dgs.ca.gov/OLS/Ukraine-Russia>). The EO directs state agencies and their contractors (including by agreement or receipt of a grant) to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should it be determined that Netsmart is a target of Economic Sanctions or is conducting prohibited transactions with



sanctioned individuals or entities, that shall be grounds for termination of this Agreement. Netsmart shall be provided advance written notice of such termination, allowing Netsmart at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of Client.

- q. California Consumer Privacy Act. Netsmart must comply with the provisions of the California Consumer Privacy Act (CCPA). (Cal. Civil Code §§1798.100, et seq.). For purposes of this provision, “business,” “consumer,” and “personal information” shall have the same meanings as set forth at Civil Code section 1798.140. Netsmart must contact Client immediately upon receipt of any request by a consumer submitted pursuant to the CCPA that requires any action on the part of Client, including but not limited to, providing a list of disclosures or deleting personal information. Netsmart must not sell, market or otherwise disclose personal information of a consumer provided by Client unless specifically authorized pursuant to terms of this Agreement. Netsmart must immediately provide to Client any notice provided by a consumer to Netsmart pursuant to Civil Code section 1798.150(b) alleging a violation of the CCPA, that involves personal information received or maintained pursuant to this Agreement. Netsmart must immediately notify Client if it receives a notice of violation from the California Attorney General pursuant to Civil Code section 1798.155(b).
- r. Campaign Contribution Disclosure. Netsmart has disclosed to Client using Attachment D - Campaign Contribution Disclosure Senate Bill 1439, whether it has made any campaign contributions of more than \$250 to any member of the San Bernardino County (“County”) Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of Netsmart’s proposal to Client, or (2) 12 months before the date this Agreement was approved by the County Board of Supervisors. Netsmart acknowledges that under Government Code section 84308, Netsmart is prohibited from making campaign contributions of more than \$250 to any member of the County Board of Supervisors or other County elected officer for 12 months after the County’s consideration of the Agreement. In the event of a proposed amendment to this Agreement, Netsmart will provide the County a written statement disclosing any campaign contribution(s) of more than \$250 to any member of the County Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment. Campaign contributions include those made by any agent/person/entity on behalf of Netsmart or by a parent, subsidiary or otherwise related business entity of Netsmart.

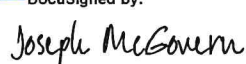
[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, San Bernardino County and Netsmart Technologies, Inc. have each caused this Agreement to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

NETSMART TECHNOLOGIES, INC.

►   
 Dawn M. Rowe, Chair, Board of Supervisors

By ►   
 (Authorized signature - sign in blue ink)

Dated: JAN 14 2025  
 SIGNED AND CERTIFIED THAT A COPY OF THIS

Name Joseph McGovern  
 (Print or type name of person signing contract)

DOCUMENT HAS BEEN DELIVERED TO THE

CHAIRMAN OF THE BOARD

Title Executive Vice-President  
 (Print or Type)

Lynna Monell  
 Clerk of the Board of Supervisors  
 of San Bernardino County

By   
 Deputy  


Dated: 1/7/2025  
 11100 Nall Avenue  
 Overland Park, KS 66211  
 Address \_\_\_\_\_

**FOR COUNTY USE ONLY**

Approved by Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
<u></u> <small>BD564072B3E14C5...</small>	<u></u> <small>6060C011AC3C487</small>	<u></u> <small>7DE8077EFA674B2</small>
Bonnie Uphold, Supervising Deputy County Counsel Date <u>1/7/2025</u>	Michael Shin, Contracts Manager Date <u>1/7/2025</u>	Georgina Yoshioka, Director Date <u>1/7/2025</u>

<p align="center"><b><u>Schedule A: Application Support Services</u></b></p>
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The following is a description of the Support Services to be performed by Netsmart during the time period in which Client is purchasing Support Services.

1. Netsmart will support and maintain the most current version of the Licensed Software in substantial conformance with applicable Federal laws. Client acknowledges and agrees that, in the event Client has chosen to utilize a less than current version of the Licensed Software or has missed any mandatory upgrades, Client will bring the Licensed Software up to Netsmart's then-current version in order for Client to maintain compliance with applicable Federal law.
2. Priority1 issues must be called in directly to the Netsmart Support department. For all other concerns Client can call or use Netsmart's designated online support system to log issues specifying a Problem or Defect in the Licensed Software.
3. If self-hosted, Client will provide and maintain, at its expense, hardware and/or software to allow Netsmart to access Client's system remotely.
4. Netsmart will also provide Client with:
  - a. updates that are distributed without charge to other similar clients which reflect modifications and incremental improvements made to the Licensed Software by Netsmart;
  - b. an opportunity to obtain enhancements to the Licensed Software for which fees are imposed on the same terms as such enhancements are generally made available to other clients
5. Netsmart will provide a toll-free problem-reporting and support telephone line available 8:00 a.m. to 5:00 p.m., Central time Monday through Friday, exclusive of Federal holidays.
6. Client agrees to grant Netsmart access to the Licensed Software on Client's system(s) for the sole purpose of performing Netsmart's obligations under this Agreement. Netsmart will ensure all connectivity to Client's system is through a single point of connectivity utility which audits Netsmart's activity on Client's system(s) when Netsmart is connected to Client's system(s). These audit logs are retained for 90 days.
7. If reasonable analysis by Netsmart indicates that a reported Problem or Defect is caused by a problem related to hardware used by Client, the hardware's system software, or applicable software other than Licensed Software, or Client's misuse or modification of the Licensed Software, Netsmart's responsibility will be limited to the correction of the portion, if any, of the problem caused by a Problem or Defect in the Licensed Software.
8. The Guardiant™ software diagnostic tool is included at no charge provided COUNTY is current on maintenance. The Guardiant software monitors the health of COUNTY's instance of the Licensed Programs, and provides COUNTY information technology personnel with the ability to review technical configuration and metric data including: configuration changes, support case activities, system usage, application events, licensing, user activity, and installed updates in a dashboard view.
9. If analysis by Netsmart indicates that a reported problem is caused by a reproducible Problem or Defect, Netsmart will use commercially reasonable efforts to provide Support Services in accordance with the following prioritization of reported problems:

Priority	Definition
<b>1 - Critical</b>	<p><b>Priority 1:</b> will be assigned when the Licensed Software or a material functional component thereof is non-operational as a result of a defect, in the production environment only, such as the production system cannot be accessed or utilized in any capacity, a direct patient safety issue is present, or a HIPAA compliance violation as a result of a server incident or Netsmart application defect. Best efforts will be made to correct Priority 1 problems, or to provide a plan for such correction, within one (1) business day. Notwithstanding the above, Netsmart will work continuously toward resolution.</p> <p><u>Client's Commitment:</u></p> <ul style="list-style-type: none"> <li>• This case Priority must be called in directly to the Netsmart Support department.</li> <li>• Client provides specific, detailed information required for troubleshooting/investigation.</li> <li>• Client provides appropriate staff and resources to sustain continuous communication and work effort as required.</li> <li>• Without appropriate client resources, the case will be downgraded to Priority 2 after three business days.</li> </ul>
<b>2 - High</b>	<p><b>Priority 2:</b> will be assigned to defects in the live production environment that have a significant negative impact on daily operations but do not cause a "System Down". A workaround may be available and/or the capacity to maintain daily business functionality. Commercially reasonable efforts will be made to correct Priority 2 problems, or to provide a plan for such correction, within five (5) business days. For the absence of doubt, a production System issue with the Software that impacts the County's ability to submit timely claims to DHCS by a claiming deadline, the parties will work in good faith to resolve the issue under the Priority 1 status protocols.</p> <p><u>Client's Commitment:</u></p> <ul style="list-style-type: none"> <li>• Client provides specific, detailed information required for troubleshooting/investigation.</li> <li>• Client provides appropriate staff and resources to sustain continuous communication and work effort as required.</li> <li>• Without appropriate client resources, the case will be downgraded to Priority 3 after six business days.</li> </ul>
<b>3 - Medium</b>	<p><b>Priority 3:</b> will be assigned for system defects that result in functions that have no major impact on daily operations. An issue that allows the continuation of function, including issues in which a reasonable workaround is available. Commercially reasonable efforts will be made to correct Priority 3 problems, or to provide a plan for such correction, within ten (10) business days.</p> <p><u>Client's Commitment:</u></p> <ul style="list-style-type: none"> <li>• Client provides specific, detailed information required for troubleshooting/investigation.</li> <li>• Client provides appropriate staff and resources to sustain continuous communication and work effort as required.</li> <li>• Without appropriate client resources, the case will be downgraded to Priority 4 after eleven (11) business days.</li> </ul>
<b>4 - Low</b>	<p><b>Priority 4:</b> will be assigned to cosmetic defects that do not affect system usability or non-defect related requests including, but not limited to, system set up/configuration, training, functionality questions, documentation, portal access, and upgrade requests. Commercially reasonable efforts will be made to address Priority 4 issues, or to provide a plan for such correction, within fifteen (15) business days.</p> <p><u>Client's Commitment:</u></p> <ul style="list-style-type: none"> <li>• Client provides specific, detailed information required for troubleshooting/investigation.</li> <li>• Client provides appropriate staff and resources to sustain continuous communication and work effort as required.</li> </ul>



## Schedule A-1: Service Level Agreement for Software Services

### 1. Definitions.

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

### 2. Coverage.

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

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

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

### 3. System Availability Calculation

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

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

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

**Unscheduled Downtime** equals the time (in minutes) during which the production system is not operational (excluding "Scheduled Downtime") from the Netsmart-provided hosting facility internet connection based on the measuring methodology documented below.

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

- c. Client is permitted to audit Unscheduled Downtime based on the methodology established below. Netsmart agrees to cooperate with Client in connection with any audit of Unscheduled Downtime. This audit must take place within 30 days of the month end.
- d. Netsmart recommends that Client implement, on a timely basis, the Service Packages that will be provided to Client by Netsmart on a periodic basis. Netsmart will advise Client on Service Packages that may enhance performance and availability and will advise Client of the advantages of implementing the Service Packages as well as the implication of electing not to implement the Service Packages. Netsmart will perform the technical requirements needed for Client to use the Service Packages that Client elects to implement, at no additional charge and as part of the recurring SaaS/Hosting fees. Client and Netsmart will work together to establish a mutually agreeable implementation schedule for the Service Packages. Upon notice to Client that the system's performance and availability will be adversely affected if Client elects not to implement a Service Package, Client will waive any credits set forth above, until such time as Client performs its obligations as necessary to implement the required Service Packages.
- e. Client must allow Netsmart to implement the latest Netsmart supported layered software version (i.e. OS, DBMS, etc.) and patches within six (6) months of the general support announcement from Netsmart. Netsmart will advise Client regarding the layered software enhancements as well as the implications of electing not to implement the layered software enhancements. Netsmart will perform the technical requirements needed for Client to use the layered software enhancements that Client elects to implement as part of the fees. Client and Netsmart will work together to establish an implementation schedule for the layered software enhancements. If Netsmart provides notice to Client that the system's performance and availability will be adversely affected if Client elects not to implement the layered software enhancements, Client waives its right to any credits set forth above until Client implements the required layered software enhancements.
- f. If Client is operating beyond the Scope of Use limits, Client waives its right to any credits set forth above until Client is in compliance with Scope of Use.
- g. During a System Stabilization Period, changes to the System may be required to achieve optimal performance and Unscheduled Downtime or Scheduled Downtime minutes do not apply.

#### **4. Exceptions**

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

- a. an event of Force Majeure;
- b. Failure of access circuits to the Netsmart network, unless such failure is caused solely by Netsmart;
- c. Scheduled maintenance, scheduled backups, scheduled restores and emergency maintenance and upgrades;
- d. Issues with FTP, POP, or SMTP Client access;
- e. Client's acts or omissions (or acts or omissions of others engaged or authorized by Client), including, without limitation, custom scripting or coding (e.g., CGI, Perl, Java, HTML, ASP, etc), any negligence, willful misconduct, or misuse of the Software Services;
- f. E-mail or webmail delivery and transmission;
- g. Outages elsewhere on the Internet that hinder access to your account. Netsmart is not responsible for browser or DNS caching that may make your site appear inaccessible when others can still access it. Netsmart will guarantee only those areas considered under the control of Netsmart: Netsmart server links to the Internet, Netsmart's routers, and Netsmart's servers; and
- h. Use of a VPN or similar connection which is not exclusively within Netsmart's control at both ends of such connection, and where the problem occurs in the part of the VPN which is not under Netsmart's control.

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

6. **Credit Request and Payment Procedures.**

In order to receive a credit, Client must submit a request for credit to Netsmart Accounting at AR@ntst.com, within thirty (30) days after the incident supporting the request. Each request must include Client's account number (per Netsmart's invoice) and the dates and times of the unavailability of the services. If the unavailability is confirmed by Netsmart as an incident eligible for credit, credits will be applied within two billing cycles after Netsmart's receipt of Client's request. Credits are not refundable and can be used only towards future billing fees.

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

ATTACHMENT A-1  
Budget Schedule

Summary of Total Professional Services plus Maintenance/Subscription						
Item	Fiscal Year 24/25	Fiscal Year 25/26	Fiscal Year 26/27	Fiscal Year 27/28	Fiscal Year 28/29	Total Contract Amendment Spend
Recurring Subscription / Maintenance Fees	\$ 2,857,207	\$ 3,000,067	\$ 3,150,071	\$ 3,307,574	\$ 3,472,953	\$ 15,787,872
Staff Changes One-time Fees						\$ 356,510
Staff Changes Recurring Subscription/Maintenance Fees	\$ 1,266,985	\$ 1,266,985	\$ 1,266,985	\$ 1,266,985	\$ 1,266,985	\$ 6,334,926
Total	\$ 4,124,192	\$ 4,267,053	\$ 4,417,056	\$ 4,574,559	\$ 4,739,938	\$ 22,479,308
Amendment Totals						

Notes:	
1	One-time Fees are the total allocation for the term of the agreement.
2	Recurring fees are total by Fiscal Year of fees in Exhibit E-1.1 Subscription and Maintenance
3	Proposed Professional Service Fee Payments are the total of fees without hold back. The hold back fees may be paid in a later Fiscal Year



<b>Annual Subscription/Maintenance Costs FY 24/25 thru FY 28/29</b>					
Product or Service	Annual Fees FY24/25	Annual Fees FY25/26	Annual Fees FY26/27	Annual Fees FY27/28	Annual Fees FY28/29
AMA CPT Code Subscription (1697 Named Users)	\$ 41,254.28	\$ 43,316.99	\$ 45,482.84	\$ 47,756.99	\$ 50,144.83
KPI VPN	\$ 726.06	\$ 762.37	\$ 800.49	\$ 840.51	\$ 882.54
Crystal Reports Developer's Version Maintenance	\$ 1,210.81	\$ 1,271.35	\$ 1,334.92	\$ 1,401.66	\$ 1,471.74
Two Party Escrow Agreement	\$ 2,435.38	\$ 2,557.15	\$ 2,685.01	\$ 2,819.26	\$ 2,960.22
Plexus Cloud Hosting - Avatar Data Warehouse - High Availability	\$ 61,400.43	\$ 64,470.45	\$ 67,693.97	\$ 71,078.67	\$ 74,632.61
Avatar Incident Tracking Maintenance	\$ 2,559.21	\$ 2,687.17	\$ 2,821.53	\$ 2,962.60	\$ 3,110.73
OrderConnect Base Fee	\$ 3,643.80	\$ 3,825.99	\$ 4,017.29	\$ 4,218.16	\$ 4,429.07
Avatar CalPM Maintenance	\$ 4,623.09	\$ 4,854.24	\$ 5,096.95	\$ 5,351.80	\$ 5,619.39
Plexus Cloud Hosting - Avatar Identity and Access Management (NIAM) Centralized Model	\$ 47,147.75	\$ 49,505.14	\$ 51,980.40	\$ 54,579.42	\$ 57,308.39
Avatar Electronic Signature Maintenance	\$ 4,623.09	\$ 4,854.24	\$ 5,096.95	\$ 5,351.80	\$ 5,619.39
Avatar State Forms Reporting Module Maintenance	\$ 4,623.09	\$ 4,854.24	\$ 5,096.95	\$ 5,351.80	\$ 5,619.39
Avatar General Ledger Interface (GLI) Maintenance	\$ 4,624.28	\$ 4,855.50	\$ 5,098.27	\$ 5,353.19	\$ 5,620.85
Avatar Web Services Suite Maintenance	\$ 4,624.68	\$ 4,855.92	\$ 5,098.71	\$ 5,353.65	\$ 5,621.33
Plexus Cloud Hosting - Perceptive - Disaster Recovery - Concurrent User (467 Concurrent Users)	\$ 92,639.11	\$ 97,271.06	\$ 102,134.61	\$ 107,241.35	\$ 112,603.41
Plexus Cloud Hosting - Avatar - Disaster Recovery - Concurrent User (467 Concurrent Users)	\$ 778,479.66	\$ 817,403.64	\$ 858,273.83	\$ 901,187.52	\$ 946,246.89
Plexus Cloud Technical Account Management - Avatar	\$ 289,406.25	\$ 303,876.56	\$ 319,070.39	\$ 335,023.91	\$ 351,775.11
Avatar Identity Manager Maintenance	\$ 5,078.34	\$ 5,332.25	\$ 5,598.86	\$ 5,878.81	\$ 6,172.75
CareConnect HIE Connector (CCD Transactions) 1,000+ Users	\$ 5,840.52	\$ 6,132.55	\$ 6,439.17	\$ 6,761.13	\$ 7,099.19
Avatar RADplus Named User Maintenance (1697 Named Users)	\$ 72,346.93	\$ 75,964.28	\$ 79,762.49	\$ 83,750.62	\$ 87,938.15
CareConnect Immunization Connector 1,000+ Users	\$ 5,840.52	\$ 6,132.55	\$ 6,439.17	\$ 6,761.13	\$ 7,099.19
Plexus Cloud Hosting - Avatar Scriptlink	\$ 9,724.05	\$ 10,210.25	\$ 10,720.77	\$ 11,256.80	\$ 11,819.64
CareConnect Lab Orders (Outbound) 1,000+ Users LabCorp	\$ 5,840.52	\$ 6,132.55	\$ 6,439.17	\$ 6,761.13	\$ 7,099.19
CareConnect Lab Results (Inbound) 1,000+ Users LabCorp	\$ 5,840.52	\$ 6,132.55	\$ 6,439.17	\$ 6,761.13	\$ 7,099.19
CareConnect Lab Orders (Outbound) - Add'l Labs Quest	\$ 5,141.76	\$ 5,398.85	\$ 5,668.79	\$ 5,952.23	\$ 6,249.84

CareConnect Lab Results (Inbound) - Add'l Labs Quest	\$ 5,141.76	\$ 5,398.85	\$ 5,668.79	\$ 5,952.23	\$ 6,249.84
CareConnect Syndromic Surveillance Connector 1,000+ Users	\$ 5,840.52	\$ 6,132.55	\$ 6,439.17	\$ 6,761.13	\$ 7,099.19
Avatar CWS Maintenance	\$ 8,393.11	\$ 8,812.77	\$ 9,253.41	\$ 9,716.08	\$ 10,201.88
Avatar MSO Maintenance	\$ 9,246.18	\$ 9,708.49	\$ 10,193.92	\$ 10,703.61	\$ 11,238.80
Document Capture Maintenance - Powered by Perceptive	\$ 9,727.76	\$ 10,214.14	\$ 10,724.85	\$ 11,261.09	\$ 11,824.15
OrderConnect - Non-Prescribing User Subscription	\$ 12,907.32	\$ 13,552.69	\$ 14,230.33	\$ 14,941.84	\$ 15,688.93
OrderConnect - EPCS Subscription	\$ 14,059.50	\$ 14,762.48	\$ 15,500.60	\$ 16,275.63	\$ 17,089.41
Avatar Data Warehouse Middleware Maintenance	\$ 16,178.57	\$ 16,987.50	\$ 17,836.87	\$ 18,728.71	\$ 19,665.15
Avatar HL7 Interface Maintenance	\$ 17,340.04	\$ 18,207.04	\$ 19,117.39	\$ 20,073.26	\$ 21,076.92
Diagnosis Content on Demand Subscription	\$ 21,533.15	\$ 22,609.81	\$ 23,740.30	\$ 24,927.31	\$ 26,173.68
Diagnosis Content on Demand Add-On	\$ 2,893.93	\$ 3,038.62	\$ 3,190.55	\$ 3,350.08	\$ 3,517.59
KPI Dashboard - Large Clinic	\$ 22,589.56	\$ 23,719.04	\$ 24,904.99	\$ 26,150.24	\$ 27,457.76
CarePathways Measures Reporting	\$ 23,727.08	\$ 24,913.44	\$ 26,159.11	\$ 27,467.06	\$ 28,840.42
Avatar ProviderConnect 750 Annual Subscription	\$ 60,843.18	\$ 63,885.34	\$ 67,079.61	\$ 70,433.59	\$ 73,955.27
Plexus Cloud Hosting - Additional Environment	\$ 18,058.95	\$ 18,961.90	\$ 19,909.99	\$ 20,905.49	\$ 21,950.77
myHealthPointe 2.0 Essentials - Human Services	\$ 76,652.50	\$ 80,485.12	\$ 84,509.38	\$ 88,734.85	\$ 93,171.59
OrderConnect - EPCS Subscription - Users 76 - 100	\$ 2,478.44	\$ 2,602.36	\$ 2,732.48	\$ 2,869.11	\$ 3,012.56
CarePOV Clinician	\$ 77,147.84	\$ 81,005.23	\$ 85,055.49	\$ 89,308.26	\$ 93,773.68
OrderConnect - FULL SUITE - Prescriber Subscription - Users 76 - 100	\$ 14,059.50	\$ 14,762.48	\$ 15,500.60	\$ 16,275.63	\$ 17,089.41
OrderConnect - FULL SUITE - Prescriber Subscription	\$ 78,774.86	\$ 82,713.61	\$ 86,849.29	\$ 91,191.75	\$ 95,751.34
OrderConnect - Non-Prescribing User Subscription - Users 65 - 100	\$ 2,460.41	\$ 2,583.43	\$ 2,712.60	\$ 2,848.24	\$ 2,990.65
CareConnect Inbox Named User (1326 Named Users)	\$ 82,233.19	\$ 86,344.85	\$ 90,662.09	\$ 95,195.19	\$ 99,954.95
Avatar Cache Enterprise Maintenance, Multi-Server, Platform Specific	\$ 168,550.20	\$ 176,977.71	\$ 185,826.60	\$ 195,117.93	\$ 204,873.82
Platform Hosting as a Service - PaaS	\$ 324,366.53	\$ 340,584.85	\$ 357,614.09	\$ 375,494.80	\$ 394,269.54
Avatar RADplus Named User Maintenance (1697 Named Users)	\$ 245,060.48	\$ 257,313.50	\$ 270,179.18	\$ 283,688.13	\$ 297,872.54
Red Hat Jboss Subscription	\$ 27,231.75	\$ 28,593.34	\$ 30,023.00	\$ 31,524.15	\$ 33,100.36
CareConnect Inbox Named User (371 Named Users)	\$ 24,541.65	\$ 25,768.73	\$ 27,057.17	\$ 28,410.03	\$ 29,830.53

Diagnosis Content on Demand Add-On	\$ 132.60	\$ 139.23	\$ 146.20	\$ 153.51	\$ 161.18
OrderConnect - FULL SUITE - Prescriber Subscription - Users 66-75	\$ 13,902.03	\$ 14,597.14	\$ 15,326.99	\$ 16,093.34	\$ 16,898.01
OrderConnect - EPCS Subscription - Users 66-75	\$ 2,451.30	\$ 2,573.87	\$ 2,702.56	\$ 2,837.69	\$ 2,979.57
CareConnect FHIR Interface SaaS	\$ 9,009.00	\$ 9,459.45	\$ 9,932.42	\$ 10,429.04	\$ 10,950.50
Total Subscription/Maintenance Costs	\$ 2,857,207.0 2	\$ 3,000,067.3 7	\$ 3,150,070.7 4	\$ 3,307,574.2 8	\$ 3,472,952.9 9

**Quarterly Subscription/Maintenance Costs FY24/25 thru FY 28/29**

<b>Payment date</b>	<b>Task Name</b>	<b>Payment</b>
07/01/24	Maintenance - FY2425Q1 (7/1/24 - 9/30/24)	\$ 714,301.75
10/01/24	Maintenance - FY2425Q2 (10/1/24 - 12/31/24)	\$ 714,301.75
01/01/25	Maintenance - FY2425Q3 (1/1/25 - 3/31/25)	\$ 714,301.75
04/01/25	Maintenance - FY2425Q4 (4/1/25 - 6/30/25)	\$ 714,301.75
07/01/25	Maintenance - FY2526Q1 (7/1/25 - 9/30/25)	\$ 750,016.84
10/01/25	Maintenance - FY2526Q2 (10/1/25 - 12/31/25)	\$ 750,016.84
01/01/26	Maintenance - FY2526Q3 (1/1/26 - 3/31/26)	\$ 750,016.84
04/01/26	Maintenance - FY2526Q4 (4/1/26 - 6/30/26)	\$ 750,016.84
07/01/26	Maintenance - FY2627Q1 (7/1/26 - 9/30/26)	\$ 787,517.68
10/01/26	Maintenance - FY2627Q2 (10/1/26 - 12/31/26)	\$ 787,517.68
01/01/27	Maintenance - FY2627Q3 (1/1/27 - 3/31/27)	\$ 787,517.68
04/01/27	Maintenance - FY2627Q4 (4/1/27 - 6/30/27)	\$ 787,517.68
07/01/27	Maintenance - FY2728Q1 (7/1/27 - 9/30/27)	\$ 826,893.56
10/01/27	Maintenance - FY2728Q2 (10/1/27 - 12/31/27)	\$ 826,893.56
01/01/28	Maintenance - FY2728Q3 (1/1/28 - 3/31/28)	\$ 826,893.56
04/01/28	Maintenance - FY2728Q4 (4/1/28 - 6/30/28)	\$ 826,893.56
07/01/28	Maintenance - FY2829Q1 (7/1/28 - 9/30/28)	\$ 868,238.24
10/01/28	Maintenance - FY2829Q2 (10/1/28 - 12/31/28)	\$ 868,238.24
01/01/29	Maintenance - FY2829Q3 (1/1/29 - 3/31/29)	\$ 868,238.24
04/01/29	Maintenance - FY2829Q4 (4/1/29 - 6/30/29)	\$ 868,238.24

**Total Subscription/Maintenance Costs FY24/25 thru FY28/29    \$ 15,787,872.29**



<b>Hosting and Subscription Recurring Fees Related to Staffing Changes</b>						
	<b>Item Description</b>	<b>Unit Cost</b>	<b>Total Cost</b>	<b>One-Time Fee</b>	<b>Recurring Annual Fee</b>	<b>Payment Terms</b>
One-time	Uplift to Avatar NX	\$206,000.00	\$206,000.00	\$ 206,000.00		Payable upon approval of quote and final pricing provided by Netsmart
Recurring	Bells AI	\$257,000.00	\$257,000.00		\$ 257,000.00	
Recurring	CareManager (Enhanced Care Management)	\$700,000.00	\$700,000.00		\$ 700,000.00	
Recurring	Diagnosis Content on Demand Add-on (Sub)	\$ 66.95	\$ 8,234.85		\$ 8,234.85	
Recurring	Plexus Cloud Hosting - Avatar - Disaster Recovery - Concurrent User	\$ 1,584.00	\$163,152.00		\$ 163,152.00	
Recurring	Plexus Cloud Hosting - Avatar Identity and Access Management (NIAM) Named Users	\$ 26.40	\$ 1,980.00		\$ 1,980.00	
Recurring	Plexus Cloud Hosting - Perceptive - Disaster Recovery (Concurrent User) - Concurrent Users	\$ 171.36	\$ 17,650.08		\$ 17,650.08	
Recurring	Platform Hosting as a Service - PaaS (Citrix) - Concurrent user access to Avatar	\$ 599.99	\$ 17,999.70		\$ 17,999.70	
One-time	Plexus Cloud Data Copy	\$ 600.00	\$ 24,000.00	\$ 24,000.00		
One-time	Plexus Cloud Data Scramble	\$ 1,600.00	\$ 32,000.00	\$ 32,000.00		
One-time	Avatar RADplus Named User License	\$ 880.00	\$ 66,000.00	\$ 66,000.00		
Recurring	Avatar RADplus Named user Maintenance	\$ 184.80	\$ 13,860.00		\$ 13,860.00	
Recurring	Annual AMA CPT Code Subscription (per Named User)	\$ 22.20	\$ 1,665.00		\$ 1,665.00	
Recurring	CareConnect Inbox Named User - Add-on Subscription	\$ 66.00	\$ 4,950.00		\$ 4,950.00	
One-time	Professional Services (Netsmart)	\$ 200.00	\$ 20,000.00	\$ 20,000.00		

Recurring	OrderConnect Prescriber Subscription	\$ 1,372.80	\$ 52,166.40		\$ 52,166.40	
Recurring	OrderConnect Non-prescriber Subscription	\$ 171.60	\$ 1,716.00		\$ 1,716.00	
One-time	OrderConnect ePCS Hard/Soft Token	\$ 75.00	\$ 8,250.00	\$ 8,250.00		
Recurring	OrderConnect ePCS Subscription	\$ 241.92	\$ 26,611.20		\$ 26,611.20	
One-time	ePCS Hard/Soft Token Transfer	\$ 60.00	\$ 60.00	\$ 60.00		
One-time	ePCS Token Shipping and Handing	\$ 20.00	\$ 200.00	\$ 200.00		
	Total One-Time Fee			\$ 356,510.00		
	Total Annual Recurring Fees				\$ 1,266,985.23	

## TABLE OF CONTENTS

### Additional Terms

<u>Name</u>	<u>Drafter</u>	<u>Date</u>
American Medical Associate (AMA) pass through Terms	Netsmart	Date of contract Execution
Change Healthcare Solutions (CHC) third party pass through terms	Netsmart	Date of contract Execution
Hyland (formerly known as Perspective) Pass-Through Terms for Inclusion in Client Contracts	Netsmart	Date of contract Execution
INTERSYSTEMS PASS THROUGH PROVISIONS AND TERMS OF SALE	Netsmart	Date of contract Execution
MedAllies, Inc. third party pass through terms	Netsmart	Date of contract Execution
Wiley third party pass through terms	Netsmart	Date of contract Execution
The Laboratory Data Management Terms of Use Agreement	Netsmart	January 26, 2023
Intelligent Medical Objects, Inc. third part pass through Terms	Netsmart	June 28, 2022
Intelichart third party pass through terms	Netsmart	April 4, 2017
Intersystems Corp third party pass thru terms	Netsmart	April 4, 2017
OrderConnectthird party pass through terms	Netsmart	April 4, 2017

[END OF DOCUMENTS INCLUDED BY REFERENCE]

## ATTACHMENT A-2 Third-Party Pass-Through Agreements



### American Medical Associate (AMA) pass through terms:

- (a) Licensed Content is copyrighted by the American Medical Association and CPT is a registered trademark of the AMA.
- (b) Netsmart ("Licensee"), as a party to a license agreement with the AMA, is authorized to sublicense Client ("End User") a limited, non-exclusive, non-transferable, non-sublicensable license for End User to use Licensed Content in Licensee's Licensed Product(s), for the sole purpose of internal use by End User within the Territory. The sublicense granted hereunder shall automatically terminate upon termination of the Agreement between Licensee and AMA, unless prior written consent of AMA is obtained by Licensee or a direct license between End User and AMA is entered (without any right to a refund). Notwithstanding the foregoing, End Users sublicense for which a Distribution Royalty has already been paid for the then-current annual release or prior releases of such Licensed Content by the Licensee shall not terminate.
- (c) A separate reduced Distribution Royalty is due for each previous annual release of Licensed Content that is distributed together with the then-current annual release of Licensed Content in a Licensed product, to an End User not previously licensed to use such previous annual releases(s), when such previous release(s) are distributed as discrete annual releases of the Licensed Content and the Licensed Product is marketed as including multiple annual releases of Licensed Content.
- (d) End Users have an obligation to report any increases in usage during a subsequent reporting period to Licensee. Such increased usage reported by the End User shall require Licensee to report and pay additional Distribution Royalties at the next scheduled due date for such increases.
- (e) The provision of updated Licensed Content in the Licensed Product(s) is dependent on a continuing contractual relationship between Licensee and the AMA.
- (f) End User is prohibited from making Licensed Content publicly available, creating derivative works (including translating), transferring, selling, leasing, licensing, or otherwise making available to any unauthorized party the Licensed Product(s), or a copy or portion of Licensed Content to any unauthorized party, including a subsidiary, affiliate, or other legal entity, however designated, for any purpose whatsoever except as expressly permitted in this Agreement.
- (g) End User expressly acknowledges and agrees to the extent permitted by applicable law, use of the Licensed Content is at End User's sole risk. The Licensed Content does not violate any copyright or trademark rights of any third party and will not knowingly violate any law. Except for the foregoing warranty the Licensed Content is provided "as is" without warranty of any kind, either expressed or implied, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. The AMA does not directly or indirectly practice medicine or dispense medical services. Fee schedules, relative value units, conversion factors and/or related components are not assigned by the AMA, are not part of CPT, and the AMA is not recommending their use. The Licensed Content does not replace the AMA's *Current Procedural Terminology* book

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or other appropriate coding authority. The coding information contained in the Licensed Content should be used only as a guide.

(h) End User is required to keep records and submit reports including information necessary for the calculation of royalties payable to the AMA by the Licensed, of the same type as required of Licensee under this Agreement. All records and reports required under this Section shall be subject to audit by AMA.

(i) The following *U.S. Government End Users* notice shall be included:

**U.S. Government End Users.** CPT is commercial technical data, which was developed exclusively at private expense by the American Medical Association (AMA), 330 North Wabash Avenue, Chicago, Illinois 60611. This agreement does not grant the Federal Government a direct license to use CPT based on FAR 52.227-14 (Data Rights - General) and DFARS 252.227-7015 (Technical Data - Commercial Items).

(j) End User must ensure that anyone with authorized access to the Licensed Product(s) will comply with the provisions of the End User Agreement.

(k) AMA shall be named as a third-party beneficiary of the End User Agreement.

(l) End User expressly consents to the release of its name to the AMA.

**CareQuality® Connection third party pass through terms:**

The contents of this Exhibit 1 are the Carequality Connection Terms that must be legally binding on every Carequality Connection, as that term is defined below. Sponsoring Implementer, as defined below, must ensure that these terms are included, directly or by reference, in a legally enforceable agreement or any other legally enforceable mechanism selected by Sponsoring Implementer (the "Enforcing Agreement"). These terms must be presented, directly or by reference, in the Enforcing Agreement as they appear in this Exhibit 1, without alteration or modification.

**1. Definitions:** As used herein, the following terms have the following meanings:

**1.1. Adverse Security Event:** The unauthorized acquisition, access, disclosure, or use of individually identifiable health information (as defined in the HIPAA Regulations) while such information is being transmitted between Implementers or Carequality Connections as specified by a Carequality Implementation Guide and pursuant to a valid CCA or Carequality Connection Terms, as applicable, but shall not include (i) any unauthorized acquisition, access, disclosure or use of encrypted data; (ii) any unintentional acquisition, access, disclosure, or use of health information if (I) such acquisition, access, disclosure, or use was made in good faith and within the course and scope of the employment, or if not an employee, as a member of the workforce of an End User; and (II) such health information is not further acquired, accessed, disclosed or used by the End User; or (iii) any acquisition, access, disclosure or use of information that was not directly related to use of the Carequality Elements.

