



COUNTY OF HUMBOLDT

AGENDA ITEM NO.
C-10

For the meeting of: April 5, 2011

Date: March 9, 2011
To: Board of Supervisors
From: Phillip R. Crandall, Director *key for PC*
Department of Health and Human Services (DHHS)-Mental Health Branch
Subject: Approval of the Contract with Netsmart, Inc. for Avatar software and services

RECOMMENDATION(S):

That the Board of Supervisors:

1. Approve the contract (Attachment 1) with Netsmart, Inc. for Avatar software and services, and;
2. Approve the request for budget appropriation transfer for fixed asset purchases related to this contract, and;
3. Authorize the Chair to sign three originals of the contract with Netsmart, Inc., and;
4. Authorize Phillip R. Crandall, DHHS Director to sign the Three-Party Escrow Service Agreement, and;
5. Authorize and designate Phillip R. Crandall, DHHS Director to be the authorized and designated person under the Three-Party Escrow Service Agreement whose actions will legally bind the County and who may manage the Iron Mountain escrow account, and;
6. Direct the Clerk of the Board to return two signed originals to DHHS-Mental Health Branch Administration.

Prepared by Paul Sheppard _____

CAO Approval *Cheryl Dillingham*

REVIEW: Auditor *WJM* County Counsel *KR* Personnel _____ Risk Manager *JG/TS* Other _____

TYPE OF ITEM:
 Consent
 Departmental
 Public Hearing
 Other _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor _____ Seconded by Supervisor *Sundberg*

Ayes *5*
Nays *0*
Abstain *0*
Absent *0*

PREVIOUS ACTION/REFERRAL:
Board Order No. G-2, C-17
Meeting of: 12/13/2005, 6/7/2007

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: *4/5/11*
By: *Nancy F. Hampton*
Kathy Hayes, Clerk of the Board

A. Netsmart Customer License and Service Agreement

LICENSE AND SERVICE AGREEMENT

Agreement made this 5th day of April, 2011, (the "Effective Date") by and between Netsmart Technologies, Inc., a Delaware corporation authorized to do business in the State of California with offices at 3500 Sunrise Highway, Suite D122, Great River, New York 11739, (hereinafter referred to as "Netsmart") and the County of Humboldt, a political subdivision of the State of California, through its Department of Health and Human Services-Mental Health Branch, with offices at 720 Wood Street, Eureka, CA 95501 (hereinafter referred to as "Licensee").

1. SCOPE OF AGREEMENT

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

- (a) Grant Licensee the rights to use and operate certain proprietary computer programs and related documentation on a non-exclusive basis as more particularly described herein; and
- (b) Provide services such as project management, installation, training and support services to Licensee. Netsmart agrees to provide all of the services described in Schedules A-N attached hereto and incorporated herein by reference.

2. DEFINITIONS

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

- (a) "Charges" means the amounts to be paid by Licensee for the right to use the Licensed Programs, for services provided to Licensee and for hardware or other Third Party Products acquired by Licensee under the terms of this Agreement. The Charges are described in Schedule A and the payment schedule for these Charges is defined in Schedule B.
- (b) "Development Services" means changes to be made to the Netsmart Programs (if any) required by Licensee and generally described in Schedule C attached hereto.
- (c) "Implementation Plan" means the detailed work plan attached hereto as Schedule D. In order to facilitate the development of the final Implementation Plan, the current version of Schedule D contains a template outlining parameters for preparation of a detailed Implementation Plan by the parties.
- (d) "Hardware Configuration" means the computer hardware required to install and operate the Licensed Programs. A description of the recommended Hardware Configuration is set forth in Schedule F attached hereto.
- (e) "Licensee Database" means a collection of data records that are maintained as a single logical area on a single computer system that is used, accessed, or acted upon by Licensed Programs.
- (f) "Licensed Programs" means both the Netsmart Programs and the Third Party programs.
- (g) "Licensee Resources" means the staff and other resources to be provided by Licensee for the installation and implementation of the Licensed Programs in accordance with the Implementation Plan. Schedule G attached hereto sets forth the required and available Licensee Resources.
- (h) "Netsmart Programs" means the Netsmart computer programs in object code form and their associated documentation. Schedule A lists separately the various modules of the Netsmart Programs purchased by Licensee.

- (i) "Optional Products and Services" means the additional products and services which Netsmart will make available to Licensee at prices shown in Schedule J for a period of 12 months after contract execution. Licensee is under no obligation, however, to purchase items listed in Schedule J.
- (j) "Problem or Defect" means any failure of the Licensed Programs to operate in substantial conformance with the Specifications.
- (k) "Services" means the installation, training and other services to be provided by Netsmart as described in Schedule E.
- (l) "Specifications" means the description and features of the Licensed Programs as set forth in the documentation relating to the Licensed Programs supplied to Licensee by Netsmart hereunder and more particularly identified in Schedule I of this Agreement.
- (m) "Support Services" means the maintenance and support services to be provided by Netsmart in accordance with Schedule H.
- (n) "Third Party Products" means any product acquired by Netsmart from an outside vendor on behalf of Licensee under the terms of this agreement. Third Party Products consisting of software are called Third Party Programs. Third Party Products are described in Schedule A.

3. LICENSED PROGRAMS

- (a) Netsmart hereby grants Licensee a non-exclusive, perpetual (subject only to termination under Section 14) non-transferable license to use the Licensed Programs in object code form only:
 - i. for Licensee's internal business purposes and not to process the data of any other entity;
 - ii. to support the number of Licensee Databases and the number of named users of the Netsmart Programs set forth in Schedule A;
 - iii. on the number of servers, operating system and for access by the maximum number of simultaneous users or other such restrictions of the Third Party Products as set forth in Schedule A;
 - iv. while Licensee is covered by the Support Services agreement described in Schedule H.
- (b) Except as expressly stated in this Agreement, no other rights, express, implied or otherwise are granted to Licensee.
- (c) The Third Party Programs are licensed subject to the same restrictions as are set forth in 3(a) above as well as such other restrictions as may be set forth in Schedule A.
- (d) Nothing in this Agreement will be deemed to convey any title or ownership interest in the Licensed Programs to Licensee. Licensee acknowledges Netsmart's rights and the rights of the owner of the Third Party Programs in the Licensed Programs and agrees that the Licensed Programs are trade secrets and unpublished works on which Netsmart and such third party(s) hold and will hold the sole and exclusive copyright. Licensee will not dispute the rights of Netsmart and the third party(s) in the Licensed Programs and will not sell, disclose, lease, sublicense, lend or otherwise make the Licensed Programs available to others.
- (e) No copies of the Licensed Programs may be made by Licensee without the prior written consent of Netsmart except for backup purposes in accordance with normal data processing practices. Licensee agrees to reproduce any copyright notices and/or other proprietary legends, regardless of form, contained in, affixed to, or appearing on the Licensed Programs.

- (f) Licensee will not disassemble or reverse engineer any of the Licensed Programs nor attempt to access or modify the source code version of the Licensed Programs and will not make any derivations, adaptations, or translations of the Licensed Programs in whole or in part, nor use the Licensed Programs to develop functionally similar computer software or to otherwise compete with Netsmart.
- (g) If suggestions made by Licensee are incorporated into subsequent versions of the Licensed Programs, Licensee hereby assigns to Netsmart all rights Licensee may have in and to any suggestions, concepts, or improvements concerning the Licensed Programs, or other products and services that may result from Licensee communications to Netsmart.

4. IMPLEMENTATION

Promptly after execution of this Agreement by both parties, the respective project managers appointed by each party will jointly develop the Implementation Plan. The Implementation Plan 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 Licensee to support the implementation pursuant to Schedule G, Licensee Resources.

5. TERM

The term of this Agreement shall be from the Effective Date and shall continue through June 30, 2014, unless sooner terminated as provided herein.

6. CHARGES AND PAYMENT TERMS

- (a) In consideration of the licenses granted hereunder, Services to be performed, and Third Party Products to be provided by Netsmart, Licensee agrees to pay Netsmart the Charges at the times and in the amounts set forth in Schedule B.
- (b) Invoices are payable net thirty (30) days after invoice date. Thereafter, any outstanding balance will bear simple interest at the lower of 18% per annum or the highest interest rate permitted by law.
- (c) The maximum amount Licensee will be obligated to Netsmart for services and licenses pursuant to this Agreement will not exceed Nine Hundred Thousand One Hundred Forty Five Dollars (\$900,145). It shall be the responsibility of Netsmart to notify Licensee in writing, at least six weeks prior to the date upon which Netsmart estimates that the maximum amount will be reached.

7. TAXES

The Charges set forth in this Agreement do not include any taxes. Where applicable, there will be added to such Charges, and Licensee will pay, amounts equal to any taxes (however designated, levied, or based) on such Charges including, but not limited to, state and local sales, privilege, property, use or excise taxes, but not including taxes based on the net income of Netsmart. If Licensee claims a tax exemption, Licensee will provide to Netsmart a certificate of exemption from taxes, or other evidence sufficient to permit Netsmart to exclude taxes from Charges.

8. WARRANTIES

- (a) Netsmart warrants that the Licensed Programs will substantially conform in all material respects with their Specifications. Netsmart will correct any Problems or Defects in accordance with the Support Services provisions set forth in Schedule H. The foregoing will be Netsmart's sole liability with regard to Problems or Defects in the Licensed Programs or Netsmart's performance or nonperformance of its obligations under this Agreement.
- (b) Netsmart further represents and warrants that it has the right to grant the licenses granted to Licensee hereunder and that to the best of Netsmart's knowledge the Licensed Programs do not infringe upon or violate the United States patent rights of any third party and do not infringe upon or violate the copyright, or trade secret right of any third party.
- (c) If any modifications, additions or alterations of any kind or nature are made to the Licensed Programs by Licensee or anyone acting with the consent of or under the direction of Licensee, all warranties will immediately terminate and Netsmart will have no further obligation or liability to Licensee. Licensee will have an affirmative obligation to immediately inform Netsmart in writing of any modifications, additions or alterations.

9. LIMITATION OF WARRANTY.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESS OR IMPLIED, WHETHER IN RELATION TO THE LICENSED PROGRAMS, 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. LICENSEE'S EXCLUSIVE REMEDY IN THE EVENT OF A BREACH OF THE SECTION 8(a) WARRANTY AND NETSMART'S SOLE OBLIGATION IS TO ATTEMPT TO MODIFY THE SOFTWARE TO ELIMINATE THE PROBLEM OR DEFECT. IN THE EVENT NETSMART CANNOT ELIMINATE THE PROBLEM OR DEFECT, IT WILL REFUND TO LICENSEE, THE LICENSE FEE PAID TO NETSMART LESS A REASONABLE ALLOWANCE FOR ANY PRODUCTIVE USE. LICENSEE'S EXCLUSIVE REMEDY IN THE EVENT OF A BREACH OF THE SECTION 8(b) WARRANTY IS SET FORTH IN SECTION 11.

10. LIMITATION OF LIABILITY

- (a) LIMITATION ON SPECIFIED DAMAGES IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES (INCLUDING DAMAGES RELATED TO DELAYS, LOSS OF DATA, INTERRUPTION OF SERVICE OR LOSS OF BUSINESS OR PROFITS OR REVENUE), EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. EXCEPT AS SET FORTH IN SECTION 11,

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY THIRD PARTY CLAIM.

- (b) **LIMITATION ON CUMULATIVE LIABILITY.** EXCEPT AS SET FORTH IN SECTION 11, THE CUMULATIVE LIABILITY OF NETSMART TO LICENSEE FOR ANY ACTUAL OR ALLEGED DAMAGES ARISING OUT OF, BASED ON OR RELATING TO THIS AGREEMENT, WHETHER BASED UPON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR ANY OTHER LEGAL THEORY, WILL NOT EXCEED THE AMOUNT OF THE LICENSE FEES PAID TO NETSMART UNDER THIS AGREEMENT.

11. HOLD HARMLESS/INDEMNIFICATION

- (a) Netsmart shall indemnify, defend and hold harmless Licensee and its officers, officials, employees and volunteers, from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorney's fees awarded against the Licensee, which are caused by any negligent or willful acts of misconduct or omissions (either directly or through or by its officers, agents or employees) in connection with Netsmart's duties and obligations under this Agreement and any amendments hereto.
- (b) Licensee shall indemnify, defend and hold harmless Netsmart and its officers, officials, employees and volunteers, from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorney's fees awarded against Netsmart, which are caused by any negligent or willful acts of misconduct or omissions (either directly or through or by its officers, agents or employees) in connection with Licensee's duties and obligations under this Agreement and any amendments hereto.
- (c) Notwithstanding paragraphs a and b, in the event that Netsmart and Licensee are both held to be negligently or willfully responsible, Netsmart and Licensee will bear their proportionate share of liability as determined in any such proceeding. Each side will bear their own costs and attorney's fees.
- (d) Acceptance of insurance, if required by this Agreement, does not relieve Netsmart from liability under this indemnification clause. This indemnification clause shall apply to all damages or claims for damages suffered by Netsmart's operations regardless if any insurance is applicable or not.

12. INFRINGEMENT INDEMNITY

In the event of a claim or suit against Licensee alleging (a) the computer program(s) as licensed by Netsmart or (b) Licensee use of the computer program(s) as licensed by Netsmart infringes any patent issued by or copyright registered in the country in which the computer program(s) was licensed to Licensee, Netsmart shall defend Licensee to the extent the claim or suit concerns such infringement, provided Licensee gives Netsmart prompt notice of such claim or suit and continuous cooperation in such

defense

In any claim or suit against Licensee that is defended by Netsmart pursuant to this Section, Netsmart shall control the defense, shall pay all litigation costs, including attorney's fees incurred by Licensee in such defense, and shall indemnify Licensee for all damages awarded by a court or settlement payments approved by Netsmart.

