



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

C-8

For the meeting of: May 12, 2015

Date: April 8, 2015

To: Board of Supervisors

From: Phillip R. Crandall, Director
Department of Health and Human Services (DHHS)-Mental Health

Subject: Agreement with Netsmart Technologies, Inc. for Avatar Software and Services

RECOMMENDATION(S):

That the Board of Supervisors:

1. Approves the Agreement with Netsmart Technologies, Inc. for Avatar software and services (Attachment 1);
2. Authorizes the Chair to sign three (3) originals of the Agreement with Netsmart Technologies, Inc.; and
3. Directs the Clerk of the Board to return two (2) signed originals of the Agreement to the DHHS-Contract Unit for forwarding to DHHS-Mental Health Administration.

SOURCE OF FUNDING:

Mental Health Fund

DISCUSSION:

On November 2, 2004 California voters passed Proposition 63, the Mental Health Services Act (MHSA) that provided the first opportunity in many years for the California Department of Mental Health (now

Prepared by Andrew Rix, Staff Services Manager

CAO Approval

REVIEW:

Auditor

County Counsel

Human Resources

Other

TYPE OF ITEM:

☒ Consent
☐ Departmental
☐ Public Hearing
☐ Other

PREVIOUS ACTION/REFERRAL:

Board Order No. G-2, C-17, C-10

Meeting of: 12/13/2006, 6/7/2007, 4/11/2011

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor Sundberg Seconded by Supervisor Bass

Ayes Sundberg, Lovelace, Fennell, Bohn, Bass

Nays
Abstain
Absent

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

Dated: May 12, 2015

By: Kathy Hayes, Clerk of the Board

Netsmart Customer License and Service Agreement

LICENSE AND SERVICE AGREEMENT

Agreement made this 12th day of May, 2015, (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, with offices at 720 Wood Street, Eureka, CA 95501 (hereinafter referred to as "Licensee")

WHEREAS, Netsmart and Licensee entered into a License and Service Agreement on April 5, 2011, with later amendments, and under that agreement Netsmart granted a non-exclusive perpetual non-transferable license to use the Licensed Programs Whereas on June 26, 2014, the parties indicated through a Letter of Intent to continue the support services for those programs while the parties completed this Agreement That Agreement stated the terms and conditions under which Netsmart would

- 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

1 SCOPE OF AGREEMENT

This Agreement states the terms and conditions under which Netsmart will

- a) Affirm the perpetual license granted to Licensee in the License and Service Agreement of April 5, 2011 with later amendments 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-F 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 and payment terms are described in Schedule A attached hereto
- b) "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 C attached hereto

- c) "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
- d) "Licensed Programs" means both the Netsmart Programs and the Third Party programs
- e) "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
- f) "Problem or Defect" means any failure of the Licensed Programs to operate in substantial conformance with the Specifications
- g) "Scope Document for Plexus Implementation Plan" or "SOW" means the detailed work plan attached hereto as Schedule B
- h) "Services" means the installation, training and other services to be provided by Netsmart as described in Schedule B
- i) "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
- j) "Support Services" means the maintenance and support services to be provided by Netsmart in accordance with Schedule D
- k) "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 affirms the perpetual license granted to Licensee in the License and Service Agreement of April 5, 2011 with later amendments that granted Licensee the rights to use and operate certain proprietary computer programs and related documentation on a non-exclusive basis as more particularly described herein
- b) Netsmart hereby grants Licensee a non-exclusive, royalty-free, 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,

The foregoing license grant may be exercised by Licensee and its employees and independent contractors (provided that such independent contractors undertake in writing to be bound by all applicable restrictions in this Agreement) (collectively,

"Licensee Personnel") on Licensee's equipment for Licensee's internal business purposes provided they are added as named users for the Licensed Programs.