**1.2. Applicable Law:** (i) If Organization is not a Federal agency, all applicable statutes and regulations of the State(s) or jurisdiction(s) in which Organization operates, as well as all applicable Federal statutes, and regulations; or (ii) if Organization is a Federal agency, all applicable Federal statutes, regulations, standards and policy requirements of the Organization agency.

**1.3. Business Associate:** An organization that is defined as a "business associate" in 45 C.F.R. § 160.103 of the HIPAA Regulations.

**1.4. Business Day(s):** Monday through Friday excluding federal or state holidays.

**1.5. Carequality Connection:** An organization that is properly listed in the Carequality Directory in accordance with the requirements of Section 15 of the CCA.

**1.6. Carequality Directory:** A set of information that includes entries for all organizations who have been accepted as Carequality Implementers, along with those organizations' Carequality Connections, which serves as the definitive reference for identifying those organizations who are valid participants in exchange activities through the Carequality Elements, and for obtaining the information needed to establish technical connectivity with such organizations.

**1.7. Carequality Elements:** Those elements that have been adopted by Carequality to support widespread interoperability among Implementers including, but not limited to, the Carequality Connected Agreement, the Carequality Connection Terms, the Carequality Directory, Implementation Guides, and the Carequality Policies.

**1.8. Carequality Policies:** Those policies and procedures adopted by Carequality which are binding on Carequality, Implementers, Carequality Connections or all of them.

20

**1.9. Carequality Use Case:** A combination of a set of functional needs and a particular technical architecture for addressing those needs, for which the Carequality Steering Committee ("Steering Committee") has adopted an Implementation Guide.



A member of the

**1.10. Confidential Information:** Proprietary or confidential materials or information of a Discloser in any medium or format that a Discloser labels as such upon disclosure or given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered confidential. With respect to Carequality, Confidential Information also includes those components of the Carequality Elements that the Carequality Steering Committee determines should be labeled Confidential. Notwithstanding any label to the contrary, Confidential Information does not include any Contribution (even if included in a Carequality Element), any information which is or becomes known publicly through no fault of a Recipient; is learned of by a Recipient from a third party entitled to disclose it; is already known to a Recipient before receipt from a Discloser as documented by the Recipient's written records; or, is independently developed by Recipient without reference to, reliance on, or use of, Discloser's Confidential Information.

**1.11. Contribution:** Any submission by a Discloser to Carequality intended by the Discloser to be considered for inclusion in any of the Carequality Elements, including comments submitted on any media, oral discussions at meetings of any work group, committee or sub-committee or other types of submissions.

**1.12. Covered Entity:** An organization that is defined as a "covered entity" in 45 C.F.R. § 160.103 of the HIPAA Regulations.

**1.13. Discloser:** The entity that discloses Confidential Information to a Recipient.

**1.14. Dispute:** Any controversy, dispute, or disagreement arising out of or relating to the interpretation or implementation of the Carequality Elements.

**1.15. End User:** An individual or program generating a request for information, responding to a request for information, publishing information to a list of recipients or receiving published information through the Carequality Elements.

**1.16. Exchange Activity:** Any use of the capability provided or supported by the Carequality Elements to exchange information among Implementers or their Carequality Connection.

**1.17. Governmental Entity:** A local, state or Federal agency.

**1.18. HIPAA Regulations:** The Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information (45 C.F.R. Parts 160 and 164) promulgated by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as in effect on the effective date of the Enforcing Agreement and as may be amended, modified, or renumbered.

**1.19. Implementation Guide:** A guide adopted by Carequality that sets forth the technical specifications and additional business rules that apply to Implementers and Carequality Connections who declare support for a specific Carequality Use Case. Additional business rules will include, but not be limited to, permitted purposes for the Carequality Use Case, roles associated with the Carequality Use Case and specifications on compliance with Section 8 of these Carequality Connection Terms ("Non-Discrimination").

**1.20. Implementer:** An organization that has signed the Carequality Connected Agreement and been accepted as such by Carequality.

**1.21. Organization Business Rule:** A data sharing restriction that Organization has adopted for itself and its End Users. An Organization Business Rule may only be based on a policy decision that Organization has made with respect to the handling of patient data identified as clinically or legally sensitive, or to the consent or authorization that is required to share data with other Implementers and Carequality Connections. It is not necessary that the Organization Business Rule be required by Applicable Law or be based on Applicable Law.



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**1.22. Organization:** The Carequality Connection on which these Carequality Connection Terms are binding.

**1.23. Recipient:** The entity that receives Confidential Information from a Discloser.

**1.24. Sponsoring Implementer:** The entity that is a party to the Carequality Connected Agreement and is ensuring that these Carequality Connection Terms are legally binding on Organization, either directly through contract or some other appropriate relationship with Organization, or by relying on one or more intermediaries. This term is used to distinguish this specific entity from other Implementers, and applies to that entity both during the period in which it is seeking to attain Implementer status, and after it is accepted as an Implementer.

## **2. Recognition as a Carequality Connection**

**2.1. Organization.** Upon Sponsoring Implementer determining to its satisfaction that Organization has met the requirements to be a Carequality Connection, and Sponsoring Implementer's inclusion of Organization in the Carequality Directory, Organization shall be recognized as a Carequality Connection, subject to all obligations, terms and conditions contained herein and entitled to all rights and benefits conferred upon Carequality Connections including, but not limited to, inclusion in the Carequality Directory.

**2.2. Sub-Organization Entities.** Sponsoring Implementer may delegate to Organization the authority to identify to Carequality those of Organization's subsidiary and related entities that Organization wishes to be listed in the Carequality directory as Carequality Connections of Sponsoring Implementer ("Sub-Organization Entities"). Such entities include, but are not limited to, separately branded business divisions, individual hospitals, individual clinics or medical offices, and otherwise-unaffiliated entities who contract with Organization for use of Organization's electronic health record system. For all Sub-Organization Entities that Organization identifies, it shall ensure that each Sub-Organization Entity is legally required to comply with these CC Terms. In addition, Organization shall work cooperatively with Sponsoring Implementer to assure that its Sub-Organization Entities are not already listed in the Carequality Directory by another Carequality Implementer.

## **3. Suspension and Termination**

**3.1. Suspension.** Sponsoring Implementer or Carequality may suspend Organization's ability to participate in any exchange activity under the Carequality Connection Terms in the event that Sponsoring Implementer or Carequality determines, following completion of a preliminary investigation, that (i) Organization has breached a material provision of these Carequality Connection Terms and failed to cure such breach within fifteen (15) days or such other period of time that the Parties have agreed to, of receiving notice of same; or (ii) there is a substantial likelihood that Organization's acts or omissions create an immediate threat or will cause irreparable harm to Carequality, Sponsoring Implementer, another Implementer, Carequality Connection, End User or individual (collectively, a "Threat Condition"). Organization may provide notice to Sponsoring Implementer that it wishes to temporarily remove itself from the Carequality Directory in the event that Organization or any of Organization's End Users cannot comply with these Carequality Connection Terms.

**3.2. Termination.** Sponsoring Implementer may terminate Organization's status as a Carequality Connection with immediate effect by giving notice to Organization if: (i) Organization is in material breach of any of these Carequality Connection Terms and fails to remedy such breach within 30 days after receiving notice of such breach; or (ii) Organization breaches a material provision of these Carequality Connection Terms where such breach is not capable of remedy. Subject to the terms of any agreement between Organization and Sponsoring Implementer, Organization may voluntarily terminate its status as a Carequality Connection at any time by providing written notice to Sponsoring Implementer and to Carequality at least 60 prior to the effective date of the termination. The notice shall indicate the reason(s) for Organization deciding to terminate its status as a Carequality Connection. If Organization is a U.S. Federal agency, then the Contract Disputes Act ("CDA"), 41 U.S.C. sections 7101 et seq., shall govern alleged breaches under these Carequality Connection Terms.



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#### **4. Legal Requirements.**

Organization shall, at all times, fully comply with all Applicable Law relating to these Carequality Connection Terms and the use of the Carequality Elements. To further support the privacy, confidentiality, and security of health information exchanged pursuant to these Carequality Connection Terms, Organization agrees that when acting as a Carequality Connection, it will comply with the provisions of the HIPAA Regulations that are applicable to Business Associates as a minimum contractual standard of conduct even if Organization is not a Covered Entity, a Business Associate, or a Governmental Entity. Notwithstanding any provision of these Carequality Connection Terms to the contrary, an Organization that is a federal agency and is not otherwise subject to the HIPAA Regulations shall not be required to comply with the HIPAA Regulations under these Carequality Connection Terms.

#### **5. Compliance with the Implementation Guides and Carequality Policies.**

Organization shall implement and maintain support of at least one Carequality Use Case and shall indicate to Sponsoring Implementer the Organization's role in such Carequality Use Case ("Carequality Use Case Role"). For all Carequality Use Cases supported by Organization, Organization shall comply with all components (unless such components are designated as optional) set forth in the applicable Implementation Guide that apply to (i) the Organization's Carequality Use Case Role or (ii) all Carequality Connections. Organization is encouraged, but not required, to comply with all optional components of the applicable Implementation Guide(s). Organization also agrees that, if it is not in compliance with all applicable components of the Implementation Guide(s) and all Carequality Policies applicable to Carequality Connections, Sponsoring Implementer may exercise its right to suspend Organization in accordance with Section 3.1. Notwithstanding any provision of these Carequality Connection Terms to the contrary, if Organization is a U.S. federal agency, no change in policies or procedures shall apply to such agency until the agency has received 60 days' prior written notice of the change and has assented in writing to the change. If the agency does not assent or does not object based on federal law to the change(s) in writing within 60 days, the change(s) shall apply to the agency. In the event of an agency objection based on federal law, if the objection is not resolved prior to the effective date of the change(s) to which the agency objects, the agency may voluntarily and/or selectively suspend participation or Carequality may suspend the agency if the agency is unable to comply with the change(s) pending continued efforts to reach a resolution.

#### **6. Non-Discrimination.**

With respect to Implementers and Implementers' Carequality Connections that have implemented the same Carequality Use Case as Organization and Organization's End Users, neither Organization nor its End Users shall unfairly or unreasonably limit exchange or interoperability with such Implementers or their Carequality Connections. Each Carequality Use Case's Implementation Guide will provide specific requirements for compliance with this requirement in the context of that Carequality Use Case.

#### **7. Organization Autonomy.**

To the extent that Organization has adopted Organization Business Rules, Organization is permitted to continue acting in accordance with such Organization Business Rules, even if

they restrict Organization's ability to support exchange of information with other Implementers or Carequality Connections or to meet the requirements of Section 6 above, provided that Organization applies such Organization Business Rules consistently with respect to other Implementers and Carequality Connections and the Organization Business Rules do not impose conditions that would unfairly or unreasonably limit interoperability.



## **8. Accountability.**

**8.1. Organization Accountability.** Organization shall be responsible for any harm to Carequality, its Sponsoring Implementer, other Carequality Connections of its Sponsoring Implementer, other Implementers and their Carequality Connections which harm is caused by Organization's, or its End Users, acts and omissions. Organization shall not be responsible for the acts or omissions of any Implementer or other Carequality Connection. Notwithstanding any provision in these Carequality Connection Terms to the contrary, Organization shall not be liable for any act or omission if a cause of action for such act or omission is otherwise prohibited by Applicable Law. This section shall not be construed as a hold harmless or indemnification provision.

**8.2. Carequality Accountability.** Organization will not hold Carequality, or anyone acting on its behalf, including but not limited to members of the Steering Committee, Advisory Council, Dispute Resolution Panel or any work group, or subcommittee, of any of these or Carequality's contractors, employees or agents liable for any damages, losses, liabilities or injuries arising from or related to these Carequality Connection Terms. This section shall not be construed as an indemnification provision.

**8.3. Limitation on Liability.** Notwithstanding anything in these Carequality Connection Terms to the contrary excluding section 8.4, in no event shall Carequality's, Sponsoring Implementer's or Organization's total liability to each other and all third party beneficiaries arising from or relating to these Carequality Connection Terms exceed an aggregate amount equal to three million dollars (\$3,000,000), whether a claim for any such liability or damages is premised upon breach of contract, breach of warranty, negligence, strict liability, or any other theories of liability, even if the entity whose conduct creates the liability has been apprised of the possibility or likelihood of such damages occurring.

**8.4. Federal agencies.** Notwithstanding any provision of these Carequality Connection Terms to the contrary, if Organization is a U.S. federal agency nothing in these Carequality Connection Terms shall be construed to limit in any way the sovereign immunity enjoyed by federal agencies or to limit the ability of the federal agency to seek to recover damages from Carequality, Implementers, or their Carequality Connections.

## **9. Dispute Resolution.**

**9.1.** Organization acknowledges that it may be in its best interest to resolve Disputes between or among Organization, or its End Users, and Carequality, other Implementers or their Carequality Connections through a collaborative, collegial process rather than through civil litigation. Organization has reached this conclusion based upon the fact that the legal and factual issues involved in these Carequality Connection Terms are unique, novel, and complex and limited case law exists which addresses the legal issues that could arise from these Carequality Connection Terms or the Enforcing Agreement. Organization acknowledges that Carequality has adopted a Dispute Resolution Process which Organization agrees to follow. Further, Organization agrees to use its best efforts to resolve Disputes with Carequality, other Carequality Connections and their Implementers or with another Implementer directly if the Dispute does not involve another Implementers' Carequality Connections, through discussions with those involved in such Dispute before even submitting the Dispute to its Implementer pursuant to the Dispute Resolution Process. If Organization requires assistance in identifying contact information for another Carequality Connection, or an Implementer, it shall seek that assistance from Sponsoring Implementer.

**9.2.** If, despite using its best efforts, Organization cannot resolve any Dispute through discussions with the other parties involved, then Organization will notify the Sponsoring Implementer of the Dispute and request that the Implementer initiate the Dispute Resolution Process. Organization is required to undertake these efforts in the event of a Dispute before seeking any other recourse.





9.3. Notwithstanding the above, Organization may be relieved of its obligation to participate in the Dispute Resolution Process if Organization (i) believes that another Implementer's or Carequality Connection's act or omission will cause irreparable harm to Organization or another organization or individual (e.g. Implementer, Carequality Connection, End User or consumer) and (ii) pursues immediate injunctive relief against such Implementer or Carequality Connection in a court of competent jurisdiction. Organization must inform its Sponsoring Implementer of such action within two business days of filing for the injunctive relief and of the result of the action within 24 hours of learning of same. If the injunctive relief sought is not granted and Organization chooses to pursue the Dispute, the Dispute must be submitted to the Organization's Sponsoring Implementer in accordance with the Dispute Resolution Process so that the Sponsoring Implementer can determine next steps.

#### **10. Cooperation.**

Organization understands and acknowledges that numerous activities with respect to Carequality shall likely involve its Sponsoring Implementer, other Implementers and their Carequality Connections, employees, agents, and third party contractors, vendors, or consultants. To the extent not legally prohibited, Organization shall: (a) respond in a timely manner to inquiries from Carequality, its Sponsoring Implementer, other Implementers or their Carequality Connections about possible issues related to the Carequality Use Case(s) in which Organization is involved; (b) collaboratively participate in discussions coordinated by Carequality to address differing interpretations of requirements set forth in an applicable Implementation Guide(s) prior to pursuing the Dispute Resolution Process; (c) make reasonable efforts to notify its Sponsoring Implementer when persistent and widespread connectivity failures are occurring with its Sponsoring Implementer or with other Implementers or their Carequality Connections, so that all those affected can investigate the problems and identify the root cause(s) of the connectivity failures; (d) work cooperatively, including without limitation facilitating contact with other Implementers or their Carequality Connections, to address the root cause(s) of persistent and widespread connectivity failures; (e) subject to Organization's right to restrict or condition its cooperation or disclosure of information in the interest of preserving privileges in any foreseeable dispute or litigation or protecting Organization's confidential information, provide reasonable information to others in support of collaborative efforts to resolve issues or Disputes; (f) provide information and other relevant assistance to Sponsoring Implementer in connection with this Section 10; and (g) subject to Organization's right to restrict or condition its cooperation or disclosure of information in the interest of preserving privileges in any foreseeable litigation or protecting Organization's Confidential Information, provide reasonable information to aid the efforts of Organization's Sponsoring Implementer, other Implementers or their Carequality Connections to understand, contain, and mitigate an Adverse Security Event, at the request of such Implementer or Carequality Connection. In no case shall Organization be required to disclose individually identifiable health information in violation of Applicable Law. In seeking another's cooperation, Organization shall make all reasonable efforts to accommodate the other's schedules and reasonable operational concerns.

#### **11. Adverse Security Event Reporting.**

11.1. As soon as reasonably practicable, but no later than five (5) business days after determining that an Adverse Security Event has occurred and is likely to have an adverse impact on an Implementer(s) or Carequality Connection(s), Organization shall provide Sponsoring Implementer with notification of the Event through the notification protocol specified by Sponsoring Implementer. The notification should include sufficient information for Sponsoring Implementer to understand the nature of the Adverse Security Event and identify other Implementers or Carequality Connections that may be impacted by the Adverse Security Event. Notwithstanding the foregoing, Organization agrees that (a) within one (1) hour of learning that an Adverse Security Event occurred and that such Event may involve an Implementer or Carequality Connection that is a Federal agency, it shall alert the Federal agency in accordance with the procedures and contacts provided by such Federal agency, and (b) that within twenty-four (24) hours after determining that an Adverse Security Event has occurred and is likely to have an adverse impact on an Implementer(s) or Carequality Connection(s) that is a Federal agency, Organization shall provide a notification to the Federal agency in accordance with the procedures and contacts provided by such Federal agency, and Organization shall copy Sponsoring Implementer and Carequality on any such notification.



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11.2. This Section 11 shall not be deemed to supersede Organization's obligations (if any) under relevant security incident, breach notification or confidentiality provisions of Applicable Law. Compliance with this Section 11 shall not relieve Organization of any other security incident or breach reporting requirements under Applicable Law including, but not limited to, those related to consumers.

## 12. Acceptable Use.

Carequality has adopted permitted purposes for the use of the Carequality Elements that are specifically set out in the Implementation Guide for each Carequality Use Case. Organization shall only engage in exchange activities through the Carequality Elements for permitted purposes as defined in the Implementation Guides. If Organization does not comply with these permitted purposes or other applicable provisions in the Implementation Guide, Carequality may exercise its right to suspend Organization in accordance with Section 3 of these Carequality Connection Terms. If Organization is not a Covered Entity or Governmental entity, then (i) Organization may only use the interoperability available through Carequality to transmit or receive information on behalf of its End Users and not on its own behalf; and (ii) Organization will not re-use, re-disclose, aggregate, de-identify or sell any information transacted by its End Users for its own benefit unless its respective Carequality Connections or End Users have given Organization the explicit written authority to do so.

## 13. Confidentiality.

13.1. Organization agrees to use any Confidential Information that it obtains solely for the purpose of performing its obligations under the Carequality Connection Terms, and for no other purpose. Organization will disclose the Confidential Information it receives only to its employees and agents who require such knowledge and use in the ordinary course and scope of their employment or retention, and are obligated to protect the confidentiality of such Confidential Information. In the event Organization has any question about whether information and/or materials it receives is Confidential Information, it shall treat the same as if it were Confidential Information. For the avoidance of doubt, the Carequality Elements that are not labeled as Confidential Information by the Carequality Steering Committee are not confidential and are not covered by the provisions of this section.

13.2. Organization may be given access to all or a portion of the Carequality Directory by Sponsoring Implementer. The Carequality Directory is intended to be used by Implementers, Carequality Connections, and End Users to create and maintain operational connectivity under the Carequality Elements, including the development and maintenance of effective user interfaces for relevant systems. Organization agrees that it will only use and disclose information contained in the Carequality Directory as necessary to advance the intended use of the Carequality Directory. For example, Organization is permitted to disclose information contained in the Carequality Directory to the personnel of its EHR vendor who are engaged in assisting Organization with establishing and maintaining connectivity via the Carequality Elements. Further, Organization shall not use the information contained in the Carequality Directory for marketing or any form of promotion of its own products and services, unless this use and disclosure is part of an effort by Organization to expand, or otherwise improve, connectivity via the Carequality Elements, and any promotion of Organization's own products or services is only incidental to the primary purpose. In no event shall Organization use the information contained in the Carequality Directory in a manner that should be reasonably expected to have a detrimental effect on another Implementer, Carequality Connection, End User, or other individual or organization.

## 14. Contributions; IP Rights; Ownership of Materials; License.

Organization acknowledges that any copyrights, patent rights, trade secrets, trademarks, service marks, trade dress, and other intellectual property in or related to Carequality including, but not limited to, these Carequality Connection Terms, Implementation Guides, Carequality Elements, Carequality Policies, related materials, information, reports, processes (the "Carequality IP"), are protected under applicable United States law.



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Recognizing that the Carequality IP is the work product of the membership of Carequality, and that Carequality is the collective representative of all Implementers' interests, these intellectual property rights are asserted and held by Carequality in its capacity as the representative of its total membership and licensed to Organization hereunder. This does not apply to Carequality trademarks, service marks or trade dress rights, which are discussed separately below. Organization is encouraged to provide Contributions to Carequality and understands that Carequality must obtain certain rights in such Contributions in order to include the Contribution in Carequality IP. Notwithstanding any provision of these Carequality Connection Terms to the contrary, if Applicant is a U.S. federal agency and considers certain information to be the intellectual property of the U.S. government, the agency shall not contribute such information unless and until it has entered into a written agreement with Carequality for the transfer or license of such intellectual property rights.

14.1. With respect to each Contribution, Organization represents that: (a) no information in the Contribution is confidential; (b) Carequality may freely disclose the information in the Contribution; and (c) to the best of its knowledge, such Contribution is free of encumbrance as it relates to the intellectual property rights of others.

14.2. To the extent that a Contribution or any portion thereof is protected by copyright or other rights of authorship, Organization grants a perpetual, irrevocable, non-exclusive, royalty-free, world-wide, sublicensable right and license to Carequality under all such copyrights and other rights in the Contribution to copy, modify, publish, display and distribute the Contribution (in whole or part) and to prepare derivative works based on or that incorporate all or part of such Contribution, in each case, for the purpose of incorporating such Contributions into the Carequality IP. Organization also grants Carequality the right: (a) to register copyright in Carequality's name any Carequality IP even though it may include Contributions; and (b) to permit others, at Carequality's sole discretion, to reproduce in whole or in part the resulting Carequality IP.

14.3. Organization shall identify to Carequality, through the issuance of a letter of assurance, any patents or patent applications which Organization believes may be applicable to any Carequality Element specifically including, but not limited to, any Implementation Guide. This assurance shall be provided without coercion and shall take the form of a general disclaimer to the effect that the patent holder will not enforce any of its present or future patent(s) that would be required to implement or use the Carequality Element relevant to any person or entity using the patent(s) to comply with such Carequality Element.

14.4. Sponsoring Implementer grants to Organization a perpetual, irrevocable, non-exclusive, royalty-free, world-wide, right and license to use, the Carequality IP for the purpose of enhancing interoperability (including through the modification of its products and services to implement the Carequality Use Cases and conform to the Implementation Guides) Organization and its End Users have and will continue to possess the usage rights to the Carequality IP as authorized by Sponsoring Implementer's Carequality Connected Agreement and these Carequality Connection Terms. Organization retains ownership of any Contribution it provides, granting only the licenses described in this Section. Nothing shall prevent Organization from (i) changing Organization's technology, services or any Contribution in any way, including to conform to the requirements of an Implementation Guide or (ii) making any change available to any other person or entity. Notwithstanding anything to the contrary in the Carequality Connection Terms, all right, title, and interest in any change to Organization's technology, services or any Contribution will accrue to the benefit of, and be owned exclusively by, Organization.

14.5. The trademarks, services marks, trade dress, business names, company names, and logos owned by Carequality, including without limitation CAREQUALITY and all Carequality logos, (collectively, the "Carequality Marks") are an important part of maintaining the strength and reputation of Carequality and its efforts to enable the interoperable exchange of healthcare information. Organization may not use the Carequality Marks to brand any of Organization's products or services and may not incorporate any Carequality Marks in any of Organization's domain names except as provided in Carequality's published guidelines on use of trademarks. Organization shall not apply for registration of any trademark, service mark, trade dress, business name or company name, or logo that incorporates any Carequality Mark or any element confusingly similar to any Carequality Mark.





In connection with any non-trademark, descriptive use of Carequality Marks, Organization will use the registration symbol ® or the trademark or service mark symbols, TM or SM, as more fully set out in the Carequality guidelines on use of trademarks, and indicate in the text that the Carequality Mark used "is the registered trademark of Carequality," "is the trademark of Carequality," or "is the service mark of Carequality," respectively.

#### **15. Disclaimers.**

Organization acknowledges that Implementers and Carequality Connections may be added to or removed from the Carequality Directory at any time; therefore, Organization may not rely upon the inclusion in the Carequality Directory of a particular Implementer or Carequality Connection. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL CAREQUALITY OR ORGANIZATION BE LIABLE TO EACH OTHER OR ANY THIRD PARTY BENEFICIARY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF THE ENTITY WHOSE CONDUCT CREATES THE LIABILITY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. NO PROVISION OF THE CCA, OR THE CAREQUALITY CONNECTION TERMS, SHALL BE CONSTRUED AS AN INDEMNIFICATION REQUIREMENT FOR ANY IMPLEMENTER OR CAREQUALITY CONNECTION, INCLUDING BUT NOT LIMITED TO A FEDERAL AGENCY, THAT IS PRECLUDED BY LAW FROM INDEMNIFYING THIRD PARTIES.

#### **16. Miscellaneous/General**

**16.1. Amendment.** These Carequality Connection Terms may be amended by Carequality from time to time, subject to the requirements of Section 21.4 of the CCA. Sponsoring Implementer will inform Organization of such amendments along with their effective date, which shall be at least thirty (30) days after the date on which Sponsoring Implementer informs Organization of such amendments.

**16.2. Third Party Beneficiary.** Carequality, other Carequality Connections of the Sponsoring Implementer, other Implementers and their Carequality Connections shall be deemed third party beneficiaries of these Carequality Connection Terms for purposes of enforcing Organization's compliance with these Carequality Connection Terms.

#### **Carequality® Connected Agreement**

This Carequality Connected Agreement (the "Agreement" or "CCA") is made by and between (the "Applicant") and Carequality, Inc., a Virginia non-stock corporation ("Carequality") effective as of the date Carequality executes this Agreement (the "Effective Date"). Applicant and Carequality may be referred to in this Agreement as a "Party" or referred to collectively as "Parties".

WHEREAS, Carequality provides a strategy, process and mechanisms that will support trusted, secure, interoperable exchange of healthcare information across geographies, vendor affinities, and existing information network relationships using different data sharing networks;

WHEREAS, Carequality supports a collaborative process among industry and government to facilitate consensus and develop the essential elements needed to allow this widespread connectivity;

WHEREAS, those organizations that elect to engage in exchange activities through the Carequality Elements and execute a Carequality Connected Agreement ("Implementers") will be able to interoperate with all other Implementers and avoid the need to join multiple data exchange networks; and

WHEREAS, Applicant, by signing this Agreement, agrees to be bound by its terms and become an Implementer if approved as such;

NOW, THEREFORE, in consideration of the premises set forth below and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:



Carequality, Inc.

**1. Definitions:** As used herein, the following terms have the following meanings:

**1.1 Adverse Security Event:** The unauthorized acquisition, access, disclosure, or use of individually identifiable health information (as defined in the HIPAA Regulations) while such information is being transmitted between Implementers or Carequality Connections as specified by a Carequality Implementation Guide and pursuant to a valid CCA, but shall not include (i) any unauthorized acquisition, access, disclosure or use of encrypted data; (ii) any unintentional acquisition, access, disclosure, or use of health information if (I) such acquisition, access, disclosure, or use was made in good faith and within the course and scope of the employment, or if not an employee, as a member of the workforce of an End User; and (II) such health information is not further acquired, accessed, disclosed or used by the End User; or (iii) any acquisition, access, disclosure or use of information that was not directly related to use of the Carequality Elements or this Agreement.

**1.2 Applicable Law:** (i) If Applicant is not a Federal agency, all applicable statutes and regulations of the State(s) or jurisdiction(s) in which Applicant operates, as well as all applicable Federal statutes, and regulations; or (ii) if Applicant is a Federal agency, all applicable Federal statutes, regulations, standards and policy requirements of the Applicant agency.

**1.3 Applicant:** The Party that has signed the CCA and agreed to comply with its terms as a Carequality Implementer. This term is used to distinguish the specific organization that is a Party to this Agreement from other Implementers, and applies to that Party both during the period in which it is seeking to attain Implementer status, and after it is accepted as an Implementer.

**1.4 Applicant Business Rule:** A data sharing restriction that Applicant has adopted for itself and its customers, participants or other constituent entities. An Applicant Business Rule may only be based on a policy decision that Applicant has made with respect to the handling of patient data identified as clinically or legally sensitive, or to the consent or authorization that is required to share data with other Implementers and Carequality Connections. It is not necessary that the Applicant Business Rule be required by Applicable Law or be based on Applicable Law.

**1.5 Business Associate:** An organization that is defined as a "business associate" in 45 C.F.R. § 160.103 of the HIPAA Regulations.

**1.6 Business Day(s):** Monday through Friday excluding federal or state holidays.

**1.7 Carequality Connection:** An organization that is properly listed in the Carequality Directory in accordance with the requirements of Section 15 of this CCA.

**1.8 Carequality Connection Terms:** The terms set forth in Exhibit I, and, if applicable, as further amended by Carequality.

**1.9 Carequality Directory:** A set of information that includes entries for all organizations who have been accepted as Carequality Implementers, along with those organizations' Carequality Connections which serves as the definitive reference for identifying those organizations who are valid participants in exchange activities through the Carequality Elements, and for obtaining the information needed to establish technical connectivity with such organizations.



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**1.10 Carequality Elements:** Those elements that have been adopted by Carequality to support widespread interoperability among Implementers including, but not limited to, the Carequality Connected Agreement, the Carequality Connection Terms, the Carequality Directory, Implementation Guides, and the Carequality Policies.

**1.11 Carequality Policies:** Those policies and procedures adopted by Carequality which are binding on Carequality, Implementers, Carequality Connections or all of them.

**1.12 Carequality Use Case:** A combination of a set of functional needs and a particular technical architecture for addressing those needs, for which the Carequality Steering Committee ("Steering Committee") has adopted an Implementation Guide.

**1.13 Confidential Information:** Proprietary or confidential materials or information of a Discloser in any medium or format that a Discloser labels as such upon disclosure or given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered confidential. With respect to Carequality, Confidential Information also includes those components of the Carequality Elements that the Carequality Steering Committee determines should be labeled Confidential. Notwithstanding any label to the contrary, Confidential Information does not include any Contribution (even if included in a Carequality Element); any information which is or becomes known publicly through no fault of a Recipient; is learned of by a Recipient from a third party entitled to disclose it; is already known to a Recipient before receipt from a Discloser as documented by the Recipient's written records; or, is independently developed by Recipient without reference to, reliance on, or use of, Discloser's Confidential Information.

**1.14 Contribution:** Any submission by a Discloser to Carequality intended by the Discloser to be considered for inclusion in any of the Carequality Elements, including comments submitted on any media, oral discussions at meetings of any work group, committee or sub-committee or other types of submissions.

**1.15 Covered Entity:** An organization that is defined as a "covered entity" in 45 C.F.R. § 160.103 of the HIPAA Regulations.

**1.16 Discloser:** The Party that discloses Confidential Information to a Recipient.

**1.17 Dispute:** Any controversy, dispute, or disagreement arising out of or relating to the interpretation or implementation of the Carequality Elements.

**1.18 End User:** An individual or program generating a request for information, responding to a request for information, publishing information to a list of recipients or receiving published information through the Carequality Elements.

**1.19 Exchange Activity:** Any use of the capability provided or supported by the Carequality Elements to exchange information among Implementers or their Carequality Connection.

**1.20 Governmental Entity:** A local, state or Federal agency.

**1.21 HIPAA Regulations:** The Standards for Privacy of Individually Identifiable Health Information and the Security Standards for the Protection of Electronic Protected Health Information (45 C.F.R. Parts 160 and 164) promulgated by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as in effect on the Effective Date of this Agreement and as may be amended, modified, or renumbered.



Version 1.0.0



**1.22 Implementation Guide:** A guide adopted by Carequality that sets forth the technical specifications and additional business rules that apply to Implementers and Carequality Connections who declare support for a specific Carequality Use Case. Additional business rules will include, but not be limited to, permitted purposes for the Carequality Use Case, roles associated with the Carequality Use Case and specifications on compliance with Section 8 of this Agreement ("Non-Discrimination").

**1.23 Implementer:** An organization that has signed the Carequality Connected Agreement and been accepted as such by Carequality.

**1.24 Recipient:** The Party that receives Confidential Information from a Discloser.

## **2. Recognition of Applicant as an Implementer**

**2.1** Applicant shall submit an application, via a form provided by Carequality, seeking to be recognized as an Implementer. The purpose of the application shall be for Applicant to demonstrate, to the satisfaction of Carequality, that Applicant is reasonably positioned to meet its obligations under this Agreement. All applications will be reviewed by Carequality using the review criteria adopted by the Steering Committee. Applicant warrants and represents that: (i) information submitted to Carequality in connection with Applicant's application and any other documentation or information provided by Applicant to Carequality is, to the best of Applicant's knowledge, accurate and complete; and (ii) it has the organizational infrastructure, legal authority and financial resources to comply with the obligations in this Agreement.

**2.2** Carequality shall inform each Applicant in writing as to whether its application was accepted or rejected. Upon receiving written notice from Carequality that Applicant has demonstrated that it is able to meet its obligations under this Agreement, Applicant shall be recognized by Carequality as an Implementer, subject to all obligations, terms and conditions contained herein and entitled to all rights and benefits conferred upon Implementers including, but not limited to, inclusion in the Carequality Directory. Applicant shall not represent itself as an Implementer until receiving such written notice from Carequality.

**2.3** Applicant acknowledges that other Implementers will be permitted to identify themselves as Implementers if such Implementers have demonstrated to the satisfaction of Carequality that they are able to meet their obligations as such.

APPLICANT ACKNOWLEDGES AND AGREES THAT CAREQUALITY MAKES NO REPRESENTATIONS OR WARRANTIES THAT ANY ORGANIZATION IDENTIFYING ITSELF AS AN IMPLEMENTER OR ANY TECHNOLOGY PLATFORMS USED OR PROVIDED BY AN ORGANIZATION IDENTIFYING ITSELF AS AN IMPLEMENTER WILL BE SAFE, ERROR FREE, ACCURATE, INTEROPERABLE OR UNINTERRUPTED, a. Developing and maintaining the Carequality Elements; and b. Developing and amending Carequality Policies.



### **3. Carequality Steering Committee.**

Carequality has established the Steering Committee to serve as the governing body over all Carequality activities and has given it responsibility and authority over the rights, responsibilities and obligations of Carequality set forth in this CCA. Applicant acknowledges the authority of the Steering Committee and hereby grants to the Steering Committee the right to provide governance, oversight, facilitation and support for the Implementers by conducting activities including, but not limited to, the following:

To the extent permitted under Applicable Law, this grant of authority to the Steering Committee is unconditional and does not require any further consideration or action by Applicant. The Steering Committee shall have the authority to unilaterally delegate to the Chairperson of the Steering Committee, a subcommittee of the Steering Committee or Carequality staff any of the responsibilities granted to the Steering Committee herein. The Steering Committee may engage contractors to perform specific duties associated with the exercise of the authorities and responsibilities granted to the Steering Committee herein.