If in any claim or suit against Licensee that is defended by Netsmart pursuant to this Section, as a result of a court order not subject to further appeal or a settlement approved by Netsmart, Licensee is enjoined or otherwise prevented from using the computer program(s) as licensed by Netsmart. Netsmart, at its option, may (a) procure for Licensee the right to continue using the computer program(s), (b) replace or modify the computer program(s) to avoid infringement, or (c) repossess the computer program(s) in exchange for a refund of the depreciated value of the computer program(s). Netsmart's option selected under this Section shall be the Licensee's sole remedy for any prospective effects of any court order or settlement. Netsmart's total, cumulative liability under this Section shall be limited to the price paid to Netsmart by Licensee for the computer program(s)

Notwithstanding any other provision of this Section, Netsmart shall not be obligated to defend and shall not be liable for costs or damages awarded in any claim or suit for infringement in which (a) the Computer Program(s) was made by netsmart pursuant to specifications supplied by Licensee, or (b) the alleged infringement is based on use by Licensee, without Netsmart's permission, of the Computer Program(s) as licensed by Netsmart in combination with another item not sold or licensed by Netsmart, where the alleged infringement arises from the combination or from practice of a method made possible by the combination, or (c) the alleged infringement is based on the Computer Program(s) as modified by Licensee without Netsmart's permission.

13. INSURANCE REQUIREMENTS

- (a) THIS CONTRACT SHALL NOT BE EXECUTED BY Licensee and Netsmart is not entitled to any right to receive payments, unless certificates of insurance, or other sufficient proof that the following provisions have been complied with, and such certificate(s) are filed with the Clerk of the Humboldt County Board of Supervisors.
- (b) Without limiting Netsmart's indemnification obligations provided for herein, Netsmart shall and shall require any of its subcontractors to take out and maintain, throughout the period of this Agreement and any extended term thereof, the following policies of insurance placed with insurers authorized to do business in California and with a current A.M. Best's rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of Netsmart, its agents, officers, directors employees, licensees, invitees, assignees or subcontractors:

- i. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of \$1,000,000 per occurrence for any one incident, including, personal injury, death and property damage. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate shall be twice the required occurrence limit.
- ii. Automobile/Motor liability insurance with a limit of liability of not less than one million dollars (\$1,000,000) combined single limit coverage. Such insurance shall include all "owned", "hired", and "non-owned" vehicles or coverage for "any auto".
- iii. Workers Compensation and Employer's Liability Insurance providing worker's compensation benefits as required by the Labor Code of the State of California. Said policy shall contain or be endorsed to contain a waiver of subrogation against Licensee, its officers, agents, and employees. In all cases, the above insurance shall include Employers Liability coverage with limits of not less than one million dollars per accident for bodily injury and disease.
- iv. Professional liability insurance/errors and omission coverage in an amount no less than Two Million Dollars (\$2,000,000) for each occurrence (Four Million Dollars (\$4,000,000) general aggregate). If said insurance is a claims made policy, the policy shall be maintained for three years after termination of this Agreement. Netsmart shall require that the aforementioned professional liability insurance coverage language be incorporated into its contract with any other entity with which it contracts for professional services.

v. Insurance notices sent to:

County of Humboldt
Attn: Risk Management
825 5th Street, Room 131
Eureka, CA 95501

(c) Special Insurance Requirements. Said policies shall unless otherwise specified herein be endorsed with, the following provisions:

- i. The Comprehensive General Liability Policy shall provide that the Licensee, its officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by or on behalf of Netsmart. The coverage shall contain no special limitations on the scope of protection afforded to Licensee, its officers, officials, employees, and volunteers. Said policy shall also contain a provision stating that such coverage:

A. Includes contractual liability.

- B. Does not contain exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to as "XCU Hazards".
- C. Is primary insurance as regards the County of Humboldt.
- D. Does not contain a pro-rata, excess only, and/or escape clause.
- E. Contains a cross liability, severability of interest or separation of insureds clause.

ii. The Certificate of Insurance will include the standard Insurer undertaking to endeavor to provide notice of cancellation or non-renewal to County not less than thirty (30) days prior thereto and in accordance with the Notice provisions set forth under Section 21. It is further understood that Netsmart shall not terminate such coverage until it provides Licensee with proof satisfactory to Licensee that equal or better insurance has been secured and is in place.

iii. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.

iv. For claims related to this project, Netsmart's insurance is primary coverage to Licensee, and any insurance or self-insurance programs maintained by Licensee are excess to Netsmart's insurance and will not be called upon to contribute with it.

v. Any failure to comply with reporting or other provisions of the Parties, including breach of warranties, shall not affect coverage provided to Licensee, its officers, officials, employees, and volunteers.

vi. Netsmart shall furnish Licensee with certificates and original endorsements effecting the required coverage prior to execution of this Agreement by Licensee. The endorsements shall be on standard ACCORD forms and subject to approval by the Licensee's Risk Manager or Licensee's Counsel. Any deductible or self-insured retention over \$100,000 shall be disclosed to Licensee prior to the commencement of the Agreement. If Netsmart does not keep all required policies in full force and effect, Licensee may terminate this Agreement under Section 14. Licensee is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered and Netsmart shall be required to purchase additional coverage to meet the aggregate limits set forth above.

14. TERMINATION

- (a) Licensee may immediately suspend or terminate this Agreement in whole or in part, where in its sole discretion, the determination is made that

there is:

- i. An illegal or improper use of funds;
- ii. A failure to comply with any term of this Agreement;
- iii. A substantially incorrect or incomplete report submitted; or
- iv. Improperly performed service.

Notwithstanding the foregoing, in the event Licensee desires to terminate under clause ii. or iii. above, Licensee shall provide notice to Netsmart specifying in detail the basis for the Licensee's decision, and provide Netsmart with ten (10) business days in which to remedy the issue giving rise to termination.

- (b) This Agreement may be terminated by either party without cause as follows:
 - i. If terminated by Netsmart, termination shall require sixty (60) days advance written notice of such intent to terminate. The notice shall state the effective date of the termination.
 - ii. Licensee may terminate this Agreement without cause upon thirty (30) days written notice; except that Licensee shall take into consideration the welfare of Licensee's clients/patients and make allowance for the treatment needs of its clients. Licensee will pay to Netsmart, at the contracted rate or price, for all materials and services delivered by Netsmart, in good faith, prior to the notice of termination without cause.
- (c) COUNTY'S obligations under this Agreement are contingent upon the availability of County, State and/or Federal funds. In the event such funding is terminated or reduced, COUNTY shall, at its sole discretion, determine whether this Agreement shall be terminated or COUNTY'S maximum obligation reduced. COUNTY shall provide CONTRACTOR seven (7) days written notice of its intent to terminate this Agreement or its intent to reduce its maximum obligation under this Agreement.
- (d) 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:
 - i. Section 10 "Limitation of Liability"
 - ii. Section 11 "Hold Harmless/Indemnification"
 - iii. Section 16 "Backup"
 - iv. Section 17 "Confidentiality"
 - v. Section 18 "Non-Solicitation"
 - vi. Section 21 "Notices"
 - vii. Section 22 "No Terms Not Included"
 - viii. Section 23 "Headings"
 - ix. Section 24 "No Waiver of Default"
 - x. Section 25 "Breach"

xi.	Section 29	“Assignment”
xii.	Section 33	“Compliance with Laws”
xiii.	Section 35	“Venue and Applicable Law”
xiv.	Section 36	“Reference to Laws and Rules”
xv.	Section 40	“Media Release and Client Identification”
xvi.	Section 43	“Amendment”
xvii.	Section 44	“Disputes”
vix.	Section 48	"General Provisions"

15. CONTINUATION OF MIS SYSTEM

Licensee may continue using the Community Mental Health Center Management Information System (“CMHC MIS”) without incurring any additional license fees but will continue to pay maintenance and support fees for the CMHC/MIS system up until the point at which Avatar maintenance and support fees commence.

16. BACKUP

Licensee understands and agrees that it is and will be solely responsible for establishing and maintaining a procedure for backing up its data in accordance with industry standards, and for maintaining procedures for reconstruction and/or recompilation of any and all data lost or destroyed during the use of the Licensed Programs, or storage of the data. Netsmart will not be liable under any circumstances for any damages caused by or arising from such lost or destroyed data. Netsmart will use commercially reasonable efforts, on a time and material basis to assist Licensee in reconstruction and/or recompilation of such data.

17. CONFIDENTIALITY

(a) Netsmart recognizes and acknowledges the sensitive and confidential nature of information it may obtain with regard to Licensee's clients and their treatment, and agrees that information with respect to Licensee's clients and their treatment will be kept in strict confidence in perpetuity by Netsmart. Netsmart agrees to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d et seq. (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act of 2009, as codified at and any current and future regulations promulgated there under including without limitation the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the “Federal Privacy Regulations”), the federal security standards contained in 45 C.F.R. Part 142 (the “Federal Security Regulations”), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162, all collectively referred to herein as “HIPAA Requirements”. Netsmart agrees not to use or further disclose any Protected Health Information (as defined in 45 C.F.R. Section 164.501) or Individually Identifiable Health Information (as defined in 42 U.S.C. Section 1320d), other than as permitted by HIPAA Requirements and the terms of this Agreement. Netsmart will make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the United States Secretary of Health and Human Services to the extent required for determining compliance with the Federal Privacy Regulations.

(b) Licensee will take adequate steps and security precautions to prevent unauthorized disclosure of information which is proprietary to Netsmart and/or the owner of the Third Party

Programs including, without limitation the Licensed Programs and to maintain the confidentiality of such information, including but not limited to: (i) instructing its employees having access to such information not to copy or duplicate the same or any part thereof and to withhold disclosure or access or reference thereto from unauthorized third parties; (ii) effecting sufficient security measures including, at the request of Netsmart, non-disclosure agreements with its employees, to safeguard such information from theft or from access by unauthorized parties.

18. NON-SOLICITATION

During the term of this Agreement and for a period of one (1) year following its termination, neither party will directly or indirectly solicit for employment or as a consultant, an employee or consultant of the other party, or any person who was an employee or consultant of the other party at any time during the six (6) month period immediately prior to the date such employee or consultant is solicited, hired or retained. This does not limit Licensee's employees or consultants seeking employment with Netsmart

19. ATTORNEY FEES

In the event of any litigation between the parties concerning performance or non-performance of either party's obligations under this Agreement, each party shall bear its own costs and expenses incurred in such litigation.

20. FORCE MAJEURE

Neither party will be responsible for delays or failures in performance resulting from acts or events beyond its reasonable control, including but not limited to, acts of nature, governmental actions, 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.

21. NOTICES

Any notices required or permitted to be sent hereunder will be in writing and will be sent, Certified Mail, Return Receipt Requested, or by a recognized international courier. Notices will be sent to either Netsmart or Licensee at the following addresses:

NETSMART:

Netsmart Technologies, Inc.
ATTN: Chief Financial Officer
3500 Sunrise Highway, Suite D122
Great River, New York, 11739

LICENSEE:

Humboldt County Dept. of Health and Human Services
ATTN: Mental Health Branch Director
720 Wood Street
Eureka, California 95501.

22. NO TERMS NOT INCLUDED

This Agreement and the schedules and exhibits attached hereto contain the entire understanding of the parties with respect to the matter contained herein. There are no promises, covenants or undertakings contained in any other writing or oral communication. In the event of any conflict between or among the documents comprising this Agreement, the latest dated document will prevail

23. 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.

24. NO WAIVER OF DEFAULT

The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement. In no event shall any payment by Licensee constitute a waiver of any breach of this Agreement or any default which may then exist on the part of Netsmart. Neither shall such payment impair or prejudice any remedy available to Licensee with respect to the breach or default.

25. BREACH

It is specifically agreed that the breach of this Agreement, and in particular the provisions concerning non-disclosure of proprietary information will result in irreparable injury and the party who claims such a breach will be entitled to specific performance and injunctive relief to correct and enjoin such breach in addition to all other remedies which might be available.

26. AUDITS

Netsmart shall be subject to the examination and audit of the State Auditor General for a period of three (3) years after final payment under this Agreement pursuant to Government Code Section 8546.7. Netsmart shall hold Licensee harmless for any liability resulting from said audit. Licensee shall have the right to demand of Netsmart the repayment of any funds disbursed to Netsmart under this Agreement, which in the judgment of Licensee were not expended in accordance with the terms of this Agreement. Netsmart shall promptly refund any such funds upon demand.

27. REPORTING

Netsmart agrees to provide Licensee with any reports that may be required by County, State or Federal agencies for compliance with this Agreement.

28. MONITORING

Netsmart agrees to extend to the Humboldt County Department of Health and Human

Services Director or designee, the State or Federal governments or their designees, the right to review and monitor records, programs or procedures, at any time, in regards to clients or patients, as well as the overall operation of Netsmart's programs in order to ensure compliance with the terms and conditions of this Agreement.

29. ASSIGNMENT

- (a) Neither party shall assign its obligations under this Agreement without the prior written consent of the other party which will not be delayed or withheld without prudent business reasons. Any assignment by Netsmart in violation of this provision shall be void and shall be cause for immediate termination of this Agreement under Section 14. (a) (ii).
- (b) The license granted hereunder to Licensee may not be assigned, or sublicensed, or shared, nor may Licensee use the Licensed Programs to provide the software features as a service (Software as a Service) to a third party without the written consent of Netsmart. Licensee may, however, assign all of its rights under this Agreement to an assignee who acquires all or substantially all of the assets of Licensee, is not a competitor of Netsmart and has financial resources at least equal to those of Licensee. Any permitted assignee will assume in writing, all obligations of the assignor.