- c) Except as expressly stated in this Agreement, no other rights, express, implied or otherwise are granted to Licensee.
- d) The Third Party Programs are licensed subject to the same restrictions as are set forth in 3(a) above as well as such other restrictions as may be set forth in Schedule A.
- e) 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, sublease, lend or otherwise make the Licensed Programs available to others including third party hosting providers.
- f) 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.
- g) 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.
- h) 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 that may result from Licensee communications to Netsmart.
- i) Escrow Program. The license herein does not include any rights to the source code for the Licensed Programs. Netsmart has established a source code escrow program with an affiliate of Iron Mountain Incorporated ("Escrow Agent") under which it has deposited a copy of the Licensed Software source code and source code documentation in electronic format with the Escrow Agent. Netsmart deposits with the Escrow Agent, updates, changes, alterations, or modifications to the code for the Licensed Software on a quarterly basis. Licensee will pay the annual subscription fee as stated in Schedule A.
- j) Upon Netsmart's request and with reasonable notice, Licensee agrees to provide Netsmart with verification as to the number of users using the Licensed Programs or allow Netsmart or its authorized agent to independently audit Licensee's database to verify the same. Should this verification identify usage of the Licensed Programs in excess of the number of licensed users,

Licensee agrees to immediately pay Netsmart's invoice for the then-current prices for such Licensed Programs for each additional user license

- k) **Data Back-up** If Netsmart is not providing hosting services, 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.

4 IMPLEMENTATION

The Scope Document for the Plexus 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 the Scope of Work.

5 TERM

The term of this Agreement shall be from July 1, 2014 and shall continue through June 30, 2016, unless sooner terminated as provided herein. For avoidance of doubt, the license granted to Licensee is perpetual.

6 CHARGES AND PAYMENT TERMS

- a) In consideration of the affirmation of the licenses previously granted, 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 A.
- b) With the exception of the initial invoice which is due upon Agreement signing, 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. Failure to make timely payment is considered a material default of the Agreement. Delinquent accounts will be subject to Netsmart's Delinquent Account Escalation Policy set forth at <http://www.ntst.com/ARpolicy>.

7 TAXES

The Charges set forth in this 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. If a Problem or Defect occurs while Licensee is receiving Support Services, Netsmart will correct the Problem or Defect in accordance with the Support Services provisions set forth in Schedule D.
- 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, then (i) with respect to the warranty made under Section 8(a), Netsmart shall have no obligation or liability to Licensee with respect to any Problem or Defect caused by such modifications, additions or alterations, and (ii) with respect to the representation and warranty under Section 8(b), Netsmart shall have no obligation or liability to Licensee with respect to any third party claim of patent, copyright or trade secret infringement or misappropriation arising from such modifications, additions or alterations. Licensee will have an affirmative obligation to immediately inform Netsmart in writing of any modifications, additions or alterations.
- d) The limited warranty described herein will not apply unless the Licensee's hardware and software system components meet Netsmart's minimum requirements as described in Schedule C.

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 modify the software to eliminate the problem or defect. Licensee's exclusive remedy in the event of a breach of the section 8(b) warranty is set forth in section 10

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.
- e) In no event will either party be liable to the other for any indirect, special, incidental, consequential, punitive, or exemplary damages (including, but not limited to, procurement of substitute goods or services, 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 12, in no event will either party be liable for any third party claim.
- f) Except as set forth in section 12, 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 license fees paid to Netsmart under this Agreement.

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 agreement 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 insured's clause.
- ii. The Certificate of Insurance will include the standard Insurer undertaking to endeavor to provide notice of cancellation or non-renewal to Licensee 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 material term of this Agreement following the notice and cure provision set forth in this section;
 - iii. A substantially incorrect or incomplete report submitted as provided for

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 and support of CMHC/MIS ends.