### **4. Fees.**

Applicant shall pay the fees set forth on Schedule 1 attached hereto (the "Fees"). Carequality shall invoice Applicant for all Fees in accordance with Schedule 1. Unless otherwise set forth in Schedule 1, invoices shall be due and payable by Applicant within sixty (60) days after receipt thereof unless Applicant notifies Carequality in writing that it is disputing the invoice and identifies the specific reasons it is disputing the invoice. Other than with regard to invoiced amounts that are disputed in good faith, any collection costs, attorney's fees or other expenses reasonably incurred by Carequality in collecting amounts due under this Agreement are the responsibility of Applicant, unless Applicant is a U.S. federal agency, in which case such costs, fees, or other expenses will be the responsibility of Applicant only if awarded by a court of competent jurisdiction. Applicant shall continue to incur Fees during any period of time in which Applicant is suspended pursuant to this Section or Section 5.3. In the event Applicant fails to make any undisputed payment required hereunder, upon at least ten (10) days prior written notice, Carequality, without limitation to any other remedy it may have, may suspend Applicant's ability to participate in any Exchange Activity under this Agreement. If Applicant makes payment within the 10 day notice period, Carequality will not suspend Applicant's ability to participate in any Exchange Activity under this Agreement for the non-payment. If Applicant is a U.S. federal agency, it shall pay these Fees that are applicable to U.S. federal agencies as set forth in Schedule 1.

**4.1 Changes to Fees.** Schedule 1 may be updated by Carequality from time-to-time in relation to operational costs and other market factors in order to ensure the sustainability of the activities conducted under the Carequality Elements. In light of the foregoing, changes to Schedule 1 are not subject to the Amendment process set forth in Section 21.4. Carequality shall provide Applicant not less than ninety (90) days' advance written notice of any adjustments to the Fees set forth in Schedule 1.

### **5. Term and Termination.**

**5.1 Term.** This Agreement shall commence on the Effective Date and shall continue until terminated in accordance with this Section.





**5.2 Termination.** Applicant may terminate this Agreement at any time by providing sixty (60) days prior written notice to Carequality. Carequality may terminate this Agreement with immediate effect by giving notice to Applicant if: (i) Applicant is in material breach of any of the terms and conditions of this Agreement and fails to remedy such breach within 30 days after receiving notice of such breach; or (ii) Applicant breaches a material provision of this Agreement where such breach is not capable of remedy. Carequality may terminate this Agreement by providing Applicant with ninety (90) days prior written notice in the event that Carequality ceases to support interoperability through the use of the Carequality Elements. If Applicant is a U.S. federal agency, then the Contract Disputes Act ("CDA"), 41 U.S.C. sections 7101 et seq., shall govern alleged breaches under this Agreement.

### **5.3 Suspension.**

**5.3.1 Suspension by Carequality.** Carequality may suspend Applicant's ability to participate in any Exchange Activity under this Agreement in accordance with Section 4 or in the event that Carequality determines, following completion of a preliminary investigation, that (i) Applicant has breached a material provision of this Agreement and failed to cure such breach within fifteen (15) days, or such other period of time that the Parties have agreed to, of receiving notice of same; or (ii) there is a substantial likelihood that Applicant's acts or omissions create an immediate threat, or will cause irreparable harm, to another Party, an Implementer, Carequality Connection, End User, organization or individual (collectively, a "Threat Condition"). To the extent that Carequality determines that one of Applicant's Carequality Connections has created a Threat Condition, Carequality may suspend that Carequality Connection's ability to participate in any Exchange Activity under this Agreement. Except for a suspension in accordance with Section 4, Carequality will make a reasonable effort to notify Applicant in advance of its intent to suspend Applicant or one of Applicant's Carequality Connections. Upon suspension of either Applicant or one of Applicant's Carequality Connections, Carequality will work collaboratively with Applicant to resolve the issue leading to the suspension.

**5.3.2 Voluntary suspension by Applicant.** Notwithstanding the foregoing, Applicant may request that Carequality temporarily suspend Applicant's ability to participate in any Exchange Activity under this Agreement in the event that Applicant cannot comply with the terms and conditions of this Agreement.

**5.3.3 Selective suspension by Applicant.** Applicant may determine that it must suspend exchanging with another Implementer with which it is otherwise required to exchange in accordance with Carequality Use Case Implementation Guide because of reasonable and legitimate concerns related to the privacy and security of information that is exchanged. If Applicant makes this determination, it is required to notify Carequality and the Implementer it is suspending promptly of its decision and the reason(s) for making the decision. If Applicant makes the decision to suspend, it is required within thirty (30) days to initiate the Dispute Resolution Process in order to resolve whatever issues led to the decision to suspend, or end its suspension and resume exchanging with the other Implementer. Provided that Applicant selectively suspends exchanging with another Implementer in accordance with this Section 5.3.3, such selective suspension shall not be deemed a violation of Section 8.

**5.3.4** Notwithstanding anything to the contrary set forth herein, Carequality retains the right to suspend any Carequality activity or Carequality Use Case (i) upon ten (10) days prior notice to Applicant if Carequality determines that Carequality's interests are threatened or (ii) immediately if Carequality determines that the safety or security of any individual or of Confidential Information is threatened.

**5.3.5** The suspension of Applicant's ability to participate in any Exchange Activity under this Agreement pursuant to this Section 5.3 has no effect on either Party's obligations hereunder. Notwithstanding the foregoing, during any suspension pursuant to this Section 5.3, Applicant's inability to participate in any Exchange Activity under this Agreement, or comply with those terms of this Agreement that require participation in any Exchange Activity, shall not be deemed a breach of this Agreement.



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**5.4 Effect of Termination.** Upon termination of this Agreement for any reason, Carequality shall immediately remove Applicant and its Carequality Connections from the Carequality Directory and any other lists of Implementers that Carequality maintains. Applicant shall (i) promptly remove all references that identify it as a Carequality Implementer from all electronic media, and (ii) cease all use of any material, including but not limited to product manuals, marketing literature, and web content that identifies it as a Carequality Implementer. Within twenty (20) business days of termination of this Agreement, Applicant shall confirm to Carequality, in writing, that it has complied with this Section.

## **6. Legal Requirements.**

Each Party shall, at all times, fully comply with all Applicable Law relating to this Agreement and the use of the Carequality Elements. To further support the privacy, confidentiality, and security of health information exchanged pursuant to this Agreement, Applicant agrees that when acting as an Implementer, it will comply with the provisions of the HIPAA Regulations that are applicable to Business Associates as a minimum contractual standard of conduct even if Applicant is not a Covered Entity, a Business Associate, or a Governmental Entity. Notwithstanding any provision of this Agreement to the contrary, an Applicant or Implementer that is a federal agency and is not otherwise subject to the HIPAA Regulations shall not be required to comply with the HIPAA Regulations under this Agreement.

## **7. Compliance with the Implementation Guides and Carequality Policies.**

Beginning on a date to be mutually agreed upon by Applicant and Carequality, Applicant shall implement and maintain support of at least one Carequality Use Case and shall indicate to Carequality the Applicant's role in such Carequality Use Case ("Carequality Use Case Role"). For all Carequality Use Cases supported by Applicant, Applicant shall comply with all components (unless such components are designated as optional) set forth in the applicable Implementation Guide that apply to (i) the Applicant's Carequality Use Case Role or (ii) all Implementers. Applicant is encouraged, but not required, to comply with all optional components of the applicable Implementation Guide(s). Applicant shall also comply with all Carequality Policies applicable to Implementers and require that its Carequality Connections comply with all applicable components of the Implementation Guide(s) and Carequality Policies. In the event of a conflict between the terms of this Agreement and the Implementation Guide(s) or Carequality Policies, the terms of this Agreement shall control. Notwithstanding any provision of this Agreement to the contrary, if Applicant or Carequality Connection is a U.S. federal agency, no change in policies or procedures shall apply to such agency until the agency has received 60 days' prior written notice of the change and has assented in writing to the change. If the agency does not assent or does not object based on federal law to the change(s) in writing within 60 days, the change(s) shall apply to the agency. In the event of an agency objection based on federal law, if the objection is not resolved prior to the effective date of the change(s) to which the agency objects, the agency may voluntarily and/or selectively suspend participation, or Carequality may suspend the agency if the agency is unable to comply with the change(s) pending continued efforts to reach a resolution.

## **8. Non-Discrimination.**

With respect to Implementers and Implementers' Carequality Connections that have implemented the same Carequality Use Case as Applicant and Applicant's Carequality Connections, neither Applicant nor its Carequality Connections shall unfairly or unreasonably limit exchange or interoperability with such Implementers or their Carequality Connections. Each Carequality Use Case's Implementation Guide will provide specific requirements for compliance with this requirement in the context of that Carequality Use Case.



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## 9. Applicant Autonomy.

To the extent that Applicant has adopted Applicant Business Rules, Applicant is permitted to continue acting in accordance with such Applicant Business Rules, even if they restrict Applicant's ability to support exchange of information with other Implementers or to meet the requirements of Section 8 above, provided that Applicant applies such Applicant Business Rules consistently with respect to other Implementers and the Applicant Business Rules do not impose unfair or unreasonable conditions that would unfairly or unreasonably limit interoperability.

## 10. Accountability.

### 10.1 Applicant Accountability.

**10.1.1 Statement of General Principle.** To the extent not prohibited by Applicable Law, Applicant shall be responsible for its acts and omissions and not for the acts or omissions of any other Implementer. Notwithstanding any provision in this Agreement to the contrary, Applicant shall not be liable for any act or omission if a cause of action for such act or omission is otherwise prohibited by Applicable Law. This section shall not be construed as a held harmless or indemnification provision.

**10.1.2 Harm to Carequality.** Subject to Sections 10.3 and 19 of this Agreement that exclude certain types of damages or limit overall damages, Applicant shall be responsible for harm suffered by Carequality to the extent that the harm was caused by Applicant's breach of this Agreement.

**10.1.3 Harm to other Implementers.** Subject to Sections 10.3 and 19 of this Agreement that exclude certain types of damages or limit overall damages, Applicant shall be responsible for harm suffered by another Implementer to the extent that the harm was caused by Applicant's willful or reckless act or intentional misconduct in each case in breach of a Section of this Agreement to which the other Implementer is a third party beneficiary pursuant to Section 21.6 of this Agreement.

**10.1.4 Implementers with no Carequality Connections.** If Applicant does not designate any Carequality Connections for a specific Carequality Use Case, then Applicant shall be responsible to other Implementers' Carequality Connections for harm suffered by other Implementers' Carequality Connections to the extent that the harm was caused by Applicant's willful act or intentional misconduct in breach of this Agreement. If Applicant chooses to both designate Carequality Connections for a specific Carequality Use Case and also directly engage in the exchange of information using the same Carequality Use Case, then Applicant shall be responsible to other Implementer's Carequality Connections for harm suffered by other Implementer's Carequality Connections to the extent that the harm was caused by Applicant's willful act or intentional misconduct in breach of this Agreement while participating in the Carequality Use Case directly and not through its Carequality Connections. In all cases, Applicant's liability shall be subject to Sections 10.3 and 19 of this Agreement that exclude certain types of damages or limit overall damages.

**10.1.5 Federal agencies.** Notwithstanding any provision of this Agreement to the contrary, if Applicant is a U.S. federal agency it is understood and agreed that nothing in this Agreement shall limit the sovereign immunity enjoyed by the agency or limit its legal right to recover damages against Carequality, Implementers, or their Carequality Connections. If Applicant is a U.S. federal agency, then Applicant shall not have any indemnification obligations to Carequality or to any other Implementer, their Carequality Connections or any third party in connection with this Agreement. No provision of the CCA, or the Carequality Connection Terms, shall be construed as an indemnification requirement for any federal agency.



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**10.2 Carequality Accountability.** Applicant has agreed to comply with this Agreement. Accordingly, Applicant will not hold Carequality, or anyone acting on its behalf, including but not limited to members of the Steering Committee, Advisory Council or any work group or subcommittee, its contractors, employees or agents liable for any damages, losses, liabilities or injuries arising from or related to this Agreement, except to the extent that such damages, losses, liabilities or injuries are the direct result of Carequality's breach of this Agreement. This section shall not be construed as a hold harmless or indemnification provision.

**10.3 Limitation on Liability.** Notwithstanding anything in this Agreement to the contrary, in no event shall either Carequality's or Applicant's total liability to each other and all third party beneficiaries arising from or relating to this Agreement exceed an aggregate amount equal to three million dollars (\$3,000,000), whether a claim for any such liability or damages is premised upon breach of contract, breach of warranty, negligence, strict liability, or any other theories of liability, even if such Party has been apprised of the possibility or likelihood of such damages occurring.

## **11. Cooperation.**

Applicant understands and acknowledges that numerous activities with respect to this Agreement shall likely involve other Implementers and their Carequality Connections, employees, agents, and third party contractors, vendors, or consultants. To the extent not legally prohibited, Applicant shall: (a) respond in a timely manner to inquiries from Carequality, Implementers or their Carequality Connections about possible issues related to the Carequality Use Case(s) supported by Applicant; (b) collaboratively participate in discussions coordinated by Carequality to address differing interpretations of requirements set forth in an applicable Implementation Guide(s) prior to pursuing the Dispute Resolution Process; (c) make reasonable efforts to notify other Implementers when persistent and widespread connectivity failures are occurring with those Implementers or their Carequality Connections so that all those affected can investigate the problems and identify the root cause(s) of the connectivity failures; (d) work cooperatively including, without limitation, facilitating contact between other Implementers or their Carequality Connections and Applicant's Carequality Connections, to address the root cause(s) of persistent and widespread connectivity failures; (e) subject to Applicant's right to restrict or condition its cooperation or disclosure of information in the interest of preserving privileges in any foreseeable dispute or litigation or protecting Applicant's confidential information, provide reasonable information (or direct its Carequality Connections to do so) to other Implementers in support of collaborative efforts to resolve issues or Disputes; (f) require that Applicant's Carequality Connections will provide information and other relevant assistance to Applicant in connection with this Section 11; and (g) subject to Applicant's right to restrict or condition its cooperation or disclosure of information in the interest of preserving privileges in any foreseeable litigation or protecting Applicant's Confidential Information, provide reasonable information to aid the efforts of other Implementers or their Carequality Connections to understand, contain, and mitigate an Adverse Security Event, at the request of such Implementer or Carequality Connection. In no case shall Applicant be required to disclose individually identifiable health information in violation of Applicable Law. In seeking an Implementer's cooperation, Applicant shall make all reasonable efforts to accommodate the Implementer's schedules and reasonable operational concerns.

## **12. Adverse Security Event Reporting.**

**12.1** As soon as reasonably practicable, but no later than five (5) business days after determining that an Adverse Security Event has occurred and is likely to have an adverse impact on an Implementer(s) or Carequality Connection(s), Applicant shall provide a notification to Carequality and all Implementers that are likely impacted by the Event. The notification should include sufficient information for the recipient of the notification to understand the nature of the Adverse Security Event. Applicant shall supplement the information contained in the notification and cooperate with other Implementers and their Carequality Connections in accordance





Notwithstanding the foregoing, Applicant agrees that (a) within one (1) hour of learning that an Adverse Security Event occurred and that such Event may involve an Implementer or Carequality Connection that is a Federal agency, it shall alert the Federal agency in accordance with the procedures and contacts provided by such Federal agency and (b) that within twenty-four (24) hours after determining that an Adverse Security Event has occurred and is likely to have an adverse impact on an Implementer(s) or Carequality Connection(s) that is a Federal agency, Applicant shall provide a notification to all such Implementers or Carequality Connections that are likely impacted by the Event in accordance with the procedures and contacts provided by such Federal agency.

12.2 Section 12.1 shall not be deemed to supersede Applicant's obligations (if any) under relevant security incident, breach notification or confidentiality provisions of Applicable Law. Compliance with Section 12.1 shall not relieve Applicant of any other security incident or breach reporting requirements under Applicable Law including, but not limited to, those related to individuals.

12.3 Applicant shall have in place a reporting protocol for its Carequality Connections to notify Applicant of Adverse Security Events that have occurred, and shall clearly communicate this protocol to its Carequality Connections.

### **13. Acceptable Use.**

(a) Carequality has adopted permitted purposes for the use of the Carequality Elements that are specifically set out in the Implementation Guide for each Carequality Use Case. Applicant shall only engage in exchange activities through the Carequality Elements for permitted purposes as defined in the Implementation Guides. If Applicant or its Carequality Connections do not comply with these permitted purposes or other applicable provisions in the Implementation Guide, Carequality may exercise its right to suspend Applicant or its relevant Carequality Connections in accordance with Section 5.3. (b) If Applicant is not a Covered Entity or Governmental Entity, then (i) Applicant may use the interoperability available through Carequality only for a permitted purpose as set forth in the relevant Implementation Guide, or otherwise within the Carequality Elements, which may authorize an Implementer to use information for specific purposes that enhance the effectiveness or the efficiency of an Implementer's network; and (ii) Applicant shall not, for its own benefit, re-use, re-disclose, aggregate, de-identify or sell any information transmitted or received by its Carequality Connections or End Users through the use of the Carequality Elements pursuant to a valid CCA unless its respective Carequality Connections or End Users have given Applicant the explicit written authority to do so. For the avoidance of doubt, an Implementer shall not be considered to be acting "for its own benefit", regardless of any compensation for services or other value it receives as a result of its actions, if (i) the Implementer is acting as a Business Associate for a customer or member of its network to do something that the customer or member is allowed to do itself, as permitted by the written agreement between the Implementer and its customer or member or some other writing that is legally enforceable, or (ii) the Implementer is taking action with respect to a patient's information at the direction of that patient or that patient's Personal Representative, as defined by the HIPAA Regulations. (c) Nothing in this Section shall restrict Applicant from having different arrangements outside of Carequality provided that Applicant can still comply with this Agreement. This Section shall not prohibit Applicant from compiling general volume statistics (such as query volumes or number of records exchanged) about its, its Carequality Connections' or its End Users' exchange activities conducted through the Carequality Elements including with other Implementers, their Carequality Connections or End Users. Notwithstanding the foregoing, to the extent such statistics identify any other Implementer or Carequality Connection, Applicant shall not disclose such statistics to any third party without the prior written consent of such Implementer or Carequality Connection.



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#### **14. Information Handling Transparency.**

Prior to being recognized as an Implementer, and during the remainder of the Term, Applicant will make publicly available an accurate statement of its information handling practices (the "Statement of Information Handling Practices"). For example, a Statement of Information Handling Practices may be a Notice of Privacy Practices as defined in the HIPAA Regulations or may consist of a statement that Applicant does not handle information in the course of exchange activities through the Carequality Elements. Any Statement of Information Handling Practices shall clearly disclose if the Applicant offers products and services to its customer and network members which involve access to, use and redisclosure of information that Applicant obtains by virtue of being an Implementer.

#### **15. Carequality Connections**

**15.1** Applicant is responsible for identifying those of its customers, participants or other constituent entities, if any, that wish to be included in the Carequality Directory as Carequality Connections. Applicant may delegate this responsibility to its current Carequality Connections or their intermediary entities as appropriate. Before listing any entity in the Carequality Directory as its Carequality Connection, Applicant must confirm that the entity does not duplicate, in terms of the healthcare information content it provides, another data source that is already a Carequality Connection of a different Implementer, for the same Use Case, and shall not list in the Carequality Directory as its Carequality Connection any such duplicative entity. For example, if a provider organization is a Carequality Connection of a health information exchange (HIE) and, via the HIE, provides access to information ultimately sourced from its electronic health record (EHR) system, then that provider organization may not also be a Carequality Connection of its EHR vendor to provide access to substantially similar data. As a further example, if a provider organization uses two different EHR systems within different parts of its enterprise, these two EHR systems are distinct data sources and are not duplicative for purposes of this Section, and these systems may be represented separately in the Carequality Directory by different Implementers. For clarity, Carequality Connections are permitted to change Implementers, but may not have an active listing in the Directory by two Implementers for the same Use Case at the same time. Applicant shall cooperate with other Implementers to avoid duplication of Directory listings in such cases, and shall make reasonable efforts to facilitate transitions from one Implementer to another. Applicant acknowledges that it must supply information that Carequality indicates is necessary to complete a Carequality Directory entry for each Carequality Connection, in order for that Carequality Connection to be listed in the Carequality Directory. Carequality Implementation Guides may specify particular technical architectures or approaches to maintaining information about participating Carequality Connections and making it available as part of the Carequality Directory, in which case Applicant shall comply with the requirements of the relevant Implementation Guides. Carequality expressly relies upon Applicant to maintain information about its Carequality Connections for use with the Carequality Directory, and Carequality expressly disclaims any responsibility to verify the accuracy of the information.

**15.2** Prior to including any organization in the Carequality Directory as its Carequality Connection, Applicant shall require such Carequality Connections to, at a minimum, comply with the Carequality Connection Terms. Applicant, or an intermediary entity, can do this, directly or indirectly, through an agreement that is legally binding on the Carequality Connection or through written policies and procedures that incorporate the Carequality Connection Terms without any change to such terms. For clarity, the previous sentence does not prohibit Applicant from enforcing additional terms or policies beyond the Carequality Connection Terms, as long as these terms or policies do not contradict, contravene, or otherwise undermine the Carequality Connection Terms, with respect to exchange activities through the Carequality Elements. Applicant represents that every organization that it identifies to Carequality as a Carequality Connection is legally obligated to comply with the Carequality Connection Terms.



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Subject to the requirements of section 21.4 of this Agreement, the Carequality Steering Committee may amend Exhibit 1 at any time. As per the requirements of Section 21.4, Carequality will provide the final text of such amendments at least sixty (60) days prior to the effective date of the amendments. Applicant, in turn, shall inform its Carequality Connections of such amendments, and make a full copy of the updated Carequality Connection Terms available to its Carequality Connections within thirty (30) days of receiving the updated Carequality Connection Terms from Carequality. Applicant shall further inform its Carequality Connections if objections raised under Section 21.4 will prevent the amendments from going into effect.

15.3 Applicant shall employ a process by which Applicant, or its designee (including one or more of its Carequality Connections, as set forth in the next sentence), validates sufficient information to uniquely identify each End User of a Carequality Connection prior to enabling such End User to use the interoperability afforded by this Agreement. Applicant may fulfill this responsibility directly or indirectly by contractually obligating its Carequality Connections or a subcontractor to fulfill this responsibility.

15.4 Applicant shall maintain and exercise the ability to suspend or terminate a Carequality Connection if such Carequality Connection fails to comply with the Carequality Connection Terms or is otherwise subject to suspension by Carequality.

## 16. Confidentiality

16.1 Applicant and Carequality each agree to use the other Party's Confidential Information only as authorized in this Agreement solely for the purpose of performing its obligations under this Agreement, and for no other purpose. Each Party hereto may act as a Discloser and a Recipient, accordingly. A Recipient will disclose the Confidential Information it receives only to its employees and agents who require such knowledge and use in the ordinary course and scope of their employment or retention, and are obligated to protect the confidentiality of such Confidential Information in a manner substantially equivalent to the terms required herein for treatment of Confidential Information. Otherwise, a Recipient agrees not to disclose the Confidential Information received to anyone. In the event a Recipient has any question about whether information and/or materials it receives is Confidential Information, it shall treat the same as if it were Confidential Information. For the avoidance of doubt, the Carequality Elements that are not labeled as Confidential Information by the Carequality Steering Committee are not confidential and are not covered by the provisions of this Section.

16.2 After Carequality's acceptance of Applicant's application to be a Carequality Implementer, Carequality shall provide Applicant with access to the Carequality Directory. The Carequality Directory is intended to be used by Implementers, Carequality Connections, and End Users to create and maintain operational connectivity under the Carequality Elements, including the development and maintenance of effective user interfaces for relevant systems. Carequality is providing Applicant with access to, and the right to use, the Carequality Directory on the express condition that Applicant only use and disclose information contained in the Carequality Directory as necessary to advance the intended use of the Carequality Directory. For example, Applicant is permitted to disclose information contained in the Carequality Directory to the personnel of a Carequality Connection's EHR vendor who are engaged in assisting the Carequality Connection with establishing and maintaining connectivity via the Carequality Elements. Further, Applicant shall not use the information contained in the Carequality Directory for marketing or any form of promotion of their own products and services, unless this use and disclosure is part of an effort by Applicant to expand, or otherwise improve, connectivity via the Carequality Elements, and any promotion of Applicant's own products or services is only incidental to the primary purpose. In no event shall Applicant use the information contained in the Carequality Directory in a manner that would be reasonably expected to have a detrimental effect on another Party, Implementer, Carequality Connection, End User, or other individual or organization.



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**17. Carequality Monitoring.**

Carequality, through its agents, employees and independent contractors, in order to confirm compliance with this Agreement, shall have the right, but not the obligation, to monitor exchange activities enabled by the Carequality Elements. Applicant agrees to cooperate with Carequality in these monitoring activities and to provide, at Carequality's reasonable request, information in the furtherance of Carequality's monitoring including, but not limited to, audit logs of exchange transactions and summary reports of exchange activities, to the extent that Applicant possesses such information. Nothing in this Section shall be construed as limiting or modifying Applicant's responsibilities for performance measure reporting or demonstration of compliance for a specific Carequality Use Case, as outlined in that Carequality Use Case's Implementation Guide. Nothing in this Agreement shall be construed to allow Carequality to have direct access to the information systems of any Applicant or Carequality Connection(s).

**18. Contributions; IP Rights; Ownership of Materials; License.**

Applicant acknowledges that any copyrights, patent rights, trade secrets, trademarks, service marks, trade dress, and other intellectual property in or related to Carequality including, but not limited to, this Agreement and all Exhibits, Implementation Guides, Carequality Elements, Carequality Policies, related materials, information, reports, processes (the "Carequality IP"), are protected under applicable United States law. Recognizing that the Carequality IP is the work product of the membership of Carequality, and that Carequality is the collective representative of all implementers' interests, these intellectual property rights are asserted and held by Carequality in its capacity as the representative of its total membership and licensed to Applicant hereunder. This does not apply to Carequality trademarks, service marks or trade dress rights, which are discussed separately in Section 18.6 below. Applicant is encouraged to provide Contributions to Carequality and understands that Carequality must obtain certain rights in such Contributions in order to include the Contribution in Carequality IP. Notwithstanding any provision of this Agreement to the contrary, if Applicant is a U.S. federal agency and considers certain information to be the intellectual property of the U.S. government, the agency shall not contribute such information unless and until it has entered into a written agreement with Carequality for the transfer or license of such intellectual property rights.

**18.1** With respect to each Contribution, Applicant represents that: (a) no information in the Contribution is confidential; (b) Carequality may freely disclose the information in the Contribution; and (c) to the best of its knowledge, such Contribution is free of encumbrance as it relates to the intellectual property rights of others.

**18.2** To the extent that a Contribution or any portion thereof is protected by copyright or other rights of authorship, Applicant grants a perpetual, irrevocable, non-exclusive, royalty-free, world-wide, sublicensable right and license to Carequality under all such copyrights and other rights in the Contribution to copy, modify, publish, display and distribute the Contribution (in whole or part) and to prepare derivative works based on or that incorporate all or part of such Contribution, in each case, for the purpose of incorporating such Contributions into the Carequality IP. Applicant also grants Carequality the right: (a) to register copyright in Carequality's name any Carequality IP even though it may include Contributions; and (b) to permit others, at Carequality's sole discretion, to reproduce in whole or in part the resulting Carequality IP.

**18.3** Applicant shall identify to Carequality, through the issuance of a letter of assurance, any patents or patent applications which Applicant believes may be applicable to any Contribution made by Applicant within any Carequality Element specifically including, but not limited to, any Implementation Guide. This assurance shall be provided without coercion and shall take the form of a general disclaimer to the effect that the patent holder will not enforce any of its present or future patent(s) that would be required to implement or use the Carequality Element relevant to any person or entity using the patent(s) to comply with such Carequality Element.





18.4 Carequality grants to Applicant a perpetual, irrevocable, non-exclusive, royalty-free, world-wide, sublicensable right and license to use, modify, reproduce, prepare derivative works of, and disseminate the Carequality IP for the purpose of enhancing interoperability (including through the modification of its products and services to implement the Carequality Use Cases and conform to the Implementation Guides) and to otherwise exercise any and all of its rights under this Agreement. Applicant and its Carequality Connections and End Users have and will continue to possess the usage rights to the Carequality IP as authorized by this Agreement and the Carequality Connection Terms.

18.5 Applicant retains ownership of any Contribution it provides, granting only the licenses described in this Section. Nothing shall prevent Applicant from (i) changing Applicant's technology, services or any Contribution in any way, including to conform to the requirements of an Implementation Guide or (ii) making any change available to any other person or entity. Notwithstanding anything to the contrary in this Agreement, all right, title, and interest in any change to Applicant's technology, services or any Contribution will accrue to the benefit of, and be owned exclusively by, Applicant.

18.6 The trademarks, services marks, trade dress, business names, company names, and logos owned by Carequality, including without limitation CAREQUALITY and all Carequality logos, (collectively, the "Carequality Marks") are an important part of maintaining the strength and reputation of Carequality and its efforts to enable the interoperable exchange of healthcare information. Applicant may not use the Carequality Marks to brand any of Applicant's products or services and may not incorporate any Carequality Marks in any of Applicant's domain names except as provided in Carequality's published guidelines on use of trademarks. Upon Applicant being recognized by Carequality as an Implementer, Applicant shall be entitled to use and display "Carequality® Implementer" within its printed marketing materials, including on Applicant's website, to indicate that Applicant has been accepted by Carequality as an Implementer under this Agreement provided that such use is not misleading or inaccurate. No other rights are granted under this Section. Applicant shall not apply for registration of any trademark, service mark, trade dress, business name or company name, or logo that incorporates any Carequality Mark or any element confusingly similar to any Carequality Mark. In connection with any non-trademark, descriptive use of Carequality Marks, Applicant and its Carequality Connections will use the registration symbol ® or the trademark or service mark symbols, ™ or sm, as more fully set out in the Carequality guidelines on use of trademarks, and indicate in the text that the Carequality Mark used "is the registered trademark of Carequality," "is the trademark of Carequality," or "is the service mark of Carequality," respectively.

#### 19. Disclaimers.

Applicant acknowledges that other Implementers and Carequality Connections may be added to or removed from the Carequality Directory at any time; therefore, Applicant may not rely upon the inclusion in the Carequality Directory of a particular Implementer or Carequality Connection. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL CAREQUALITY OR APPLICANT BE LIABLE TO EACH OTHER OR ANY THIRD PARTY BENEFICIARY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE, OR LOSS OF INFORMATION OR DATA, WHETHER A CLAIM FOR ANY SUCH LIABILITY OR DAMAGES IS PREMISED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORIES OF LIABILITY, EVEN IF THE PARTY HAS BEEN APPRISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING. NO PROVISION OF THE CCA, OR THE CAREQUALITY CONNECTION TERMS, SHALL BE CONSTRUED AS AN INDEMNIFICATION REQUIREMENT FOR ANY IMPLEMENTER, INCLUDING BUT NOT LIMITED TO A FEDERAL AGENCY, THAT IS PRECLUDED BY LAW FROM INDEMNIFYING THIRD PARTIES.



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## 20. Dispute Resolution.

20.1 Applicant acknowledges that it may be in its best interest to resolve Disputes between or among Applicant or Applicant's Carequality Connections, and Carequality, other Implementers or their Carequality Connections through a collaborative, collegial process rather than through civil litigation. Applicant has reached this conclusion based upon the fact that the legal and factual issues involved in this Agreement are unique, novel, and complex and limited case law exists which addresses the legal issues that could arise from this Agreement. Therefore, Applicant shall submit Disputes to the non-binding dispute resolution process established by Carequality ("Dispute Resolution Process") (Exhibit 2). Applicant also agrees to direct its Carequality Connections to use their best efforts to resolve issues that may arise between its Carequality Connections and other Implementers' Carequality Connections or other Implementers to the extent that such Implementers do not have Carequality Connections through informal discussions before seeking to invoke the Dispute Resolution Process. In addition, Applicant agrees that if such informal discussions do not successfully resolve the issues after good faith efforts, then before a Dispute is submitted to the Dispute Resolution Process, Applicant will seek to facilitate the informal resolution of such issues directly between itself and the other affected Implementer(s). To the extent that such issues cannot be resolved through cooperation between Applicant and the other Implementer(s), Applicant on behalf of its Carequality Connection may choose to submit the Dispute to the Dispute Resolution Process. Under no circumstances will the Dispute Resolution Process give Carequality any power to assess monetary damages against Applicant, Applicant's Carequality Connections, or any other Implementer or Carequality Connection. Except in accordance with Section 20.2, if Applicant refuses to participate in the Dispute Resolution Process, such refusal shall constitute a material breach of this Agreement and may be grounds for termination in accordance with Section 5.2.

20.2 Immediate Injunctive Relief. 20.2.1 Notwithstanding Section 20.1, Applicant may be relieved of its obligation to participate in the Dispute Resolution Process if Applicant (i) believes that another Implementer's or Carequality Connection's act or omission will cause irreparable harm to Applicant or another organization or individual (e.g., Implementer, Carequality Connection, End User or consumer) and (ii) pursues immediate injunctive relief against such Implementer or Carequality Connection in a court of competent jurisdiction. Applicant must inform Carequality of such action within two business days of filing for the injunctive relief and of the result of the action within 24 hours of learning of same. Notwithstanding any provision of this Agreement to the contrary, if Applicant is a U.S. federal agency, federal law shall govern whether and when equitable relief may be granted. 20.2.2 If the injunctive relief sought in Section 20.2(a) is not granted and Applicant chooses to pursue the Dispute, the Dispute must be submitted to the Dispute Resolution Process in accordance with Section 20.1.

20.3 Activities during Dispute Resolution Process. The pendency of a Dispute under this Agreement has no effect on either Party's obligations hereunder, unless Applicant suspends or terminates its rights in accordance with Section 5.2 or 5.3 or is suspended in accordance with Section 5.3.

20.4 Implementation of Agreed Upon Resolution. If, at any point during the Dispute Resolution Process, Applicant and all of the other parties to the Dispute accept a proposed resolution of the Dispute, Applicant and Carequality each agrees to implement the terms of the resolution in the agreed upon timeframe.

20.5 Reservation of Rights. If, following the Dispute Resolution Process, in the opinion of Applicant, the Dispute Resolution Process failed to adequately resolve the Dispute, Applicant may pursue any remedies available to it in a court of competent jurisdiction.



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## 21. Miscellaneous/General

**21.1 Authority to Execute.** Applicant warrants and represents that it has the full power and authority to execute this Agreement and that any representative of Applicant who executes this Agreement has full power and authority to do so on behalf of Applicant.

**21.2 Notices.** All Notices to be made under this Agreement shall be given in writing to Applicant and Carequality at the addresses set forth following each Party's signature, and shall be deemed given: (i) upon delivery, if personally delivered; (ii) upon the date indicated on the return receipt, when sent by the United States Postal Service Certified Mail, return receipt requested; and (iii) if by facsimile telecommunication or other form of electronic transmission, upon receipt when the Notice is directed to a facsimile telecommunication number or electronic mail address listed by the Party and the sending facsimile machine or electronic mail address receives confirmation of receipt by the receiving facsimile machine or electronic mail address.

**21.3 Governing Law, Forum and Jurisdiction.** In the event of a dispute between the Parties, the applicable Federal and State conflicts of law provisions that govern the operations of the Parties shall determine governing law. If any Party to a dispute is a U.S. federal agency, only Federal law shall apply.