30. SUBCONTRACTING

Netsmart shall not subcontract for any services without prior written approval of Licensee which will not be delayed or withheld without prudent business reasons.

31. RELATIONSHIP OF PARTIES

It is understood that this is an Agreement by and between two independent contractors and is not intended to, and shall not be construed to, create the relationship of agents, servant, employee, partnership, joint venture, or any other similar association. Both parties further agree that Netsmart shall not be entitled to any benefits to which Licensee's employees are entitled, including but not limited to overtime, retirement benefits, worker's compensation and injury leave or other leave benefits.

32. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE

Netsmart certifies by its signature below that Netsmart is not a Nuclear Weapons Contractor, in that Netsmart is not knowingly or intentionally engaged in the research, development, production, or testing of nuclear warheads, nuclear weapons systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. Netsmart agrees to notify Licensee immediately if it becomes a Nuclear Weapons Contractor as defined above. Licensee may immediately terminate this Agreement if it determines that the foregoing certification is false or if Netsmart becomes a Nuclear Weapons Contractor.

33. COMPLIANCE WITH LAWS

- (a) Netsmart agrees to comply with all applicable local, state and federal laws and regulations, including but not limited to the Americans with Disabilities Act.
- (b) Licensee agrees to comply with all laws and regulations, including all United States and multilateral export laws and regulations, to assure that the Licensed Programs are not exported, directly or indirectly, in violation of law.

34. COMPLIANCE WITH ELECTRONIC HEALTH RECORD REGULATIONS

Netsmart will maintain the Avatar software solution in regulatory compliance with both STATE and FEDERAL regulations for Electronic Health Record (eHR) systems as part of the annual maintenance/support program, for which there is an annual fee as outlined herein.

35. VENUE AND APPLICABLE LAW

This Agreement shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder or relating to this Agreement shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 and 395.

36. REFERENCE TO LAWS AND RULES

In the event any law, regulation or policy referred to in this Agreement is amended during the term hereof, the parties agree to comply with the amended provision as of the effective date of such amendment. This principle will not apply to county or local laws, rules or regulations relating to the functions, features and output of Netsmart's software.

37. NONDISCRIMINATION

- (a) Consistent with the requirements of applicable federal or state law, Netsmart will not engage in any unlawful discriminatory practices in the employment of personnel, or in any other respect on the basis of race, color, gender, religion, marital status, national origin, age, sexual preference or mental or physical handicap.
- (b) During the performance of this Agreement, Netsmart and its subcontractors will not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, mental or physical handicap, medical conditions, marital status, age, sexual preference or sex. Netsmart and its subcontractors will comply with the Disabilities Act of 1990, the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated there under (Title 2, CCR, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5, Division 4 of Title 2, CCR, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

- (c) Netsmart will comply with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, pertaining to the prohibition of discrimination against qualified handicapped persons in all federally assisted programs or activities, as detailed in regulations signed by the Secretary of Health and Welfare Agency, effective June 2, 1977, and found in the Federal Register, Volume 42, No. 86, dated May 4, 1977.
- (d) Netsmart will include equivalent nondiscrimination and compliance provisions of this Agreement in all subcontracts to perform work under this Agreement.

38. RECORDS

Netsmart shall maintain accurate records of its costs and operating expenses relating to this Agreement. Such records of costs, expenditures and reimbursements shall be maintained for at least seven (7) years from the close of the State's fiscal year during which services were provided, or until audit findings which may have begun prior to the end of such seven-year period, are resolved, whichever is later. Such records shall be open to inspection by the Humboldt County Mental Health Director, the Humboldt County Auditor-Controller, the Humboldt County Grand Jury, the State Controller, the State Director of the Department of Mental Health, the United States Department of Health and Human Services, or any of their designees.

39. CONFIDENTIALITY OF RECORDS

- a) In the performance of this Agreement, Netsmart may receive confidential information. Netsmart agrees to protect the confidentiality of all of Licensee's clients and patients in conformance with, but not limited to, the California Welfare and Institutions Code Sections 827, 5328, and 10850, the California Confidentiality of Medical Information Act, California Health & Safety Code sections 1280.15 and 130203 as applicable, the United States Health Information Portability and Accountability Act of 1996 ("HIPAA") and the United States Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("HITECH Act"), and their implementing regulations, including as appropriate Title 45 of the Code of Federal Regulations Section 205.50
- b) Netsmart agrees to hold Confidential Information in confidence and not to make use of Confidential Information for any purpose other than the performance of this Agreement.
- c) As used in this Section "Confidential Information" means all tangible and intangible information and materials being disclosed to Netsmart under this Agreement relating to the project, Licensee's systems and operations, and specifically including all Personally Identifiable Information regardless of the medium or form of disclosure. Except for Personally Identifiable Information, the following shall not be considered Confidential Information: (i) any information in the public domain at the time of its communication thereof to either party by the other party; (ii) any information which enters the public

domain, through no fault of the receiving party, subsequent to the time of its communication to the receiving party; (iii) any personal contact information of staff and business partners; and (iv) any information which is obtained in good faith by either party from a third party, provided such third party is not bound by a confidentiality agreement with Netsmart or Licensee, as applicable.

- d) Licensee agrees to hold trade secrets or other proprietary information of Netsmart in confidence. In the event a request is made to Licensee under a freedom of information or public right to know law to release trade secrets or proprietary information of Netsmart, Licensee will provide prompt notice to Netsmart so that Netsmart may take lawful action to oppose the disclosure of the information.

39. MEDIA RELEASE AND CLIENT IDENTIFICATION

- a) All press releases and informational material related to this Agreement shall receive approval from Licensee prior to being released to the media (television, radio, newspapers, Internet). In addition, Netsmart shall inform Licensee of requests for interviews by media related to this Agreement prior to such interviews taking place. Licensee reserves the right to have a representative present at such interviews. All notices required by this provision shall be given to the Director of the Humboldt County Department of Health and Human Services or his designee.
- b) Licensee authorizes Netsmart to identify Licensee as a client, and to use Licensee's name and logo in any of Netsmart's advertising copy, promotional material, or press releases.

41. DRUG FREE WORKPLACE CERTIFICATION

By signing this Agreement, Netsmart hereby certifies that Netsmart will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by doing all of the following:

- (a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- (b) Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(b), to inform employees about all of the following:
 - i. the dangers of drug abuse in the workplace,
 - ii. Netsmart's policy of maintaining a drug-free workplace,
 - iii. any available counseling, rehabilitation and employee assistance programs, and

- iv. penalties that may be imposed upon employees for drug abuse violations.
- (c) Provide as required by Government Code Section 8355(c) that every employee who works on the Agreement:
- i. will receive a copy of Netsmart's drug-free policy statement, and
 - ii. will agree to abide by the terms of Netsmart's statement as a condition of employment on the Agreement or grant.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Netsmart may be ineligible for award of future state contracts if the Department determines that any of the following has occurred: (1) Netsmart has made a false certification or, (2) violates the certification by failing to carry out the requirements as noted above.

42. PATIENTS' RIGHTS

The parties to this Agreement shall comply with applicable laws, regulations and State policies relating to patients' rights.

43. AMENDMENT

This Agreement may be amended at any time during the term of this Agreement upon the written mutual consent of both parties.

44. DISPUTES

The parties will use reasonable efforts, including, without limitation, face-to-face negotiations, to resolve any differences arising between them as a result of this Agreement prior to exercising their respective rights at law or equity. If a trial results from this Agreement, the parties waive their right to a jury trial. No action, regardless of form, arising out of this Agreement will be brought more than two (2) years after the cause of action accrues.

45. ESCROW SERVICES

(a) Possession and Use of Source Code

Source code and other material that results from custom programming by Netsmart for Licensee under this license shall be deemed to be Licensee's property subject to all of the terms and conditions of the license set forth in this Agreement. Source code for the Netsmart Avatar Entire Suite of Software Products and all update/enhancements shall be placed in an escrow account with a third party at Licensee's expense with Licensee as beneficiary in the event Netsmart does not provide Maintenance and

Support as required by this Agreement, or bankruptcy of Netsmart.

In the event -Source Code is released to Licensee, Licensee's permitted use of the source code under this license shall be limited to use of source code Maintenance and Support of the Netsmart Avatar Entire Suite of Software Products and Licensee's obligations with regard to confidentiality will apply to the source code and documentation.

(b) Escrow Charges

Netsmart maintains a three-Party Escrow Agreement with Iron Mountain Incorporated and will include Licensee as a beneficiary under such Escrow Agreement. The annual escrow cost of two thousand five hundred dollars (\$2,500) and the annual auxiliary account cost of One Thousand Dollars (\$1,000) for a total annual cost of Three Thousand Five Hundred Dollars (\$3,500) annually for including Licensee as a beneficiary under such Escrow Agreement shall be paid by Licensee to Netsmart. Netsmart will make a deposit of any updates to the Licensed Programs annually, and will deposit any new version of the Licensed Programs upon its release to Netsmart's licensees. The costs to begin and due at the time Humboldt County has successfully converted/migrated operations to the Netsmart Avatar Platform.

(c) Escrow Agreement

Netsmart will provide Licensee with the Escrow Agreement for the Humboldt County Department of Health and Human Services Director, or designee, to sign within thirty (30) business days following the execution of this Agreement. The Escrow Agreement will be substantially similar to the agreement attached hereto in Schedule N. The resulting Escrow Agreement shall then be attached hereto as Schedule L (Three-Party Escrow Agreement) and incorporated herein by this reference.

46. CHANGE OF OWNERSHIP

Netsmart agrees that if there is a change or transfer of ownership of Netsmart business prior to completion of this Agreement, the new owners shall be required under terms of sale or other transfer to assume Netsmart duties and obligations contained in this Agreement and complete them to the reasonable satisfaction of Licensee.

47. HIPAA REQUIREMENTS

The "County of Humboldt HIPAA Business Associate Agreement", a copy of which is attached hereto and identified as Exhibit M, is hereby incorporated into this Agreement. Netsmart agrees to adhere to the terms and conditions set forth herein.

48. GENERAL PROVISIONS

- (a) This Agreement may be executed in two or more counterparts, each of which will be deemed an original.
- (b) This Agreement may be executed by electronic signature as follows:
 - i. a fax copy of this Agreements with a signature page that displays the image of a handwritten signature; or
 - ii. a digital file that is transmitted by one party to the other which, when displayed on an electronic video display terminal, presents an image of this Agreement with a signature page bearing the image of a handwritten signature.

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the date first above written.

Netsmart Technologies, Inc.

County of Humboldt

ATTEST:

Kathy Hayes, Clerk of the Board

BY: Nancy L. Hampton

BY: Mark Lovelace

MARK LOVELACE
(Printed Name)

TITLE: Chair, Board of Supervisors

DATE: 4-8-11

BY: [Signature]
JOSEPH MCGOVERN
(Printed Name)

TITLE: EVP

DATE: 3-21-2011

BY: [Signature]
Alan Tillinghast
(Printed Name)

TITLE: EVP

DATE: 3/21/2011

COUNTY COUNSEL

BY: Karen Roebuck

RISK MANAGER

BY: J. Ann Hath/TS

(2 Corporate Officer Signatures Required)

Schedule A

<u>Netsmart Programs</u>	<u>Quantity</u>	<u>Price</u>
Licensee Database(s)	1	included
RADplus – Named Users: Includes Avatar System access and security management, modeling, table and dictionary maintenance and ad-hoc report integration	250	\$200,000
Avatar Practice Management - Includes system management, client tracking, scheduling and reporting functions	1	No charge
Clinician Workstation –Includes system management, assessment, progress notes, treatment planning and reporting functions	1	\$25,000
Electronic Medication Administration Record (price is based on 16-bed facility)	1	\$8,000
Electronic Signature Software	1	\$10,000
MIS to Avatar transfer fee for 83 concurrent MIS licenses to 250 Avatar licenses	250	\$25,000
Point-of-Service Scanning	1	\$7,500
Avatar Test Server	1	\$10,000
Discount for 250 RADplus named-user licenses (MIS To Avatar migration program) Valid based on receipt of signed contract by 4/5/2011.		<\$200,000>
Total Netsmart Programs		\$85,500
<u>Third Party Products and Services</u>		
Cache Enterprise Multi Server Platform Specific for 63 concurrent users	N/A	\$48,762
Cache Multi-Server, Single Platform license (for ECP Platform) based on 63 concurrent users	N/A	\$9,576
Cache Platform Specific, Single Server (for Test server) – 5 concurrent users	N/A	\$3,095
Crystal Report Writer - Developer	1	\$595
Hardware – see Schedule F for specifications	2	\$26,632
Total Third Party Products		\$88,660
<u>Netsmart Development</u>		
As defined in Schedule C		\$15,000
Total Netsmart Development		\$15,000
<u>Netsmart Services</u>		
As defined in Schedule E		\$246,250
Total Netsmart Services		\$246,250
Grand Total of One Time Charges		\$435,410

<u>Annual Recurring Charges and Subscriptions</u>	Price
Netsmart Programs annual support	\$61,005.00
Cache' annual support	\$13,515.26
Annual Iron Mountain Escrow	<u>\$3,500.00</u>
<u>Total Annual Recurring Charges</u>	<u>\$ 78,020.26</u>