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 OF TRADE SECRETS AND IMPLEMENTATION

- a) Each party agrees that by reason of their engagement hereunder, they will acquire confidential information and trade secrets concerning the operations of the other party and their business methods and operations.
- b) Each party (including its employees and agents) will use the same standard of care, but in no event less than reasonable care, that it uses to protect its own confidential information to protect any confidential information of the other party.
- c) During the course of the Agreement, Netsmart and Licensee agree not to discuss the project with any person who does not have a need to know that information for a constructive purpose that will positively impact completion of the Implementation Plan.
- d) 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.
- e) 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.

- in this Agreement,
- iv Failure to maintain adequate levels of insurance as specified in Section 13,
- v Failure to comply with State or Federal Law as provided for in this Agreement,
- vi Filing of a bankruptcy petition,
- vii Business closure, or
- vii Improperly performed service in accordance with the SOW following the notice and cure provision set forth in this section

Notwithstanding the foregoing, in the event Licensee desires to terminate under the clauses 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) Licensee'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, Licensee shall, at its sole discretion, determine whether this Agreement shall be terminated or Licensee's maximum obligation reduced. Licensee shall provide Netsmart 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 14 "Termination"
 - iv) Section 17 "Confidentiality"
 - v) Section 18 "Non-Solicitation"
 - vi) Section 40 "Confidentiality of Records"
 - vii) Section 55 "General Provisions"

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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 twelve (12) 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, acts of terrorism, fire, labor difficulties or shortages, civil disturbances, transportation problems, interruptions of power supply or communications or natural disasters, provided such party takes reasonable efforts to minimize the effect of such acts or events.

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.
4950 College Boulevard,
Overland Park, Kansas 66212
Contracts Notice@ntst.com

LICENSEE:

Humboldt County Dept. of Health and Human Services
ATTN: DHHS-Mental Health 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. **AUDIT AND RECORD RETENTION**

- a) 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.
- b) Netsmart shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
- c) Netsmart's facility or office or such part thereof as may be engaged in the performance of this Agreement and its records shall be subject at all reasonable times to inspection, audit, and reproduction.
- d) Netsmart agrees that the State Department of Health Care Services, the State Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Netsmart agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

- e) Netsmart shall preserve and make available its records (1) for a period of seven (7) years from the date of final payment under this Agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement or by subparagraphs (1) or (2) below.
 - (1) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of seven (7) years from the date of any resulting final settlement.
 - (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the seven-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular seven (7)-year period, whichever is later.
- f) Netsmart shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code Section 10115.10, if applicable.
- g) Netsmart may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, Netsmart must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

27. INSPECTION RIGHTS

Netsmart shall make all books and records pertaining to the goods and services furnished under the terms of this Agreement available for inspection, examination, or copying: fiscal audits, program compliance, review of client complaints, or copying: 1) By Licensee, the State Department of Health Care Services, the United States Department of Health and Human Services, the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives; 2) At all reasonable times at Netsmart's normal place of business or at such other mutually-agreeable location in California; 3) In a form maintained in accordance with the general standards and Licensee standards applicable to such book or record keeping; 4) For a term of at least seven (7) years from the close of the California Department of Health Care Services' fiscal year in which this Agreement was in effect. Books and records include, but are not limited to, all physical records originated or prepared pursuant to the performance under this Agreement including working papers, reports, financial records and books of account, client records, prescription files, subcontracts, and any other documentation pertaining to covered services and other related services for clients.

28. REPORTING

During any audit or inspection pursuant to Section 27, Netsmart agrees to provide Licensee with any reports that may be required by County, State or Federal agencies for compliance with this Agreement.