**21.4 Amendment.** This Agreement, and any attachments or exhibits incorporated by reference into this Agreement, may be amended by Carequality from time to time provided that Carequality first provides notice and an opportunity to provide feedback on the draft proposed amendment and an opportunity to object in accordance with this Section. Carequality will provide Notice of any proposed amendment to Applicant and all other Implementers at least ninety (90) calendar days prior to the proposed effective date of the amendment. Carequality will accept feedback on the draft proposed amendment from Applicant and all other Implementers for twenty-one (21) calendar days, and will provide final text of the proposed amendment to Applicant and all other Implementers no later than sixty (60) calendar days prior to the effective date of the amendment. Applicant shall have thirty (30) days from the date of the publication of the final text to advise Carequality in writing if the Applicant objects to the proposed amendment and the specific reasons for its objection. If more than one-third (1/3) of all Implementers object to the proposed amendment, then the amendment shall not go into effect. Otherwise, the amendment shall be effective at the end of the ninety (90) day notice period. Applicant shall be required to sign any amendment approved in accordance with this section or terminate participation by providing at least sixty (60) days prior written Notice of such termination to Carequality. No amendment to this Agreement shall be proposed to Applicant unless such amendment is proposed to all other Implementers. Notwithstanding the foregoing, if Carequality determines, based on advice from legal counsel, that an amendment is required in order for Carequality to remain in compliance with Applicable Law, Carequality is not required to provide Applicant and other Implementers with an opportunity to object to the amendment. However, Carequality shall still be required to provide sixty (60) days advance notice of the amendment.

**21.5 Applicable Law.** Notwithstanding anything herein to the contrary, Applicant shall not be required to do or undertake any action or omission that would cause Applicant to violate its Applicable Law.

**21.6 Third Party Beneficiary.** Each Implementer shall be deemed a third party beneficiary of this Agreement for purposes of enforcing Applicant's compliance with Sections 7, 8, 10.1, 10.1.3, 11, 12, 13, 19 and 20 of this Agreement. In the event that Applicant does not designate any Carequality Connections or that Applicant engages in exchange directly with other Implementers' Carequality Connections in a specific Carequality Use Case even though it has Carequality Connections for that specific Carequality Use Case, then each Implementer's Carequality Connections shall be deemed a third party beneficiary of this Agreement solely for the purpose of enforcing Applicant's compliance with Section 10.1.4 of this Agreement.





**21.8 Force Majeure.** Neither Party shall be responsible for any delays or failures in performance caused by the occurrence of events or other circumstances that are beyond its reasonable control after the exercise of commercially reasonable efforts to either prevent or mitigate the effect of any such occurrence or event.

21.10 Survival of Rights and Obligations. All Sections, which by their nature are meant to survive this Agreement, shall survive expiration or termination of this Agreement.

**21.12 Captions.** Captions appearing in this Agreement are for convenience only and shall not be deemed to explain, limit or amplify the provisions of this Agreement.

**21.14 Entire Agreement; Waiver.** This Agreement, together with all attachments, exhibits and artifacts incorporated by reference, contains the entire understanding of the Parties with regard to the subject matter contained herein. The failure of either Party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way affect the validity of this Agreement or any part hereof or the right of such Party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach, nor shall any delay by either Party to exercise any right under this Agreement operate as a waiver of any such right.

**21.16 Priority.** In the event of any conflict or inconsistency between a provision in the body of this Agreement and any exhibit or attachment hereto, the terms contained in the body of this Agreement shall prevail.

written consent of the Parties.



**21.18 Remedies Cumulative.** The rights and remedies of the Parties provided in this Agreement are cumulative and are in addition to any other rights and remedies provided by law.

Updated: July 2022



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**Change Healthcare Solutions (CHC) third party pass through terms:**

**END USER LICENSE AGREEMENT**

The following terms apply to the Services:

**1. Definitions.** For all purposes of this Agreement, the following terms shall have the following meanings:

1.1 **"Affiliate"** shall mean any entity owned or controlled by, under common ownership or control with, or which owns or controls either party to this Agreement or any of its subsidiaries.

1.2 **"Company"** means Change Healthcare Solutions, LLC.

1.3 **"IP"** shall mean the Software, Services and Materials provided hereunder.

1.4 **"Materials"** shall mean all specifications and written materials (including but not limited to any and all training materials, designs and design documents, information manuals, and all other documentation) provided to End User by Company with respect to the Services provided hereunder.

1.5 **"Payers"** shall mean those entities that receive Transactions submitted by End User through the Services, as identified from time to time by Company.

1.6 **"Services"** shall mean the transaction processing and other services performed by Company or one of its Affiliates from time to time for End User.

1.7 **"Software"** shall mean those computer software programs (whether in source or object code form) to be provided by Company hereunder for the purpose of facilitating the Services, if applicable.

1.8 **"Transactions"** shall mean batch and real-time healthcare transactions submitted by End User to Company for transmission to a Payer, whether or not a Payer accepts or favorably adjudicates such transactions.

**2. Right to Use the Services.** Subject to the terms and conditions of this Agreement, Company grants to End User a non-exclusive and non-transferable license for the term of this agreement to use the specified Services, including the machine readable object code version of the Software, if applicable, only at the End User owned or controlled facilities for the internal use of End User for the processing of Transactions. This license grant to End User also includes the right to use the Materials at the Facilities solely to assist End User in its use of the Services. No rights are granted to the IP except as explicitly set forth in this Agreement. End User shall not remove any of Company's copyright, trademark, or other confidentiality notices from the Software or Materials.

www.nts1.com  
4800 College Boulevard  
Overland Park, KS 66211  
and 842 1973

**3. Transaction Rejection Rate.** Netsmart's End Users are subject to the Transaction rejection rate of three percent (3%).

**4. Expenses For Use of the CHC Services.** CHC is not responsible for Netsmart's End Users' expenses for acquiring, operating or maintaining hardware and software for use of the CHC Services or modifications or enhancements to Netsmart's platform.

**5. Information.** End Users have no entitlements to and may not decompile, disassemble or reverse engineer or otherwise attempt to discover source code or other information concerning the Licensed Software.

**6. Fees.** Company and Netsmart shall be entitled at any time without prior notice to pass through any access fees and/or increase in communications tariffs related to the Services, including, without limitation, government-imposed access fees, fees resulting from changes in regulation or statute, any third party-imposed access fees, or any other fees assessed against Company and outside of Company's reasonable control. Company shall make available to End User upon request documentation relating to such pass-through fees in connection with the Services.

6.1 End User shall be responsible for any taxes or charges however called, including but not limited to any registration fees, assessments, sales, use, personal property, ad valorem, stamp, documentary, excise, telecommunication and other taxes (excluding any taxes imposed on Company's income) imposed by any federal, state or local government or regulatory authority with respect to the performance of the Services or delivery of the Materials by Company pursuant to this Agreement, whether such is imposed now or later by the applicable authority, even if such imposition occurs after the receipt or use by End User of the applicable IP, the invoicing by Company for the applicable IP, or the termination of this Agreement. If End User is tax-exempt, End User must submit with this Agreement evidence of its tax-exempt status.

6.2 End User acknowledges that End User has not relied on the future availability of any programs, services, functionality, features or updates in entering into the payment obligations in this Agreement.

**7. End User Obligations.**

7.1 End User agrees to transmit Transactions through the Services, if applicable, only in accordance with the requirements, procedures, data element standards, formats, codes, protocols and edits set forth in the then applicable companion guides and Materials.

7.2 End User shall execute any and all applicable documents and comply with any and all applicable procedures, rules and regulations which Company, the applicable Payer, or applicable law may require for transmission by Company of Transactions to such Payer's system, including without limitation, rules governing record retention, non-discrimination, and error resolution as promulgated by the Services, MasterCard, VISA, the settlement bank, and insurance carriers, each as amended from time to time. End User also shall adhere to such rules and regulations as are

PAGE 2 OF 5





required by governmental agencies having jurisdiction, including the Department of Health and Human Services ("HHS"). End User shall provide all supporting documents and written acknowledgements requested by Company necessary to comply with said rules and regulations. In furtherance thereof, if submitting eligibility Transactions to State Medicaid programs, End User hereby agrees to the following: (a) access to eligibility information shall be restricted to the sole purpose of verification of Medicaid eligibility where Medicaid payment for medical services has been requested by authorized parties or where otherwise permitted by federal or state statute or regulation; (b) verification of eligibility under the system is not a guarantee of payment, and the records as to the recipient's eligibility status shall be the final authority; (c) End User indemnifies and holds harmless each State, its agents and employees, from any and all claims by such End User or any recipient who is aggrieved by the actions of End User hereunder; (d) End User is an approved Medicaid provider in each State to which it submits eligibility Transactions, and has supplied its correct Provider Identification Number for each such State on the signatory page hereto; and (e) End User agrees to abide by the Federal and State regulations regarding confidentiality of information.

7.3 End User hereby appoints Company as its attorney-in-fact for the limited purpose of using the information End User provides to submit electronic Transactions and/or sign hard copy (paper) Transactions on End User's behalf to third-party Payers or processors, including but not limited to commercial insurers, Medicare, Medicaid, and government agencies, and, where appropriate, agencies or carriers covering work-related accident or illness benefits, where End User's signature is required for Transaction processing. End User acknowledges that Company is not responsible for the content or adjudication of any insurance claim, and End User retains all liability on such claims and agrees to indemnify and hold Company harmless on account of all such claims, including the reconciliation or adjustment of any claim.

7.4 End User shall only submit Transactions to the Services on behalf of physicians or suppliers that have executed appropriate written authorizations for such submission, and a true copy of such authorization shall be furnished to Company upon request. End User shall maintain each claim, if applicable, for a period of seventy-two (72) months in such manner as to assure that such claim can be associated or identified with a claim form from the applicable physician or supplier.

7.5 End User shall retain records relative to End User's use of the Services in accordance with sound business practices, and Company may request access during normal business hours upon reasonable advance notice to such records as are reasonably necessary to examine End User's compliance with its obligations hereunder.

7.6 Netsmart or its supplier may suspend Services without liability if Netsmart's End User misuses the Services or violates the terms and conditions of a Netsmart End User Agreement.

8. **Representations and Warranties.** Company represents and warrants that the Services provided hereunder shall be provided (i) without material defect and (ii) in a professional and



workmanlike manner. In the event that a documented and reproducible flaw inconsistent with this warranty is discovered, Company's sole responsibility shall be to use commercially reasonable efforts to correct such flaw in a timely manner. This warranty does not apply to (i) any media or documentation which has been subjected to damage or abuse; (ii) any claim resulting in whole or in part from changes in the operating characteristics of computer hardware or computer operating systems made after the release of the applicable Service; (iii) any claim resulting from problems in the interaction of the Software and/or the Services with non-Company software or equipment; (iv) any claim resulting from a breach by End User of any of its obligations hereunder; or (v) errors or defects caused by End User, its agents, contractors, employees or any third party not controlled by Company.

**9. Limitations of Liability.**

9.1 Company's REPRESENTATIONS AND WARRANTIES ARE THOSE SET FORTH IN ARTICLE 8 OF THIS AGREEMENT. Company DISCLAIMS ALL other REPRESENTATIONS AND WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE. Company does not guarantee the payment or the timing of payment of any claims submitted through the Services. Payment remains the responsibility of the particular Payer of health care services and/OR supplier to which the End User is submitting. IN NO EVENT SHALL either party BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF such party HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Company's AGGREGATE LIABILITY TO END USER UNDER THIS AGREEMENT AND WITH RESPECT TO the ip FURNISHED HEREUNDER (WHETHER UNDER CONTRACT, TORT, OR ANY OTHER THEORY OF LAW OR EQUITY) SHALL NOT EXCEED, UNDER ANY CIRCUMSTANCES, THE price PAID BY END USER TO Company FOR THE PARTICULAR IP INVOLVED DURING THE ONE YEAR PRECEDING END USER'S CLAIM. THE FOREGOING LIMITATION OF LIABILITY REPRESENTS THE ALLOCATION OF RISK OF FAILURE BETWEEN THE PARTIES AS REFLECTED IN THE PRICING HEREUNDER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES.

9.2 In the event that any information to be transmitted through the Services is not transmitted by Company or is not accurately transmitted as a result of Company's failure to perform the Services in accordance with the terms of this Agreement, and such results in damage to End User, then Company's sole obligation and liability to End User for such event (subject to reasonable mitigation by End User and the limitation of liability set forth in Section 9.1), shall be limited to furnishing credits on subsequent invoices from Company to End User in an amount equal to End User's actual damages incurred for reconstructing or retransmitting the data, including reasonable out-of-pocket expenses that End User can demonstrate it has sustained and that are directly attributable to such failure. End User further agrees that Company shall not be liable in any way for any inaccuracy resulting from errors or omissions or the negligent or other wrongful acts of any employee or agent of End User or its Affiliates. Any claim against Company by End User must be asserted in writing within ninety (90) days after Company should have transmitted

PAGE 4 OF 6



accurate information received from End User or the transmission of inaccurate information on which the claim is based, as applicable, End User hereby agrees to promptly supply to Company documentation reasonably requested by Company to support any claim of End User. THIS SECTION STATES THE ENTIRE LIABILITY OF Company WITH RESPECT TO CLAIMS THAT INFORMATION WAS NOT TRANSMITTED OR WAS TRANSMITTED INACCURATELY BY Company.

9.3 Company agrees to indemnify, defend and hold End User harmless from and against any loss, claim, judgment, liability, damage, action or cause of action, including reasonable attorneys' fees and court costs, directly resulting from a third party claim that End User's proper use of the IP infringes or misappropriates the intellectual property rights of a third party; provided, however, that Company shall have no obligation to indemnify, defend or hold End User harmless with respect to such third party claims unless End User promptly notifies Company in writing of the claim, allows Company to exclusively control the defense of such claim, and cooperates with Company in the defense of the claim or in any related settlement negotiations. Such indemnity shall not apply to any claim arising out of (a) the combination, operation or use of the IP with any product, data or apparatus not furnished by or on behalf of Company or not specified by Company in writing, (b) End User's modification of the IP, (c) use of the IP in a manner that conflicts with the prescribed uses in the applicable Materials, (d) use of the IP other than in accordance with this Agreement, or (e) use of other than a current release of any Software. If an infringement claim has been brought, or Company believes such an infringement claim is reasonably likely, Company may, at its sole option and expense, (i) use commercially reasonable efforts to procure the right to continue using the infringing IP; (ii) replace or modify the same so that it becomes non-infringing; or (iii) terminate End User's right to use the infringing IP and refund to End User all amounts paid by End User for the applicable IP during the one year preceding Company's refund, and if the infringing IP is the only IP contracted for hereunder, terminate this Agreement. THIS SECTION 9.3 STATES COMPANY'S ENTIRE LIABILITY TO END USER WITH RESPECT TO ANY INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS BROUGHT BY ANY THIRD PARTY AND SUCH LIABILITY IS FURTHER LIMITED BY THE LIMITATIONS APPEARING IN SECTION 9.1 ABOVE.

9.4 Company shall have no responsibility for determining the accuracy of any claim submitted, for settling disputed claims, for settling disputed payments, for settling disagreements or disputes between a Payer and End User, for any liability for the acts of a Payer and/or End User that violate the Social Security Act and related regulations and/or guidelines, or for any liability foreseeable or otherwise occurring beyond Company's transmission of data.

9.5 Any claim or cause of action arising out of, based on, or relating to this Agreement not presented by End User within one (1) year from the discovery of the claim or cause of action shall be deemed waived. End User shall use commercially reasonable efforts to mitigate damages for which Company may become responsible under this Agreement.

9.6 Neither party shall be responsible for delays or failures in performance resulting from acts





or events beyond its reasonable control, including but not limited to, acts of nature, governmental actions, fire, labor difficulties or shortages, civil disturbances, transportation problems, interruptions of power, supply or communications or natural disasters, provided such party takes reasonable efforts to minimize the effect of such acts or events.

**10. Term and Rights Upon Termination.**

Upon expiration or termination of this Agreement for any reason, (i) all license rights granted End User hereunder shall terminate and (ii) End User shall immediately cease using the IP and Services.

**11. Miscellaneous.**

11.1 The parties shall comply with all applicable laws, and each party shall secure any license, permit or authorization required by law in connection with those aspects of the transmission process for which it is responsible under this Agreement. End User shall conduct all marketing, advertising, and solicitations of End Users in compliance with applicable local, state, and federal ordinances, laws, statutes, regulations and codes, including the Telephone Consumer Protection Act of 1991, as amended ("TCPA") and The Controlling the Assault of Non-Solicited Pornography And Marketing Act of 2003, as amended ("CAN-SPAM").

11.2 The parties will act as independent contractors, and this Agreement does not constitute either party as the agent or partner of the other party.

11.3 Each party represents and warrants that, as of the Effective Date, neither it nor its medical staff, partners, officers, directors, or employees are or have been (i) sanctioned for, or convicted of, a criminal offense related to health care or (ii) barred, suspended or terminated from participation in a state or federal health care program. Each party agrees that, should it or its medical staff, partners, officers, directors, or employees become so sanctioned, convicted, barred, suspended or terminated, this Agreement will automatically terminate.

11.4 If and to the extent required by Section 1395x(v)(1)(I) of Title 42 of the United States Code, until the expiration of four (4) years after the termination of this Agreement, Company shall make available, upon written request by the Secretary of HHS or the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the costs of the Services provided hereunder. Company further agrees that, in the event it carries out any of its duties under this Agreement through a subcontract with a related organization with a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period, such subcontract shall contain a similar requirement for the subcontractor.

11.5 Netsmart's Supplier, Change Healthcare, is a third party beneficiary for enforcement of the terms in these End User Pass Through Provisions and the limitation of liability in this Agreement with respect to enforcement of the terms in these End User Pass Through Provisions.

PAGE 6 OF 6





**Hyland (formerly known as Perspective) Pass-Through Terms for Inclusion in Client Contracts**

**DEFINED TERMS:** All capitalized terms used in this Agreement shall have the meanings ascribed them in this Agreement.

"Delivery" means: (i) the electronic downloading of the Software onto User's systems; (ii) the Software being made available by Solution Provider to User for electronic download onto User's systems; or (iii) the delivery by Hyland to User of a Production Certificate for such Software module(s) by Hyland either shipping (physically or electronically) the Production Certificate to User or making the Production Certificate available for electronic download by User (including through one of Hyland's authorized solution providers).

"Documentation" means: (1) to the extent available, the "Help Files" included in the Software; (2) if any such "Help Files" are included in the Software, such other documentation published by Hyland, in each case, which relate to the functional, operational or performance characteristics of the Software.

"Effective Date" means the date this Agreement is signed by the last party that signs this Agreement, as determined based on the dates set forth after their respective signatures.

"Error" means any defect or condition inherent in the Software which is reported by User in accordance with this Agreement and which is confirmed by Solution Provider, that causes the Software to fail to function in any material respects as described in the Documentation.

"Error Correction Services" means Solution Provider's reasonable efforts to correct an Error, which may be effected by a reasonable workaround.

"Existing Software" means Hyland's proprietary software products previously licensed to User on a perpetual basis. (Definition applicable to **existing perpetual user converting to subscription either through a full conversion or add-on**).

"Hyland" means Hyland Software, Inc. or one of its affiliates, and its successors and assigns.

"Maintenance and Support" means for the Software, (i) Error Correction Services, (ii) Technical Support Services, and (iii) the availability of Upgrades and Enhancements in accordance with this Agreement.

"Production Certificate" means license codes, a license certificate, or an IFM file issued by Hyland or its Solution Provider and necessary for User to activate Software for User's production use.

"Prohibited Act" or "Prohibited Acts" means any action taken by User that is: (i) in violation of Section 3 of this Agreement, or (ii) in violation of or contrary to Section 4 of this Agreement.

"Resolution" means Solution Provider provides User with a reasonable workaround, correction, or modification that solves or mitigates a reported Error.

"Software" means (i) Hyland's proprietary software products licensed by User from Solution Provider, including any third party software bundled by Hyland together with Hyland's proprietary software products as part of a unified product; and (ii) all Upgrades and Enhancements of the software products described in clause (i) which User properly obtains under this Agreement. Software does not include ShareBase. **CHOOSE ONE OF THE FOLLOWING OPTIONS AS APPLICABLE: (OPTION 1) IF THIS TEMPLATE IS BEING USED TO CONVERT EXISTING PERPETUALLY LICENSED SOFTWARE TO SUBSCRIPTION, USE THIS: Software includes Existing Software. (OPTION 2) IF THIS TEMPLATE IS BEING USED TO ADDRESS ADD-ON SUBSCRIPTION LICENSES BUT THE PREVIOUSLY LICENSED PERPETUAL SOFTWARE WILL REMAIN PERPETUAL, AND HYLAND ENTERED INTO THE PERPETUAL LICENSE AGREEMENT OR EULA WITH THE CUSTOMER (EITHER WRITTEN OR VIA CLICK-THRU), USE THIS: For**



purposes of Maintenance and Support, Software includes Existing Software. (OPTION 3): IF THIS IS FOR A NET NEW SUBSCRIPTION CUSTOMER, CHOOSE NEITHER OPTION 1 NOR OPTION 2)

"Subscription Fees" means periodic fees for the licensing of Software under this Agreement and for Maintenance and Support for such Software, and payable by User to Solution Provider.

"Retired Software" means at any particular time during a maintenance period covered by this Agreement, any Software product or version of the Software licensed by User from Solution Provider under this Agreement which is identified as being retired on Hyland's applicable secure end user web site, currently <https://www.hyland.com/community>. The effective date of such change will be twelve (12) months from the date Hyland initially posts the status change on its end user web site, and User will receive notice as a registered user of Hyland's applicable secure end user web site.

"Technical Support Services" means telephone or online technical support related to problems reported by User and associated with the operation of any Software, including assistance and advice related to the operation of the Software.

"Upgrades and Enhancements" means any and all new versions, improvements, modifications, upgrades, updates, fixes and additions to the Software that Solution Provider makes available to User or to Solution Provider's end users generally during any maintenance period under this Agreement to correct Errors or deficiencies or enhance or change the capabilities of the Software, together with updates of the Documentation to reflect such new versions, improvements, modifications, upgrades, fixes or additions, provided, however, that the foregoing shall not include new, separate product offerings, new modules, or re-platformed Software.

## 2. TERM/TERMINATION:

2.1 Generally. Subject to early termination as provided below, the initial term of this Agreement will be the three (3) year period that commences on the Effective Date (the "Initial Term"); and such term will automatically renew thereafter for successive terms of one (1) year each, unless and until either party provides at least thirty (30) days advance written notice of non-renewal, in which case this Agreement shall terminate at the end of the then current term.

### 2.2 Termination

2.2.1 Automatic. This Agreement shall terminate automatically, without any other or further action on the part of either of the parties, immediately upon termination or expiration of the Reseller Agreement between Hyland and Solution Provider. In such event, User may contact Hyland and use reasonable efforts to enter into a mutually agreeable agreement to replace this Agreement.

2.2.2 By Either Party. Either party may terminate this Agreement immediately upon written notice to the other party if the other party has committed a breach of a material provision of this Agreement, and has failed to cure the breach within thirty (30) days after receipt of the written notice of the breach given by the non-breaching party; provided that Solution Provider shall not be required to give User any opportunity to cure any breach in the case of a Prohibited Act or breach of the U.S. Government End User section, all of which are considered for all purposes to be material provisions of this Agreement.

### 2.3 Certain Effects or Consequences of Termination; Survival of Certain Provisions

2.3.1 Generally. Any termination of this Agreement will not discharge or otherwise affect any pre-termination obligations of either party existing under this Agreement at the time of termination, including User's obligation to pay to Solution Provider all fees and charges incurred or due for any period or event occurring on or prior to the effective date of termination or expiration of this Agreement, and all liabilities which have accrued prior to the date of termination shall survive.

2.3.2 Survival of Certain Obligations. All provisions of this Agreement, which by their nature extend





beyond the expiration or termination of this Agreement will survive and remain in effect until all obligations are satisfied, including, but not limited to all disclaimers of warranties, confidentiality obligations and limitations of liability set forth in this Agreement.

**2.3.3. Effects or Consequences of Termination.** Upon any termination of this Agreement, any license to use the Software will automatically terminate without other or further action on the part of any party; and User shall immediately: (a) discontinue any and all use of the Software and Documentation; and (b) either (1) return the Software and Documentation to Solution Provider, or (2) with the prior permission of Solution Provider, destroy the Software and Documentation and certify in writing to Solution Provider that User has completed such destruction.

### 3. LICENSE:

3.1 Subject to User's payment in full of the Subscription Fees and any other amounts due and payable under this Agreement, and subject further to User's compliance with this Agreement, Solution Provider grants to User a revocable, non-exclusive, non-assignable (except as provided in this Agreement), limited license to the Software, in machine-readable object code form only, and the associated Documentation, solely for use:

(a) by User internally, and only for storing, processing and accessing User's own data; and

(b) subject to Section 3.7 below, by a third-party contractor retained by User as a provider of services to User ("Contractor"), but only by the Contractor for storing, processing and accessing User's own data in fulfillment of the Contractor's contractual obligations as a service provider to User.

The Software and associated Documentation is licensed for use by a single organization and may not be used for the processing of third-party data as a service bureau, application service provider or otherwise. User shall not make use of the Software or associated Documentation in any manner not expressly permitted by this Agreement. Software subject to a regulatory control may only be installed in the country identified as the end user location in the purchase order. The Software may be located and hosted on computer servers owned and controlled by a third party. Such third-party hosting provider shall be considered a Contractor, and subject to the requirements of Section 3.7 below.

**3.2. Use Restriction.** Each module of the Software is licensed for a specific type of use, such as concurrently or on a specified workstation or by a specified individual and the Software may control such use. Software products that are volume-based may: (i) no longer function if applicable volume limits have been exceeded; (ii) require User to pay additional fees based on User's volume usage; and/or (iii) include functionality which monitors or tracks User usage and reports that usage. User may not circumvent or attempt to circumvent this restriction by any means, including but not limited to changing the computer calendars. Use of software or hardware that reduces the number of users directly accessing or utilizing the Software (sometimes called "multiplexing" or "pooling" software or hardware) does not reduce the number of Software licenses required. The required number of Software licenses would equal the number of distinct inputs to the multiplexing or pooling software or hardware. User is prohibited from using any software other than the Software Client modules or a Software application programming interface ("API") to access the Software or any data stored in the Software database for any purpose other than generating reports or statistics regarding system utilization, unless Solution Provider has given its prior written consent to User's use of such other software and User has paid to Solution Provider Subscription Fees with respect to such access. User further agrees that the Software shall not be copied and installed on additional servers unless User has purchased a license therefore, and the number of users of the Software shall not exceed the number of users permitted by the Software Client licenses purchased by User.

**3.3. Production and Test Systems.** User shall be entitled to use one (1) production copy of the Software licensed and one (1) additional copy of the production environment licensed for customary remote disaster recovery purposes which may not be used as a production system concurrently with the operation of any other copy of the Software in a production environment. Subject to the payment of any additional applicable license fees or subscription fees User shall be entitled to license a reasonable number of additional copies of the production environment licensed Software to be used exclusively in a non-production environment and solely for the purposes of experimenting and testing the Software, developing integrations between the Software and other applications that integrate to the Software solely using integration modules of the Software licensed by User under



this Agreement, and training User's employees on the Software ("Test Systems"). User may be required to provide to Solution Provider certain information relating to User's intended use of such Test Systems such as the manufacturer, model number, serial number, and installation site. Solution Provider reserves the right to further define the permitted use(s) and/or restrict the use(s) of the Test Systems. User's sole recourse in the event of any dissatisfaction with any Software in any non-production system is to stop using such Software and return it to Solution Provider, provided that, to the extent that User is using the Test System for the purposes of testing an Upgrade or Enhancement of the Software prior to implementing the same in User's production environment, then User may contact Solution Provider for the provision of Maintenance and Support as described in this Agreement. User shall not make any copies of the Software not specifically authorized by this Section.

**3.4 Evaluation Software.** From time to time User may elect to evaluate certain Software modules ("Evaluation Software") for the purpose of determining whether or not to purchase a production license of such Evaluation Software. Evaluation Software is licensed for User's use in a non-production environment. Notwithstanding anything to the contrary, as to any Evaluation Software, the Agreement and the limited license granted hereby will terminate on the earliest of: (a) last day of the evaluation period specified in the accepted purchase order delivered for such Evaluation Software; or (b) immediately upon the delivery of written notice to such effect by Solution Provider to User. Upon expiration or other termination of such period, User immediately shall either (y) discontinue any and all use of the Evaluation Software and related Documentation and remove the Evaluation Software; or (z) deliver a purchase order for purchase of such Evaluation Software.

**3.5 Third-Party Licenses.** The Software may be bundled with software owned by third parties, including but not limited to those manufacturers listed in the Help>About screen of the Software. Such third-party software is licensed solely for use within the Software and is not to be used on a stand-alone basis. Notwithstanding the above, User acknowledges that, depending on the modules licensed, the Software may include open-source software governed by an open source license, in which case the open source license (a copy of which is provided in the Software or upon request) may grant you additional rights to such open source software. Additionally, in the case of such software to be downloaded and installed on a mobile device, if such software will be downloaded from the application market or store maintained by the manufacturer of the mobile device, then use of such software will be governed by the license terms for the software included at the applicable application store or market or presented to User or User's user in the software, and this Agreement will not govern such use.

**3.6 Integration Code.** If applicable, Software also includes all adapters or connectors created by Hyland and provided to you by Solution Provider as part of an integration between the Software and a third party line of business application ("Integration Code"). Software also includes any desktop host or other content services software provided by Hyland and downloaded on a user's computer used to extend functionality in Hyland's products. Such Integration Code and desktop host may only be used in combination with other Software and in accordance with the terms of this Agreement.

**3.7 Contractor Use Agreement.** User agrees that if it desires to allow a Contractor to do any of the following:

- (a) make use of the Software configuration tools, Software administrative tools or any of the Software's application programming interfaces ("APIs")
- (b) make use of any training materials or attend any training courses, either online or in person, in either case related to the Software; or
- (c) access any of Hyland's secure websites (including, but not limited to, [users.onbase.com](http://users.onbase.com), [teamonbase.com](http://teamonbase.com), [training.onbase.com](http://training.onbase.com), [demo.onbase.com](http://demo.onbase.com), and [Hyland.com/Community](http://Hyland.com/Community)), either through Contractor's use of User's own log-in credentials or through credentials received directly or indirectly by Contractor;

then, User must cause such Contractor to execute a use agreement with Hyland in a form available for download at Hyland's Community website ("Contractor Use Agreement"). User understands and agrees that: (x) User may not allow a Contractor to do any of the foregoing if such Contractor has not signed a Contractor Use Agreement, and (y) Contractors may use the Software only in compliance with the terms of this Agreement, and (z) User is responsible for such compliance by all Contractors that do not execute a Contractor Use Agreement. User agrees that it shall indemnify Hyland from and against all claims, liabilities, losses, damages, and costs, including, but not limited to,



reasonable attorneys' fees and court costs, which are suffered or incurred by Hyland and arise from or in connection with the breach or noncompliance with the terms of this Agreement by any Contractor that does not sign a Contractor Use Agreement.

3.8 See High Risk Use. The Software is not fault-tolerant and is not guaranteed to be error free or to operate uninterrupted. The Software is not designed or intended for use in any situation where failure or fault of any kind of the Software could lead to death or serious bodily injury to any person, or to severe physical or environmental damage ("High Risk Use"). User is not licensed to use the Software in, or in conjunction with, High Risk Use. High Risk Use is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, or weaponry systems. High Risk Use does not include utilization of the Software for administrative purposes, as an information resource for medical professionals, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. These non-controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function. User agrees not to use, distribute or sublicense the use of the Software in, or in connection with, any High Risk Use. User agrees to indemnify and hold harmless Solution Provider from any third-party claim arising out of User's use of the Software in connection with any High Risk Use.

3.9 Audit Rights. Upon reasonable notice to User, Solution Provider shall be permitted access to audit User's use of the Software solely in order to determine User's compliance with the licensing and pricing terms this Agreement, including, where applicable, to measure User's volume usage. Additionally, if requested by Solution Provider in connection with Software licensed on a volume basis, User shall provide reports that show User's volume usage. User shall reasonably cooperate with Solution Provider with respect to its performance of such audit. User acknowledges and agrees that User is prohibited from publishing the results of any benchmark test using the Software to any third party without Hyland's prior written approval, and that User has not relied on the future availability of any programs or services in entering into this Agreement.

3.10 AnyDoc. The optional AccuZip component of the OCR for AnyDoc and AnyDoc EXCHANGED Software products contains material obtained under agreement from the United States Postal Service (USPS) and must be kept current via an update plan provided by Solution Provider to maintain User's continued right to use. The USPS has contractually required Solution Provider to include "technology which automatically disables access to outdated [zip code] products." This technology disables only the AccuZip component and is activated only if AccuZip is not updated on a regular and timely basis. Solution Provider regularly updates the zip code list as part of Maintenance and Support for the AccuZip module.

3.11 The Software may contain functionality that allows User to access, link or integrate the Software with User's applications or applications or services provided by third parties. Solution Provider has no responsibility for such applications or services, websites or content and does not endorse any third-party web sites, applications or services that may be linked or integrated through the Software, any activities engaged in by User with such third parties is solely between User and such third party.

3.12 With respect to certain Software products licensed for use in a healthcare setting, pricing for the Software is based upon the number of Studies and Non-DICOM Objects that are generated annually by User using the Software and pricing will be adjusted based on such usage. For the purposes of this Agreement, "Study" or "Studies" means a collection of one or more images generated for a single patient which is identified by a study instance unique identifier (SUID) and "Non-DICOM Object" means a collection of one or more images or documents which are not identified by an SUID and are stored as a single file. For clarification, the number of Studies and Non-DICOM does not include any pre-existing Studies that are migrated into the Software. During the term of the Agreement, following receipt of a written request from Hyland, User shall promptly provide to Hyland reasonable access to Hyland to enable Hyland to report to User in writing the number of Studies and Non-DICOM Objects generated by User during the reporting period identified by Hyland (the "Hyland Reported Number"). User shall have the right to review and object in writing to such Hyland Reported Number. If User objects to the Hyland Reported Number, the parties shall cooperate in good faith to attempt to resolve the dispute within ten (10) days of User's objection. If, within twenty (20) days of User's objection, the parties are not able to resolve the dispute,





either party may submit such dispute to a mutually agreed upon independent third party, who shall act as an independent consultant ("Independent Consultant"). The Independent Consultant shall determine the procedure to be followed to resolve the dispute and the parties shall provide to the Independent Consultant such information, and access to such records, as the Independent Consultant may request in connection with its review. The Independent Consultant shall report in writing to Hyland and User a calculation of the number of Studies and Non-DICOM Objects for such reporting period in accordance herewith as promptly as practicable, and such determination shall be final, binding and conclusive as to the parties. All fees and disbursements of the Independent Consultant for services rendered shall be shared equally by Hyland and User. As used herein, the number of Studies and Non-DICOM Objects resulting from the process described above shall be final and binding upon Hyland and User.

#### **4. OWNERSHIP AND PROHIBITED CONDUCT:**

4.1 Ownership. Solution Provider's direct and indirect suppliers, including Hyland, own the Software and Documentation, including, without limitation, any and all worldwide copyrights, patents, trade secrets, trademarks and proprietary and confidential information rights in or associated with the foregoing. The Software and Documentation are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. No ownership rights in the Software or Documentation are transferred to User. User agrees that nothing in this Agreement or associated documents gives it any right, title or interest in the Software or Documentation, except for the limited express rights granted in this Agreement. User acknowledges and agrees that, with respect to Hyland's end users generally, Hyland has the right, at any time, to change the specifications and operating characteristics of the Software and Hyland's policies respecting Upgrades and Enhancements (including, but not limited to its release process). THIS AGREEMENT IS NOT A WORK FOR HIRE AGREEMENT. At no time shall User file or obtain any lien or security interest in or on any components of the Software or Documentation.