Schedule B

Description	Amount Due
Netsmart Programs As described in Schedule A.	
Due on Agreement effective date	\$23,115
Due on software installation	\$23,115
Nine (9) consecutive monthly payments of \$4,363.33	\$39,270
Total Payment - Netsmart Programs	\$85,500
Third Party Products As described in Schedule A.	
Due on Agreement effective date	\$62,028
Hardware (as described in Schedule F) – 30 days from Agreement effective date	\$26,632
Total Payment -Third Party Products	\$88,660
Development Payment As described in Schedule C.	
Due on Agreement effective date	
Due 60 days from Agreement effective date	\$7,500
Due 270 days from Agreement effective date	\$7,500
Total Payment – Development Services	\$15,000
Implementation Services As described in Schedule E.	
Due on Agreement effective date	\$36,937.50
Five consecutive monthly payments of \$34,885 starting from agreement effective date	\$174,425
One final monthly payment to be paid nine months after agreement effective date	\$34,887.50
Total Payment – Installation Services	\$246,250

Annual Recurring Charges and Subscriptions	
Netsmart Programs as described in Schedule A	
Initial Term from contract signing through 12/31/2011 due on Agreement effective date.	0
Subsequent annual periods payable 90 days in advance. This amount is subject to annual increases as defined in Schedule H paragraph (i)	\$61,005
Annual Escrow Charge as described in schedule L due on Agreement Effective Date and annually thereafter on the anniversary of the Agreement Effective Date	\$3,500.00
Cache' as described in Schedule A	
Initial Term from agreement effective date due on Agreement execution based Agreement effective date which shall be no later than 4/5/2011.	\$10,143
Subsequent annual periods payable 90 days in advance. This amount is subject to annual increases as defined in Schedule H paragraph (i)	\$13,515.26
<u>Total Annual Payment - Initial Term (4/5/11 through 12/31/11)</u>	<u>\$10,143</u>
<u>Annual Recurring Charge</u>	<u>\$78,202.26</u>

<p>TRAVEL AND LIVING AND TRAVEL TIME EXPENSES Billed monthly as incurred at the most economical rates. Every attempt to acquire lowest cost travel rates (lead times, discounts, etc.) should be made. Travel time billed at \$150/hr or employees salary rate (Which ever is lowest). Total billable time will only include actual travel time plus one hour before (arrival time to airport, check-in) and hour after arrival (luggage pickup, transportation and arrival to hotel). All travel events must first be approved by authorized Humboldt County representative prior to incurring travel costs. Only those travel expenses which are ordinary and necessary to accomplish the official business purpose of the trip are eligible for reimbursement. Entertainment expenses, including alcohol, are not reimbursable. If official business travel is interrupted for personal convenience, any resulting additional expense shall be borne by the Consultant/Netsmart</p> <p><i>Travel and Living Expenses are as follows:</i></p> <p>Meals: Charged at Netsmart's then current daily per diem rate. The current rate is not to exceed \$50.00 per day</p> <p>Airline: Coach Class on Major Airline including any additional fees applied by the airline. This will not include extra baggage charges, cancellation, flight change charges unless preapproved or other purchased items on the flight, etc. Travelers are required pre-book flights at the airlines lowest cost rates and to acquire the least cost routing and fares.</p> <p>Personal Vehicle: Personal vehicle usage will be reimbursed at the currently defined rate by the IRS. If staff elects to travel by personal vehicle, the travel costs, hourly rates and travel costs will not be paid in excess of the (least cost travel method & hourly staff rate i.e. long distance/out of state driving verses flying & hourly staff rate)</p> <p>Rental Car: Mid Size vehicle at local rates, county is not responsible for damages or any extra drop off fees, etc. incurred during rental period.</p> <p>Hotel: Reasonable hotel selections located within Eureka area should not exceed \$150 per night stay without prior approval. Room rates are reimbursable at local actual charged rates. Rates are limited to room fee, local bed tax and other standard room charges. No cleaning, snacks or other additional discretionary charges.</p> <p>Ancillaries: Gas, Tolls, Parking. Humboldt County is not responsible for parking tickets or other moving violations.</p>	<p>Billed as incurred</p>
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Schedule C
Netsmart Development Services

All Development Services provided by Netsmart on behalf of the Licensee will be based on the prior preparation and approval of functional specifications. Approved specifications are incorporated by reference in Schedule I. Prices indicated below include the costs associated with the creation of specification and quality assurance. Additional fees for maintenance of custom software will be included in Schedule B.

Unless otherwise stated below, Development Services and its attendant costs are not included under this Agreement

In the event additional Development Services are required, Netsmart will make these services available as described in Schedule J.

Description	Price
Standard demographic conversion (includes balance forward)	\$15,000
Total Fees for Development Services	\$15,000

Schedule D
Implementation Plan

Netsmart and Licensee will formally develop and approve a detailed implementation plan within thirty (30) days of Agreement execution. Professional Services have been set based on the expectation of a nine month implementation plan. In the event extensions to this plan are required, additional Netsmart Implementation Services may be required. High-level project milestones are as follows:

Project Activity	Days from Agreement Execution
Hardware installation	45
Software installation	60
System table definition	120
Training of trainers	150
Go Live	365

Schedule E
Netsmart Implementation Services

Description of Service	Quantity	Price
Project Management To consult and be the primary liaison with the Licensee's project manager in developing and executing the Project Implementation Plan. Project Management time allocation is based on a high level month implementation plan as described in Schedule D. Any extensions to the agreed upon implementation schedule will require additional Netsmart Installation Services	662	\$148,950
Software Installation Installation of the Licensed Programs on Licensee's hardware.	24	\$4,800
File Build Assistance Assistance in the creation of and loading of various configuration tables.	80	\$16,000
Training Application training on the Netsmart Programs listed in Schedule A.	264	\$49,500
Go Live Support Onsite technical and implementation assistance during the cutover from testing to production operations	64	\$12,000
RADplus forms and or SQL reporting development	80	\$15,000
TOTAL		\$ 246,250
In the event additional Netsmart Installation Services are required, Netsmart will make these services available as described in Schedule I.		

Schedule F
Hardware Configuration

Licensee is purchasing hardware from Netsmart.

If Netsmart is providing hardware the detailed configuration is described below.

ECP/Middleware

Module	Description
PowerEdge R610	Chassis for Up to Six 2.5-Inch Hard Drives
Operating System	Windows Server® 2008, Standard x64 Edition, Includes 5 CALs
Shipping	PowerEdge R610 Shipping
Memory	32GB Memory (8x4GB), 1066MHz Dual Ranked RDIMMs for 2 Processors, Adv ECC
Feature Upgrades for Embedded NIC Ports	Dual Two-Port Embedded Broadcom® NetXtreme II 5709 Gigabit Ethernet NIC
Primary Processor	Intel® Xeon® X5550, 2.66Ghz, 8M Cache, Turbo, HT, 1333MHz Max Mem
Additional Processor	Intel® Xeon® X5550, 2.66Ghz, 8M Cache, Turbo, HT, 1333MHz Max Mem
1st Hard Drive	73GB 10K RPM Serial-Attach SCSI 2.5" Hot Plug Hard Drive
Primary Controller	SAS 6/iR Integrated
BIOS Setting	Power Saving BIOS Setting
Embedded Management	iDRAC6 Express
Internal Optical Drive	DVD ROM, SATA, Internal
Bezel	Bezel
System Documentation	No Systems Documentation, No OpenManage DVD Kit
2nd Hard Drive	73GB 10K RPM Serial-Attach SCSI 2.5" Hot Plug Hard Drive
Hard Drive Configuration	RAID 1 for PERC 6/i or SAS 6/iR Controllers
Rails	Sliding Ready Rails With Cable Management Arm
Hardware Support Services	3 Year ProSupport for IT 4HR 7x24 Onsite: Non Mission Critical
Installation Services	No Installation

Power Supply	High Output Power Supply, Redundant, 717W
Power Cords	No Additional Power Cord
Power Cords	NEMA 5-15P to C13 Wall Plug, 125 Volt, 15 AMP, 10 Feet (3m), Power Cord

Database Server

Module	Description
PowerEdge R710	Chassis for Up to Eight 2.5-Inch Hard Drives
Operating System	Windows Server® 2008, Standard x64 Edition, Includes 5 CALs
SHIP	PowerEdge R710 Shipping
Memory	32GB Memory (8x4GB), 1066MHz Dual Ranked RDIMMs for 2 Processors, Adv ECC
Feature Upgrades for Embedded NIC Ports	Dual Two-Port Embedded Broadcom® NetXtreme II 5709 Gigabit Ethernet NIC
Processor	Intel® Xeon® X5560, 2.8Ghz, 8M Cache, Turbo, HT, 1333MHz Max Mem
Additional Processor	Intel® Xeon® X5560, 2.8Ghz, 8M Cache, Turbo, HT, 1333MHz Max Mem
1st Hard Drive	300GB 10K RPM Serial-Attach SCSI 2.5" Hot Plug Hard Drive
Primary Controller	PERC 6/i SAS RAID Controller, 2x4 Connectors, Internal, PCIe ,256MB Cache, x8
BIOS Setting	Power Saving BIOS Setting
Embedded Management	iDRAC6 Express
Internal Optical Drive	DVD ROM, SATA, Internal
Bezel	Bezel
Riser Card	Riser with 2 PCIe x8 + 2 PCIe x4 Slot
System Documentation	No Systems Documentation, No OpenManage DVD Kit
2nd Hard Drive	300GB 10K RPM Serial-Attach SCSI 2.5" Hot Plug Hard Drive
Hard Drive Configuration	RAID 1/RAID 10 for PERC 6/i Controller
Rails Sliding Ready Rails With Cable Management Arm	
Hardware Support Services	3 Year ProSupport for IT 4HR 7x24 Onsite: Non Mission Critical

Power Supply	High Output Power Supply, Redundant, 870W
Power Cords	No Additional Power Cords
4th Hard Drive	300GB 10K RPM Serial-Attach SCSI 2.5" Hot Plug Hard Drive
5th Hard Drive	300GB 10K RPM Serial-Attach SCSI 2.5" Hot Plug Hard Drive
6th Hard Drive	300GB 10K RPM Serial-Attach SCSI 2.5" Hot Plug Hard Drive
3rd Hard Drive	300GB 10K RPM Serial-Attach SCSI 2.5" Hot Plug Hard Drive
7th Hard Drive	300GB 10K RPM Serial-Attach SCSI 2.5" Hot Plug Hard Drive
8th Hard Drive	300GB 10K RPM Serial-Attach SCSI 2.5" Hot Plug Hard Drive
Power Cords	NEMA 5-15P to C13 Wall Plug, 125 Volt, 15 AMP, 10 Feet (3m), Power Cord

If Licensee is acquiring their own hardware they will provide a detailed description of its intended server configuration for Netsmart's approval prior to purchase.

CLIENT WORKSTATION:

RADplus™ Workstation Requirements:

Minimum Operating Requirements:

Processor: Intel Pentium 500 MHz or greater
Operating System: Windows 2000 or greater
RAM: 512 MB
Hard-disc space: 512 MB
Monitor: VGA or higher (1024 x 768 pixels)
Mouse: Microsoft Mouse or compatible pointing device
Browser: Internet Explorer 6.0 or better

Suggested Operating Requirements:

Processor: Intel Pentium 1.3Ghz or greater
Operating System: Windows XP or greater
RAM: 1 GB
Hard-disc space: 1 GB
Monitor: VGA or higher (1024 x 768 pixels)
Mouse: Microsoft Mouse or compatible pointing device
Browser: Internet Explorer 6.0 or better

Schedule G

Licensee Resources

Licensee will provide the resources described below for the implementation of the Netsmart Programs. Failure to provide these resources could compromise the project and may result in the need for additional Netsmart Implementation Services

For Avatar Cal-PM: Client Side Project Manager, Billing Subject Matter Expert(s) to cover all pay sources, DT Subject Matter Expert, Trainers for the End Users, Business Analyst, System Analyst, backups, configuration, crystal report writing, RADplus Develop
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For Avatar CWS: Client Side Project Manager (can be the same as the PM Project Manager), Clinical Subject Matter Experts to cover all programs of service, System Analyst (backups, configuration, crystal report writing, RADplus Development, etc), End User Train
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Schedule H

Support Services

The Support Services described in this Schedule will be performed by Netsmart subject to the terms and conditions of this License and Service Agreement.