29 **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, in regards to this Agreement, as well as the overall operation of Netsmart's programs in order to ensure compliance with the terms and conditions of this Agreement

30 **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

31 **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. Netsmart shall ensure that all subcontractors are subject to the applicable terms and conditions of this Agreement including, but not limited to, the privacy, security, and confidentiality requirements

32 **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

33 **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

34 **COMPLIANCE WITH LAWS**

- a) Netsmart agrees to comply with all applicable local, state and federal laws and regulations as it relates to the general operation of its business, including but not limited to the Americans with Disabilities Act
- b) Netsmart agrees to comply with applicable provisions of any Mental Health Plan contract between the California Department of Health Care Services and Licensee
- c) 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

35 **COMPLIANCE WITH ELECTRONIC HEALTH RECORD REGULATIONS**

Netsmart will maintain the Avatai software solution in regulatory compliance with both STATE and FEDERAL regulations for Electronic Health Record (eHR) systems as of the Effective Date of this Agreement for the modules provided for herein as part of the annual maintenance/support program, for which there is an annual fee as outlined herein. Any specific State of California or Federal eHR requirements that require new solutions, modules, or third party products or content will be addressed by an amendment of this Agreement.

36 **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.

37 **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.

38 **NONDISCRIMINATION**

- a) Consistent with the requirements of applicable Federal or State law, Netsmart will not engage in any unlawful discriminatory practices in the execution of this Agreement including the employment of personnel, or in any other respect on the basis of race, religion or religious creed, color, age (over 40), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics) mental or physical disability (including HIV status and AIDS), military service, or any other classifications protected by federal, state, or local laws or ordinances. This policy does not require the employment of unqualified persons.
- b) 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 thereunder (Title 2, CCR, Section 7285 et seq) Netsmart and its subcontractors will ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination 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 Netsmart and its subcontractors will give written notice of their obligation under this clause to labor organizations with which they have a collective bargaining or other agreement

- c) Netsmart agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U S C 4212) Such notices shall state Netsmart's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees
- d) Netsmart shall, in all solicitations or advancements for employees placed by or on behalf of Licensee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era
- e) Netsmart shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of Netsmart's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment
- f) Netsmart shall comply with all the provisions of and furnish all information and reports required by Section 5043 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U S C 4212) and of the Federal Executive Order No 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity, and as supplemented by regulation at 41 Code of Federal Regulations part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, and of the rules, regulations, and relevant orders of the Secretary of Labor 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 Human Services, effective June 2, 1977, and found in the Federal Register, Volume 42, No 86, dated May 4, 1977
- g) Netsmart shall furnish all information and reports required by Federal Executive Order No 11246 as amended, including by Executive Order 11375,

'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 Code of Federal Regulations part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 12973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- h) In the event of Netsmart's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and Netsmart may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 Code of Federal Regulations part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- i) Netsmart will include the nondiscrimination and compliance provisions of this Agreement in all subcontracts to perform work under this Agreement.

39. 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 five (5) 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 5 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.

40. CONFIDENTIALITY OF RECORDS

- 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. In the performance of this Agreement, Netsmart shall 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 and Licensee acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. If necessary, Netsmart agrees to promptly enter into negotiations concerning an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations.
- c) Netsmart agrees to comply with the applicable privacy, security, and confidentiality requirements under any Mental Health Plan contract between the California Department of Health Care Services and Licensee regarding Licensee's client information including the following

NETSMART shall protect from unauthorized disclosure the names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available to NETSMART or are disclosed to NETSMART as a result of services performed under this Agreement, except for statistical information not identifying any such person. For purposes of these subsections, identifying information shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print, or a photograph. Such identifying information shall not be used for any purpose other than carrying out NETSMART's duties and obligations hereunder.

NETSMART shall promptly transmit to LICENSEE all requests for disclosure of such identifying information not emanating from a client/patient or person whose name or identifying information become available to NETSMART or is disclosed to NETSMART as a result of services performed under this Agreement.

NETSMART shall use or disclose only the minimum amount of Protected Health Information "PHI" necessary to accomplish the intended purpose of this Agreement. NETSMART shall not use or disclose PHI in any manner that would constitute a breach of this Agreement or a violation of local, state or federal law.

NETSMART shall comply with the accounting requirements of 45 Code of Federal Regulations Section 164.528 and any associated regulations or informal guidance issued by the U.S. Department of Health and Human Services, Office of Civil Rights, all as may be amended or changed from time to time.