4.2 Prohibited Conduct. User agrees not to, (a) remove copyright, trademark or other proprietary rights notices that appear on or during the use of the Software or Documentation; (b) sell, transfer, rent, lease or sub-license the Software or Documentation; (c) alter or modify the Software or Documentation; or (d) reverse engineer, disassemble, decompile or attempt to derive source code from the Software or Documentation or prepare derivative works therefrom.

#### **5. MAINTENANCE AND SUPPORT:**

5.1 Maintenance and Support Terms. Subject to the payment of Subscription Fees, except with respect to Retired Software, Solution Provider will provide Maintenance and Support in accordance with this Section 5.

5.1.1 Technical Support Services. Solution Provider will provide telephone or online technical support related to problems reported by User and associated with the operation of any Software, including assistance and advice related to the operation of the Software. Technical Support Services are not available for Retired Software.

5.1.2 Error Correction Services. With respect to any Errors in the Software which are reported by User and which are confirmed by Solution Provider, in the exercise of its reasonable judgment, Solution Provider will use its reasonable efforts to correct the Error, which may be effected by a reasonable workaroud. Solution Provider shall promptly commence to confirm any reported Errors after receipt of a proper report of such suspected Error from User. Solution Provider may elect to correct the Error in the current available or in the next available commercially released version of the Software and the Resolution may require the User to implement an Upgrade and Enhancement to obtain the correction. Error Correction Services are not available for Retired Software.

5.1.3 Reporting Policies and Procedures Applicable to Technical Support Services and Error Correction Services. In requesting Technical Support Services and Error Correction Services, User will submit such requests in accordance with



Service Provider's current reporting procedures. Maintenance and Support generally will be available in accordance with the Master Agreement between Solution Provider and Client.

**5.1.4. Upgrades and Enhancements.** Solution Provider will provide, in accordance with Hyland's then current policies, as set forth from time to time on Hyland's secure end user web site (currently [www.hyland.com/community](http://www.hyland.com/community)), all Upgrades and Enhancements, if and when released, during the term of this Agreement. Upgrades and Enhancements are not available for Retired Software.

## **5.2. Exclusions.**

**5.2.1. Generally.** Solution Provider is not responsible for providing, or obligated to provide, Maintenance and Support under this Agreement: (1) in connection with any Errors or problems that result in whole or in part from any alteration, revision, change, enhancement or modification of any nature of the Software, or from any error or defect in any configuration of the Software, which activities in any such case were undertaken by any party other than Solution Provider or Hyland; (2) in connection with any Error if Solution Provider (directly or through Hyland) has previously provided corrections for such Error, which User fails to implement; (3) in connection with any Errors or problems that have been caused by errors, defects, problems, alterations, revisions, changes, enhancements or modifications in the database, operating system, third party software (other than third party software embedded in the Software by Hyland), hardware or any system or networking utilized by User; (4) if the Software or related software or systems have been subjected to abuse, misuse, improper handling, accident or neglect; or (5) if any party other than Solution Provider or Hyland has provided any services in the nature of Maintenance and Support to User with respect to the Software. Maintenance and Support does not include any services that Solution Provider may provide in connection with assisting or completing an upgrade of Software with any available Upgrade and Enhancement.

**5.2.2. Excluded Software and Hardware.** This Agreement does not govern, and Solution Provider shall not be responsible for, the maintenance or support of any software other than the Software or for any hardware or equipment of any kind or nature, whether or not obtained by User from Solution Provider.

## **5.3. Certain Other Responsibilities of User.**

**5.3.1. Operation of the Software and Related Systems.** User acknowledges and agrees that it is solely responsible for the operation, configuration, supervision, management and control of the Software and all related hardware and software (including the database software). User is solely responsible for: obtaining or providing training for its personnel; taking appropriate measures to isolate and backup or otherwise archive its computer systems, programs, data or files; and instituting appropriate security procedures and implementing reasonable procedures to examine and verify all output before use.

**5.3.2. Access to Premises and Systems.** User shall make available reasonable access and use of User's premises, and online access to User's computer hardware, peripherals, Software and other software as Solution Provider deems necessary to diagnose and correct any Errors or to otherwise provide Maintenance and Support. Accordingly, User shall install and maintain means of communication and the appropriate communications software as mutually agreed upon by Solution Provider and User and an adequate connection with Solution Provider and Hyland to facilitate Solution Provider's on-line Maintenance and Support. Such right of access and use shall be provided at no cost or charge to Solution Provider or Hyland.

**5.4. Professional Services for Projects Not Covered by Technical Support Services or Error Correction Services.** If User requests professional services which are outside the scope of Technical Support Services or Error Correction Services, User agrees that such services shall not be covered by this Agreement and such services only shall be engaged pursuant to a separate services agreement.

**5.5. Implementation of Upgrades and Enhancements to Regulated Products.** User acknowledges and agrees that for regulatory compliance purposes, Solution Provider may be required to engage Hyland under a services agreement to implement Upgrades and Enhancements to a regulated product. If Hyland offers a self-service option for implementing Upgrades and Enhancements to a regulated product, and the User chooses



this option, User agrees to comply with the training, reporting, and documentation requirements established by Hyland to ensure that the implementation is performed and documented as required by applicable regulations.

## 6. SUBSCRIPTION FEES, PAYMENT TERMS AND TAXES:

6.1 **Subscription Fees.** User shall pay Subscription Fees to Solution Provider for the Software licensed under this Agreement in such amounts as are invoiced by Solution Provider, provided, that during the Initial Term of this Agreement, User shall pay Subscription Fees to Solution Provider for the initial Software licensed hereunder in accordance with **Purchase Agreement/Quote**. Following expiration of the Initial Term of this Agreement, Solution Provider will increase the Subscription Fees for the Software for any renewal period in accordance with its Master Agreement with User.

6.2 **General Payment Terms.** So long as User is not in default of any payment obligations under this Agreement, except as otherwise provided in this Agreement, User shall pay in full each invoice issued hereunder net thirty (30) days from the date of User's receipt of such invoice.

6.3 **Certain Remedies for Non-Payment or Late Payment.** At the election of Solution Provider, exercisable by written notice to User, any past due amounts shall bear interest at the rate of one and one-half percent (1.5%) per month (or, if lower, the maximum rate lawfully chargeable) from the date due through the date that such past due amounts and such accrued interest are paid in full. In the event of any default by User in the payment of any amounts due hereunder, which default continues unremedied for at least thirty (30) calendar days after the due date of such payment, Solution Provider shall have the right to suspend or cease the provision of any services under this Agreement, including the delivery of any Upgrades and Enhancements, to User unless and until such default shall have been cured.

6.4 **Taxes and Governmental Charges.** All payments under this Agreement are exclusive of all applicable taxes and governmental charges (such as duties), all of which shall be paid by User to Solution Provider (other than taxes on Solution Provider's income). In the event User is required by law to withhold taxes, User agrees to furnish Solution Provider all required receipts and documentation substantiating such payment. If Solution Provider is required by law to remit any tax or governmental charge on behalf of or for the account of User, User agrees to reimburse Solution Provider within thirty (30) days after Solution Provider notifies User in writing of such remittance. User agrees to provide Solution Provider with valid tax exemption certificates in advance of any remittance otherwise required to be made by Solution Provider on behalf of or for the account of User, where such certificates are applicable.

6.5 **Resolution of Invoice Disputes.** If, prior to the due date for payment under any invoice, User notifies Solution Provider in writing that it disputes all or any portion of an amount invoiced, both parties will use reasonable efforts to resolve the dispute within thirty (30) calendar days of Solution Provider's receipt of the notice. If any amount remains disputed in good faith after such 30-day period, either party may escalate the disputed items to the parties' respective executive management to attempt to resolve the dispute. The parties agree that at least one of each of their respective executives will meet (which may be by telephone or other similarly effective means of remote communication) within ten (10) calendar days of any such escalation to attempt to resolve the dispute. If the parties' executive managers are unable to resolve the dispute within ten (10) calendar days of such meeting, either party thereafter may file litigation in a court of competent jurisdiction under Section 11.2 of this Agreement to seek resolution of the dispute.

## 7. LIMITED WARRANTY; DISCLAIMER OF WARRANTIES:

7.1 **Software Warranty.** For a period of sixty (60) days from and including a Software module has been Delivered to User, Solution Provider warrants to User that such Software module, when properly installed and properly used, will function in all material respects as described in the Documentation. The terms of this warranty shall not apply to, and Solution Provider shall have no liability for any non-conformity related to: (a) any Retired Software modules, or (b) any Software module that has been (i) modified by User or a third party, (ii) used in combination with equipment or software other than that which is consistent with the Documentation, or (iii) misused or abused.

7.2 **Remedy.** Solution Provider's sole obligation, and User's sole and exclusive remedy for any non-





conformities of the express limited warranties under Section 7.1 shall be as follows: provided that, within the applicable period, User notifies Solution Provider in writing of the non-conformity. Solution Provider will either (a) repair or replace the non-conforming Software module, which may include the delivery of a reasonable workaround for the non-conformity; or (b) if Solution Provider determines that repair or replacement of the Software module is not practicable, then terminate this Agreement with respect to the non-conforming Software module, in which event, upon compliance by User with its obligations under Section 2.3 of this Agreement, Solution Provider will refund any portion of the Subscription Fees paid prior to the time of such termination with respect to such Software.

## **7.5 DISCLAIMER OF WARRANTIES**

7.5.1 EXCEPT FOR THE WARRANTIES PROVIDED BY SOLUTION PROVIDER AS EXPRESSLY SET FORTH IN SECTION 7.1, SOLUTION PROVIDER AND HYLAND (INCLUDING HYLAND'S SUPPLIERS) MAKE NO WARRANTIES OR REPRESENTATIONS REGARDING ANY SOFTWARE, INNOVATIONS, INFORMATION, MAINTENANCE AND SUPPORT OR ANY OTHER SERVICES PROVIDED UNDER THIS AGREEMENT. SOLUTION PROVIDER AND HYLAND (INCLUDING HYLAND'S SUPPLIERS) DISCLAIM AND EXCLUDE ANY AND ALL OTHER EXPRESS, IMPLIED AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF GOOD TITLE, WARRANTIES AGAINST INFRINGEMENT, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES THAT MAY ARISE OR BE DEEMED TO ARISE FROM ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. SOLUTION PROVIDER AND HYLAND (INCLUDING HYLAND'S SUPPLIERS) DO NOT WARRANT THAT ANY SOFTWARE OR MAINTENANCE AND SUPPORT PROVIDED WILL SATISFY USER'S REQUIREMENTS OR ARE WITHOUT DEFECT OR ERROR, OR THAT THE OPERATION OF ANY SOFTWARE PROVIDED UNDER THIS AGREEMENT WILL BE UNINTERRUPTED, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT. SOLUTION PROVIDER AND HYLAND DO NOT ASSUME ANY LIABILITY WHATSOEVER WITH RESPECT TO ANY THIRD-PARTY HARDWARE, FIRMWARE, SOFTWARE, OR SERVICES.

7.5.2 USER SPECIFICALLY ASSUMES RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE AND MAINTENANCE AND SUPPORT TO ACHIEVE ITS BUSINESS OBJECTIVES.

7.5.3 SOLUTION PROVIDER MAKES NO WARRANTIES WITH RESPECT TO ANY SOFTWARE USED IN ANY NON-PRODUCTION SYSTEM AND PROVIDES ANY SUCH SOFTWARE "AS IS."

7.5.4 No oral or written information given by Solution Provider, its agents, or employees shall create any additional warranty. No modification or addition to the limited warranties set forth in this Agreement is authorized, unless it is set forth in writing, references this Agreement, and is signed on behalf of Solution Provider by a corporate officer.

## **8. LIMITATIONS OF LIABILITY:**

8.1 IN NO EVENT SHALL SOLUTION PROVIDER'S OR ITS DIRECT OR INDIRECT SUPPLIERS' (INCLUDING HYLAND) AGGREGATE LIABILITY FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE PERFORMANCE OR NON-PERFORMANCE OF SERVICES OR THE USE OR INABILITY TO USE SOFTWARE, EXCEED THE AGGREGATE AMOUNTS ACTUALLY PAID BY USER TO SOLUTION PROVIDER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO SUCH LIABILITY. IN NO EVENT SHALL SOLUTION PROVIDER OR ITS DIRECT OR INDIRECT SUPPLIERS (INCLUDING HYLAND) BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES OR ANY TYPE OF CLAIM FOR LOST PROFITS, LOST SAVINGS, BUSINESS INTERRUPTION DAMAGES OR EXPENSES, THE COSTS OF SUBSTITUTE SOFTWARE OR SERVICES, LOSSES RESULTING FROM THEASURE, DAMAGE, DESTRUCTION OR OTHER LOSS OF FILES, DATA OR PROGRAMS OR THE COST OF RECOVERING SUCH INFORMATION, OR OTHER PECUNIARY LOSS, EVEN IF SOLUTION PROVIDER OR SUCH SUPPLIERS (INCLUDING HYLAND) HAVE BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR LOSSES.



8.2 IF USER USES THE SOFTWARE IN A CLINICAL SETTING, USER ACKNOWLEDGES THAT THE SOFTWARE DOES NOT OFFER MEDICAL INTERPRETATIONS OF DATA, DIAGNOSE PATIENTS, OR RECOMMEND THERAPY OR TREATMENT; THE SOFTWARE IS AN INFORMATION RESOURCE AND IS NOT A SUBSTITUTE FOR THE SKILL, JUDGMENT AND KNOWLEDGE OF USER'S USERS OF THE SOFTWARE IN THE PROVISION OF HEALTHCARE SERVICES. IN ADDITION TO THE LIMITATIONS OF LIABILITY PROVIDED HEREIN, NETTHER SOLUTION PROVIDER NOR HYLAND SHALL NOT HAVE ANY LIABILITY FOR ANY ASPECT OF USER'S SERVICES PROVIDED IN CONJUNCTION WITH ITS USE OF THE SOFTWARE.

## 9. CONFIDENTIAL INFORMATION:

9.1 "Confidential Information" shall be such information of Solution Provider, User or Hyland, as the case may be, that is marked "Proprietary" or "Confidential," that is known by the recipient to be confidential or that is of such a nature as customarily would be confidential between business parties, except as provided in the next sentence. Confidential Information shall not include information that: (a) is or becomes generally known to the public without breach of this Agreement by the recipient, or (b) is demonstrated by the recipient to have been in the recipient's possession prior to its disclosure by the disclosing party, or (c) is received by the recipient from a third party that is not bound by restrictions, obligations or duties of non-disclosure to the disclosing party, or (d) is demonstrated by recipient to have been independently developed by recipient without breach of its obligations.

9.2 Each party agrees that, as a recipient, it shall at all times maintain the confidentiality of all Confidential Information, using the same degree of care that such party uses to protect its own confidential information, but in any event not less than reasonable care, and not use or disclose to any third party any such Confidential Information, except as may be required by law or court order or as provided under this Agreement. User agrees to take all reasonable steps to protect all Software and any related Documentation delivered by Solution Provider or Hyland to User under this Agreement from unauthorized copying or use. Each party shall be liable and responsible for any breach of this Section 9 committed by any of such party's employees, agents, consultants, contractors or representatives.

10. **FORCE MAJEURE:** No failure, delay or default in performance of any obligation of a party to this Agreement (except the payment of money) shall constitute a default or breach to the extent that such failure to perform, delay or default arises out of a cause, existing or future, beyond the control (including, but not limited to, action or inaction of governmental, civil or military authority; fire, strike, lockout or other labor dispute; flood; war; riot; theft; earthquake; natural disaster or acts of God; national emergencies; unavailability of materials or utilities; sabotage; viruses; or the act, negligence or default of the other party) and without negligence or willful misconduct of the party otherwise chargeable with failure, delay or default. Either party desiring to rely upon any of the foregoing as an excuse for failure, default or delay in performance shall, when the cause arises, give to the other party prompt notice in writing of the facts which constitute such cause, and, when the cause ceases to exist, give prompt notice of that fact to the other party. This Section shall in no way limit the right of either party to make any claim against third parties for any damages suffered due to said causes. If any performance date by a party under this Agreement is postponed or extended pursuant to this Section 10 for longer than ninety (90) calendar days, the other party, by written notice given during the postponement or extension, and at least thirty (30) days prior to the effective date of termination, may terminate this Agreement.

## 11. GENERAL PROVISIONS:

11.1 **Interpretation** The headings used in this Agreement are for reference and convenience purposes only and shall not in any way limit or affect the meaning or interpretation of any of the terms hereof. All defined terms in this Agreement shall be deemed to refer to the masculine, feminine, neuter, singular or plural, in each instance as the context or particular facts may require. Use of the terms "hereunder," "herein," "hereby" and similar terms refer to this Agreement.



**11.2 Waiver.** No waiver of any right or remedy on one occasion by either party shall be deemed a waiver of such right or remedy on any other occasion.

**11.3 Integration.** This Agreement, including any and all exhibits and schedules referred to herein or therein set forth the entire agreement and understanding between the parties pertaining to the subject matter and merges and supersedes all prior agreements, negotiations and discussions between them on the same subject matter. User acknowledges and agrees in entering into the Agreement and its purchases hereunder are not contingent on the availability of any future functionality, features, programs, or services. This Agreement may only be modified by a written document signed by duly authorized representatives of the parties. This Agreement shall not be supplemented or modified by any course of performance, course of dealing or trade usage. User and Solution Provider specifically acknowledge and agree that any other terms varying from or adding to the terms of this Agreement, whether contained in any purchase order or other electronic, written or oral communication made from User to Solution Provider are rejected and shall be null and void and of no force or effect, unless expressly agreed to in writing by both parties. This Agreement will prevail over any conflicting stipulations contained or referenced in any other document. **[CHOOSE ONE OF THE FOLLOWING OPTIONS AS APPLICABLE: (OPTION 1) IF THIS TEMPLATE IS BEING USED TO CONVERT EXISTING PERPETUALLY LICENSED SOFTWARE TO SUBSCRIPTION, USE THIS:** The parties acknowledge and agree that this Agreement supersedes and replaces any and all previous agreements, including click-thru or shrink-wrap agreements, related to all Software previously licensed to User. **(OPTION 2) IF THIS TEMPLATE IS BEING USED TO ADDRESS ADD-ON SUBSCRIPTION LICENSES BY THE PREVIOUSLY LICENSED PERPETUAL SOFTWARE WILL REMAIN PERPETUAL, AND BYLAND ENTERED INTO THE PERPETUAL LICENSE AGREEMENT OR EULA WITH THE CUSTOMER (EITHER WRITTEN OR VIA CLICK-THRU), USE THIS:** The parties acknowledge and agree that this Agreement supersedes and replaces any and all previous agreements, including click-thru or shrink-wrap agreements, related to all Software other than Existing Software. **(OPTION 3): IF THIS IS FOR A NET NEW SUBSCRIPTION CUSTOMER, CHOOSE NEITHER OPTION 1 NOR OPTION 2]**

**11.4 Binding Effect; No Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Neither party may assign, transfer or sublicense all or part of this Agreement or its rights or obligations under this Agreement, in whole or in part, to any other person or entity without the prior written consent of the other party; provided that such consent shall not be unreasonably withheld in the case of any assignment or transfer by a party of this Agreement in its entirety to the surviving entity of any merger or consolidation or to any purchaser of substantially all of such party's assets that assumes in writing all of such party's obligations and duties under this Agreement. Any assignment made without compliance with the provisions of this Section 11.4 shall be null and void and of no force or effect.

**11.5 Export.** Any Software or Documentation provided under this Agreement are subject to export control laws and regulations of the United States and other jurisdictions. User agrees to comply fully with all relevant export control laws and regulations, including the regulations of the U.S. Department of Commerce and all U.S. export control laws, including, but not limited to, the U.S. Department of Commerce Export Administration Regulations (EAR), to assure that the Software or Documentation is not exported in violation of United States of America law or the laws and regulations of other jurisdictions. User agrees that it will not export or re-export the Software or Documentation to any organizations or nationals in the United States embargoed territories of Cuba, Iran, Iraq, North Korea, Sudan, Syria or any other territory or nation with respect to which the U.S. Department of Commerce, the U.S. Department of State or the U.S. Department of Treasury maintains any commercial activities sanctions program. User shall not use the Software or Documentation for any prohibited end uses under applicable laws and regulations of the United States and other jurisdictions, including but not limited to, any application related to, or purposes associated with, nuclear, chemical or biological warfare, missile technology (including unmanned air vehicles), military application or any other use prohibited or restricted under the U.S. Export Administration Regulations (EAR) or any other relevant laws, rules or regulations of the United States of America and other jurisdictions.

**11.6 U.S. Government End Users.** To the extent applicable to User, the terms and conditions of this Agreement shall pertain to the U.S. Government's use and/or disclosure of the Software and shall supersede any conflicting contractual terms or conditions. By accepting the terms of this Agreement and/or the delivery of the Software, the U.S. Government hereby agrees that the Software qualifies as "commercial" computer software within the meaning of AII U.S. Federal acquisition regulation(s) applicable to this





procurement and that the Software is developed exclusively at private expense. If this license fails to meet the U.S. Government's needs or is inconsistent in any respect with Federal law, the U.S. Government agrees to return this Software to Solution Provider. In addition to the foregoing, where DFARS is applicable, use, modification, reproduction, release, display, or disclosure of the Software or Documentation by the U.S. Government is subject solely to the terms of this Agreement, as stated in DFARS 227.7202, and the terms of this Agreement shall supersede any conflicting contractual term or conditions.

**11.7 Injunctive Relief:** The parties to this Agreement recognize that a remedy at law for a breach of the provisions of this Agreement relating to Confidential Information and intellectual property rights will not be adequate for aggrieved party's protection and, accordingly, the aggrieved party shall have the right to seek, in addition to any other relief and remedies available to it, specific performance or injunctive relief to enforce the provisions of this Agreement.

**11.8 English Language Controls:** This Agreement was originally prepared in the English language. Although Solution Provider may provide one or more translations of this Agreement into another language, and you may actually sign one of those translations, this is done solely for your convenience. The English language version of this Agreement will control for all purposes in the case of any conflict or discrepancy between the English language version and any translations.

**11.9 Expenses:** Except as otherwise specifically provided herein, each party shall bear and pay its own expenses incurred in connection with this Agreement and the transactions contemplated hereby.

**11.10 Third Parties:** Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the parties hereto, any rights or remedies by reason of this Agreement; provided, however, that third party suppliers of software products bundled with the Software are third party beneficiaries to this Agreement as it applies to their respective software products. Notwithstanding the foregoing, User and Solution Provider expressly acknowledge and agree that Hyland is a third-party beneficiary of this Agreement and shall be entitled to enforce this Agreement to the full extent of the law as if Hyland were a party hereto. Hyland shall be afforded all remedies available to any party to this Agreement under the terms hereof or under applicable law.

Version: January 2023

**Intelichart third party pass through terms:**

**ARTICLE I – DEFINITIONS**

"Documentation" means those materials provided to Client that describe the function and use of the Portal, including without limitation the online user guide for the Portal, as updated from time to time.

"Intelichart" or "Supplier" means Intelichart, LLC, a North Carolina limited liability company.

"Netsmart Agreement" means a written agreement between Netsmart and Client, including all schedules, exhibits, and addenda thereto, pursuant to which Client is purchasing subscriptions to access and use the Portal.

"Order Form" means a Netsmart order form submitted by Client in order to (i) purchase additional User subscriptions to the Portal, and/or (iii) purchase Services from Netsmart. Each Order Form shall be in a form acceptable to Netsmart and shall not be deemed effective unless accepted in writing by Netsmart in its sole discretion. The terms of each such Order Form are hereby incorporated by reference.

**ARTICLE II - SUBSCRIPTION AND SERVICES**

(a) **Subscription Purchases.** During the Term Netsmart shall make the Portal available to the Client pursuant to, and in accordance with, the Terms, the Netsmart Agreement and each of the applicable exhibits, schedule(s) and/or Order Forms thereto. Client agrees that its subscriptions hereunder are neither contingent on the delivery of any future functionality or features in the Portal nor dependent on any oral or written public comments made by Netsmart regarding future functionality or features in the Portal. For avoidance of doubt, Client acknowledges and agrees that its right to access and use the Portal is subscription-based and is not being provided pursuant any perpetual license grant included within the Netsmart Agreement; provided, however, that the restrictions and limitations imposed on the Licensed Programs included in the Netsmart Agreement shall apply to your access and use of the Portal.

(b) **User Subscriptions.** Unless otherwise specified in an applicable Order Form, (i) the Portal shall be purchased as User subscriptions and may be accessed by no more than the number of Users purchased by Client from Netsmart, (ii) additional User subscriptions for the Portal may be purchased during the term of the Netsmart Agreement by submitting an Order Form, and (iii) the additional User subscriptions for the Portal shall terminate on the same dates as the then-existing subscriptions for the Portal. User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Portal.



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(c) **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Netsmart reserve all rights, title and interest in and to the Portal, including all related intellectual property rights. No rights are granted to Client hereunder other than as expressly set forth herein.

(d) **Client Responsibilities.** Client shall (i) be responsible for its User's compliance with the Netsmart Agreement, (ii) be solely responsible for the accuracy, quality, integrity and legality of the Patient Data and of the means by which Client acquired the Patient Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Portal, and notify Netsmart promptly of any such unauthorized access or use, (iv) use the Portal only in accordance with the Documentation and all applicable federal and state laws and regulations, (v) not make the Portal available to anyone other than its Users, its administrative personnel and Client's patients, provided that in each such instance that Client shall ensure that such individual (A) shall use the Portal only in accordance with the Documentation and all applicable federal and state laws and regulations and (B) shall not access and/or use the Portal in order to build a competitive product or service, copy any features, functions or graphics of the Portal, or monitor the availability and/or functionality of the Portal for any benchmarking or competitive purposes, (vi) not sell, resell, rent or lease the Portal, (vii) not modify, alter, revise, decompile, disassemble, reverse engineer, create derivative works or attempt to derive the source code of the Portal, (viii) not use the Portal to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (ix) not store or transmit any material containing software viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs, (x) not interfere with or disrupt the integrity or performance of the Portal, (xi) not attempt to gain unauthorized access to the Portal or their related systems or networks, or (xii) not access the Portal in order to build a competitive product or service, copy any features, functions or graphics of the Portal or monitor the availability and/or functionality of the Portal for any benchmarking or competitive purposes.

(e) **Patient Data.** As between Netsmart and Client, Client exclusively owns all rights, title and interest in and to all of the Patient Data. Client hereby grants Netsmart and IntelliChart a non-exclusive, unrestricted royalty-free license to distribute, modify, transmit, display and otherwise exploit any de-identified information contained in the Patient Data, in any medium, including without limitation, incorporating such de-identified information into Netsmart's and/or IntelliChart's national data repository, as well as submission and sublicense of such de-identified information to third parties for independent studies and analyses, provided, however, that Netsmart's and IntelliChart's right to distribute, modify, transmit, display and otherwise exploit certain personally identifiable



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Patient Data of Client submitted to the Portal shall be governed by, subject to, and exploited in a manner consistent and acceptable with then-current HIPAA regulations.

**Article III - WARRANTIES AND INDEMNIFICATION**

(a) **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THE NETSMART AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

(b) **Netsmart Breach.** Client acknowledges and agrees that should Netsmart discontinue provisions of services under the Netsmart Agreement, or materially breach its reseller agreement with IntelliChart, then Client may negotiate directly with IntelliChart to obtain subscriptions/licenses and/or services previously provided by or through Netsmart.

(c) **IntelliChart Remedies.** Client acknowledges and agrees that if Client has breached the terms of the Netsmart Agreement as it relates to the Portal, IntelliChart may exercise and enforce in Netsmart's name all of Netsmart's rights under the Netsmart Agreement, subject to the terms of its reseller agreement with Netsmart.

(d) **Indemnity by Client.** Client shall defend IntelliChart from and against any Claim made or brought by a third party against IntelliChart alleging that (i) the Patient Data, or (ii) Client's misuse of the Portal infringes or misappropriates such third party's United States patent, copyright, trademark, or trade secret rights, and shall indemnify IntelliChart for any damages finally awarded against, and for reasonable attorney's fees incurred by, IntelliChart in connection with any such Claim; provided that IntelliChart, as applicable, (x) promptly gives Client written notice of the Claim; (y) gives Client sole control of the defense and settlement of the Claim (provided that Client may not settle any Claim unless the settlement unconditionally releases IntelliChart of all liability); and (z) provides to Client all reasonable assistance, at Client's expense.

(e) **LIMITATION OF LIABILITY.** CLIENT ACKNOWLEDGES AND AGREES THAT IN NO EVENT SHALL INTELIChart HAVE ANY LIABILITY TO CLIENT, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE. CLIENT AGREES THAT THE PORTAL IS A DOCUMENTATION TOOL ONLY, AND THAT THE PORTAL IS NOT INTENDED TO PROVIDE DIAGNOSES, PRACTICE GUIDELINES, ADVICE, OR PROTOCOLS FOR DELIVERING MEDICAL CARE. CLIENT



www.intellicart.com

FURTHER AGREES THAT NOTHING IN THE PORTAL OR ANYTHING ELSE PROVIDED PURSUANT TO THE NETSMART AGREEMENT CONSTITUTES OR IS INTENDED TO BE MEDICAL ADVICE OR A SUBSTITUTE FOR MEDICAL KNOWLEDGE OR JUDGMENT. CLIENT FURTHER AGREES IT SHALL BE SOLELY RESPONSIBLE TO ENSURE THAT THE DOCUMENTATION OF MEDICAL CARE PROVIDED BY IT, ITS AFFILIATES OR THEIR RESPECTIVE EMPLOYEES, AGENTS, THIRD PARTY CONTRACTORS, AND SUPPLIERS IS ACCURATE AND THAT ALL BILLING INFORMATION DELIVERED BY CLIENT TO ANY INSURANCE COMPANY, GOVERNMENTAL AGENCY, OR OTHER PAYOR SHALL BE ACCURATE AND COMPLETE. NEITHER NETSMART NOR ITS VENDORS SHALL HAVE ANY RESPONSIBILITY AS A RESULT OF THE NETSMART AGREEMENT FOR DECISIONS MADE OR ACTIONS TAKEN OR NOT TAKEN IN RENDERING MEDICAL CARE OR FOR INFORMATION PROVIDED TO ANY INSURANCE COMPANY, GOVERNMENTAL AGENCY, OR OTHER PAYOR.

#### ARTICLE IV - MISCELLANEOUS

- (a) **Assignment.** Client shall have no right to transfer, assign or sublicense any of its rights, interests or obligations with respect to the Portal to any third party and any attempt to do so shall be null and void.
- (b) **Conflicting Terms.** In the event of any conflict, overlap and/or contradiction of terms between the Netsmart Agreement and the Terms, these Terms shall prevail.





**Intelligent Medical Objects, Inc. third party pass through terms:**

This product(s) contains the IMO Problem IT terminology products ("Service") from Intelligent Medical Objects, Inc. ("IMO"). The Service and the Netsmart Software Application are separate products provided by separate entities.

Every effort has been made to ensure that the information provided in the Service is accurate, up-to-date, and complete, but no guarantee is made to that effect. In addition, the information contained herein may be time-sensitive.

The Service does not endorse drugs, diagnose patients, or recommend therapy. The Service is an informational resource designed to assist licensed healthcare practitioners in caring for their patients. Health practitioners should use their professional judgment in using the information provided. The Service is not a substitute for the care provided by licensed healthcare practitioners. IMO does not assume any responsibility for any aspect of healthcare administered with the aid of information the Service provides.

**License Grant**

The license granted herein is a non-exclusive, non-transferrable license to use the Service worldwide during the term of the agreement subject to the terms of this EULA. This license includes the rights to: (i) use the Service solely in conjunction with the Netsmart Software Application, and (ii) use of the Service for internal purposes in a non-production/non-clinical setting for back-up, archival, support, testing, training, and demonstrations purposes.

**Restrictions**

End User shall not cause or permit others to copy, duplicate, redistribute, loan, rent, retransmit, publish, license or sublicense or otherwise transfer or commercially exploit, the Service in whole or part. End User shall not prepare derivative works or incorporate the Service, in whole or part, in any other system or work or reverse engineer decompile, disassemble, decrypt, translate, alter, or modify the Service, in whole or part.

**Disclaimer of Warranties**

THE CUSTOMER ACKNOWLEDGES THAT THE SERVICE IS PROVIDED ON AN "AS-IS" BASIS. EXCEPT FOR WARRANTIES WHICH MAY NOT BE DISCLAIMED AS A MATTER OF LAW, IMO MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO REPRESENTATIONS OR WARRANTIES REGARDING THE ACCURACY OR NATURE OF THE CONTENT OF THE SERVICE, WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

THE SERVICE HAS BEEN DESIGNED FOR USE IN THE UNITED STATES ONLY AND COVERS ONLY DRUG PRODUCTS USED IN PRACTICE IN THE UNITED STATES. IMO PROVIDES NO CLINICAL INFORMATION OR CHECKS FOR DRUGS NOT AVAILABLE FOR SALE IN THE UNITED STATES. CLINICAL PRACTICE PATTERNS OUTSIDE THE UNITED STATES MAY DIFFER SUBSTANTIALLY FROM INFORMATION SUPPLIED BY THE SERVICE. IMO DOES NOT WARRANT THAT USES OUTSIDE THE UNITED STATES ARE APPROPRIATE.

The End User acknowledges that Updates to the Service are at the sole discretion of IMO. IMO makes no representations or warranties whatsoever, express or implied, with respect to the compatibility of the Service, or future releases thereof, with any computer hardware or software, nor does IMO represent or warrant the continuity of the features or the facilities provided by or through the Service as between various releases thereof.



[www.imo.com](http://www.imo.com)



Any warranties expressly provided herein do not apply if: (i) the End User alters, mishandles or improperly uses, stores or installs all, or any part, of the Service, (ii) the End User uses, stores, or installs the Service on a computer system which fails to meet the specifications provided by IMO, or (iii) the breach of warranty arises out of or in connection with acts or omissions of persons or entities other than IMO.

**Assumption of Risk, Disclaimer of Liability, Indemnity**

THE END USER ASSUMES ALL RISK FOR SELECTION AND USE OF THE SERVICE AND CONTENT PROVIDED THEREIN. IMO SHALL NOT BE RESPONSIBLE FOR ANY ERRORS, MISSTATEMENTS, INACCURACIES OR OMISSIONS REGARDING CONTENT DELIVERED THROUGH THE SERVICE OR ANY DELAYS IN OR INTERRUPTIONS OF SUCH DELIVERY.

THE END USER ACKNOWLEDGES THAT IMO: (A) HAS NO CONTROL OF OR RESPONSIBILITY FOR THE END USER'S USE OF THE SERVICE OR CONTENT PROVIDED THEREIN, (B) HAS NO KNOWLEDGE OF THE SPECIFIC OR UNIQUE CIRCUMSTANCES UNDER WHICH THE SERVICE OR CONTENT PROVIDED THEREIN MAY BE USED BY THE END USER, (C) UNDERTAKES NO OBLIGATION TO SUPPLEMENT OR UPDATE CONTENT OF THE SERVICE, AND (D) HAS NO LIABILITY TO ANY PERSON FOR ANY DATA OR INFORMATION INPUT INTO THE SERVICE BY THE END USER.