- (a) Netsmart will maintain the then current version of the Licensed Programs in substantial conformance with its Specifications as amended from time to time by Netsmart, and with applicable Federal regulatory requirements and laws. Netsmart will use commercially reasonable efforts to either:
 - (i) Correct any reproducible Problems or Defects in the then current or immediately prior release of Licensed Programs by Netsmart which prevent it from operating in substantial conformance with the Specifications and applicable Federal regulatory requirements; or
 - (ii) Provide a commercially reasonable alternative that will substantially conform with the Specifications and applicable Federal regulatory requirements and laws.
- (b) Licensee will make requests for Support Services by giving Netsmart written notice specifying a Problem or Defect in the Licensed Programs. In making a verbal request for Support Services, Licensee will provide Netsmart within twenty four (24) hours after such verbal notice with such written information and documentation as may be reasonably prescribed by Netsmart.
- (c) 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 1 will be assigned when the Licensed Program or a material Licensed Program functional component is not operational, such as patient registration screen input/update/inquiry. Commercially reasonable efforts will be made to correct Priority 1 problems, or to provide a plan for such correction, within two (2) business days.
 - Priority 2 will be assigned for less critical functions, such as low impact screens and report printing errors. Commercially reasonable efforts will be made to correct Priority 2 problems, or to provide a plan for such correction, within five (5) business days.
 - Priority 3 will be assigned to problems not having a major impact on the Licensee's ability to run the Licensed Program but which obviously requires correction. Priority 3 problems will be responded to within ten (10) working days with a corrective plan and scheduled date for the implementation of the correction.
- (d) Licensee will provide and maintain, at its expense, hardware and/or software to allow Netsmart to access Licensee's system remotely. Licensee will provide Netsmart with appropriate access credentials.
- (e) On a timely basis Netsmart will also provide Licensee with:
 - (i) such updates as are distributed without charge to other similar Licensees which reflect modifications and incremental improvements made to the Licensed Programs by Netsmart;

- (ii) an opportunity to obtain enhancements to the Licensed Programs for which charges are imposed on the same terms as such enhancements are generally made available to other Licensees;
 - (iii) telephone support to answer Licensee's questions about the Licensed Programs and their use.
- (f) Netsmart will make technical support personnel available from 9:00 a.m. to 6:00 p.m., Netsmart local time Monday through Friday, exclusive of Netsmart holidays.
- (g) If reasonable analysis by Netsmart indicates that a reported Problem or Defect is caused by a problem related to Hardware used by Licensee, the hardware's system software, or applicable software other than Licensed Programs, or Licensee's misuse or modification of the Licensed Programs, 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 Programs. Licensee will, at Netsmart's option, pay Netsmart for the cost of analyzing the reported problem at Netsmart's then prevailing time-and-materials rate.
- (h) The initial term for provision of Support Services will be for a period commencing on the first day of the month following the installation of the Netsmart Programs, and continuing until the following January 1 (the "Anniversary Date"). The initial term for the provision of Support Services for Third Party Programs will be for a period commencing upon the installation of the Third Party Programs, and continuing until the following January 1 (the "Anniversary Date"). After the initial term, Support Services will be automatically renewed on an annual basis as of each Anniversary Date unless either party gives the other written notice of termination not less than sixty (60) days prior to the next Anniversary Date, or in accordance with other provisions of this Agreement.
- (i) Netsmart agrees that it will not revise the Charges for Support Services during the initial term. Netsmart will give Licensee not less than sixty (60) days written notice prior to any Anniversary Date of any revised schedule of Support Service Charges. Charges during any renewal term will not be increased by more than twice the CPI – Medical Care increase in the prior year.
- (j) Absent a bona fide dispute, if Licensee fails to pay for Support Services when due, Netsmart may refuse to provide Support Services until Licensee makes payment of all Charges due. If Licensee has missed any mandatory upgrades Netsmart will also charge, and Licensee will pay, for software and services necessary to bring the Licensed Programs up to Netsmart's then-current level before Netsmart will certify that Licensee is again eligible for maintenance hereunder.

Schedule I

Specifications

As set forth in the following documentation:

<input checked="" type="checkbox"/>	Avatar Cal-PM User Guide
<input checked="" type="checkbox"/>	Avatar Cal-PM Welcome Guide
<input checked="" type="checkbox"/>	Avatar Cal-PM Kickoff Manual
<input checked="" type="checkbox"/>	Avatar CWS User Guide
<input checked="" type="checkbox"/>	Avatar CWS Welcome Guide
<input checked="" type="checkbox"/>	Avatar CWS Kickoff Manual
<input checked="" type="checkbox"/>	RADplus User Guide
<input checked="" type="checkbox"/>	Setup and Utilization of Third Party Reporting Software
<input checked="" type="checkbox"/>	System Administration Procedures for Netsmart Systems Utilizing Cache'

Electronic versions of all documentation described herein will be available for Licensee download and use at no additional charge while Licensee is in good standing with respect to this Agreement. Support in compliance of the Americans with Disabilities Act may be contracted for under separate cover. Licensee may make additional copies of documentation for internal use only, and will not alter or eliminate any copyright notice on any copy of the documentation.

Schedule J

Optional Products and Services

Licensee may exercise the option granted to it hereunder for the purchase of the products and services listed in this Schedule, by signing and sending to Netsmart a copy of the Additional Purchase Amendment attached to this Schedule. Licensee may also request Netsmart to provide it with the availability and pricing for other products and services not listed in this Schedule. The purchase of additional products and services will be effective when Netsmart returns an executed copy of the Additional Purchase Amendment.

The following pricing will hold firm for a period of 12 months from the Agreement Effective Date. (Prices for Third Party Programs are subject to change by the owner or distributor of the Third Party Programs).

Optional Software

Item	License Price	Annual Maintenance
Avatar Data Warehouse Middleware (Data extract to MS-SQL or Oracle, or Caché)	\$35,000	\$7,350
Addiction Severity Index (ASI) version 5: (Requires Avatar CWS)	\$2,500	\$525
Additional RADplus Named Users	\$800	\$168
Additional Cache' seats (concurrent-user licenses)	\$926	\$204
Avatar Order Entry	\$35,000	\$7,350
Executive Reporting System (ERS)	\$50,000	\$10,500
Avatar MSO	\$75,000	\$15,750
Avatar Mobile Connect (\$498 per named user, minimum 10 named users)	\$498/named user	\$105/named user
Avatar Batch Scanning	\$50,000	\$10,500

Optional Subscriptions and Services	Fees
Software Escrow Agreement: Netsmart maintains a 2-Party Escrow Agreement with Iron Mountain and will include Licensee as a beneficiary under such Escrow Agreement.	Initial setup fee of \$500 and an annual fee of \$1,200
Netsmart University- (plus \$2,500 in set-up services and web-based training) Includes Avatar course content and Clinical, HR, Regulatory, Compliance, Supervisory and Soft Skills course content for 250 users	\$13,750
BACKUP TAPE VERIFICATION AND CERTIFICATION Your backup tapes will be tested every month to ensure and to restore integrity. An electronic and hard-copy certificate is issued for your records. See Note 1 below	\$250/mo (and one-time setup of \$500) *plus tape shipping charge
OrderConnect -- named-user licenses --	\$12,480.00

Quantity 8 @\$130/named user/month*	
OrderConnect – agent licenses -- Quantity 2 @\$13/named user/month*	\$312.00
Meaningful Use Quality Measures*	\$1,000.00
Meaningful Use Immunization*	\$1,000.00
Meaningful Use Syndromic Surveillance*	\$1,000.00
Meaningful Use – Lab Results (in Network) – 1st lab*	\$4,000.00
Reportable Labs*	\$2,500.00
ConsumerConnect*	\$12,500.00
CareConnect Subscription – Continuity of Care Document (CCD)*	\$11,250.00

*Price based on a five-year agreement; annual fees increase 5% per year.

Optional Conversions/Development Services	Fees
CSI Conversion	\$15,000
CalOMS Conversion	\$15,000

Additional Professional Services

In the event additional Netsmart Installation Services are required, Netsmart will make these services available at a cost of \$1,800 per day as authorized by the Licensee. This rate will remain in effect for 365 days from contract execution and then will be available at Netsmart’s then current daily rate

In the event additional Netsmart Development Services are required, Netsmart will make these services available at a cost of \$1,800 per day as authorized by the Licensee. This rate will remain in effect for 365 days from contract execution and then will be available at Netsmart’s then current daily rate

Notes

1. Backup software currently supported:

- CA Brightstor/Arcserv
- Veritas
- Microsoft Windows Back-up

Backup tape media currently supported

- Ultrium LTO
- DLT
- DAT

Sample Additional Purchase Amendment

This is an Amendment ("Amendment") to a License Agreement dated _____, 200_, between Netsmart Technologies, Inc. ("Netsmart") and _____ ("Licensee").

The parties hereby amend the Agreement as follows:

1. All terms used in this Amendment, which are defined in the Agreement, will have the same meaning as in the Agreement.
2. Licensee agrees to license or purchase the following additional products or services:

Product/Service	Purchase/License	Charges

3. The terms and conditions of the Agreement will be applicable to the additional products or services purchased or licensed hereunder.
4. Except as amended herein, the License Agreement is hereby ratified and confirmed.
5. Payment terms: _____

IN WITNESS WHEREOF, Netsmart and Licensee have executed this Amendment as of the later of the dates below.

Netsmart Technologies, Inc.

Licensee

By: _____

By: _____

Date: _____

Date: _____

Schedule K

Changes to Standard Agreement

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Schedule L

Escrow Agreement

To be attached after execution by all parties to the escrow agreement

Schedule M

**COUNTY OF HUMBOLDT
HIPAA BUSINESS ASSOCIATE AGREEMENT**

Recitals:

- A. COUNTY, as a "Covered Entity" (defined below) wishes to disclose certain information to CONTRACTOR, hereafter known as the "BUSINESS ASSOCIATE" (defined below) pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI") (defined below).
- B. COUNTY and BUSINESS ASSOCIATE intend to protect the privacy and provide for the security of PHI disclosed to BUSINESS ASSOCIATE pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information and Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.
- C. As part of the HIPAA Regulations, the Privacy Rule and Security Rule (defined below) requires COUNTY to enter into an Agreement containing specific requirements with BUSINESS ASSOCIATE prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e), and 164.504(e) of the Code of Federal Regulations ("C.F.R") and contained in this Agreement.

The parties agree as follows:

1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].
- b. **Business Associate** shall have the 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 17938 and 45 C.F.R. Section 160.103.
- c. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- d. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501
- e. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- f. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- g. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- h. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- i. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable

basis to believe the information can be used to identify the individual, and shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].

- j. **Protected Information** shall mean PHI provided by COUNTY to BUSINESS ASSOCIATE or created or received by BUSINESS ASSOCIATE on COUNTY's behalf.
 - k. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
 - l. **Unsecured PHI** shall have the 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(h).
2. **Obligations of Business Associate**
- a. **Permitted Uses.** BUSINESS ASSOCIATE shall not use Protected Information except for the purpose of performing BUSINESS ASSOCIATE's obligations under the Agreement as permitted under the Agreement. Further, BUSINESS ASSOCIATE shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by COUNTY. However, BUSINESS ASSOCIATE may use Protected Information (i) for the proper management and administration of Business Associate, or (ii) to carry out the legal responsibilities of Business Associate [45 C.F.R. Sections 164.504(e)(2)(i), 164.501(e)(2)(ii)(A) and 164.504(e)(4)(i)].
 - b. **Permitted Disclosures.** BUSINESS ASSOCIATE shall not disclose Protected Information except for the purpose of performing BUSINESS ASSOCIATE's obligations under the Agreement and as permitted under the Agreement. BUSINESS ASSOCIATE shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by COUNTY. If BUSINESS ASSOCIATE discloses Protected Information to a third party, BUSINESS ASSOCIATE must obtain, prior to making any such disclosure, (i) reasonable *written* assurances from such third party that such Protected Information 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 BUSINESS ASSOCIATE of any breaches of confidentiality of the Protected Information, 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)].
 - c. **Prohibited Uses and Disclosures.** BUSINESS ASSOCIATE shall not use or disclose Protected Information for fundraising or marketing purposes. BUSINESS ASSOCIATE shall not disclose Protected Information 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 PHI solely relates [42 U.S.C. Section 17935(a)]. BUSINESS ASSOCIATE shall not directly or indirectly receive remuneration in exchange for Protected Information, except with prior written consent of COUNTY and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2); however this prohibition shall not affect payment by COUNTY to BUSINESS ASSOCIATE for services provided pursuant to the Agreement

- d. **Appropriate Safeguards.** BUSINESS ASSOCIATE shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312 [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BUSINESS ASSOCIATE shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931].
- e. **Reporting of Improper Access, Use or Disclosure.** BUSINESS ASSOCIATE shall report to COUNTY *in writing* of any access, use or disclosure of Protected Information not permitted by the Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than two (2) business days after discovery [42 U.S.C Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].
- f. **Business Associate's Agents.** BUSINESS ASSOCIATE shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree *in writing* to the same restrictions and conditions that apply to BUSINESS ASSOCIATE with respect to such PHI and implement the safeguards required by paragraph c above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BUSINESS ASSOCIATE shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation [45 C.F.R. Sections 164.530(f) and 164.530(e)(1)].
- g. **Access to Protected Information.** This provision applies only if the BUSINESS ASSOCIATE maintains a designated record set on behalf of the COUNTY. BUSINESS ASSOCIATE shall make Protected Information maintained by BUSINESS ASSOCIATE or its agents or subcontractors in Designated Record Sets available to COUNTY for inspection and copying within ten (10) days of a request by COUNTY to enable COUNTY to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BUSINESS ASSOCIATE maintains an Electronic Health Record, BUSINESS ASSOCIATE shall provide such information in electronic format to enable COUNTY to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
- h. **Amendment of PHI.** This provision applies only if the BUSINESS ASSOCIATE maintains a designated record set on behalf of the COUNTY. Within ten (10) days of receipt of a request from COUNTY for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BUSINESS ASSOCIATE or its agents or subcontractors shall make such Protected Information available to COUNTY for amendment and incorporate any such amendment to enable COUNTY to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526.
- i. **Accounting Rights.** Within ten (10) days of notice by COUNTY of a request for an accounting of disclosures of Protected Information, BUSINESS ASSOCIATE and its agents or subcontractors shall make available to COUNTY the information required to provide an accounting of disclosures to enable COUNTY to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and

the HITECH Act, including, but not limited to 42 U.S.C. Section 17935(c), as determined by COUNTY. BUSINESS ASSOCIATE agrees to implement a process that allows for an accounting to be collected and maintained by BUSINESS ASSOCIATE and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BUSINESS ASSOCIATE maintains an electronic health record and is subject to this requirement. 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 Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information 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. In the event that the request for an accounting is delivered directly to BUSINESS ASSOCIATE or its agents or subcontractors, BUSINESS ASSOCIATE shall within five (5) days of a request forward it to COUNTY in writing. It shall be COUNTY's responsibility to prepare and deliver any such accounting requested. BUSINESS ASSOCIATE shall not disclose any Protected Information except as set forth in Sections 2.b. of this Business Associate Agreement [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this subparagraph i shall survive the termination of this Agreement.