NETSMART shall only use, store, disclose, or access PHI in compliance with this Agreement and all applicable local, state and federal laws, regulations, rules and standards.

NETSMART shall not download PHI to any personal device, including, but not limited to, flash drives, cell phones, iPads, or tablets without the prior written approval of LICENSEE.

If NETSMART has reason to believe that PHI transmitted pursuant to this Agreement may have been accessed, disclosed, or acquired in breach of the terms and conditions

herein, NETSMART shall immediately take all actions necessary to preserve forensic evidence and to identify, mitigate and remediate the cause of the suspected breach. NETSMART shall give highest priority to immediately mitigating

and remediating the suspected breach, and shall devote such resources as may be required to accomplish that goal. In addition, NETSMART shall cooperate with LICENSEE's mitigation and remediation efforts, including providing any and all information necessary to enable LICENSEE to fully understand the nature and scope of the suspected breach, including, but not limited to, identification of each individual whose unsecured PHI may have been improperly accessed, acquired, or disclosed.

NETSMART shall notify LICENSEE, by telephone call and/or e-mail, immediately after discovering a suspected breach of PHI in computerized form, if the PHI was, or is reasonably believed to have been acquired by an unauthorized person. NETSMART shall notify LICENSEE, by telephone call or e-mail, within twenty four (24) hours after discovering any other suspected security incident, intrusion, loss or unauthorized use or disclosure of PHI in violation of this Agreement or any applicable local, state or federal law. A breach shall be treated as discovered by NETSMART as of the first day on which such breach is known thereto (including any employee, officer, or other agent thereof) or reasonably should have been known thereby.

To the extent deemed warranted, the NETSMART shall provide notice to any or all individuals affected by the suspected breach. NETSMART shall pay the full costs associated with notifying the impacted individuals, which may include, but are not limited to, the costs to retain an outside consulting firm to undertake the notification effort. In addition, NETSMART shall consult with LICENSEE regarding the steps required to notify impacted individuals and any other persons, media outlets or governmental agencies, and must supply LICENSEE with the following information: 1) A brief description of the circumstances surrounding the suspected breach, including the date of occurrence and discovery thereof, if known; 2) A description of the types of unsecured PHI that were involved in the suspected breach (such as the full name, Social Security number, date of birth, home address, account number, or disability code of all affected third parties); 3) A brief description of what NETSMART is doing to remediate the breach, mitigate losses and protect against any further breaches.

NETSMART agrees to timely prepare accurate and complete performance records relating to the use and disclosure of PHI transmitted pursuant to this Agreement, and to maintain and preserve said records for at least seven (7) years from the date of expiration or termination of this Agreement, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising there from.

NETSMART shall make itself reasonably available to the California Department of Health Care Services at no cost to testify as witnesses, or otherwise, in the event of any litigation or administrative proceedings being commenced against the State Department of Health Care Services, its directors, officers or employees based upon claimed violations of HIPAA, or the HIPAA regulations, which involves inactions or actions by Licensee, except where Licensee or NETSMART is a named adverse party.

All workforce members who assist in the performance of functions or activities on behalf of NETSMART, or access or disclose Personal Health Information "PHI,"

Personal Information "PI," or Personal Identifying Information "PII," must complete information privacy and security training, at least annually, at their own expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following termination of this Agreement.

Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.

All persons that will be working with PHI, PII, or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to PHI, PII, or PI. The statement must be renewed annually. NETSMART shall retain each person's written confidentiality statement for inspection for a period of six (6) years following termination of this Agreement. Before a member of the workforce may access PHI, PII, or PI, a background screening of that worker must be conducted. The screening should be commensurate with the risk and magnitude of harm the employee could cause, with more thorough screening being done for those employees who are authorized to bypass significant technical and operational security controls. NETSMART shall retain each workforce member's background check documentation for a period of three (3) years.

All workstations and laptops that store PHI, PII, or PI either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the California Department of Health Care Services Information Security Office. Servers containing unencrypted PHI, PII, or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.