IMO SHALL NOT BE LIABLE TO ANY PERSON (INCLUDING BUT NOT LIMITED TO THE END USER AND PERSONS TREATED BY OR ON BEHALF OF THE END USER) FOR, AND THE END USER AGREES TO INDEMNIFY AND HOLD HARMLESS FROM ANY CLAIMS, LAWSUITS, PROCEEDINGS, COSTS, ATTORNEY'S FEES, DAMAGES OR OTHER LOSSES (COLLECTIVELY "LOSSES") ARISING OUT OF OR RELATING TO (A) THE END USER'S USE OF THE SERVICE OR CONTENT PROVIDED THEREON OR ANY EQUIPMENT FURNISHED IN CONNECTION THEREWITH AND (B) ANY DATA OR INFORMATION INPUT INTO THE SERVICE BY END USER, IN ALL CASES INCLUDING BUT NOT LIMITED TO LOSSES FOR TORT, PERSONAL INJURY, MEDICAL MALPRACTICE OR PRODUCT LIABILITY. FURTHER WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL IMO BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, LOSS OF BUSINESS OR DOWN TIME, EVEN IF IMO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE INFORMATION CONTAINED WITHIN THE SERVICE IS INTENDED FOR USE ONLY BY PHYSICIANS AND OTHER HEALTHCARE PROFESSIONALS WHO SHOULD RELY ON THEIR CLINICAL DISCRETION AND JUDGEMENT IN DIAGNOSIS AND TREATMENT. AS BETWEEN THE END USER AND IMO, THE END USER HEREBY ASSUMES FULL RESPONSIBILITY FOR INSURING THE APPROPRIATENESS OF USING AND RELYING UPON THE INFORMATION IN VIEW OF ALL ATTENDANT CIRCUMSTANCES, INDICATIONS, AND CONTRADICTIONS.

**Liability of IMO to the End User**

Under no circumstance shall IMO be liable to the End User or any other person for any direct, indirect, or exemplary, special, or consequential damages arising out of or relating to the End User's use of or inability to use the Service or the content of the Service provided therein or any equipment furnished in connection therewith. IMO's total liabilities in connection with this Agreement are limited to the fees received by IMO under this agreement specifically relating to the End User's service or product which is the subject of the claim.

**End User Documentation**

End User is responsible for generating any user documentation related to the Services



#### Security

End User shall establish the appropriate firewalls and security systems, such that the Service is accessed only by the defined End Users and is not used in an unauthorized manner.

#### Copyright Notices

End User shall identify IMO as the source and copyright holder for the Service. Further, End User agrees not to obscure the IMO copyright notice in any instance.

#### DSM-IV-TR License Required

Customer and End User acknowledge that use of the IMO Problem IT products by End Users requires a DSM-IV-TR license for each End user from the American Psychiatric Association.

The Customer and End User represent and warrant that they have, and will maintain for the term of the agreement, APA DSM-IV-TR and DSM-5 codes licenses directly from the APA or an authorized reseller for Customer's End Users.

#### **SOLELY FOR CUSTOMERS ACCESSING THE SERVICE VIA HOMECARE:**

#### Third Party Content

- (a) **CPT® Content.** END-USER acknowledges that use of IMO® Procedure IT terminology requires CPT Editorial Content licenses that are separate from the license granted herein. End User acknowledges and agrees to the CPT Editorial Content terms and conditions set forth at [www.e-imo.com/CPT](http://www.e-imo.com/CPT), which may be updated from time to time.
- (b) **SNOMED CT® Content.** The Service includes SNOMED Clinical Terms (SNOMED CT®) which is used by permission of the International Health Terminology Standards Development Organisation (IHTSDO). All rights reserved. SNOMED CT®, was originally created by The College of American Pathologists. "SNOMED" and "SNOMED CT" are registered trademarks of the IHTSDO.
- (c) **Other Content.** END-USER acknowledges that the Service includes additional third-party content. END-USER agrees to the terms and conditions set forth at [www.e-imo.com/LOINC](http://www.e-imo.com/LOINC), which may be updated from time to time.

Updated August 16, 2010



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INTERSYSTEMS PASS THROUGH PROVISIONS AND TERMS OF SALE

**LICENSE AND SUPPORT SERVICES AGREEMENT**

1. This License Agreement is between InterSystems ("InterSystems") and the end user customer ("you", the "Customer" or the "End User"). This License Agreement shall not be binding until an order form has been fully executed.
2. As of the date specified on the Order Form or, if no date is specified, on the date the Order Form has been fully executed (the "Effective Date"), InterSystems hereby grants to you a nontransferable and nonexclusive license (the "License") to use the InterSystems product(s) named in the Order Form (the "Licensed Software"), provided all fees set forth on the Order Form are paid, for internal use within your organization in the conduct of your business. You may use the Licensed Software only in conjunction with the myAvatar application / solution ("AP Software"). Unless otherwise provided on the Order Form, you may not use the Licensed Software to provide services to your customers or other third parties or to exchange data or information with third parties. No License shall be granted upon the physical delivery of any software to you. For the avoidance of doubt, the "Licensed Software" shall not include any open source or third party software that may be shipped with, installed with or used in conjunction with InterSystems' proprietary software.
3. If you acquire the License directly from InterSystems, then the Order Form is executed by you and InterSystems, and you are responsible for paying all fees specified therein to InterSystems. If you acquire the License via a third party (a "Partner"), then the Order Form is executed by the Partner and InterSystems, and the Partner is responsible for paying all fees specified therein to InterSystems. From time to time, the size and/or scope of your License may be adjusted, which adjustment will be reflected in a new Order Form.
4. Your License is subject to InterSystems' standard Terms and Conditions in effect from time to time, relating to the Licensed Software ("Product Terms"). The Product Terms can be found at [www.intersystems.com/etc](http://www.intersystems.com/etc).
5. Your Order Form will specify whether this License is a paid-up or a subscription license. The term of a paid-up License shall be 30 years from the Effective Date ("License Term"). The License Term of a subscription License begins on the Effective Date and is renewed automatically from year to year on the anniversary of the Effective Date unless proper notice of non-renewal is provided. The License Term of a paid-up or a subscription License is subject to earlier termination in accordance with section 11 below.
6. The Licensed Software may only be used on servers operated by you or on your behalf. You may not sublicense the Licensed Software or otherwise make it available to third parties except as explicitly provided herein.



Copyright (C) 2009 InterSystems



7. Software Update and Technical Assistance services ("Support Services") shall be provided in accordance with the Product Terms and pricing in effect on the date such Support Services are invoiced. Support Services are renewed automatically from year to year on the anniversary of the Effective Date unless proper notice of non-renewal is provided.
8. InterSystems hereby warrants to you that (i) the Licensed Software will operate substantially in accordance with InterSystems' documentation relating thereto for one year from the Effective Date or the end of the License Term, whichever occurs first, and (ii) all Support Services shall be performed in a competent, workmanlike and professional manner by personnel with sufficient training and experience commensurate with their roles to provide the services in the manner and time required, and in a manner consistent with industry standards. The foregoing warranties are conditioned upon the use of the Licensed Software strictly in accordance with InterSystems' documentation and instructions, and the absence of any misuse, damage, alteration or modification thereof. INTERSYSTEMS SHALL NOT BE DEEMED TO HAVE MADE ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION, MERCHANTABILITY, TITLE, NON-INFRINGEMENT, DESIGN, OPERATION OR FITNESS FOR A PARTICULAR PURPOSE OF THE LICENSED SOFTWARE OR SUPPORT SERVICES. Your exclusive remedy for a breach of the above warranties shall be for InterSystems to use reasonable efforts to repair, replace or re-perform any non-conforming Licensed Software or Support Services, as applicable. THE LIMITED WARRANTY HEREIN DOES NOT INCLUDE SUPPORT SERVICES AND IS NOT A SUBSTITUTE FOR SUCH SERVICES, WHICH IN THE CASE OF A PAID-UP LICENSE, ARE AVAILABLE FOR A SEPARATE FEE.
9. In the event of a claim that the Licensed Software that has not been altered, modified, misused or damaged infringes upon the intellectual property rights of a third party when used in accordance with InterSystems' documentation and instructions, InterSystems shall either (a) modify the Licensed Software, (b) procure a license for you to use the Licensed Software or (c) terminate your License, at InterSystems' sole discretion. If (a) and (b) are not commercially reasonable, InterSystems' will refund (i) for subscription licenses all pre-paid, unused fees paid by Partner and (b) for a paid up license, a pro-rata refund of the license fees paid depreciated on a three year straight line basis, in exchange for return of the Licensed Software. This Section 9 shall constitute your sole remedy and InterSystems' maximum liability for claims arising under this Section 9.
10. InterSystems' liability to you shall in no event exceed the portion of the fee received by InterSystems in respect of the specific Licensed Software or Support Services on account of which such liability arose. In no event shall InterSystems be liable to you for any special, incidental, exemplary, indirect or consequential damages or lost profits.
11. Either party may terminate this License Agreement with 30 days advance written notice upon the other party's material breach if the breach is not cured during that period. Either party may terminate this License Agreement immediately upon written notice to the other party if the other party declares bankruptcy, makes an assignment for the benefit of creditors, or ceases to function as a going concern. In addition, you may terminate this License Agreement upon 30 days advance written notice if InterSystems discontinues support for the platform on which the Licensed Software operates. A subscription License shall terminate automatically on the last day of the final period for which



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InterSystems has received the proper fee. You shall be liable for all fees relating to Licensed Software or Support Services provided prior to termination, and Sections 11, 12, 13, 14 and 15 hereof shall survive termination or expiration of this License Agreement. Your rights to use the Licensed Software cease immediately upon termination or expiration of this License Agreement.

12. The Licensed Software and related documentation are and shall remain the sole property of InterSystems. You agree not to (i) decompile, disassemble, or reverse engineer the Licensed Software or (ii) disclose to others the Licensed Software or any data or information relating to the Licensed Software. In addition, you agree not to use or disclose any confidential information provided to you by InterSystems or its affiliates contained in or relating to the Licensed Software, Support Services or this business relationship. You agree to allow InterSystems or its representatives to audit your use of the Licensed Software upon 5 days advance notice by InterSystems. You agree to provide access to your premises and otherwise cooperate with InterSystems in such audit.
13. The parties are and shall be independent contractors to one another, and this License Agreement shall not create an agency, partnership or joint venture between the parties. Neither party nor its employees, agents or representatives shall be deemed to be an agent or employee of the other party and each party acknowledges that it is not authorized to bind or in any way commit the other party to any legal, financial or any other obligation.
14. This License Agreement shall be governed by and construed in accordance with the laws of, and the parties agree to submit to exclusive jurisdiction of the Commonwealth of Massachusetts, USA.
15. You agree to comply with all applicable laws, including, but not limited to: U.S. export control or similar laws with respect to the distribution of the Licensed Software, Support Services and technical data; the US Foreign Corrupt Practices Act and any other anti-corruption laws; and applicable data protection laws. Without InterSystems' prior written consent, you may not allow the Licensed Software, Support Services or technical data to be exported to or used in a country or region where a license, permit or special permission is required. The English version of this License Agreement shall control unless otherwise required by local law.
16. This document, as well as the Product Terms in effect as of the Effective Date (or, in the case of Support Services, as of the date such Support Services are provided), constitute the entire agreement (the "License Agreement") between you and InterSystems relating to your use of the Licensed Software and receipt of Support Services and supersedes any prior understandings between us as well as any purchase orders or similar documents that may be submitted to InterSystems. InterSystems shall have the right to transfer or assign this License Agreement without your consent or prior notice to you. You may not assign this License Agreement without InterSystems' prior written consent. This License Agreement may only be modified or amended by a writing signed by both parties.

Version 2 - March 2021





**Intersystems Corp third party pass thru terms:**

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**9. Limitation of Liability.** ANY OTHER TERMS OF THIS LICENSE AGREEMENT NOTWITHSTANDING, EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS TO THE OTHER PARTY AS PROVIDED IN THIS LICENSE AGREEMENT OR IN ANY OTHER AGREEMENT BETWEEN YOU AND LICENSOR CONCERNING THE SOFTWARE, UNDER NO CIRCUMSTANCES SHALL YOU OR LICENSOR BE LIABLE TO THE OTHER OR ANY PERSON CLAIMING THROUGH THE OTHER, WHETHER IN CONTRACT, TORT OR OTHERWISE, FOR ANY LOSS OF PROFITS, LOSS OF USE OF EQUIPMENT, LOSS OR CORRUPTION OF DATA OR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR FOR ANY PAYMENT RELATED TO OR AS A RESULT OF SUCH LOSSES OR DAMAGES ARISING OUT OF OR OTHERWISE RELATED TO THIS LICENSE AGREEMENT, THE SOFTWARE OR USER DOCUMENTATION, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND WITHOUT REGARD TO ANY DETERMINATION THAT ANY REMEDY SPECIFIED IN THIS LICENSE AGREEMENT FAILS ITS ESSENTIAL PURPOSE. NEITHER PARTY'S CUMULATIVE LIABILITY TO THE OTHER PARTY OR TO ANY PERSON CLAIMING THROUGH THE OTHER UNDER THIS LICENSE AGREEMENT SHALL EXCEED AN AMOUNT EQUAL TO THE LICENSE FEES PAID BY YOU TO LICENSOR FOR THE SOFTWARE.

**10. Indemnification.** You agree to hold harmless, indemnify and, at Licensor's request, defend Licensor, its affiliates and their respective officers, directors, agents and employees (collectively, "Licensor Parties") from and against any and all claims (including liabilities, damages, losses, costs and expenses and reasonable attorneys' fees) to the extent arising out of any action or proceeding brought by a third party against any one or more of the



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Licensor Parties related to (a) any act or omission by you which is a breach by you of any terms of this License Agreement, or (b) your willful misconduct or negligent acts or omissions.

**11. Intellectual Property.** You recognize, as between you and Licensor, Licensor's ownership in and title to all trademarks and/or service marks owned by Licensor, including DOCUMENT CAPTURE, IMAGENOW, IMAGE NOW, WEBNOW, CAPTURENOW, ISCRIP and PERCEPTIVE SOFTWARE, including any and all common law and registered rights throughout the world (hereinafter the "Trademarks"). You also recognize, as between you and Licensor, Licensor's ownership in and to any and all copyrights, patents, trade dress, trade secrets and/or any other intellectual property rights related to the Software and the User Documentation (hereinafter "Intellectual Property Rights"). No right, license or interest is granted for any Intellectual Property Right unless expressly provided herein, and Licensor reserves all rights therein. No right, license or interest in or to any of the Trademarks is granted hereunder, and you agree that you shall assert no such right, license or interest with respect to such Trademarks. Furthermore, you shall not contest the validity of any of the Trademarks or Intellectual Property Rights, claim adversely to Licensor any right, title or interest in and to the Trademarks or Intellectual Property Rights and shall not use, register, apply to register or aid a third party in registering the Trademarks or Intellectual Property Rights during the term of this License Agreement or any time thereafter. If Licensor considers it advisable to record you as a licensee of the Trademarks, you agree to cooperate in such procedure and to execute any documents submitted to you for this purpose.

**12. Notices.** Any notices, demands or other communications required or permitted under this License Agreement shall be in writing and shall be deemed to have been given: (a) upon receipt if delivered personally; (b) five (5) days after deposit in the mail if sent by U.S. certified mail, postage prepaid, return receipt requested; and (c) upon receipt if delivered to a recognized overnight courier or delivery service which provides international service, fees prepaid; in each case addressed to the party for whom it is intended at the address for such party as last provided to the other.

**13. Governing Law.** This License Agreement shall be construed and governed in accordance with the internal laws of the State of Kansas, U.S.A. without regard to its rules of conflict or choice of law provisions that would require the application of the laws of any other jurisdiction. The parties hereto agree to submit to the exclusive jurisdiction and venue of the District Court of Johnson County, Kansas,

U.S.A. and the Federal District Court of Kansas located in Kansas City, Kansas,



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arising under or related to this License Agreement. In each case, this License Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

**14. Costs of Litigation.** If any action is brought by either party to this License Agreement against the other party regarding the subject matter hereof, the prevailing party shall be entitled to recover, in addition to any other relief granted, reasonable attorneys' fees and costs and expenses of investigation and litigation.

**15. Severability.** Should any term of this License Agreement be declared void or unenforceable by any court of competent jurisdiction, such declaration shall have no effect on the remaining terms hereof.

**16. No Waiver.** The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

**17. Export Laws.** You acknowledge that the export laws and regulations of the United States and other relevant local export laws and regulations apply to the Software, the User Documentation and other technical data provided to you under this License Agreement.

**18. Miscellaneous.** No amendment, modification or waiver of this License Agreement or any provision hereof shall be effective unless it is in writing and signed by a duly authorized representative of you and Licensor. This License Agreement, together with any other agreement between you and Licensor concerning the Software, represents the entire agreement between Licensor and you concerning the Software and User Documentation, and any and all other prior agreements, representations, statements, negotiations and undertakings with respect to such subject matter, are terminated and superseded hereby; provided, however, that in the event of any conflict between the terms of this License Agreement and any such other Agreement between you and Licensor, the terms of this License Agreement shall control.

Licensor, upon thirty (30) days written notice to you and not more than once during each calendar year during the term of this License Agreement and once during the one (1) year period following the termination of this License Agreement, at Licensor's expense, may enter upon your premises during your regular business hours to audit your use of the Software. You agree to cooperate with Licensor's audit and provide reasonable assistance and access to information. If pursuant to any such audit Licensor discovers any excess unlicensed use of the Software, you agree to pay within thirty (30) days of written notification an amount equal to the sum of (a) the license fees and support and



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maintenances fees which Licensor would have received if your excess unlicensed use of the Software had been licensed, (b) interest on such fees from the date such additional fees should have been paid at the rate of twelve percent (12%) per annum or the maximum interest rate permitted by law, whichever is lower, and (c) all costs and expenses incurred by Licensor in conducting such audit. If you fail to pay such amount within thirty (30) days of being invoiced for such amount, Licensor may terminate your licenses of the Software and any maintenance and support of the Software. You shall be responsible for any of your costs incurred in cooperating with any such audit.

This License Agreement shall bind and inure to the benefit of the parties, as applicable, and their respective permitted successors and assigns.

Except for actions for nonpayment or violation of Licensor's rights in the Software, Trademarks or Intellectual Property Rights, no action, regardless of form, arising out of or relating to this License Agreement may be brought by either party more than two (2) years after the cause of action has accrued. Except as otherwise provided in this License Agreement, all remedies of the parties hereunder are non-exclusive and are in addition to all other available legal and equitable remedies.

Neither party shall be responsible or liable for failure to fulfill its obligations under this License Agreement (except for payment of any purchase price or other fees) due to any major unforeseeable event beyond the control of, and not caused by the fault or negligence of, such party or its agents, including, without limitation, an act of God, fire, earthquake, flood, explosion, action of the elements, war invasion, terrorism, insurrection, riot, mob violence, sabotage, inability to procure equipment, facilities, materials or supplies in the open market, failure of power, failure of transportation, strike, lockout, action of labor unions, condemnation, requisition, law or order of government, civil or military authorities; provided that the party failing to perform in such event shall promptly resume or remedy, as the case may be, the performance of its obligations hereunder, as soon as practicable.

The headings and captions of the sections and paragraphs of this License Agreement are for convenience of reference only and are not to be used to modify or interpret this License Agreement. The terms of Sections 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of this License Agreement shall survive the termination of this License Agreement. The controlling language of this License Agreement is English. If you have received a translation of this License Agreement into another language, it has been provided for your convenience only.

The Uniform Computer Information Transactions Act does not apply to this license of the Software



A small, faint version of the Netsmart logo, consisting of the stylized green figures and the word "Netsmart".



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[END OF THIRD PARTY PASS THROUGH AGREEMENTS]

## ATTACHMENT A-3 Terms of Use Agreements

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### The Laboratory Data Management Terms of Use Agreement

The Laboratory Data Management Terms of Use Agreement ("EULA") is a legal agreement made this 1/26/2023, between You (hereinafter referred to as "Client") and Laboratory Corporation of America Holdings (hereinafter referred to as "LabCorp") for Client's use of the Laboratory Data Management system. As used in this Agreement, the term "Client" includes the medical group practice, the ordering physician or other person as designated by applicable laws, rules and regulations

WHEREAS, both parties acknowledge the mutual operational efficiencies that can be derived from automated laboratory results transmission and retrieval, use of Client patient demographics for test ordering and off-hours reporting; and

WHEREAS, the parties desire to enter into an agreement whereby LabCorp will provide Laboratory Data Management Software and/or Hardware ("LDM" System) to Client as set forth herein and Client will use the LDM System of LabCorp; and

WHEREAS, Client acknowledges the Restricted Use of the LDM System as hereinafter provided.

The Parties hereby agree as follows:

#### A. LDM System

1. The Laboratory Data Management System ("LDM System") may consist of any or all of the software, hardware and components identified in this Section A1:
  - a. Interface. After acceptance of this Agreement by Client, and subject to confirmation and acceptance by LabCorp, LabCorp agrees to arrange with Client's Software Vendor, Change Healthcare, ("Vendor") for the purchase, installation and any applicable and temporary initial maintenance of the "Interface" described as follows: either a Uni-directional Interface developed by Vendor which allows LabCorp to electronically transmit patient test results into Client's System, or a Bi-Directional Interface developed by Vendor which allows LabCorp to electronically transmit patient test results into Client's System and allow LabCorp to electronically receive laboratory test requisitions sent from Client's system. The type of interface arranged is at the sole discretion of LabCorp.
  - b. Necessary Equipment. LabCorp may provide Client, at no additional charge, peripheral equipment as well as LabCorp Requisition Forms, LabCorp Report Paper and Labels, and Printer Ribbons or Laser Printer Cartridges (as applicable). Client shall use such equipment and supplies for the sole purposes of ordering reference laboratory tests, and the receipt of reference laboratory test results, from LabCorp via the LDM System.

Client shall provide, at its own cost, all telephone service (whether local or long distance), modems, phone lines, computers and other equipment, software, Internet access and any other items or services necessary for Client to use the LDM System.

2. Ownership of LDM System. The LDM System shall be made available to Client's facility(ies) and may not be moved or removed without LabCorp's prior written consent. Client shall attach and at all times keep affixed such labels as LabCorp may direct to show LabCorp's or a third party vendor's ownership interest in the LDM System. Client hereby grants LabCorp the right to inspect the LDM System at any reasonable time and Client shall not make any alterations, additions or improvements to the LDM System without the prior consent of LabCorp. Client shall bear the entire risk of all loss, theft damage or other interruption or termination of use of the LDM System from any cause whatsoever, during any term hereof and until the LDM System is returned to LabCorp. Client shall promptly notify LabCorp in writing of the occurrence of any of the above events.

#### B. Support, Maintenance and Installation

1. Client agrees to cooperate with LabCorp and applicable vendors in the installation of the LDM System. In the event Client fails to cooperate with such development and/or to implement the LDM System within six (6) months from the date the Vendor provides the LDM System to Client, LabCorp in its sole discretion may immediately terminate this Agreement without further notice. If this Agreement terminates as a result of Client's failure to cooperate and/or implement the LDM System, Client agrees to reimburse LabCorp the total cost of the Interface within thirty(30) days of termination of this Agreement.
2. Client shall be responsible for all maintenance, support, upgrade costs and service and other fees which are related to Client's system. For the purposes of this Agreement, "Client System" shall mean any

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1/3

1/26/23, 7:53 AM

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current or future hardware and/or software purchased, leased or otherwise arranged for by Client for Client's use whether or not LabCorp arranges for the provision of the LDM System described herein, including but not limited to, Client's: operating system, office or practice management system, EMR software, word processing software, accounting software, e-mail software, central processing unit ("CPU"), monitor, keyboard, printer, router, and scanner.

#### **C. Compliance with All Laws and Restricted Use**

1. LabCorp is transmitting result reports to Client's Vendor, and into Vendor's system, at Client's direction and authorization and Client maintains the relationship with Vendor. The LDM System shall communicate exclusively with LabCorp, shall relate directly to laboratory services being provided by LabCorp to Client and shall not be used by Client for any other purpose. Client is being provided the LDM System for the sole purpose of receiving LabCorp test results and use of Client patient demographics for test ordering via the LDM System. Client agrees it shall make no other use of the LDM System and agrees further to execute and abide by the terms contained in any additional agreement required by LabCorp or any LDM System software and hardware vendor.
2. It is the intent of the parties hereto to comply with all federal, state and local statutes, regulations and ordinances, including but not limited to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Section 1877 of the Social Security Act (commonly known as the "Stark Provisions") and the anti-kickback provisions set forth in the fraud and abuse sections of 42 U.S.C. 1320(a), as well as and any regulations issued thereunder and any applicable similar state laws and regulations. The parties agree that pursuant to this Agreement, LabCorp shall only provide items, devices, or supplies that are used solely to order or communicate the results of, tests or procedures provided for Client, and that any benefit, consideration or remuneration conferred upon by Client by virtue of this Agreement is not conditioned upon the referral of Medicare or Medicaid testing to LabCorp.
3. Should either party reasonably conclude that any portion of this Agreement is or may be in violation of such requirements or subsequent enactments by federal, state or local authorities, this Agreement shall terminate immediately by written notice thereof to other party unless the parties agree to such modifications of the Agreement as may be necessary to establish compliance with all federal, state, and local statutes, regulations and ordinances. Otherwise, if Client fails to comply fully with the requirements set forth in this Section C, LabCorp shall have the right to immediately remove the LDM System, demand repayment, and terminate this Agreement.

#### **D. Warranty/Liability**

1. Client agrees that any claims related to the establishment or functioning of the LDM System shall be brought to the attention of LabCorp. LabCorp shall not be responsible for any claim in connection with the establishment or performance of the LDM System. Client hereby express releases LabCorp and agrees to indemnify and LabCorp harmless from any and all claims, including any and all claims for property damage, personal injuries and/or consequential, punitive or other damages which arise, or are alleged to have arisen, in connection with the establishment, operation or functioning of the LDM System to the extent that such costs and liabilities are proximately caused by the negligence or misconduct of Client.
2. Unless otherwise specifically agreed to by the parties in a Web-Based Laboratory Services Agreement, Client represents and warrants that it shall not use the LDM System, or other LabCorp connectivity solutions, to provide or support web-based laboratory testing services directly to patients or consumers, either through its own website(s) or, in support of the other websites that offer such direct to consumer testing. In the event of a breach of this section, LabCorp may immediately terminate this Agreement and disconnect the LDM System.

#### **E. Term and Termination**

1. This Agreement shall remain in force and effect for successive annual periods unless terminated. Client and LabCorp shall have the right to terminate this Agreement, with or without cause, by giving the other party a 30 day prior written notice. In addition, if Client should at any time discontinue using LabCorp's laboratory services, the parties acknowledge that there shall be no further need for Client to have the LDM System and this Agreement shall terminate immediately.
2. Client agrees that, in the event of the termination of this Agreement, with or without cause, by either party, the LDM System will be returned to LabCorp, at LabCorp's expense, and client shall return or destroy all copies of any documentation and materials accompanying the LDM System.

#### **F. Assignment**

Client may not assign this Agreement without the prior written consent of LabCorp.

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2/3



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**G. Entire Agreement**

This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter herein and no amendment or modification of its terms shall be valid or binding upon any party unless reduced to writing and signed by authorized representatives of the parties hereto. Any applicable provisions required by federal, state, or local law are hereby incorporated by reference. This EULA supersedes any previous EULA that may have been executed between Client and LabCorp.

Accept

Decline

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30

[END OF TERMS OF USE AGREEMENT]

## **ATTACHMENT B**

### **Scope of Service (Statement of Work)**

- Provide software license subscriptions
- Provide software maintenance and support services including technical support
- Provide software updates needed to comply with Federal and State mandated changes
- Provide recurring services and support associated with a Contractor Hosted solution which entails the management of the hardware, software, and database that will reside on Contractor premise for access by County
- Provide disaster recovery services (with Avatar failover to the secondary data center completed within four hours)
- Provide additional software licenses, subscription services and technical consulting on an "as approved" basis by the County
  - County will submit a written request for a quote
  - Netsmart will provide a written quote "Scope of Work"
  - County will review and provide written approval

[END OF SCOPE OF SERVICE (STATEMENT OF WORK)]

## **ATTACHMENT B-1**

### **Source Code & Escrow Account Requirements**

#### **1. Source Code.**

If the Source Code is released to the COUNTY pursuant to the Escrow Agreement release conditions (Exhibit G) CONTRACTOR grants COUNTY the nonexclusive, nontransferable right to use a copy of the Source Code as described Section 2.

1.1 COUNTY may use, modify and reproduce the Source Code for the purpose of maintaining the System/Installation. COUNTY shall not secure the Source Code to modify or maintain the System for any other entity, or to create new software programs or functions.

1.2 COUNTY shall maintain the secrecy of the Source Code and shall not disclose it to anyone outside of the COUNTY. However, COUNTY may allow a Third Party access to the Source Code for the purpose of maintaining the System installation, as long as the Third Party signs an agreement protecting the confidentiality of the Source Code.

1.3 The use of the Source Code would be limited to the license rights of COUNTY as established in this Contract.

#### **2. Escrow of Source Code**

The Source Code associated with the Licensed Programs shall be deposited in electronic media form and validated annually, with an escrow company pursuant to an escrow agreement. CONTRACTOR currently uses Iron Mountain as its Escrow company. A copy of the Escrow Agreement is attached hereto as Exhibit G.

CONTRACTOR agrees to deliver into escrow, and COUNTY is entitled to receive System Source Code, including Updates, Upgrades, new versions, and Documentation pursuant to the terms and conditions of the Escrow Agreement.

2.1 CONTRACTOR shall add COUNTY to the Escrow Agreement with Escrow Company as a beneficiary. The Escrow Agreement shall govern the terms of the deposit of the Source Code and COUNTY's entitlement to receive the Source Code.

[END OF SOURCE CODE & ESCROW ACCOUNT REQUIREMENTS]



## **ATTACHMENT B-2**

### **Change Order Process**

#### **1.1 Change in Programs.**

The Parties acknowledge that the government programs supported by this Contract will be subject to continuous change during the Term of this Contract. Except as provided for in this Attachment, CONTRACTOR has provided for or will provide for adequate resources subject to the Maintenance and Support provisions of Attachment A for federal law changes, and at no additional cost to COUNTY, will comply with State of California mandated changes during the Term of this Contract, subject to the Change Order process described in this Attachment. If COUNTY adopts a local law, rule or regulation relating to the functions, features and output of the Software and not to the general operation of the CONTRACTOR's business, COUNTY will notify CONTRACTOR in writing prior to the application of such law, rule or regulation to the Software. The Parties agree to meet and discuss any impact to the Software and if necessary, address any change and costs through the Change Order Process described herein.

#### **1.2 Identifying Changes.**

In consideration of CONTRACTOR's knowledge, experience and expertise related to the implementation of Electronic Health Records such as the System, CONTRACTOR agrees to advise COUNTY of any changes in applicable Federal or State law, regulation, codes, policies or guidelines of which it becomes aware and the potential impact of such changes on the performance of the Services or Deliverables or COUNTY's use of the Services or Deliverables. CONTRACTOR agrees to 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. In the ordinary course of business, if COUNTY becomes aware of any material changes in applicable law, regulation, codes, policies or guidelines affecting this Contract, COUNTY will promptly notify CONTRACTOR of the changes and work with CONTRACTOR to identify the impact of such changes on how COUNTY uses the Services or Deliverables.

#### **1.3 Change Order Procedures.**

**1.3.1 Change Request.** If either Party believes that a change (whether in the processes, procedures, standards, Services, time frames, costs or Deliverables) is necessary or desirable, such Party shall submit a written Change Request to the other Party.

**1.3.2 Change Response.** If COUNTY initiates a Change Request, within twenty (20) business days of CONTRACTOR's receipt of such Change Request, CONTRACTOR shall provide to COUNTY a written statement describing in detail: (a) the impact on any System performance, if any, and the modifications to the System that will be required as a result of the Change Request including changes in Services and/or Deliverables; (b) the name and identification of CONTRACTOR's personnel to be assigned and the work hours required to accomplish the Change Request and (c) an estimate of the cost to implement each Change Request (collectively, the "Change Response"). If CONTRACTOR submits a Change Request to COUNTY, such Change Request shall include the information required for a Change Response. COUNTY shall accept or reject any Change Response or CONTRACTOR-initiated Change Request, as applicable, within twenty (20) business days after receipt of same from CONTRACTOR.

**1.3.3 Change Order.** Subject to Section 1.3.2, if COUNTY accepts a Change Response or CONTRACTOR-initiated Change Request in writing, such Change Response, together with COUNTY's Change Request, or such CONTRACTOR initiated Change Request, the Parties will complete a "Change Order" which shall become part of this Contract. If COUNTY rejects CONTRACTOR's Change Response or CONTRACTOR-initiated Change Request, CONTRACTOR shall proceed to fulfill its obligations under this Contract. Without first obtaining COUNTY's prior written approval in accordance with the Change Order procedures set forth in this Section 1.3 (Change Order Procedures), which approval COUNTY may withhold in its sole discretion, CONTRACTOR shall make no Change which may: (a) increase COUNTY's total cost of the Services and/or Deliverables; (b) require changes to COUNTY's Systems, facilities, software, utilities, tools or equipment; (c) require COUNTY to install a new version, release, upgrade of, or replacement for, any software or equipment or to modify any software or equipment excluding software or hardware that is no longer supported by its manufacturer (i.e. Windows); (d) have an adverse impact on the functionality, interoperability, performance, security, accuracy, speed, responsiveness, quality, or resource efficiency of the Services and/or Deliverables; (e) have an adverse impact on the schedule for and the delivery of services and/or products by COUNTY to its clients and customers; or (f) violate or be inconsistent with the applicable Laws.

1.3.4 Administration of Change Orders. The CONTRACTOR Project Manager and the COUNTY Project Manager shall negotiate in good faith any Change Request. If the Parties reach an agreement in writing, the Change Request will be presented for review and approval as follows:

1.3.4.1 Change Requests with no cost shall be presented to the COUNTY Project Manager for initial approval and the COUNTY Executive Team for final approval; and if approved, the CONTRACTOR shall begin to work on the approved Change Order;

1.3.4.2 A Change Request that does not change the term of the Contract and/or is in an amount that does not exceed twenty five thousand dollars (\$25,000) shall be presented to the COUNTY Director of Behavioral Health; provided however, that if the aggregate amount of all approved Change Orders exceeds five (5) percent of the total original Contract amount, any additional Change Requests must be presented to the Board of Supervisors for consideration and approval; and if approved, the terms of this Contract shall be modified accordingly and the CONTRACTOR shall begin to work on the approved Change Order.

1.3.5 Effectiveness of Change Orders. CONTRACTOR shall not be entitled to rely upon the effectiveness of any Change Order unless such Change Order has been approved in writing by the authorized individuals identified in Section 1.3.4 or the Board of Supervisors.

[END OF CHANGE ORDER PROCESS]

## ATTACHMENT B-3 Invoices

CONTRACTOR shall submit correct invoices to the COUNTY Project Manager during the Project and during Maintenance for all charges, and other amounts to be paid by COUNTY hereunder. All invoices submitted must meet with the approval of the COUNTY Project Manager during the Project and the COUNTY Business Applications Manager during Operations, Maintenance and Support or their designees prior to payment. CONTRACTOR shall only submit invoices for Services or Deliverables. COUNTY will return incorrect or incomplete invoices to CONTRACTOR for correction and reissue. The Contract number must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract. Invoices must reference this Contract and provide detailed information and in a format as requested by COUNTY, including without limitation:

1. CONTRACTOR name, address, telephone number and federal tax identification number;
2. An itemization of each Deliverable, Critical Milestone or Services provided;
3. The Deliverable, Critical Milestone or Services provided for which payment is sought and the Acceptance date triggering payment;
4. Applicable Charges;
5. Date of delivery and/or date of installation, as applicable;
6. Any other Project costs with a detailed itemization of such costs, if applicable;
7. Sales or use taxes, if applicable;
8. Credits and offsets, if any; and
9. Total amount due.

Contractor shall submit detailed, correct invoices for each Deliverable listed in ATTACHMENT A-1 in the amount noted, in triplicate and in accordance with COUNTY's standard invoicing requirements or other procedures agreed to in writing by the Parties to COUNTY Project Manager for all Charges and other amounts to be paid by COUNTY hereunder.