- j. **Government Access to Records.** BUSINESS ASSOCIATE shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to COUNTY and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BUSINESS ASSOCIATE's compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)]. BUSINESS ASSOCIATE shall provide to COUNTY a copy of any Protected Information that BUSINESS ASSOCIATE provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- k. **Minimum Necessary.** BUSINESS ASSOCIATE (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure [42 U.S.C. Section 17935(b); 45 C.F.R. Part 164, 45 C.F.R. Section 164.514(d)(3)]. BUSINESS ASSOCIATE understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary of the United States Department of Health and Human Services with respect to what constitutes "minimum necessary."
- l. **Data Ownership.** BUSINESS ASSOCIATE acknowledges that BUSINESS ASSOCIATE has no ownership rights with respect to the Protected Information.
- m. **Notification of Breach.** During the term of the Agreement, BUSINESS ASSOCIATE shall notify COUNTY without unreasonable delay and in no case later than two (2) business days of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which BUSINESS ASSOCIATE becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Such notice shall include, but not be limited to, the identification of each individual whose unsecured protected health information has been, or is reasonably believed by the BUSINESS ASSOCIATE to have been accessed, acquired, or disclosed during such breach. BUSINESS ASSOCIATE shall

provide COUNTY with any other available information that the COUNTY is required to include in notification to the individual under 45 C.F.R. Section 164.404(c) at the time of the notification required by this subparagraph m or promptly thereafter as information becomes available. [45 C.F.R. 164.410]. BUSINESS ASSOCIATE shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

- n. **Breach Pattern or Practice by COUNTY.** Pursuant to 42 U.S.C. Section 17934(b), if the BUSINESS ASSOCIATE knows of a pattern of activity or practice of the COUNTY that constitutes a material breach or violation of the COUNTY's obligations under the Agreement, the BUSINESS ASSOCIATE must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BUSINESS ASSOCIATE must terminate the Agreement or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of the United States Department of Health and Human Services. BUSINESS ASSOCIATE shall provide written notice to COUNTY of any pattern of activity or practice of the COUNTY that BUSINESS ASSOCIATE believes constitutes a material breach or violation of the COUNTY's obligations under the Agreement within five (5) days of discovery and shall meet with COUNTY to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

3. Termination

- a. **Material Breach.** A breach by BUSINESS ASSOCIATE of any provision of this Business Associate Agreement, as determined by COUNTY, shall constitute a material breach of the Agreement and shall provide grounds for *immediate* termination of the Agreement, any provision in the Agreement to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].
- b. **Effect of Termination.** Upon termination of the Agreement for any reason, BUSINESS ASSOCIATE shall, at the option of COUNTY, return or destroy all Protected Information that BUSINESS ASSOCIATE or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by COUNTY, BUSINESS ASSOCIATE shall continue to extend the protections of Section 2 of this Addendum to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI feasible [45 C.F.R. Section 164.504(e)(ii)(2)(I)]. If COUNTY elects destruction of the PHI, BUSINESS ASSOCIATE shall certify in writing to COUNTY that such PHI has been destroyed.

4. **Amendment to Comply with Law.** COUNTY and BUSINESS ASSOCIATE acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Business Associate Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that COUNTY must receive satisfactory written assurance from BUSINESS ASSOCIATE that BUSINESS ASSOCIATE will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to the Business Associate

Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. COUNTY may terminate the Agreement upon thirty (30) days written notice in the event (i) BUSINESS ASSOCIATE does not promptly enter into negotiations to amend this Business Associate Agreement when requested by COUNTY pursuant to this Section or (ii) BUSINESS ASSOCIATE does not enter into an amendment to this Business Associate Agreement providing assurances regarding the safeguarding of PHI that COUNTY, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

5. **Survival.** The respective rights and obligations of Business Associate shall survive the termination of the Agreement.
6. **Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

Schedule N
SAMPLE ESCROW AGREEMENT



Three-Party Escrow Service Agreement

Iron Mountain provides flexible, comprehensive escrow services that generate the type of agreement that gives our customers the right level of protection in each unique situation. Iron Mountain is different from other providers in the industry because of our customer-driven approach to technology escrow. With Iron Mountain, the customer's experience is focused on defining his or her own unique needs for a comprehensive service—not on studying and struggling to comprehend the terms, options and add-ons of a variety of pre-packaged agreements.

The benefit of this approach is that it can adapt to meet the needs of a single customer or application today, as well as future ones with requirements that may be quite different. With Iron Mountain, one set of comprehensive escrow services with elective components suited for every situation, covers all the key issues for technology escrow.

At Iron Mountain, we take intellectual property protection seriously and deliver our services with the integrity you and your clients would expect – and, in fact, demand, from a trusted and neutral third party. We don't just vault technology. We provide complete intellectual property management services.

Purpose

Iron Mountain's Three-Party Escrow Service Agreement is generally used when:

- Both parties agree that the highest level of escrow protection is needed.
- The beneficiary needs to sign the agreement.
- The beneficiary needs to negotiate the terms of the agreement and the unique release conditions.
- The beneficiary wants technical verification of the deposit materials.

Key Features

*Iron Mountain's Three-Party Escrow Service Agreements **may** include any of the following:*

- Secure real-time online account management with Escrow Management Center 24x7x365.
- When elected, verification of deposit materials. This includes documentation of the hardware, software environment, utilities, compilers and operating systems needed to access the deposit materials.
- Electronic Depositing of materials.
- Additional advanced types of technical verification including build and usability testing.
- Deposit Tracking Notification – periodic notices to depositors and beneficiaries related to deposit material.
- Escrow Expert consulting services.

(PLEASE DELETE THIS COVER PAGE BEFORE EXECUTING THE AGREEMENT)



EFFECTIVE DATE: _____

DEPOSIT ACCOUNT NUMBER: _____

THREE-PARTY ESCROW SERVICE AGREEMENT

1. Introduction.

This Three Party Escrow Service Agreement (the "**Agreement**") is entered into by and between _____ (the "**Depositor**"), and by _____ (the "**Beneficiary**") and by Iron Mountain Intellectual Property Management, Inc. ("**Iron Mountain**"). Depositor, Beneficiary, and Iron Mountain may be referred to individually as a "Party" or collectively as the "Parties" throughout this Agreement.

- (a) The use of the term services in this Agreement shall refer to Iron Mountain services that facilitate the creation, management, and enforcement of software or other technology escrow accounts as described in Exhibit A attached hereto ("**Services**"). A Party shall request Services under this Agreement by submitting a work request for certain Iron Mountain Services ("**Work Request**") via written instruction or the online portal maintained at the website located at www.ironmountainconnect.com, or other websites owned or controlled by Iron Mountain that are linked to that website (collectively the "**Iron Mountain Website**").
- (b) The Beneficiary and Depositor have, or will have, entered into a license agreement or other agreement conveying intellectual property rights to the Beneficiary, and the Parties intend this Agreement to be considered as supplementary to such agreement, pursuant to Title 11 United States [Bankruptcy] Code, Section 365(n).

2. Depositor Responsibilities and Representations.

- (a) Depositor shall make an initial deposit that is complete and functional of all proprietary technology and other materials covered under this Agreement ("**Deposit Material**") to Iron Mountain within thirty (30) days of the Effective Date. Depositor may also update Deposit Material from time to time during the Term of this Agreement provided a minimum of one (1) complete and functional copy of Deposit Material is deposited with Iron Mountain at all times. At the time of each deposit or update, Depositor will provide an accurate and complete description of all Deposit Material sent to Iron Mountain using the form attached hereto as Exhibit B.
- (b) Depositor represents that it lawfully possesses all Deposit Material provided to Iron Mountain under this Agreement free of any liens or encumbrances as of the date of their deposit. Any Deposit Material liens or encumbrances made after their deposit will not prohibit, limit, or alter the rights and obligations of Iron Mountain under this Agreement. Depositor warrants that with respect to the Deposit Material, Iron Mountain's proper administration of this Agreement will not violate the rights of any third parties.
- (c) Depositor represents that all Deposit Material is readable and useable in its then current form; if any portion of such Deposit Material is encrypted, the necessary decryption tools and keys to read such material are deposited contemporaneously.
- (d) Depositor agrees, upon request by Iron Mountain, in support of Beneficiary's request for verification Services, to promptly complete and return the Escrow Deposit Questionnaire attached hereto as Exhibit Q. Depositor consents to Iron Mountain's performance of any level(s) of verification Services described in Exhibit A attached hereto and Depositor further consents to Iron Mountain's use of a subcontractor to perform verification Services. Any such subcontractor shall be bound by the same confidentiality obligations as Iron Mountain and shall not be a direct competitor to either Depositor or Beneficiary. Iron Mountain shall be responsible for the delivery of Services of any such subcontractor as if Iron Mountain had performed the Services. Depositor represents that all Deposit Material is provided with all rights necessary for Iron Mountain to verify such proprietary technology and materials upon receipt of a Work Request for such Services or agrees to use commercially reasonable efforts to provide Iron Mountain with any necessary use rights or permissions to use materials necessary to perform verification of the Deposit Material. Depositor agrees to reasonably cooperate with Iron Mountain by providing reasonable access to its technical personnel for verification Services whenever reasonably necessary.

3. Beneficiary Responsibilities and Representations.

- (a) Beneficiary acknowledges that, as between Iron Mountain and Beneficiary, Beneficiary assumes all responsibility for the completeness and functionality of all Deposit Material.
- (b) Beneficiary may submit a verification Work Request to Iron Mountain for one or more of the Services defined in Exhibit A attached hereto and further consents to Iron Mountain's use of a subcontractor if needed to provide such Services. Beneficiary warrants that Iron Mountain's use of any materials supplied by Beneficiary to perform the verification Services described in Exhibit A is lawful and does not violate the rights of any third parties.

4. Iron Mountain Responsibilities and Representations.

- (a) Iron Mountain agrees to use commercially reasonable efforts to provide the Services requested by Authorized Person(s) (as identified in the "**Authorized Person(s)/Notices Table**" below) representing the Depositor or Beneficiary in a Work Request. Iron Mountain may reject a Work Request (in whole or in part) that does not contain all required information at any time upon notification to the Party originating the Work Request.
- (b) Iron Mountain will conduct a visual inspection upon receipt of any Deposit Material and associated Exhibit B. If Iron Mountain determines that the Deposit Material does not match the description provided by Depositor represented in Exhibit B attached hereto, Iron Mountain will notify Depositor of such discrepancies and notate such discrepancy on the Exhibit B.
- (c) Iron Mountain will provide notice to the Beneficiary of all Deposit Material that is accepted and deposited into the escrow account under this Agreement.
- (d) Iron Mountain will work with a Party who submits any verification Work Request for Deposit Material covered under this Agreement to either fulfill any standard verification Services Work Request or develop a custom Statement of Work ("**SOW**"). Iron Mountain and the requesting Party will mutually agree in writing to an SOW on the following terms and conditions that include but are not limited to: description of Deposit Material to be tested; description of Verification testing; requesting Party responsibilities; Iron Mountain responsibilities; Service Fees; invoice payment instructions; designation of the paying Party; designation of authorized SOW representatives for both the requesting Party and Iron Mountain with name and contact information; and description of any final deliverables prior to the start of any fulfillment activity. After the start of fulfillment activity, each SOW may only be amended or modified in writing with the mutual agreement of both Parties, in accordance with the change control procedures set forth therein.
- (e) Iron Mountain will hold and protect Deposit Material in physical or electronic vaults that are either owned or under the control of Iron Mountain, unless otherwise agreed to by the Parties.
- (f) Upon receipt of written instructions by both Depositor and Beneficiary, Iron Mountain will permit the replacement or removal of previously submitted Deposit Material. The Party making such request shall be responsible for getting the other Party to approve the joint instructions.

5. Payment.

The Party responsible for payment designated in Exhibit A ("**Paying Party**") shall pay to Iron Mountain all fees as set forth in the Work Request ("**Service Fees**"). Except as set forth below, all Service Fees are due within thirty (30) calendar days from the date of invoice in U.S. currency and are non-refundable. Iron Mountain may update Service Fees with a ninety (90) calendar day written notice to the Paying Party during the term of this Agreement. The Paying Party is liable for any taxes related specifically to Services purchased under this Agreement or shall present to Iron Mountain an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice. Depositor and Beneficiary agree that if this Agreement terminates during the term for any reason, other than for the fault of Iron Mountain, all prepaid fees shall be non-refundable. Any Service Fees not collected by Iron Mountain when due shall bear interest until paid at a rate of one percent (1%) per month (12% per annum) or the maximum rate permitted by law, whichever is less. Notwithstanding, the non-performance of any obligations of Depositor to deliver Deposit Material under the License Agreement or this Agreement, Iron Mountain is entitled to be paid all Service Fees that accrue during the Term of this Agreement.

6. Term and Termination.

- (a) The "**Term**" of this Agreement is for a period of one (1) year from the Effective Date ("**Initial Term**") and will automatically renew for additional one (1) year terms ("**Renewal Term**") and continue in full force and effect until one of the following events occur: (i) Depositor and Beneficiary provide Iron Mountain with sixty (60) days' prior written joint notice of their intent to terminate this Agreement; (ii) Beneficiary provides Iron Mountain and Depositor with sixty (60) days' prior written notice of their

intent to terminate this Agreement; (iii) the Agreement terminates under another provision of this Agreement; or (iv) any time after the Initial Term, Iron Mountain provides a sixty (60) days' prior written notice to the Depositor and Beneficiary of Iron Mountain's intent to terminate this Agreement. If the Effective Date is not specified above, then the last date noted on the signature blocks of this Agreement shall be the Effective Date.