Only the minimum necessary amount of PHI, PII, or PI required to perform necessary business functions may be copied, downloaded, or exported. All electronic files that contain PHI, PII, or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.

All workstations, laptops and other systems that process and/or store PHI, PII, or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily. All workstations, laptops and other systems that process and/or store PHI, PII, or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release. Applications and systems that cannot be patched within this time frame due to significant operational reasons must have compensatory controls implemented to minimize risk until the patches can be installed. Applications and systems that cannot be patched must have compensatory controls implemented to minimize risk, where possible.

All users must be issued a unique user name for accessing PHI, PII, or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed at least every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:

- 1) Upper case letters (A-Z)
- 2) Lower case letters (a-z)
- 3) Arabic numerals (0-9)
- 4) Non-alphanumeric characters (punctuation symbols)

When no longer needed, all PHI, PII, or PI must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the California Information Security Office.

The system providing access to PHI, PII, or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity. All systems providing access to PHI, PII, or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements. The system must maintain an automated audit trail which can identify the user or system process which alters PHI, PII, or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If PHI, PII, or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence. The system providing access to PHI, PII, or PI must use role based access controls for all user authentications, enforcing the principle of least privilege. All data transmissions of PHI, PII, or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI, PII, or PI in motion such as website access, file transfer, and E-Mail.

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

PHI, PII, or PI in paper form shall not be left unattended at any time, unless it is

locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. PHI, PII, or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes. Visitors to areas where PHI, PII, or PI is contained shall be escorted and PHI, PII, or PI shall be kept out of sight while visitors are in the area. PHI, PII, or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing. Only the minimum necessary PHI, PII, or PI may be removed from the premises of NETSMART except with express written permission. PHI, PII, or PI shall not be considered "removed from the premises" if it is only being transported from one of Netsmart's locations to another of Netsmart's locations. Faxes containing PHI, PII, or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax. Mailings containing PHI, PII, or PI shall be sealed and secured from damage or inappropriate viewing of such PHI, PII, or PI to the extent possible. Mailings which include 500 or more individually identifiable records of PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission to use another method is obtained.

41. 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.

42. 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

43 PATIENTS' RIGHTS

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

44 AMENDMENT

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

45 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

46 ESCROW SERVICES

a) Possession and Use of Source Code

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 custom code under this license shall be limited to use of object 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 Licensee has successfully converted/migrated operations to the Netsmart Avatar Platform.

c) Escrow Agreement

The Three-Party Escrow Agreement with Iron Mountain, Netsmart and Licensee previously executed is attached hereto as Schedule F.

47. **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.

In the event of a change in Netsmart's ownership or control, within thirty five (35) days, or upon request of Licensee, Netsmart, shall notify Licensee of any change in ownership or control and provide information as requested by Licensee. The disclosures to be provided shall include, but not be limited to: 1) The name and address of any person (individual or corporation) with an ownership or control interest in Netsmart. The address for corporate entities shall include, as applicable, a primary business address, every business location, and a P.O. Box address; 2) Date of birth and Social Security Number (in the case of an individual); 3) Other tax identification number (in the case of a corporation with an ownership or control interest in Netsmart or in any subcontractor in which Netsmart has a 5 percent or more interest); 4) Whether the person (individual or corporation) with an ownership or control interest in Netsmart is related to another person with ownership or control interest in the same or any other Netsmart contractor as a spouse, parent, child, or sibling; or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which Netsmart has a 5 percent or more interest is related to another person with ownership or control interest in Netsmart as a spouse, parent, child, or sibling; 5) The name of any other disclosing entity in which Netsmart has an ownership or control interest; and 6) The name, address, date of birth, and Social Security Number of any managing employee of Netsmart.