Invoices shall be mailed to: DBH BHMIS Project Manager  
303 East Vanderbilt Way  
San Bernardino, CA 92415

CONTRACTOR shall only submit an invoice for Payment Events after they have received approval of the Deliverable from the COUNTY Project Manager. All invoices submitted must meet with the approval of the COUNTY Project Manager or his/her designee prior to being forwarded to COUNTY Fiscal for payment. Invoices shall include all information reasonably requested by COUNTY, including, without limitation, this Contract name and number, Federal Tax Identification Number, itemization of each Deliverable or Service provided for which payment is requested, corresponding COUNTY Acceptance dates for each Deliverable or Service, cross-reference to the approved item in ATTACHMENT A-1, method of delivery for all software provided to COUNTY, sales and use taxes, the calculation and legal and regulatory bases for any such taxes, Holdback amounts, if applicable, and total amount due.

COUNTY shall have the right to dispute any invoices submitted for payment by CONTRACTOR if COUNTY believes the Charges are inaccurate or incorrect in any way. COUNTY shall use reasonable efforts to provide a Notice to CONTRACTOR within ten (10) business days after receipt of an invoice, specifying the reasons why COUNTY believes the Charges are inaccurate or incorrect, but COUNTY shall not be in breach of the Contract if it fails to provide CONTRACTOR such Notice.

In the event of any dispute with regard to a portion of an invoice, the undisputed portion shall be paid as provided herein. COUNTY shall pay CONTRACTOR undisputed amounts within sixty (60) days of receipt of a correct invoice. Notwithstanding any other provision of this Contract, the COUNTY may withhold all payments due to the CONTRACTOR, if the CONTRACTOR has been given at least thirty (30) days' notice of any deficiency(ies) and has failed to correct such deficiency(ies). Such deficiency(ies) may include, but are not limited to: failure to provide services described in this Contract; Federal, State, and



County audit exceptions resulting from noncompliance; and significant performance problems as determined by the COUNTY Department of Behavioral Health (DBH) Director or his/her designee.

[END OF INVOICES]

## **ATTACHMENT B-4 Unapproved Work**

If the CONTRACTOR provides any goods or services to County other than the work required under this Contract, or if the CONTRACTOR submits invoices for payment in respect of any work, other than Maintenance and Support Services and Hosting Services, without first having obtained an approved System Change Request by COUNTY Project Manager in respect of such work, the same shall be deemed to be a gratuitous effort on the part of CONTRACTOR and CONTRACTOR shall have no claim whatsoever against COUNTY therefore.

[END OF UNAPPROVED WORK]

**ATTACHMENT B-5**  
**STATE OF CALIFORNIA IMPOSED REQUIREMENTS**

The COUNTY is required to include certain confidentiality and security terms from various State Contracts, which terms apply to this Contract. As a result, the terms of:

- (i) Exhibit D, Information Confidentiality and Security Requirements, attached to State Contract No. 21-10106 (COUNTY Contract No. 21-743), between COUNTY and the State Department of Health Care Services (also known as the Performance Contract);
- (ii) Exhibit F, Privacy and Security Provisions, attached to State Contract No. 22-20127 (COUNTY Contract No. 22-1094), between COUNTY and the State Department of Health Care Services (also known as the Specialty Mental Health Services Contract); and
- (iii) Exhibit F, Business Associate Addendum, attached to State Contract No. 23-30118 (COUNTY Contract No. 23-1361), as amended, between COUNTY and the State Department of Health Care Services (also known as the Substance Abuse Disorder Services Contract) are hereby incorporated into this Contract and CONTRACTOR agrees to adhere to the incorporated provisions with respect to information confidentiality, privacy and security requirements.

The incorporated exhibits referenced above are attached hereto collectively as Exhibit D. Any breach of the State confidentiality and security terms is a material breach, subject to termination. During the term of this Contract, the attached provisions may change if the State of California imposes new or amended requirements upon COUNTY. If this occurs, COUNTY will provide any such new or amended requirements to CONTRACTOR.

[END OF STATE OF CALIFORNIA IMPOSED REQUIREMENTS]



**STATE CONTRACT NO. 21-10106**  
**Exhibit D**  
**Information Confidentiality and Security Requirements**

County of San Bernardino  
21-10106  
Page 1 of 7

**Exhibit D**  
**Information Confidentiality and Security Requirements**

- 1 **Definitions.** For purposes of this Exhibit, the following definitions shall apply:
  - A. **Public Information:** Information that is not exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws.
  - B. **Confidential Information:** Information that is exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws.
  - C. **Sensitive Information:** Information that requires special precautions to protect from unauthorized use, access, disclosure, modification, loss, or deletion. Sensitive Information may be either Public Information or Confidential Information. It is information that requires a higher than normal assurance of accuracy and completeness. Thus, the key factor for Sensitive Information is that of integrity. Typically, Sensitive Information includes records of agency financial transactions and regulatory actions.
  - D. **Personal Information:** Information that identifies or describes an individual, including, but not limited to, their name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It is DHCS' policy to consider all information about individuals private unless such information is determined to be a public record. This information must be protected from inappropriate access, use, or disclosure and must be made accessible to data subjects upon request. Personal Information includes the following:

Notice-triggering Personal Information: Specific items of personal information (name plus Social Security number, driver license/California identification card number, or financial account number) that may trigger a requirement to notify individuals if it is acquired by an unauthorized person. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph. See Civil Code sections 1798.29 and 1798.82.
- 2 **Nondisclosure.** The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure any Personal Information, Sensitive Information, or Confidential Information (hereinafter identified as PSCI).
- 3 The Contractor and its employees, agents, or subcontractors shall not use any PSCI for any purpose other than carrying out the Contractor's obligations under this Agreement.
- 4 The Contractor and its employees, agents, or subcontractors shall promptly transmit to the DHCS Program Contract Manager all requests for disclosure of any PSCI not emanating from the person who is the subject of PSCI.
- 5 The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the person who is the subject of PSCI, any PSCI to anyone other than DHCS

DHCS ICSCR 2/17

County of San Bernardino  
21-10106  
Page 2 of 7

**Exhibit D**  
**Information Confidentiality and Security Requirements**

without prior written authorization from the DHCS Program Contract Manager, except if disclosure is required by State or Federal law.

6. The Contractor shall observe the following requirements:

**A. Safeguards.** The Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PSCI, including electronic PSCI that it creates, receives, maintains, uses, or transmits on behalf of DHCS. Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, including at a minimum the following safeguards:

**1) Personnel Controls**

- a. **Employee Training.** All workforce members who assist in the performance of functions or activities on behalf of DHCS, or access or disclose DHCS PSCI, must complete information privacy and security training, at least annually, at Business Associate's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following contract termination.
- b. **Employee Discipline.** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- c. **Confidentiality Statement.** All persons that will be working with DHCS PSCI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to DHCS PSCI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for DHCS inspection for a period of six (6) years following contract termination.
- d. **Background Check.** Before a member of the workforce may access DHCS PSCI, a thorough background check of that worker must be conducted, with evaluation of the results to assure that there is no indication that the worker may present a risk to the security or integrity of confidential data or a risk for theft or misuse of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

**2) Technical Security Controls**

- a. **Workstation/Laptop encryption.** All workstations and laptops that process and/or store DHCS PSCI must be encrypted using a FIPS 140-2 certified algorithm which

DHCS/CSN 2/17

County of San Bernardino

21-10106

Page 3 of 7

#### Exhibit D

#### Information Confidentiality and Security Requirements

is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the DHCS Information Security Office.

- b. **Server Security.** Servers containing unencrypted DHCS PSCI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- c. **Minimum Necessary.** Only the minimum necessary amount of DHCS PSCI required to perform necessary business functions may be copied, downloaded, or exported.
- d. **Removable media devices.** All electronic files that contain DHCS PSCI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, smartphones, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
- e. **Antivirus software.** All workstations, laptops and other systems that process and/or store DHCS PSCI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- f. **Patch Management.** All workstations, laptops and other systems that process and/or store DHCS PSCI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.
- g. **User IDs and Password Controls.** All users must be issued a unique user name for accessing DHCS PSCI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:
  - Upper case letters (A-Z)
  - Lower case letters (a-z)
  - Arabic numerals (0-9)
  - Non-alphanumeric characters (punctuation symbols)
- h. **Data Destruction.** When no longer needed, all DHCS PSCI must be cleared, purged, or destroyed consistent with NIST Special Publication 800-88, Guidelines for Media Sanitization such that the PSCI cannot be retrieved.

DHCS ICSB 2/14



County of San Bernardino  
21-10106  
Page 4 of 7

**Exhibit D**  
**Information Confidentiality and Security Requirements**

- l. **System Timeout.** The system providing access to DHCS PSCI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- j. **Warning Banners.** All systems providing access to DHCS PSCI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- k. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for DHCS PSCI, or which alters DHCS PSCI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If DHCS PSCI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- l. **Access Controls.** The system providing access to DHCS PSCI must use role based access controls for all user authentications, enforcing the principle of least privilege.
- m. **Transmission encryption.** All data transmissions of DHCS PSCI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PSCI can be encrypted. This requirement pertains to any type of PSCI in motion such as website access, file transfer, and E-Mail.
- n. **Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting DHCS PSCI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

**3) Audit Controls**

- a. **System Security Review.** All systems processing and/or storing DHCS PSCI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.
- b. **Log Reviews.** All systems processing and/or storing DHCS PSCI must have a routine procedure in place to review system logs for unauthorized access.
- c. **Change Control.** All systems processing and/or storing DHCS PSCI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

DHCS ICSR 2/17

County of San Bernardino

21-10106

Page 5 of 7

**Exhibit D**

**Information Confidentiality and Security Requirements**

**4) Business Continuity / Disaster Recovery Controls**

- a. **Emergency Mode Operation Plan.** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic DHCS PSCI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.
- b. **Data Backup Plan.** Contractor must have established documented procedures to backup DHCS PSCI to maintain retrievable exact copies of DHCS PSCI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore DHCS PSCI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DHCS data.

**5) Paper Document Controls**

- a. **Supervision of Data.** DHCS PSCI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. DHCS PSCI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- b. **Escorting Visitors.** Visitors to areas where DHCS PSCI is contained shall be escorted and DHCS PSCI shall be kept out of sight while visitors are in the area.
- c. **Confidential Destruction.** DHCS PSCI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
- d. **Removal of Data.** DHCS PSCI must not be removed from the premises of the Contractor except with express written permission of DHCS.
- e. **Faxing.** Faxes containing DHCS PSCI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
- f. **Mailing.** Mailings of DHCS PSCI shall be sealed and secured from damage or inappropriate viewing of PSCI to the extent possible. Mailings which include 500 or more individually identifiable records of DHCS PSCI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of DHCS to use another method is obtained.

DHCS ICS4 2/17

County of San Bernardino  
21-10106  
Page 6 of 7

**Exhibit D**  
**Information Confidentiality and Security Requirements**

6. **Security Officer.** The Contractor shall designate a Security Officer to oversee its data security program who will be responsible for carrying out its privacy and security programs and for communicating on security matters with DHCS.

***Discovery and Notification of Breach. Notice to DHCS:***

(1) To notify DHCS immediately upon the discovery of a suspected security incident that involves data provided to DHCS by the Social Security Administration. This notification will be by telephone call plus email or fax upon the discovery of the breach. (2) To notify DHCS within 24 hours by email or fax of the discovery of unsecured PSCI in electronic media or in any other media if the PSCI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, any suspected security incident, intrusion or unauthorized access, use or disclosure of PSCI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by the contractor as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of the contractor..

Notice shall be provided to the DHCS Program Contract Manager, the DHCS Privacy Officer and the DHCS Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves data provided to DHCS by the Social Security Administration, notice shall be provided by calling the DHCS EITS Service Desk. Notice shall be made using the "DHCS Privacy Incident Report" form, including all information known at the time. The contractor shall use the most current version of this form, which is posted on the DHCS Privacy Office website ([www.dhcs.ca.gov](http://www.dhcs.ca.gov)), then select "Privacy" in the left column and then "Business Use" near the middle of the page) or use this link: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx>

- C. Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PSCI, the Contractor shall take:
- 1) Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
  - 2) Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- D. **Investigation of Breach.** The Contractor shall immediately investigate such security incident, breach, or unauthorized use or disclosure of PSCI. If the initial report did not include all of the requested information marked with an asterisk, then within seventy-two (72) hours of the discovery, The Contractor shall submit an updated "DHCS Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer.

DHCS IGSP 2017



County of San Bernardino

21-10106

Page 7 of 7

**Exhibit D**  
**Information Confidentiality and Security Requirements**

- E. Written Report.** The Contractor shall provide a written report of the investigation to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer, if all of the required information was not included in the DHCS Privacy Incident Report, within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.
- F. Notification of Individuals.** The Contractor shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer shall approve the time, manner and content of any such notifications.
- 7. Affect on lower tier transactions.** The terms of this Exhibit shall apply to all contracts, subcontracts, and subawards, regardless of whether they are for the acquisition of services, goods, or commodities. The Contractor shall incorporate the contents of this Exhibit into each subcontract or subaward to its agents, subcontractors, or independent consultants.
- 8. Contact Information.** To direct communications to the above referenced DHCS staff, the Contractor shall initiate contact as indicated herein. DHCS reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Exhibit or the Agreement to which it is incorporated.

<b>DHCS Program Contract Manager</b>	<b>DHCS Privacy Officer</b>	<b>DHCS Information Security Officer</b>
See the Scope of Work exhibit for Program Contract Manager Information	Privacy Officer c/o Office of Legal Services Department of Health Care Services P.O. Box 997413, MS 0011 Sacramento, CA 95899-7413  Email: <a href="mailto:privacyofficer@dhcs.ca.gov">privacyofficer@dhcs.ca.gov</a>  Telephone: (916) 445-4646	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 0400 Sacramento, CA 95899-7413  Email: <a href="mailto:iso@dhcs.ca.gov">iso@dhcs.ca.gov</a>  Telephone: ITSD Help Desk (916) 440-7000 or (800) 579-0874

- 9. Audits and Inspections.** From time to time, DHCS may inspect the facilities, systems, books and records of the Contractor to monitor compliance with the safeguards required in the Information Confidentiality and Security Requirements (ICSR) exhibit. Contractor shall promptly remedy any violation of any provision of this ICSR exhibit. The fact that DHCS inspects, or fails to inspect, or has the right to inspect, Contractor's facilities, systems and procedures does not relieve Contractor of its responsibility to comply with this ICSR exhibit.

DHCS ICSR 2/17

[END OF STATE CONTRACT NO. 21-10106 EXHIBIT D – INFORMATION CONFIDENTIALITY AND SECURITY REQUIREMENTS]

**STATE CONTRACT NO. 22-20127  
EXHIBIT F  
PRIVACY AND SECURITY PROVISIONS**

San Bernardino County Behavioral Health  
22-20127  
Page 1 of 6

**Exhibit F  
Privacy and Security Provisions**

1. This Agreement has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act and its implementing privacy and security regulations at 45 Code of Federal Regulations, Parts 160 and 164 (collectively "HIPAA") only to the extent that Contractor performs functions or activities on behalf of the Department pursuant to this Agreement that are described in the definition of "business associate", including, but not limited to, utilization review, quality assurance, or benefit management.
2. The term "Agreement" as used in this document refers to and includes both this Privacy and Security Provisions and the contract to which this Privacy and Security Provisions is attached as an exhibit.
3. For purposes of this Agreement, the term "Business Associate" shall have the same meaning as set forth in 45 CFR section 160.103.
4. The Department of Health Care Services (DHCS) intends that Contractor may create, receive, maintain, transmit or aggregate certain information pursuant to the terms of this Agreement, some of which information may constitute Protected Health Information (PHI) and/or confidential information protected by Federal and/or state laws.
  - 4.1 As used in this Agreement and unless otherwise stated, the term "PHI" refers to and includes both "PHI" as defined at 45 CFR section 160.103 and Personal Information (PI) as defined in the Information Practices Act at California Civil Code section 1798.3(a). PHI includes information in any form, including paper, oral, and electronic. The term PHI, as used in this exhibit, shall mean PHI accessed by Contractor in a database maintained by DHCS, received by Contractor from the Department, or acquired, or created by Contractor in connection with performing the functions, activities, and services on behalf of DHCS as specified in this Agreement.
  - 4.2 As used in this Agreement, the term "confidential information" refers to information not otherwise defined as PHI in Section 4.1 of this Agreement, but to which state and/or federal privacy and/or security protections apply.
5. Contractor, on DHCS's behalf, provides services or arranges, performs or assists in the performance of functions or activities on behalf of DHCS, and may create, receive, maintain, transmit, aggregate, use or disclose PHI (collectively, "use or disclose PHI") in order to fulfill Contractor's obligations under this Agreement. DHCS and Contractor are each a party to this Agreement and are referred to, collectively, as the "parties."
6. The terms used in this Agreement, but not otherwise defined, shall have the same meanings as those terms in HIPAA. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.
7. **Permitted Uses and Disclosures of PHI by Contractor.** Except as otherwise indicated in this Agreement, Contractor may use or disclose PHI, inclusive of de-identified data derived from such PHI, only to perform functions, activities or services specified in this Agreement on behalf of DHCS, provided that such use or disclosure would not violate HIPAA or other applicable laws if done by DHCS.
  - 7.1 **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Agreement, Contractor may use and disclose PHI if necessary for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor. Contractor may disclose PHI for this purpose if the disclosure is required by law, or if the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware that the confidentiality of the information has been breached.

**Exhibit F**  
**Privacy and Security Provisions**

**8. Compliance with Other Applicable Law**

- 8.1 To the extent that other state and/or federal laws provide additional, stricter and/or more protective (collectively, more protective) privacy and/or security protections to PHI or other confidential information covered under this Agreement beyond those provided through HIPAA, Contractor agrees:
  - 8.1.1 To comply with the more protective of the privacy and security standards set forth in applicable state or federal laws to the extent such standards provide a greater degree of protection and security than HIPAA or are otherwise more favorable to the individuals whose information is concerned; and
  - 8.1.2 To treat any violation of such additional and/or more protective standards as a breach or security incident, as appropriate, pursuant to Section 17 of this Agreement.
- 8.2 Examples of laws that provide additional and/or stricter privacy protections to certain types of PHI and/or confidential information, as defined in Section 4. of this Agreement, include, but are not limited to the Information Practices Act, California Civil Code sections 1798-1798.78, Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, Welfare and Institutions Code section 5328, and California Health and Safety Code section 11845.5.
- 8.3 If Contractor is a Qualified Service Organization (QSO) as defined in 42 CFR section 2.11, Contractor agrees to be bound by and comply with subdivisions (2)(i) and (2)(ii) under the definition of QSO in 42 CFR section 2.11.

**9. Additional Responsibilities of Contractor**

- 9.1 Nondisclosure. Contractor shall not use or disclose PHI or other confidential information other than as permitted or required by this Agreement or as required by law.
- 9.2 Safeguards and Security.
  - 9.2.1 Contractor shall use safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI and other confidential data and comply, where applicable, with subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the information other than as provided for by this Agreement. Such safeguards shall be based on applicable Federal Information Processing Standards (FIPS) Publication 199 protection levels.
  - 9.2.2 Contractor shall, at a minimum, utilize a National Institute of Standards and Technology Special Publication (NIST SP) 800-53 compliant security framework when selecting and implementing its security controls and shall maintain continuous compliance with NIST SP 800-53 as it may be updated from time to time. The current version of NIST SP 800-53, Revision 5, is available online at <https://csrc.nist.gov/publications/detail/sp/800-53/rev-5/final>; updates will be available online at <https://csrc.nist.gov/publications/sp800>.
  - 9.2.3 Contractor shall employ FIPS 140-2 validated encryption of PHI at rest and in motion unless Contractor determines it is not reasonable and appropriate to do so based upon a risk assessment, and equivalent alternative measures are in place and documented as such. FIPS 140-2 validation can be determined online at <https://csrc.nist.gov/projects/cryptographic-module-validation-program/validated-modules/search>, with information about the Cryptographic Module Validation Program under FIPS 140-2 available online at <https://csrc.nist.gov/Projects/cryptographic-module-validation-program/fips-140-2>. In addition, Contractor shall maintain, at a minimum, the most current industry standards for transmission and storage of PHI and other confidential information.



**Exhibit F**  
**Privacy and Security Provisions**

- 9.2.4** Contractor shall apply security patches and upgrades, and keep virus software up-to-date, on all systems on which PHI and other confidential information may be used.
- 9.2.5** Contractor shall ensure that all members of its workforce with access to PHI and/or other confidential information sign a confidentiality statement prior to access to such data. The statement must be renewed annually.
- 9.2.6** Contractor shall identify the security official who is responsible for the development and implementation of the policies and procedures required by 45 CFR Part 164, Subpart C.
- 9.3 Contractor's Agent.** Contractor shall ensure that any agents, subcontractors, subawardees, vendors or others (collectively, "agents") that use or disclose PHI and/or confidential information on behalf of Contractor agree to the same restrictions and conditions that apply to Contractor with respect to such PHI and/or confidential information.
- 10. Mitigation of Harmful Effects.** Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI and other confidential information in violation of the requirements of this Agreement.
- 11. Access to PHI.** Contractor shall make PHI available in accordance with 45 CFR section 164.524.
- 12. Amendment of PHI.** Contractor shall make PHI available for amendment and incorporate any amendments to protected health information in accordance with 45 CFR section 164.526.
- 13. Accounting for Disclosures.** Contractor shall make available the information required to provide an accounting of disclosures in accordance with 45 CFR section 164.528.
- 14. Compliance with DHCS Obligations.** To the extent Contractor is to carry out an obligation of DHCS under 45 CFR Part 164, Subpart E, comply with the requirements of the subpart that apply to DHCS in the performance of such obligation.
- 15. Access to Practices, Books and Records.** Contractor shall make its internal practices, books, and records relating to the use and disclosure of PHI on behalf of DHCS available to DHCS upon reasonable request, and to the federal Secretary of Health and Human Services for purposes of determining DHCS' compliance with 45 CFR Part 164, Subpart E.
- 16. Return or Destroy PHI on Termination; Survival.** At termination of this Agreement and any successor agreements, if feasible, Contractor shall return or destroy all PHI and other confidential information received from, or created or received by Contractor on behalf of, DHCS that Contractor still maintains in any form and retain no copies of such information. If return or destruction is not feasible, Contractor shall notify DHCS of the conditions that make the return or destruction infeasible, and DHCS and Contractor shall determine the terms and conditions under which Contractor may retain the PHI. If such return or destruction is not feasible, Contractor shall extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- 17. Breaches and Security Incidents.** Contractor shall implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and take the following steps:
- 17.1 Notice to DHCS.**
- 17.1.1** Contractor shall notify DHCS within 24 hours by email (or by telephone if Contractor is unable to email DHCS) of the discovery of:

**Exhibit F**  
**Privacy and Security Provisions**

- 17.1.1.1 Unsecured PHI if the PHI is reasonably believed to have been accessed or acquired by an unauthorized person;
  - 17.1.1.2 Any suspected security incident which risks unauthorized access to PHI and/or other confidential information;
  - 17.1.1.3 Any intrusion or unauthorized access, use or disclosure of PHI in violation of this Agreement; or
  - 17.1.1.4 Potential loss of confidential data affecting this Agreement.
- 17.1.2** Notice shall be provided to the DHCS Program Contract Manager (as applicable), the DHCS Privacy Office, and the DHCS Information Security Office (collectively, "DHCS Contacts") using the DHCS Contact Information at Section 17.6. below:
- Notice shall be made using the current DHCS "Privacy Incident Reporting Form" ("PIR Form"; the initial notice of a security incident or breach that is submitted is referred to as an "Initial PIR Form") and shall include all information known at the time the incident is reported. The form is available online at <https://www.dhcs.ca.gov/formsandpubs/laws/prv/Documents/Privacy-Incident-Report-PIR.pdf>.
- Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PHI, Contractor shall take:
- 17.1.2.1 Prompt action to mitigate any risks or damages involved with the security incident or breach; and
  - 17.1.2.2 Any action pertaining to such unauthorized disclosure required by applicable Federal and State law.
- 17.2** **Investigation.** Contractor shall immediately investigate such security incident or confidential breach.
- 17.3** **Complete Report.** To provide a complete report of the investigation to the DHCS contacts within ten (10) working days of the discovery of the security incident or breach. This "Final PIR" must include any applicable additional information not included in the Initial Form. The Final PIR Form shall include an assessment of all known factors relevant to a determination of whether a breach occurred under HIPAA and other applicable federal and state laws. The report shall also include a full, detailed corrective action plan, including its implementation date and information on mitigation measures taken to halt and/or contain the improper use or disclosure. If DHCS requests information in addition to that requested through the PIR form, Contractor shall make reasonable efforts to provide DHCS with such information. A "Supplemental PIR" may be used to submit revised or additional information after the Final PIR is submitted. DHCS will review and approve or disapprove Contractor's determination of whether a breach occurred, whether the security incident or breach is reportable to the appropriate entities, if individual notifications are required, and Contractor's corrective action plan.
- 17.3.1** If Contractor does not complete a Final PIR within the ten (10) working day timeframe, Contractor shall request approval from DHCS within the ten (10) working day timeframe of a new submission timeframe for the Final PIR.
- 17.4** **Notification of Individuals.** If the cause of a breach is attributable to Contractor or its agents, Contractor shall notify individuals accordingly and shall pay all costs of such notifications, as well as all costs associated with the breach. The notifications shall comply with applicable federal and state law. DHCS shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.

**Exhibit F**  
**Privacy and Security Provisions**

- 17.5 Responsibility for Reporting of Breaches to Entities Other than DHCS.** If the cause of a breach of PHI is attributable to Contractor or its subcontractors, Contractor is responsible for all required reporting of the breach as required by applicable federal and state law.
- 17.6 DHCS Contact Information.** To direct communications to the above referenced DHCS staff, the Contractor shall initiate contact as indicated here. DHCS reserves the right to make changes to the contact information below by giving written notice to Contractor. These changes shall not require an amendment to this Agreement.

DHCS Program Contract Manager	DHCS Privacy Office	DHCS Information Security Office
See the Scope of Work exhibit for Program Contract Manager information.	Privacy Office c/o: Office of HIPAA Compliance Department of Health Care Services P.O. Box 997413, MS 4722 Sacramento, CA 95899-7413  Email <a href="mailto:incidents@dhcs.ca.gov">incidents@dhcs.ca.gov</a>  Telephone (916) 445-4646	Information Security Office DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413  Email <a href="mailto:incidents@dhcs.ca.gov">incidents@dhcs.ca.gov</a>

- 18. Responsibility of DHCS.** DHCS agrees to not request the Contractor to use or disclose PHI in any manner that would not be permissible under HIPAA and/or other applicable federal and/or state law.

**19. Audits, Inspection and Enforcement**

- 19.1** From time to time, DHCS may inspect the facilities, systems, books and records of Contractor to monitor compliance with this Agreement. Contractor shall promptly remedy any violation of this Agreement and shall certify the same to the DHCS Privacy Officer in writing. Whether or how DHCS exercises this provision shall not in any respect relieve Contractor of its responsibility to comply with this Agreement.
- 19.2** If Contractor is the subject of an audit, compliance review, investigation or any proceeding that is related to the performance of its obligations pursuant to this Agreement, or is the subject of any judicial or administrative proceeding alleging a violation of HIPAA, Contractor shall promptly notify DHCS unless it is legally prohibited from doing so.

**20. Termination**

- 20.1 Termination for Cause.** Upon DHCS' knowledge of a violation of this Agreement by Contractor, DHCS may in its discretion:
- 20.1.1** Provide an opportunity for Contractor to cure the violation and terminate this Agreement if Contractor does not do so within the time specified by DHCS; or
- 20.1.2** Terminate this Agreement if Contractor has violated a material term of this Agreement.
- 20.2 Judicial or Administrative Proceedings.** DHCS may terminate this Agreement if Contractor is found to have violated HIPAA, or stipulates or consents to any such conclusion, in any judicial or administrative proceeding.

**21. Miscellaneous Provisions**



**Exhibit F**  
**Privacy and Security Provisions**

- 21.1 Disclaimer.** DHCS makes no warranty or representation that compliance by Contractor with this Agreement will satisfy Contractor's business needs or compliance obligations. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of PHI and other confidential information.
- 21.2. Amendment.**
- 21.2.1** Any provision of this Agreement which is in conflict with current or future applicable Federal or State laws is hereby amended to conform to the provisions of those laws. Such amendment of this Agreement shall be effective on the effective date of the laws necessitating it, and shall be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties.
- 21.2.2** Failure by Contractor to take necessary actions required by amendments to this Agreement under Section 21.2.1 shall constitute a material violation of this Agreement.
- 21.3 Assistance in Litigation or Administrative Proceedings.** Contractor shall make itself and its employees and agents available to DHCS at no cost to DHCS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHCS, its directors, officers and/or employees based upon claimed violation of HIPAA, which involve inactions or actions by the Contractor.
- 21.4 No Third-Party Beneficiaries.** Nothing in this Agreement is intended to or shall confer, upon any third person any rights or remedies whatsoever.
- 21.5 Interpretation.** The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and other applicable laws.
- 21.6 No Waiver of Obligations.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

[END OF STATE CONTRACT NO. 22-20127 EXHIBIT F PRIVACY AND SECURITY PROVISIONS]

**STATE CONTRACT NO. 23-30118  
EXHIBIT F  
BUSINESS ASSOCIATE ADDENDUM**

County of San Bernardino  
23-30118

Exhibit F

**Business Associate Addendum**

1. This Agreement has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act (HIPAA) and its implementing privacy and security regulations at 45 Code of Federal Regulations, Parts 160 and 164 (collectively, and as used in this Agreement)
2. The term "Agreement" as used in this document refers to and includes both this Business Associate Addendum and the contract to which this Business Associate Agreement is attached as an exhibit, if any.
3. For purposes of this Agreement, the term "Business Associate" shall have the same meaning as set forth in 45 CFR section 160.103.
4. The Department of Health Care Services (DHCS) intends that Business Associate may create, receive, maintain, transmit or aggregate certain information pursuant to the terms of this Agreement, some of which information may constitute Protected Health Information (PHI) and/or confidential information protected by Federal and/or state laws.
  - 4.1. As used in this Agreement and unless otherwise stated, the term "PHI" refers to and includes both "PHI" as defined at 45 CFR section 160.103 and Personal Information (PI) as defined in the Information Practices Act (IPA) at California Civil Code section 1798.3(a). PHI includes information in any form, including paper, oral, and electronic.
  - 4.2. As used in this Agreement, the term "confidential information" refers to information not otherwise defined as PHI in Section 4.1 of this Agreement, but to which state and/or federal privacy and/or security protections apply.
5. Contractor (however named elsewhere in this Agreement) is the Business Associate of DHCS acting on DHCS's behalf and provides services or arranges, performs or assists in the performance of functions or activities on behalf of DHCS, and may create, receive, maintain, transmit, aggregate, use or disclose PHI (collectively, "use or disclose PHI") in order to fulfill Business Associate's obligations under this Agreement. DHCS and Business Associate are each a party to this Agreement and are collectively referred to as the "parties."
6. The terms used in this Agreement, but not otherwise defined, shall have the same meanings as those terms in HIPAA and/or the IPA. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

County of San Bernardino  
23-30118

Exhibit F

**7. Permitted Uses and Disclosures of PHI by Business Associate**

Except as otherwise indicated in this Agreement, Business Associate may use or disclose PHI, inclusive of de-identified data derived from such PHI, only to perform functions, activities or services specified in this Agreement on behalf of DHCS, provided that such use or disclosure would not violate HIPAA or other applicable laws if done by DHCS.

**7.1. Specific Use and Disclosure Provisions.**

Except as otherwise indicated in this Agreement, Business Associate may use and disclose PHI if necessary for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. Business Associate may disclose PHI for this purpose if the disclosure is required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person. The person shall notify the Business Associate of any instances of which the person is aware that the confidentiality of the information has been breached, unless such person is a treatment provider not acting as a business associate of Business Associate.

**8. Compliance with Other Applicable Law**

**8.1.** To the extent that other state and/or federal laws provide additional, stricter and/or more protective (collectively, more protective) privacy and/or security protections to PHI or other confidential information covered under this Agreement beyond those provided through HIPAA, Business Associate agrees:

- 8.1.1.** To comply with the more protective of the privacy and security standards set forth in applicable state or federal laws to the extent such standards provide a greater degree of protection and security than HIPAA or are otherwise more favorable to the individuals whose information is concerned; and
- 8.1.2.** To treat any violation of such additional and/or more protective standards as a breach or security incident, as appropriate, pursuant to Section 18. of this Agreement.

**8.2.** Examples of laws that provide additional and/or stricter privacy protections to certain types of PHI and/or confidential information, as defined in Section 4. of this Agreement, include, but are not limited to the Information Practices Act, California Civil Code sections 1798-1798.78, Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, Welfare and



County of San Bernardino  
23-30118

Exhibit F

Institutions Code section 5328, and California Health and Safety Code section 11845.5.

- 8.3. If Business Associate is a Qualified Service Organization (QSO) as defined in 42 CFR section 2.11, Business Associate agrees to be bound by and comply with subdivisions (2)(i) and (2)(ii) under the definition of QSO in 42 CFR section 2.11.

**9. Additional Responsibilities of Business Associate**

**9.1. Nondisclosure**

- 9.1.1. Business Associate shall not use or disclose PHI or other confidential information other than as permitted or required by this Agreement or as required by law.

**9.2. Safeguards and Security**

- 9.2.1. Business Associate shall use safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI and other confidential data and comply, where applicable, with subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the information other than as provided for by this Agreement. Such safeguards shall be based on applicable Federal Information Processing Standards (FIPS) Publication 199 protection levels.
- 9.2.2. Business Associate shall, at a minimum, utilize a National Institute of Standards and Technology Special Publication (NIST SP) 800-53 compliant security framework when selecting and implementing its security controls and shall maintain continuous compliance with NIST SP 800-53 as it may be updated from time to time. The current version of NIST SP 800-53, Revision 5<sup>1</sup>, is available online; updates will be available online through the Computer Security Resource Center website<sup>2</sup>.
- 9.2.3. Business Associate shall employ FIPS 140-3 validated encryption of PHI at rest and in motion unless Business Associate determines it is not reasonable and appropriate to do so based upon a risk assessment, and equivalent alternative measures are in place and documented as such. FIPS 140-3 validation can be determined online through the Cryptographic Module Validation Program<sup>3</sup>. In addition, Business Associate shall maintain, at a minimum, the most current industry

<sup>1</sup> <https://csrc.nist.gov/publications/detail/sp/800-53/rev-5/final>

<sup>2</sup> <https://csrc.nist.gov/publications/sp800>

<sup>3</sup> <https://csrc.nist.gov/projects/cryptographic-module-validation-program/validated-modules/search>

County of San Bernardino  
23-30118

**Exhibit F**

standards for transmission and storage of PHI and other confidential information.

- 9.2.4.** Business Associate shall apply security patches and upgrades, and keep virus software up-to-date, on all systems on which PHI and other confidential information may be used.
- 9.2.5.** Business Associate shall ensure that all members of its workforce with access to PHI and/or other confidential information sign a confidentiality statement prior to access to such data. The statement must be renewed annually.
- 9.2.6.** Business Associate shall identify the security official who is responsible for the development and implementation of the policies and procedures required by 45 CFR Part 164, Subpart C.

**9.3. Business Associate's Agent**

Business Associate shall ensure that any agents, subcontractors, subawardees, vendors or others (collectively, "agents") that use or disclose PHI and/or confidential information on behalf of Business Associate agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI and/or confidential information.