- (b) Unless the express terms of this Agreement provide otherwise, upon termination of this Agreement, Iron Mountain shall return the Deposit Material to the Depositor. If reasonable attempts to return the Deposit Material to Depositor are unsuccessful, Iron Mountain shall destroy the Deposit Material.
- (c) In the event of the nonpayment of undisputed Service Fees owed to Iron Mountain, Iron Mountain shall provide all Parties to this Agreement with written notice of Iron Mountain's intent to terminate this Agreement. Any Party to this Agreement shall have the right to make the payment to Iron Mountain to cure the default. If the past due payment is not received in full by Iron Mountain within thirty (30) calendar days of the date of such written notice, then Iron Mountain shall have the right to terminate this Agreement at any time thereafter by sending written notice to all Parties. Iron Mountain shall have no obligation to perform the Services under this Agreement (except those obligations that survive termination of this Agreement) so long as any undisputed Service Fees due Iron Mountain under this Agreement remain unpaid.

7. General Indemnity.

Subject to Section 10 and 11, each Party shall defend, indemnify and hold harmless the others, their corporate affiliates and their respective officers, directors, employees, and agents and their respective successors and assigns from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, reasonable attorneys' fees), arising under this Agreement from the negligent or intentional acts or omissions of the indemnifying Party or its subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them.

8. Warranties.

- (a) IRON MOUNTAIN WARRANTS ANY AND ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER. EXCEPT AS SPECIFIED IN THIS SECTION, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, AGAINST INFRINGEMENT OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. AN AGGRIEVED PARTY MUST NOTIFY IRON MOUNTAIN PROMPTLY OF ANY CLAIMED BREACH OF ANY WARRANTIES AND SUCH PARTY'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE RETURN OF THE PORTION OF THE FEES PAID TO IRON MOUNTAIN BY PAYING PARTY FOR SUCH NON-CONFORMING SERVICES. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE. THE WARRANTY PROVIDED IS SUBJECT TO THE LIMITATION OF LIABILITY SET FORTH IN THIS AGREEMENT.
- (b) Depositor warrants that all Depositor information provided hereunder is accurate and reliable and undertakes to promptly correct and update such Depositor information during the Term of this Agreement.
- (c) Beneficiary warrants that all Beneficiary information provided hereunder is accurate and reliable and undertakes to promptly correct and update such Beneficiary information during the Term of this Agreement.
- (d) Ownership Warranty. Depositor warrants that it is the owner or legal custodian of the Deposit Material and has full authority to store the Deposit Material and direct their disposition in accordance with the terms of this Agreement. Depositor shall reimburse Iron Mountain for any expenses reasonably incurred by Iron Mountain (including reasonable legal fees) by reason of Iron Mountain's compliance with the instructions of Depositor in the event of a dispute concerning the ownership, custody or disposition of Deposit Material stored by Depositor with Iron Mountain.

9. Confidential Information.

Iron Mountain shall have the obligation to reasonably protect the confidentiality of the Deposit Material. Except as provided in this Agreement Iron Mountain shall not use or disclose the Deposit Material. Iron Mountain shall not disclose the terms of this Agreement to any third Party. If Iron Mountain receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Material, Iron Mountain will notify the Parties to this Agreement unless prohibited by law. After notifying the Parties, Iron Mountain may comply in good faith with such order. It shall be the responsibility of Depositor or Beneficiary to challenge any such order; provided, however, that Iron Mountain does not waive its rights to present its position with respect to any such order. Iron Mountain will cooperate with the Depositor or Beneficiary, as applicable, to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Iron Mountain's standard charges or as quoted upon submission of a detailed request.

10. Limitation of Liability.

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, ALL LIABILITY, IF ANY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, OF ANY PARTY TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT EQUAL TO ONE YEAR OF FEES PAID OR OWED TO IRON MOUNTAIN UNDER THIS AGREEMENT. IF CLAIM OR LOSS IS MADE IN RELATION TO A SPECIFIC DEPOSIT OR DEPOSITS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES RELATED SPECIFICALLY TO SUCH DEPOSITS. THIS LIMIT SHALL NOT APPLY TO ANY PARTY FOR: (I) ANY CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR TRADEMARK; (II) LIABILITY FOR DEATH OR BODILY INJURY; (III) PROVEN THEFT; OR (IV) PROVEN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

11. Consequential Damages Waiver.

IN NO EVENT SHALL ANY PARTY TO THIS AGREEMENT BE LIABLE TO ANOTHER PARTY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR LOST DATA OR INFORMATION, ANY COSTS OR EXPENSES FOR THE PROCUREMENT OF SUBSTITUTE SERVICES, OR ANY OTHER INDIRECT DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EVEN IF THE POSSIBILITY THEREOF MAY BE KNOWN IN ADVANCE TO ONE OR MORE PARTIES.

12. General.

- (a) Incorporation of Work Requests. All valid Depositor and Beneficiary Work Requests are incorporated into this Agreement.
- (b) Purchase Orders. In the event that the Paying Party issues a purchase order or other instrument used to pay Service Fees to Iron Mountain, any terms and conditions set forth in the purchase order which constitute terms and conditions which are in addition to those set forth in this Agreement or which establish conflicting terms and conditions to those set forth in this Agreement are expressly rejected by Iron Mountain.
- (c) Right to Make Copies. Iron Mountain shall have the right to make copies of all Deposit Material as reasonably necessary to perform the Services. Iron Mountain shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on Deposit Material onto any copies made by Iron Mountain. Any copying expenses incurred by Iron Mountain as a result of a Work Request to copy will be borne by the Party requesting the copies. Iron Mountain may request Depositor's reasonable cooperation in promptly copying Deposit Material in order for Iron Mountain to perform this Agreement.
- (d) Choice of Law. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the Commonwealth of Massachusetts, USA, as if performed wholly within the state and without giving effect to the principles of conflicts of laws.
- (e) Authorized Person(s). Depositor and Beneficiary must each authorize and designate one person whose actions will legally bind such party ("Authorized Person" who shall be identified in the Authorized Persons (s) Notices Table of this Agreement) and who may manage the Iron Mountain escrow account through the Iron Mountain website or written instruction. The Authorized Person for each the Depositor and Beneficiary will maintain the accuracy of their name and contact information provided to Iron Mountain during the term of this Agreement.
- (f) Right to Rely on Instructions. Iron Mountain may act in reliance upon any instruction, instrument, or signature reasonably believed by Iron Mountain to be genuine and from an Authorized Person(s), officer, or other employee of a Party. Iron Mountain may assume that such representative of a Party to this Agreement who gives any written notice, request, or instruction has the authority to do so. Iron

Mountain will not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document reasonably believed to be from such representative. With respect to Release and Destruction of Deposit Materials, Iron Mountain shall rely on an Authorized Person(s).

- (g) Force Majeure. No Party shall be liable for any delay or failure in performance due to events outside the defaulting Party's reasonable control, including without limitation acts of God, earthquake, labor disputes, shortages of supplies, riots, war, acts of terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the excused Party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.
- (h) Notices. All notices regarding Exhibit C (release) shall be sent by commercial express mail or other commercially appropriate means that provide prompt delivery and require proof of delivery. All other correspondence, including invoices, payments, and other documents and communications, may be sent electronically or via regular mail. The Parties shall have the right to rely on the last known address of the other Parties. Any correctly addressed notice to last known address of the other Parties that is relied on herein and that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be notified as provided herein shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by electronic mail, the postal authorities by mail, through messenger or commercial express delivery services.
- (i) No Waiver. No waiver of rights under this Agreement by any Party shall constitute a subsequent waiver of this or any other right under this Agreement.
- (j) Assignment. No assignment of this Agreement by Depositor or Beneficiary or any rights or obligations of Depositor or Beneficiary under this Agreement is permitted without the written consent of Iron Mountain, which shall not be unreasonably withheld or delayed. Iron Mountain shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Beneficiary unless Iron Mountain receives clear, authoritative and conclusive written evidence of the change of parties.
- (k) Severability. In the event any of the terms of this Agreement become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, such term(s) shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect. If this paragraph becomes applicable and, as a result, the value of this Agreement is materially impaired for any Party, as determined by such Party in its sole discretion, then the affected Party may terminate this Agreement by written notice to the others.
- (l) Independent Contractor Relationship. Depositor and Beneficiary understand, acknowledge, and agree that Iron Mountain's relationship with Depositor and Beneficiary will be that of an independent contractor and that nothing in this Agreement is intended to or should be construed to create a partnership, joint venture, or employment relationship.
- (m) Attorneys' Fees. In any suit or proceeding between the Parties relating to this Agreement, the prevailing Party will have the right to recover from the other(s) its costs and reasonable fees and expenses of attorneys, accountants, and other professionals incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of this Agreement, and shall survive and not be merged into any such judgment.
- (n) No Agency. No Party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other Parties or bind the other Parties in any respect whatsoever.
- (o) Disputes. Any dispute, difference or question relating to or arising among any of the Parties concerning the construction, meaning, effect or implementation of this Agreement or the rights or obligations of any Party hereof will be submitted to, and settled by arbitration by a single arbitrator chosen by the corresponding Regional Office of the American Arbitration Association in accordance with the Commercial Rules of the American Arbitration Association. The Parties shall submit briefs of no more than 10 pages and the arbitration hearing shall be limited to two (2) days maximum. The arbitrator shall apply Massachusetts law. Unless otherwise agreed by the Parties, arbitration will take place in Boston, Massachusetts, U.S.A. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator. Service of a petition to confirm the arbitration award may be made by regular mail or by commercial express mail, to the attorney for the Party or, if unrepresented, to the Party at the last known business address. If however, Depositor or Beneficiary refuse to submit to arbitration, the matter shall not be submitted to arbitration and Iron Mountain may submit the matter to any court of competent jurisdiction for an interpleader or similar action. Unless adjudged otherwise, any costs of

arbitration incurred by Iron Mountain, including reasonable attorney's fees and costs, shall be divided equally and paid by Depositor and Beneficiary.

- (p) **Regulations.** All Parties are responsible for and warrant, to the extent of their individual actions or omissions, compliance with all applicable laws, rules and regulations, including but not limited to: customs laws; import; export and re-export laws; and government regulations of any country from or to which the Deposit Material may be delivered in accordance with the provisions of this Agreement.
- (q) **No Third Party Rights.** This Agreement is made solely for the benefit of the Parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement unless otherwise agreed to by all the parties hereto.
- (r) **Entire Agreement.** The Parties agree that this Agreement, which includes all the Exhibits attached hereto and all valid Work Requests submitted by the Parties, is the complete agreement between the Parties hereto concerning the subject matter of this Agreement and replaces any prior or contemporaneous oral or written communications between the Parties. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified herein. Each of the Parties herein represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized and signed by a person who meets statutory or other binding approval to sign on behalf of its business organization as named in this Agreement. This Agreement may only be modified by mutual written agreement of the Parties.
- (s) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
- (t) **Survival.** Sections 6 (Term and Termination), 7 (General Indemnity), 8 (Warranties), 9 (Confidential Information), 10 (Limitation of Liability) 11(Consequential Damages Waiver), and 12 (General) of this Agreement shall survive termination of this Agreement or any Exhibit attached hereto.

Note: If contracting electronically via the online portal, clicking the "I Accept" button displayed as part of the ordering process, evidences agreement to the preceding terms and conditions (the "Agreement"). If you are entering into this Agreement via the online portal on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these terms and conditions, in which case the terms "you" or "your" shall refer to such entity. If you do not have such authority, or if you do not agree with these terms and conditions, you must select the "I Decline" button.

DEPOSITOR

COMPANY NAME:	
SIGNATURE:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS	

BENEFICIARY

COMPANY NAME:	
SIGNATURE:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS:	

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

SIGNATURE:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS:	ipmclientservices@ironmountain.com

NOTE: AUTHORIZED PERSON(S)/NOTICES TABLE, BILLING CONTACT INFORMATION TABLE AND EXHIBITS FOLLOW

DEPOSITOR -- AUTHORIZED PERSON(S)/NOTICES TABLE

Provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All notices will be sent to the person(s) at the address(es) set forth below. This is required information.

COMPANY:	
ADMINISTRATIVE CONTACT PRINT NAME:	
TITLE:	
EMAIL ADDRESS	
ADDRESS 1	
ADDRESS 2	
CITY/STATE/PROVINCE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	

BENEFICIARY -- AUTHORIZED PERSON(S)/NOTICES TABLE

Provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All notices will be sent to the person(s) at the address(es) set forth below. This is required information.

COMPANY:	
ADMINISTRATIVE CONTACT PRINT NAME:	
TITLE:	
EMAIL ADDRESS	
ADDRESS 1	
ADDRESS 2	
CITY/STATE/PROVINCE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

All notices should be sent to ipmclientservices@ironmountain.com OR Iron Mountain Intellectual Property Management, Inc., Attn: Client Services

2100 Norcross Parkway, Suite 150
Norcross, Georgia, 30071, USA.
Telephone: 800-875-5669
Facsimile: 770-239-9201

BILLING CONTACT INFORMATION TABLE

Please provide the name and contact information of the Billing Contact under this Agreement. All Invoices will be sent to this individual at the address set forth below.