**10. Mitigation of Harmful Effects**

Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI and other confidential information in violation of the requirements of this Agreement.

**11. Access to PHI**

Business Associate shall make PHI available in accordance with 45 CFR section 164.524.

**12. Amendment of PHI**

Business Associate shall make PHI available for amendment and incorporate any amendments to protected health information in accordance with 45 CFR section 164.526.

**13. Accounting for Disclosures**

Business Associate shall make available the information required to provide an accounting of disclosures in accordance with 45 CFR section 164.528.

**14. Compliance with DHCS Obligations**

County of San Bernardino  
23-30118

**Exhibit F**

To the extent Business Associate is to carry out an obligation of DHCS under 45 CFR Part 164, Subpart E, comply with the requirements of the subpart that apply to DHCS in the performance of such obligation.

**15. Access to Practices, Books and Records**

Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI on behalf of DHCS available to DHCS upon reasonable request, and to the federal Secretary of Health and Human Services for purposes of determining DHCS' compliance with 45 CFR Part 164, Subpart E.

**16. Return or Destroy PHI on Termination; Survival**

At termination of this Agreement, if feasible, Business Associate shall return or destroy all PHI and other confidential information received from, or created or received by Business Associate on behalf of, DHCS that Business Associate still maintains in any form and retain no copies of such information. If return or destruction is not feasible, Business Associate shall notify DHCS of the conditions that make the return or destruction infeasible, and DHCS and Business Associate shall determine the terms and conditions under which Business Associate may retain the PHI. If such return or destruction is not feasible, Business Associate shall extend the protections of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

**17. Special Provision for SSA Data**

If Business Associate receives data from or on behalf of DHCS that was verified by or provided by the Social Security Administration (SSA data) and is subject to an agreement between DHCS and SSA, Business Associate shall provide, upon request by DHCS, a list of all employees and agents and employees who have access to such data, including employees and agents of its agents, to DHCS.

**18. Breaches and Security Incidents**

Business Associate shall implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and take the following steps:

**18.1. Notice to DHCS**

- 18.1.1.** Business Associate shall notify DHCS immediately upon the discovery of a suspected breach or security incident that involves SSA data. This notification shall be provided via the DHCS Incident Reporting Portal upon discovery of the breach. If Business Associate is unable to provide notification via the DHCS Incident Reporting Portal, then Business Associate shall provide notice by email or telephone to DHCS.



County of San Bernardino  
23-30118

Exhibit F

**18.1.2.** Business Associate shall notify DHCS within 24 hours via the online DHCS Incident Reporting Portal (or by email or telephone if Business Associate is unable to use the DHCS Incident Reporting Portal) of the discovery of the following, unless attributable to a treatment provider that is not acting as a business associate of Business Associate:

**18.1.2.1.** Unsecured PHI if the PHI is reasonably believed to have been accessed or acquired by an unauthorized person;

**18.1.2.2.** Any suspected security incident which risks unauthorized access to PHI and/or other confidential information;

**18.1.2.3.** Any intrusion or unauthorized access, use or disclosure of PHI in violation of this Agreement; or

**18.1.2.4.** Potential loss of confidential information affecting this Agreement.

**18.1.3.** Notice submitted to the DHCS Incident Reporting Portal will be sent to the DHCS Program Contract Manager (as applicable), the DHCS Privacy Office, and the DHCS Information Security Office. If providing notice to DHCS via email, use the DHCS contact information at Section 18.6 below (collectively, "DHCS Contacts").

Notice shall be made using the DHCS Incident Reporting Portal via the link on the DHCS Data Privacy Website<sup>4</sup> online.

Notice via email shall be made using the current DHCS "Privacy Incident Reporting Form"<sup>5</sup> and shall include all information known at the time the incident is reported. The form is available online.

Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PHI, Business Associate shall take:

**18.1.3.1.** Prompt action to mitigate any risks or damages involved with the security incident or breach; and

**18.1.3.2.** Any action pertaining to such unauthorized disclosure required by applicable Federal and State law.

<sup>4</sup> <https://www.dhcs.ca.gov/formsandpubs/laws/pnv/Pages/default.aspx>

<sup>5</sup> <https://www.dhcs.ca.gov/formsandpubs/laws/pnv/Documents/Privacy-Incident-Report-PIR.pdf>

County of San Bernardino  
23-30118

Exhibit F

County of San Bernardino  
23-30118

Exhibit F

**18.2. Investigation**

Business Associate shall immediately investigate such security incident or breach.

**18.3. Complete Report**

Business Associate shall provide a complete report of the investigation to DHCS within ten (10) working days of the discovery of the security incident or breach. This complete report must include any applicable additional information not included in the initial submission. The complete report shall include an assessment of all known factors relevant to a determination of whether a breach occurred under HIPAA and other applicable federal and state laws. The report shall also include a full, detailed corrective action plan, including its implementation date and information on mitigation measures taken to halt and/or contain the improper use or disclosure. If DHCS requests additional information, Business Associate shall make reasonable efforts to provide DHCS with such information. DHCS will review and approve or disapprove Business Associate's determination of whether a breach occurred, whether the security incident or breach is reportable to the appropriate entities, if individual notifications are required, and Business Associate's corrective action plan.

**18.3.1.** If Business Associate does not submit a complete report within the ten (10) working day timeframe, Business Associate shall request approval from DHCS within the ten (10) working day timeframe of a new submission timeframe for the complete report.

**18.4. Notification of Individuals**

If the cause of a breach is attributable to Business Associate or its agents, other than when attributable to a treatment provider that is not acting as a business associate of Business Associate, Business Associate shall notify individuals accordingly and shall pay all costs of such notifications, as well as all costs associated with the breach. The notifications shall comply with applicable federal and state law. DHCS shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.

**18.5. Responsibility for Reporting of Breaches to Entities Other than DHCS**

If the cause of a breach of PHI is attributable to Business Associate or its agents, other than when attributable to a treatment provider that is not acting as a business associate of Business Associate, Business Associate



County of San Bernardino  
23-30118

Exhibit F

is responsible for all required reporting of the breach as required by applicable federal and state law.

**18.6. DHCS Contact Information**

To contact the above referenced DHCS staff, the Contractor shall initiate contact as indicated here. DHCS reserves the right to make changes to the contact information below by giving written notice to Business Associate. These changes shall not require an amendment to this Agreement.

**18.6.1. DHCS Program Contract Manager**

See the Scope of Work exhibit for Program Contract Manager information. If this Business Associate Agreement is not attached as an exhibit to a contract, contact the DHCS signatory to this Agreement.

**18.6.2. DHCS Privacy Office**

Privacy Office  
c/o: Data Privacy Unit  
Department of Health Care Services  
P.O. Box 997413, MS 4722  
Sacramento, CA 95899-7413

Email: [incidents@dhcs.ca.gov](mailto:incidents@dhcs.ca.gov)

Telephone: (916) 445-4646

**18.6.3. DHCS Information Security Office**

Information Security Office  
Department of Health Care Services  
P.O. Box 997413, MS 6400  
Sacramento, CA 95899-7413

Email: [incidents@dhcs.ca.gov](mailto:incidents@dhcs.ca.gov)

**19. Responsibility of DHCS**

DHCS agrees to not request the Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA and/or other applicable federal and/or state law.

**20. Audits, Inspection and Enforcement**

**20.1.** From time to time, DHCS may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement.

County of San Bernardino  
23-30118

**Exhibit F**

Business Associate shall promptly remedy any violation of this Agreement and shall certify the same to the DHCS Privacy Officer in writing. Whether or how DHCS exercises this provision shall not in any respect relieve Business Associate of its responsibility to comply with this Agreement.

- 20.2.** If Business Associate is the subject of an audit, compliance review, investigation or any proceeding that is related to the performance of its obligations pursuant to this Agreement, or is the subject of any judicial or administrative proceeding alleging a violation of HIPAA, Business Associate shall promptly notify DHCS unless it is legally prohibited from doing so.

**21. Termination**

**21.1. Termination for Cause**

Upon DHCS' knowledge of a violation of this Agreement by Business Associate, DHCS may in its discretion:

- 21.1.1.** Provide an opportunity for Business Associate to cure the violation and terminate this Agreement if Business Associate does not do so within the time specified by DHCS; or
- 21.1.2.** Terminate this Agreement if Business Associate has violated a material term of this Agreement.

**21.2. Judicial or Administrative Proceedings**

DHCS may terminate this Agreement if Business Associate is found to have violated HIPAA, or stipulates or consents to any such conclusion, in any judicial or administrative proceeding.

**22. Miscellaneous Provisions**

**22.1. Disclaimer**

DHCS makes no warranty or representation that compliance by Business Associate with this Agreement will satisfy Business Associate's business needs or compliance obligations. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI and other confidential information.

**22.2. Amendment**

Any provision of this Agreement which is in conflict with current or future applicable Federal or State laws is hereby amended to conform to the provisions of those laws. Such amendment of this Agreement shall be effective on the effective date of the laws necessitating it, and shall be

County of San Bernardino  
23-30118

**Exhibit F**

binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties.

- 22.2.1.** Failure by Business Associate to take necessary actions required by amendments to this Agreement under Section 22.2.1 shall constitute a material violation of this Agreement.



County of San Bernardino  
23-30118

Exhibit F

**22.3. Assistance in Litigation or Administrative Proceedings**

Business Associate shall make itself and its employees and agents available to DHCS at no cost to DHCS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHCS, its directors, officers and/or employees based upon claimed violation of HIPAA, which involve inactions or actions by the Business Associate.

**22.4. No Third-Party Beneficiaries**

Nothing in this Agreement is intended to or shall confer, upon any third person any rights or remedies whatsoever.

**22.5. Interpretation**

The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA and other applicable laws.

**22.6. No Waiver of Obligations**

No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

## **ATTACHMENT C BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (Agreement) supplements and is made a part of the contract (Contract) by and between the San Bernardino County Department of Behavioral Health (hereinafter Covered Entity) and Netsmart Technologies, Inc. (hereinafter Business Associate). This Agreement is effective as of the effective date of the Contract.

### **RECITALS**

**WHEREAS**, Covered Entity (CE) wishes to disclose certain information to Business Associate (BA) pursuant to the terms of the Contract, which may include Protected Health Information (PHI); and

**WHEREAS**, CE and BA intend to protect the privacy and provide for the security of the PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act), their implementing regulations, and other applicable laws; and

**WHEREAS**, The Privacy Rule and the Security Rule require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, sections 164.314, subdivision (a), 164.502, subdivision (e), and 164.504, subdivision (e) of the Code of Federal Regulations (C.F.R.) and contained in this Agreement; and

**WHEREAS**, Pursuant to HIPAA and the HITECH Act, BA shall fulfill the responsibilities of this Agreement by being in compliance with the applicable provisions of the HIPAA Standards for Privacy of PHI set forth at 45 C.F.R. sections 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.316 (Policies and Procedures and Documentation Requirements), and, 164.400, et seq. and 42 United States Code (U.S.C.) section 17932 (Breach Notification Rule), in the same manner as they apply to a CE under HIPAA;

**NOW THEREFORE**, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

### **A. Definitions**

Unless otherwise specified herein, capitalized terms used in this Agreement shall have the same meanings as given in the Privacy Rule, the Security Rule, the Breach Notification Rule, and HITECH Act, as and when amended from time to time.

1. Breach shall have the same meaning given to such term under the HIPAA Regulations [45 C.F.R. §164.402] and the HITECH Act [42 U.S.C. §§17921 et seq.], and includes the definition set forth in 22 California Code of Regulations (C.C.R.) § 79901(b).
2. Business Associate (BA) shall have the same meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 U.S.C. section 17921 and 45 C.F.R. section 160.103, and includes the definition set forth in 22 C.C.R. § 79901(c).
3. Covered Entity (CE) shall have the same meaning given to such term as under the Privacy Rule and Security Rule, including, but not limited to 45 C.F.R. section 160.103.
4. Designated Record Set shall have the same meaning given to such term under 45 C.F.R. section 164.501.
5. Detect(ed) shall have the same meaning given to such term under 22 C.C.R. § 79901(f).

6. Electronic Protected Health Information (ePHI) means PHI that is maintained in or transmitted by electronic media as defined in the Security Rule, 45 C.F.R. section 164.103.
7. Individual shall have the same meaning given to such term under 45 C.F.R. section 160.103.
8. Medical Information shall have the same meaning given to such term under 22 C.C.R. § 79901(l).
9. Privacy Rule means the regulations promulgated under HIPAA by the United States Department of Health and Human Services (HHS) to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Parts 160 and 164, subparts A and E.
10. Protected Health Information (PHI) shall have the same meaning given to such term under 45 C.F.R. section 160.103, limited to the information received from, or created or received by Business Associate from or on behalf of, CE.
11. Security Rule means the regulations promulgated under HIPAA by HHS to protect the security of ePHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, subparts A and C.
12. Unsecured PHI shall have the same meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act, including, but not limited to 42 U.S.C. section 17932, subdivision (h).

## **B. Obligations and Activities of BA**

### **1. Permitted Uses and Disclosures**

BA may disclose PHI: (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) for purposes of Treatment, Payment and Operations (TPO); (iv) as required by law; or (v) for Data Aggregation purposes for the Health Care Operations of CE. Prior to making any other disclosures, BA must obtain a written authorization from the Individual.

If BA discloses PHI to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such breach. [42 U.S.C. section 17932; 45 C.F.R. sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)]

### **2. Prohibited Uses and Disclosures**

- i. BA shall not use, access or further disclose PHI other than as permitted or required by this Agreement and as specified in the attached Contract or as required by law. Further, BA shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act. BA shall disclose to its employees, subcontractors, agents, or other third parties, and request from CE, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- ii. BA shall not use or disclose PHI for fundraising or marketing purposes.
- iii. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. (42 U.S.C. section 17935(a) and 45 C.F.R. section 164.522(a)(1)(i)(A).)
- iv. BA shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CE and as permitted by the HITECH Act (42 U.S.C. section 17935(d)(2); and 45 C.F.R. section 164.508); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to this Agreement.

### **3. Appropriate Safeguards**



- i. BA shall implement appropriate safeguards to prevent the unauthorized use or disclosure of PHI, including, but not limited to, administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of the PHI BA creates, receives, maintains, or transmits on behalf of the CE, in accordance with 45 C.F.R. sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. sections 164.504(e)(2)(ii)(b) and 164.308(b).]
- ii. In accordance with 45 C.F.R. section 164.316, BA shall maintain reasonable and appropriate written policies and procedures for its privacy and security program in order to comply with the standards, implementation specifications, or any other requirements of the Privacy Rule and applicable provisions of the Security Rule.
- iii. BA shall provide appropriate training for its workforce on the requirements of the Privacy Rule and Security Rule as those regulations affect the proper handling, use confidentiality and disclosure of the CE's PHI.

Such training will include specific guidance relating to sanctions against workforce members who fail to comply with privacy and security policies and procedures and the obligations of the BA under this Agreement.

#### 4. Subcontractors

BA shall enter into written agreements with agents and subcontractors to whom BA provides CE's PHI that impose the same restrictions and conditions on such agents and subcontractors that apply to BA with respect to such PHI, and that require compliance with all appropriate safeguards as found in this Agreement.

#### 5. Reporting of Improper Access, Use or Disclosure or Breach

Every suspected and actual Breach shall be reported immediately, but no later than one (1) business day upon discovery, to CE's Office of Compliance. Upon discovery of a Breach or suspected Breach, BA shall complete the following actions:

- i. Provide CE's Office of Compliance with the following information to include but not limited to:
  - a) Name and address of the facility where the breach occurred;
  - b) Date and time the Breach or suspected Breach occurred;
  - c) Date and time the Breach or suspected Breach was discovered or Detected;
  - d) Number of staff, employees, subcontractors, agents or other third parties and the names and titles of each person allegedly involved, including the person who performed the Breach, witnessed the Breach, used the Medical Information, or the person to whom the disclosure was made;
  - e) Name of patient(s) affected;
  - f) Number of potentially affected Individual(s) with contact information;
  - g) Description of how the Breach or suspected Breach allegedly occurred; and
  - h) Description of the Medical Information that was Breached, including the nature and extent of the Medical Information involved, including the types of individually identifiable information and the likelihood of re-identification.
- ii. Conduct and document a risk assessment by investigating without unreasonable delay and in no case later than five (5) calendar days of discovery of the Breach or suspected Breach to determine the following:
  - a) The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;

- b) The unauthorized person who had access to the PHI;
  - c) Whether the PHI was actually acquired or viewed; and
  - d) The extent to which the risk to PHI has been mitigated.
- iii. Provide a completed risk assessment and investigation documentation to CE's Office of Compliance within ten (10) calendar days of discovery of the Breach or suspected Breach with a determination as to whether a Breach has occurred. At the discretion of CE, additional information may be requested.
- a) If BA and CE agree that a Breach has not occurred, notification to Individual(s) is not required.
  - b) If a Breach has occurred, notification to the Individual(s) is required and BA must provide CE with affected Individual(s) name and contact information so that CE can provide notification.
  - c) The risk assessment and investigation documentation provided by BA to CE shall, at a minimum, include a description of any corrective or mitigation actions taken by BA.
- iv. Make available to CE and governing State and Federal agencies in a time and manner designated by CE or governing State and Federal agencies, any policies, procedures, internal practices and records relating to a Breach or suspected Breach for the purposes of audit or should the CE reserve the right to conduct its own investigation and analysis.

6. Access to PHI

To the extent BA maintains a Designated Record Set on behalf of CE, BA shall make PHI maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule. If BA maintains ePHI, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act. If BA receives a request from an Individual for access to PHI, BA shall immediately forward such request to CE.

7. Amendment of PHI

If BA maintains a Designated Record Set on behalf of the CE, BA shall make any amendment(s) to PHI in a Designated Record Set that the CE directs or agrees to, pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. section 164.526, in the time and manner designated by the CE.

8. Access to Records

BA shall make internal practices, books, and records, including policies and procedures, relating to the use, access and disclosure of PHI received from, or created or received by BA on behalf of, CE available to the Secretary of HHS, in a time and manner designated by the Secretary, for purposes of the Secretary determining CE's compliance with the Privacy Rule and Security Rule and patient confidentiality regulations. Any documentation provided to the Secretary shall also be provided to the CE upon request.

9. Accounting for Disclosures

BA, its agents and subcontractors shall document disclosures of PHI and information related to such disclosures as required by HIPAA. This requirement does not apply to disclosures made for purposes of TPO. BA shall provide an accounting of disclosures to CE or an Individual, in the time and manner designated by the CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for

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

#### 10. Termination

CE may immediately terminate this agreement, and any related agreements, if CE determines that BA has breached a material term of this agreement. CE may, at its sole discretion, provide BA an opportunity to cure the breach or end the violation within the time specified by the CE.

#### 11. Return of PHI

Upon termination of this Agreement, BA shall return all PHI required to be retained by the BA or its subcontractors, employees or agents on behalf of the CE. In the event the BA determines that returning the PHI is not feasible, the BA shall provide the CE with written notification of the conditions that make return not feasible. Additionally, the BA must follow established policies and procedures to ensure PHI is safeguarded and disposed of adequately in accordance with 45 C.F.R. section 164.310, and must submit to the CE a certification of destruction of PHI. For destruction of ePHI, the National Institute of Standards and Technology (NIST) guidelines must be followed. BA further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement, to any PHI retained by BA or its subcontractors, employees or agents after the termination of this Agreement, and to limit any further use, access or disclosures.

#### 12. Breach by the CE

Pursuant to 42 U.S.C. section 17934, subdivision (b), if the BA is aware of any activity or practice by the CE that constitutes a material Breach or violation of the CE's obligations under this Agreement, the BA must take reasonable steps to address the Breach and/or end eliminate the continued violation, if the BA has the capability of mitigating said violation. If the BA is unsuccessful in eliminating the violation and the CE continues with non-compliant activity, the BA must terminate the Agreement (if feasible) and report the violation to the Secretary of HHS.

#### 13. Mitigation

BA shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to BA of a use, access or disclosure of PHI by BA, its agents or subcontractors in violation of the requirements of this Agreement.

#### 14. Costs Associated to Breach

BA shall be responsible for reasonable costs associated with a Breach. Costs shall be based upon the required notification type as deemed appropriate and necessary by the CE and shall not be reimbursable under the Agreement at any time. CE shall determine the method to invoice the BA for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:

- Postage;
- Alternative means of notice;
- Media notification; and
- Credit monitoring services.

#### 15. Direct Liability

BA may be held directly liable under HIPAA and California law for impermissible uses and disclosures of PHI; failure to provide breach notification to CE; failure to provide access to a copy of ePHI to CE or individual; failure to disclose PHI to the Secretary of HHS when investigating BA's compliance with HIPAA; failure to provide an accounting of disclosures; and, failure to enter into a business associate agreement with subcontractors.

#### 16. Indemnification



BA agrees to indemnify, defend and hold harmless CE and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, injuries, costs and expenses (including costs for reasonable attorney fees) that are caused by or result from the acts or omissions of BA, its officers, employees, agents and subcontractors, with respect to the use, access, maintenance or disclosure of CE's PHI and Medical Information, including without limitation, any Breach of PHI or Medical Information, or any expenses incurred by CE in providing required Breach notifications under federal and state laws.

**17. Judicial or Administrative Proceedings**

CE may terminate the Contract, effective immediately, if (i) BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws or (ii) a finding or stipulation is made in any administrative or civil proceeding in which the BA has been joined that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.

**18. Insurance**

In addition to any general and/or professional liability insurance coverage required of BA under the Contract for services, BA shall provide appropriate liability insurance coverage during the term of this Agreement to cover any and all claims, causes of action, and demands whatsoever made for loss, damage, or injury to any person arising from the breach of the security, privacy, or confidentiality obligations of BA, its agents or employees, under this Agreement and under HIPAA 45 C.F.R. Parts 160 and 164, Subparts A and E.

**19. Assistance in Litigation or Administrative Proceedings**

BA shall make itself, and any subcontractors, employees, or agents assisting BA in the performance of its obligations under the Agreement, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers, or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where BA or its subcontractor, employee or agent is a named adverse party.

**C. Obligations of CE**

1. CE shall notify BA of any of the following, to the extent that such may affect BA's use, access, maintenance or disclosure of PHI:
  - i. Any limitation(s) in CE's notice of privacy practices in accordance with 45 C.F.R. section 164.520.
  - ii. Any changes in, or revocation of, permission by an individual to use, access or disclose PHI.
  - iii. Any restriction to the use, access or disclosure of PHI that CE has agreed to in accordance with 45 C.F.R. section 164.522.

**D. General Provisions**

**1. Remedies**

BA agrees that CE shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which CE may have at law or in equity in the event of an unauthorized use, access or disclosure of PHI by BA or any agent or subcontractor of BA that received PHI from BA.

**2. Ownership**

The PHI shall be and remain the property of the CE. BA agrees that it acquires no title or rights to the PHI.

**3. Regulatory References**

A reference in this Agreement to a section in the Privacy Rule and Security Rule and patient confidentiality regulations means the section as in effect or as amended.

4. No Third-Party Beneficiaries

Nothing express or implied in the Contract or this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5. Amendment

The parties acknowledge that state and federal laws related to privacy and security of PHI are rapidly evolving and that amendment of the Contract or this Agreement may be required to ensure compliance with such developments. The parties shall negotiate in good faith to amend this Agreement when and as necessary to comply with applicable laws. If either party does not agree to so amend this Agreement within 30 days after receiving a request for amendment from the other, either party may terminate the Agreement upon written notice. To the extent an amendment to this Agreement is required by law and this Agreement has not been so amended to comply with the applicable law in a timely manner, the amendment required by law shall be deemed to be incorporated into this Agreement automatically and without further action required by either of the parties. Subject to the foregoing, this Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by BA and CE.

6. Interpretation

Any ambiguity in this Agreement shall be resolved to permit CE to comply with the Privacy and Security Rules, the HITECH Act, and all applicable patient confidentiality regulations.

7. Compliance with State Law

In addition to HIPAA and all applicable HIPAA Regulations, BA acknowledges that BA and CE may have confidentiality, privacy, and breach notification obligations under State law, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq. ("CMIA")) and 22 C.C.R. § 79001 et seq. If any provisions of this Agreement or HIPAA Regulations or the HITECH Act conflict with CMIA or any other California State law regarding the degree of protection provided for PHI/Medical Information and patient medical records, then BA shall comply with the more restrictive requirements.

8. Survival

The respective rights and obligations and rights of CE and BA relating to protecting the confidentiality or a patient's PHI/Medical Information shall survive the termination of the Contract or this Agreement.

## ATTACHMENT C-1

### Business Associate Addendum for Cloud Services Software as a Service (SaaS)

This Business Associate Addendum for Cloud Services is entered into by and between the San Bernardino County (County) and Business Associate (Contractor) for the purposes of establishing terms and conditions applicable to the provision of services by Business Associate to the County involving the use of hosted cloud computing services. County and Business Associate agree that the following terms and conditions will apply to the services provided under this addendum and the associated Business Associate Agreement as applicable.

#### 1. DEFINITIONS:

- a) **"Software as a Service (SaaS)"** - The capability provided to the consumer is to use applications made available by the provider running on a cloud infrastructure. The applications are accessible from various client devices through a thin client interface such as a web browser or application. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
- b) **"Data"** - means any information, formulae, algorithms, or other content that the County, the County's employees, agents and end users upload, create or modify using the SaaS pursuant to this Contract. Data also includes user identification information, Protected Health Information (as defined by the Health Insurance Portability and Accountability Act (HIPAA)) and metadata which may contain Data or from which the Data may be ascertainable.
- c) **"Data Breach"** - means any access, destruction, loss, theft, use, modification or disclosure of Data by an unauthorized party or that is in violation of Contract terms and/or applicable state or federal law.

#### 2. SaaS AVAILABILITY: Unless otherwise stated in the Statement of Work (SOW):

- a) The SaaS shall be available twenty-four (24) hours per day, 365 days per year (excluding agreed-upon maintenance downtime).
- b) If SaaS monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the County shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the SOW.
- c) If SaaS monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the County may terminate the contract for material breach.
- d) Contractor shall provide advance written notice to the County in the manner set forth in the SOW of any major upgrades or changes that will affect the SaaS availability.

#### 3. DATA AVAILABILITY: Unless otherwise stated in the SOW:

- a) The Data shall be available twenty-four (24) hours per day, 365 days per year (excluding agreed-upon maintenance downtime).
- b) If Data monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the County shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the SOW if the County is unable to access the Data as a result of:
  - 1) Acts or omissions of Contractor;
  - 2) Acts or omissions of third parties working on behalf of Contractor;
  - 3) Network compromise, network intrusion, hacks, introduction of viruses, disabling devices, malware and other forms of attack that can disrupt access to Contractor's server, to the extent such attack would have been prevented by Contractor taking reasonable industry standard precautions;
  - 4) Power outages or other telecommunications or Internet failures, to the extent such outages were within Contractor's direct or express control.



- c) If Data monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the County may terminate the contract for material breach.

**4. DATA SECURITY:**

- a) In addition to the provisions set forth in the Business Associate Agreement, Contractor shall certify to the County:
  - 1) The sufficiency of its security standards, tools, technologies and procedures in providing SaaS under this Contract;
  - 2) Compliance with the following:
    - i. The California Information Practices Act (Civil Code Sections 1798 et seq.);
    - ii. Undergo an annual Statement on Standards for Attestation Engagements (SSAE) 16 Service Organization Control (SOC) 2 Type II audit. Audit results and Contractor's plan to correct any negative findings shall be made available to the County within thirty (30) business days of Contractor's receipt of such results.
- b) Contractor shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with section a) above at all times during the term of this Addendum to secure such Data from Data Breach, protect the Data and the SaaS from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the County's access to its Data.
- c) Contractor shall allow the County reasonable access to SaaS security logs, latency statistics, and other related SaaS security data that affect this Addendum and the County's Data, at no cost to the County.
- d) Contractor assumes responsibility for the security and confidentiality of the Data under its control.
- e) No Data shall be copied, modified, destroyed or deleted by Contractor other than for normal operation or maintenance of SaaS during the Addendum period without prior written notice to and written approval by the County.
- f) Contractor shall provide access to Data only to those employees, contractors and subcontractors who need to access the Data to fulfill Contractor's obligations under this Agreement. Contractor will ensure that, prior to being granted access to Data, staff who perform work under this agreement have all undergone and passed criminal background screenings; have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all data protection provisions of this Addendum and the associated Business Associate Agreement; and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the Data they will be handling.

- 5. **ENCRYPTION:** Contractor warrants that all Data will be encrypted in transmission (including via web interface) using Transport Layer Security (TLS) version 1.2 or equivalent and in storage at a level equivalent to or stronger than Advanced Encryption Standard (AES) 128-bit level encryption.

- 6. **DATA LOCATION:** All Data will be stored on servers located solely within the Continental United States.

- 7. **RIGHTS TO DATA:** The parties agree that as between them, all rights, including all intellectual property rights, in and to Data shall remain the exclusive property of the County, and Contractor has a limited, non-exclusive license to access and use the Data as provided to Contractor solely for performing its obligations under the Contract. Nothing herein shall be construed to confer any license or right to the Data, including user tracking and exception Data within the system, by implication, or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of Data by Contractor or third parties is prohibited. For the purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.

**8. TRANSITION PERIOD:**

- a) For ninety (90) days prior to the expiration date of this Contract, or upon notice of termination of this Contract, Contractor shall assist the County in extracting and/or transitioning all Data in the format determined by the County ("Transition Period").
- b) The Transition Period may be modified in the SOW or as agreed upon in writing by the parties in a contract amendment.
- c) During the Transition Period, SaaS and Data access shall continue to be made available to the County without alteration.
- d) Contractor agrees to compensate the County for damages or losses the County incurs as a result of Contractor's failure to comply with this section.
- e) Unless otherwise stated in the SOW, the Contractor shall permanently destroy or render inaccessible any portion of the Data in Contractor's and/or subcontractor's possession or control following the expiration of all obligations in this section. Within thirty (30) days, Contractor shall issue a written statement to the County confirming the destruction or inaccessibility of the County's Data.
- f) The County at its option, may purchase additional transition services as agreed upon in the SOW.

**9. DISASTER RECOVERY/BUSINESS CONTINUITY:** Unless otherwise stated in the Statement of Work:

- a) In the event of disaster or catastrophic failure that results in significant Data loss or extended loss of access to Data, Contractor shall notify the County by the fastest means available and also in writing. Contractor shall provide such notification within twenty-four (24) hours after Contractor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Contractor shall inform the County of:
  - 1) The scale and quantity of the Data loss;
  - 2) What Contractor has done or will do to recover the Data and mitigate any deleterious effect of the Data loss; and
  - 3) What corrective action Contractor has taken or will take to prevent future Data loss.
- b) If Contractor fails to respond immediately and remedy the failure, the County may exercise its options for assessing damages or other remedies.
- c) Contractor shall restore continuity of SaaS, restore Data, restore accessibility of Data, and repair SaaS as needed to meet the Data and SaaS Availability requirements under this Addendum. Failure to do so may result in the County exercising its options for assessing damages or other remedies.
- d) Contractor shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with the County. The County and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the County, its agents and law enforcement.

**10. EXAMINATION AND AUDIT:** Unless otherwise stated in the Statement of Work:

- a) Upon advance written request, Contractor agrees that the County or its designated representative shall have access to Contractor's SaaS operational documentation and records, including online inspections that relate to the security of the SaaS product purchased by the County.
- b) Contractor shall allow the County, its authorized agents, or a mutually acceptable third party to test that controls are in place and working as intended. Tests may include, but not be limited to, the following:
  - 1) Operating system/network vulnerability scans,
  - 2) Web application vulnerability scans,
  - 3) Database application vulnerability scans, and
  - 4) Any other scans to be performed by the County or representatives on behalf of the County.
- c) After any significant Data loss or Data Breach or as a result of any disaster or catastrophic failure, Contractor will at its expense have an independent, industry-recognized, County-approved third party perform an information security audit. The audit results shall be shared with the County within seven (7) days of Contractor's receipt of such results. Upon Contractor receiving the results of the

audit, Contractor will provide the County with written evidence of planned remediation within thirty (30) days and promptly modify its security measures in order to meet its obligations under this Contract.

- 11. DISCOVERY:** Contractor shall promptly notify the County upon receipt of any requests which in any way might reasonably require access to the Data of the County or the County's use of the SaaS. Contractor shall notify the County by the fastest means available and also in writing, unless prohibited by law from providing such notification. Contractor shall provide such notification within forty-eight (48) hours after Contractor receives the request. Contractor shall not respond to subpoenas, service of process, Public Records Act requests, and other legal requests directed at Contractor regarding this Contract without first notifying the County unless prohibited by law from providing such notification. Contractor agrees to provide its intended responses to the County with adequate time for the County to review, revise and, if necessary, seek a protective order in a court of competent jurisdiction. Contractor shall not respond to legal requests directed at the County unless authorized in writing to do so by the County.
- 12. INSURANCE REQUIREMENTS:** Contractor shall, at its own expense, secure and maintain for the term of this contract, Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall cover breach response cost as well as any regulatory fines and penalties.
- 13. DATA SEPARATION:** Data must be partitioned from other data in such a manner that access to it will not be impacted or forfeited due to e-discovery, search and seizure or other actions by third parties obtaining or attempting to obtain Service Provider's records, information or data for reasons or activities that are not directly related to Customer's business.





## Campaign Contribution Disclosure (Senate Bill 1439)

### **DEFINITIONS**

**Actively supporting the matter:** (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

**Agent:** A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

**Otherwise related entity:** An otherwise related entity is any for-profit organization/company which does not have a parent-subsidiary relationship but meets one of the following criteria:


- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources, or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

**Parent-Subsidiary Relationship:** A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

**Contractors must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.**

1. Name of Contractor: <b>Netsmart Technologies, Inc.</b>		
2. Is the entity listed in Question No. 1 a non-profit organization under Internal Revenue Code section 501(c)(3)?  Yes <input type="checkbox"/> If yes, skip Question Nos. 3 - 4 and go to Question No. 5. No <input checked="" type="checkbox"/>		
3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, <u>if</u> the individual actively supports the matter <u>and</u> has a financial interest in the decision: <b>N/A</b>		
4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s): <b>N/A</b>		
5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):		
<b>Company Name</b>	<b>Relationship</b>	
N/A		
6. Name of agent(s) of Contractor:		
<b>Company Name</b>	<b>Agent(s)</b>	<b>Date Agent Retained (if less than 12 months prior)</b>
N/A		
7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter <u>and</u> (2) has a financial interest in the decision <u>and</u> (3) will be possibly identified in the contract with the County or board governed special district:		
<b>Company Name</b>	<b>Subcontractor(s):</b>	<b>Principal and/or Agent(s):</b>
N/A		
8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board <u>and</u> (2) have a financial interest in the outcome of the decision:		
<b>Company Name</b>	<b>Individual(s) Name</b>	
None		

<p>9. Was a campaign contribution, of more than \$250, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?</p> <p>No <input checked="" type="checkbox"/> If no, please skip Question No. 10.      Yes <input type="checkbox"/> If yes, please continue to complete this form.</p>	
<p>10. Name of Board of Supervisor Member or other County elected officer: _____</p> <p>Name of Contributor: _____</p> <p>Date(s) of Contribution(s): _____</p> <p>Amount(s): _____</p> <p>Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.</p>	
<p>By signing below, Contractor certifies that the statements made herein are true and correct. Contractor understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer while this matter is pending and for 12 months after a final decision is made by the County.</p>	
<p>                  _____                  Signature  <b>Joseph McGovern</b>                  _____                  Print Name</p>	<p><b>12/6/2024</b>                  _____                  Date  <b>Netsmart Technologies, Inc.</b>                  _____                  Print Entity Name, if applicable</p>