DEPOSITOR

PRINT NAME:	
TITLE:	
EMAIL ADDRESS	
STREET ADDRESS	
PROVINCE/CITY/STATE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	
PURCHASE ORDER #	

BENEFICIARY

PRINT NAME:	
TITLE:	
EMAIL ADDRESS	
STREET ADDRESS	
PROVINCE/CITY/STATE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	
PURCHASE ORDER #	

MUST BE COMPLETED EXHIBIT A - Escrow Service Work Request - Deposit Account Number:

SERVICE Check box(es) to order service	SERVICE DESCRIPTION – THREE PARTY ESCROW AGREEMENT All services are listed below. Services in shaded tables are required for every new escrow account set up. Some services may not be available under the Agreement.	ONE- TIME FEES	ANNU- AL FEES	PAYING PARTY Check box to identify the Paying Party for each service below.
<input checked="" type="checkbox"/> Setup Fee <input checked="" type="checkbox"/> Deposit Account Fee- including Escrow Management Center Access <input checked="" type="checkbox"/> Beneficiary Fee including Escrow Management Center Access	<p>Iron Mountain will setup a new escrow deposit account using a standard escrow agreement. Custom contracts are subject to the Custom Contract Fee noted below.</p> <p>Iron Mountain will set up one deposit account to manage and administrate access to Deposit Material that will be secured in a controlled storage environment. Furthermore, Iron Mountain will provide account services that include unlimited deposits, electronic vaulting, access to Iron Mountain Connect™ Escrow Management Center for secure online account management, submission of electronic Work Requests, and communication of status. A Client Manager will be assigned to each deposit account and provide training upon request to facilitate secure Internet access to the account and ensure fulfillment of Work Requests. An oversize fee may apply.</p> <p>Iron Mountain will fulfill a Work Request to add a Beneficiary to an escrow deposit account and manage access rights associated with the account. Beneficiary will have access to Iron Mountain Connect™ Escrow Management Center for secure online account management, submission of electronic Work Requests, and communication of status. A Client Manager will be assigned to each deposit account and provide training upon request to facilitate secure Internet access to the account and ensure fulfillment of Work Requests.</p>	<p>\$1,250</p>	<p>\$1,000</p> <p>\$700</p>	<input checked="" type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary <input checked="" type="checkbox"/> Depositor -OR - <input type="checkbox"/> Beneficiary <input checked="" type="checkbox"/> Depositor – OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Deposit Tracking Notification	<p>At least semi-annually, Iron Mountain will send an update reminder to Depositor. Thereafter, Beneficiary will be notified of last deposit.</p>	<p>N/A</p>	<p>\$375</p>	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add File List Report	<p>Iron Mountain will fulfill a Work Request to provide a File Listing Report, which includes a deposit media readability analysis, a file listing, a file classification table, virus scan outputs, and assurance of completed deposit questionnaire. A final report will be sent to the Paying Party regarding the Deposit Material to ensure consistency between Depositor's representations (i.e., Exhibit B and Deposit Questionnaire) and stored Deposit Material. Deposit must be provided on CD, DVD-R, or deposited FTP.</p>	<p>\$2,500</p>	<p>N/A</p>	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Level 1 - Inventory and Analysis Test	<p>Iron Mountain will perform an Inventory Test on the initial deposit, which includes Analyzing deposit media readability, virus scanning, developing file classification tables, identifying the presence/absence of build instructions, and identifying materials required to recreate the Depositor's software development environment. Output includes a report which will include build instructions, file classification tables and listings. In addition, the report will list required software development materials, including, without limitation, required source code languages and compilers, third-party software, libraries, operating systems, and hardware, as well as Iron Mountain's analysis of the deposit.</p>	<p>\$5,000 or based on SOW if custom work required</p>	<p>N/A</p>	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Level 2 – Deposit Compile Test	<p>Iron Mountain will fulfill a Work Request to perform a Deposit Compile Test, which includes the outputs of the File Listing Report and the Level 1 - Inventory Test as described above plus recreating the Depositor's software development environment, compiling source files and modules, linking libraries and recreating executable code, pass/fail determination, creation of comprehensive build instructions with a final report sent to the Paying Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.</p>	<p>Based on SOW</p>	<p>N/A</p>	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Level 3 - Binary Comparison	<p>Iron Mountain will fulfill a Work Request to perform one Deposit Usability Test - Binary Comparison which includes a comparison of the files built from the Deposit Compile Test to the actual licensed technology on the Beneficiary's site to ensure a full match in file size, with a final report sent to the Requesting Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.</p>	<p>Based on SOW</p>	<p>N/A</p>	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Level 4 - Full Usability	<p>Iron Mountain will fulfill a Work Request to perform one Deposit Usability Test - Full Usability which includes a confirmation that the built applications work properly when installed, based on pre-determined test scripts provided by the Parties. A final report will be sent to the Paying Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.</p>	<p>Based on SOW</p>	<p>N/A</p>	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary

<input type="checkbox"/> Add Dual/Remote Vaulting	Iron Mountain will fulfill a Work Request to store and manage the deposit materials in a remote location, designated by the client, outside of Iron Mountain's primary escrow vaulting location or to store and manage a redundant copy of the deposit materials in one (1) additional location. All Deposit Materials (original and copy) must be provided by the Depositor.	N/A	\$500	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Release Deposit Material	Iron Mountain will process a Work Request to release Deposit Material by following the specific procedures defined in Exhibit C "Release of Deposit Materials" the Escrow Service Agreement.	\$500	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Custom Services	Iron Mountain will provide its Escrow Expert consulting based on a custom SOW mutually agreed to by all Parties.	\$175/hour	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Custom Contract Fee	Custom contracts are subject to the Custom Contract Fee, which covers the review and processing of custom or modified contracts.	\$500	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary

Note: Parties may submit Work Requests via written instruction or electronically through the online portal.

**EXHIBIT B
DEPOSIT MATERIAL DESCRIPTION**

COMPANY NAME: _____ DEPOSIT ACCOUNT NUMBER: _____

DEPOSIT NAME _____ AND DEPOSIT VERSION _____

(Deposit Name will appear in account history reports)

DEPOSIT MEDIA (PLEASE LABEL ALL MEDIA WITH THE DEPOSIT NAME PROVIDED ABOVE)

MEDIA TYPE	QUANTITY	MEDIA TYPE	QUANTITY
<input type="checkbox"/> CD-ROM / DVD		<input type="checkbox"/> 3.5" Floppy Disk	
<input type="checkbox"/> DLT Tape		<input type="checkbox"/> Documentation	
<input type="checkbox"/> DAT Tape		<input type="checkbox"/> Hard Drive / CPU	
		<input type="checkbox"/> Circuit Board	

	TOTAL SIZE OF TRANSMISSION (SPECIFY IN BYTES)	# OF FILES	# OF FOLDERS
<input type="checkbox"/> Electronic Deposit			
<input type="checkbox"/> Other (please describe below):			

DEPOSIT ENCRYPTION (Please check either "Yes" or "No" below and complete as appropriate)

Is the media or are any of the files encrypted? Yes or No

If yes, please include any passwords and decryption tools description below. Please also deposit all necessary encryption software with this deposit.

Encryption tool name _____ Version _____

Hardware required _____

Software required _____

Other required information _____

DEPOSIT CERTIFICATION (Please check the box below to Certify and Provide your Contact Information)

<input type="checkbox"/> I certify for Depositor that the above described Deposit Material has been transmitted electronically or sent via commercial express mail carrier to Iron Mountain at the address below.	<input type="checkbox"/> Iron Mountain has inspected and accepted the above described Deposit Material either electronically or physically. Iron Mountain will notify Depositor of any discrepancies.
NAME:	NAME:
PRINT NAME:	PRINT NAME:
DATE:	DATE:
EMAIL ADDRESS:	
TELEPHONE NUMBER:	
FAX NUMBER:	

Note: If Depositor is physically sending Deposit Material to Iron Mountain, please label all media and mail all Deposit Material with the appropriate Exhibit B via commercial express carrier to the following address:

Iron Mountain Intellectual Property Management, Inc.
Attn: Vault Administration
2100 Norcross Parkway, Suite 150
Norcross, GA 30071

Telephone: 800-875-5669
Facsimile: 770-239-9201

FOR IRON MOUNTAIN USE ONLY: (NOTED DISCREPANCIES ON VISUAL INSPECTION)

EXHIBIT C

RELEASE OF DEPOSIT MATERIALS

Deposit Account Number: _____

Iron Mountain will use the following procedures to process any Beneficiary Work Request to release Deposit Material. All notices under this Exhibit C shall be sent pursuant to the terms of Section 12(h) Notices.

1. Release Conditions. The Depositor and Beneficiary agree that a Work Request for the release of the Deposit Material shall be based solely on one or more of the following conditions (defined as "**Release Conditions**"):
 - (i) Depositor's breach of the license agreement or other agreement between the Depositor and the Beneficiary regulating the use of the Deposit Material covered under this Agreement; or
 - (ii) Failure of the Depositor to function as a going concern or to operate in the ordinary course; or
 - (iii) Depositor is subject to voluntary or involuntary bankruptcy.
2. Release Work Request. A Beneficiary may submit a Work Request to Iron Mountain to release the Deposit Material covered under this Agreement. Iron Mountain will send a written notice of this Beneficiary Work Request within five (5) business days to the Depositor's Authorized Person(s).
3. Contrary Instructions. From the date Iron Mountain mails written notice of the Beneficiary Work Request to release Deposit Material covered under this Agreement, Depositor authorized representative(s) shall have ten (10) business days to deliver to Iron Mountain contrary instructions. Contrary instructions shall mean the written representation by Depositor that a Release Condition has not occurred or has been cured ("**Contrary Instructions**"). Contrary Instructions shall be on company letterhead and signed by an authorized Depositor representative. Upon receipt of Contrary Instructions, Iron Mountain shall promptly send a copy to Beneficiary's Authorized Person(s). Additionally, Iron Mountain shall notify both Depositor and Beneficiary Authorized Person(s) that there is a dispute to be resolved pursuant to the Disputes provisions of this Agreement. Iron Mountain will continue to store Deposit Material without release pending (i) joint instructions from Depositor and Beneficiary with instructions to release the Deposit Material; or (ii) dispute resolution pursuant to the Disputes provisions of this Agreement; or (iii) receipt of an order from a court of competent jurisdiction.
4. Release of Deposit Material. If Iron Mountain does not receive Contrary Instructions from an authorized Depositor representative, Iron Mountain is authorized to release Deposit Material to the Beneficiary or, if more than one Beneficiary is registered to the deposit, to release a copy of Deposit Material to the Beneficiary. Iron Mountain is entitled to receive any undisputed, unpaid Service Fees due Iron Mountain from the Parties before fulfilling the Work Request to release Deposit Material covered under this Agreement. Any Party may cure a default of payment of Service Fees.
5. Termination of Agreement Upon Release. This Agreement will terminate upon the release of Deposit Material held by Iron Mountain.
6. Right to Use Following Release. Beneficiary has the right under this Agreement to use the Deposit Material for the sole purpose of continuing the benefits afforded to Beneficiary by the License Agreement. Notwithstanding, the Beneficiary shall not have access to the Deposit Material unless there is a release of the Deposit Material in accordance with this Agreement. Beneficiary shall be obligated to maintain the confidentiality of the released Deposit Material.

EXHIBIT Q

ESCROW DEPOSIT QUESTIONNAIRE

Introduction

From time to time, technology escrow beneficiaries may exercise their right to perform verification services. This is a service that Iron Mountain provides for the purpose of validating relevance, completeness, currency, accuracy and functionality of deposit materials.

Purpose of Questionnaire

In order for Iron Mountain to determine the deposit material requirements and to quote fees associated with verification services, a completed deposit questionnaire is requested. It is the responsibility of the escrow depositor to complete the questionnaire.

Instructions

Please complete the questionnaire in its entirety by answering every question with accurate data. Upon completion, please return the completed questionnaire to the beneficiary asking for its completion, or e-mail it to Iron Mountain to the attention of verification@ironmountain.com

Escrow Deposit Questionnaire

General Description

1. What is the general function of the software to be placed into escrow?
2. On what media will the source code be delivered?
3. What is the size of the deposit in megabytes?

Requirements for the Execution of the Software Protected by the Deposit

1. What are the system hardware requirements to successfully execute the software? (memory, disk space, etc.)
2. How many machines are required to completely set up the software?
3. What are the software and system software requirements, to execute the software and verify correct operation?

Requirements for the Assembly of the Deposit

1. Describe the nature of the source code in the deposit. (Does the deposit include interpreted code, compiled source, or a mixture? How do the different parts of the deposit relate to each other?)
2. How many build processes are there?
3. How many unique build environments are required to assemble the material in the escrow deposit into the deliverables?
4. What hardware is required for each build environment to compile the software? (including memory, disk space, etc.)
5. What operating systems (including versions) are used during compilation? Is the software executed on any other operating systems/version?
6. How many separate deliverable components (executables, share libraries, etc.) are built?
7. What compilers/linkers/other tools (brand and version) are necessary to build the application?
8. What, if any, third-party libraries are used to build the software?
9. How long does a complete build of the software take? How much of that time requires some form of human interaction and how much is automated?
10. Do you have a formal build document describing the necessary steps for system configuration and compilation?
11. Do you have an internal QA process? If so, please give a brief description of the testing process.
12. Please list the appropriate technical person(s) Iron Mountain may contact regarding this set of escrow deposit materials.

Please provide your technical verification contact information below:

COMPANY:	
SIGNATURE:	
PRINT NAME:	
ADDRESS 1:	
ADDRESS 2:	

CITY, STATE, ZIP	
TELEPHONE:	
EMAIL ADDRESS:	

For additional information about Iron Mountain Technical Verification Services, please contact
Manager of Verification Services at **978-667-3601 ext. 100** or by e-mail at **[mailto:
verification@ironmountain.com](mailto:verification@ironmountain.com)**