48. **DISCLOSURES RELATED TO BUSINESS TRANSACTIONS**

Within thirty five (35) days, upon request by Licensee, in accordance with 42 Code of Federal Regulations Sections 455.101 through 455.106, Netsmart shall submit disclosures regarding certain business transactions. The following information must be disclosed: 1) The ownership of any subcontractor with whom Netsmart has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and 2) Any significant business transactions between Netsmart and any wholly owned supplier, or between Netsmart and any subcontractor, during the five (5)-year period ending on the date of the request.

49. **DISCLOSURES RELATED TO PERSON CONVICTED OF CRIMES**

Upon request by Licensee, Netsmart shall submit disclosures regarding its owners,

persons with controlling interest, agents, and managing employees' criminal convictions related to federal health care programs pursuant to 42 Code of Federal Regulations Section 455 106(a)(1) and (2) Netsmart shall submit the following disclosures 1) The identity of any person who is a managing employee of Netsmart who has been convicted of a crime related to federal health care programs (42 Code of Federal Regulations Section 455 106(a)(1), (2)), and 2) The identity of any person who is an agent of Netsmart who has been convicted of a crime related to federal health care programs (42 Code of Federal Regulations Section 455 106(a)(1), (2)) For this purpose, the word "agent" has the meaning described in 42 Code of Federal Regulations Section 455 101

50 FEDERAL HEALTH CARE PROGRAM EXCLUSION

Netsmart warrants that it is not excluded from participation and shall not employ or contract with providers or other individuals and entities excluded from participation in federal health care programs (as defined in Section 1128B(F) of the Social Security Act) under either Section 1128, 1128A, or 1156 of the Social Security Act

51 CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of eighteen (18), if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan or loan guarantee The law also applies to children's services that are provided in indoor facilities that are constructed, operated or maintained with such Federal funds The law does not apply to children's services provided in private residences, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole source of applicable Federal funds is Medicare or Medicaid, or facilities where Women, Infants and Children Program (WIC) coupons are redeemed Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to One Thousand Dollars (\$1,000 00) for each violation and/or the imposition of an administrative compliance order on the responsible entity By signing this Agreement, Netsmart certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act

52 CLEAN AIR / POLLUTION

For Agreements of amounts in excess of \$100,000 (unless exempt under 40 Code of Federal Regulations Section 15 5) Netsmart agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U S C 1857(h)) Section 508 of the Clean Water Act (33 U S C 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 Code of Federal Regulations part 15) Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 USC 7401 et seq), as amended, and the Federal Water Pollution Control Act (33 U S C 1251 et seq), as amended

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53 NOTIFICATION OF LITIGATION

Licensee shall be informed by Netsmart within forty-eight (48) hours of notification of professional litigation

54 HIPAA REQUIREMENTS

The "County of Humboldt HIPAA Business Associate Agreement", a copy of which is attached hereto and identified as Schedule E, is hereby incorporated into this Agreement

Netsmart agrees to adhere to the terms and conditions set forth herein

55 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
 - 1 a fax copy of this Agreements with a signature page that displays the image of a handwritten signature, or
 - 11 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

[Signature page to follow]

Exhibit 1 – Schedule A
Deliverables, Pricing, and Payment Terms

Netsmart Programs	Qty	Amount	Due – Invoices payable net 30 days
<u>Netsmart Programs Already licensed under Prior Agreement</u>			
RADplus – Named Users Includes Avatar System access and security management, modeling, table and dictionary maintenance and ad-hoc report integration	322	\$0	Already licensed under Prior Agreement (ongoing maintenance fees apply and are listed below)
Avatar Practice Management – Includes system management, client tracking, scheduling and reporting functions	1	\$0	Already licensed under Prior Agreement
Clinician Workstation – includes system management, assessment, progress notes, treatment planning and reporting functions	1	\$0	Already licensed under Prior Agreement
Avatar Order Entry License	1	\$0	Already licensed under Prior Agreement
Avatar eMAR License	1	\$0	Already licensed under Prior Agreement
Avatar Electronic Signature License	1	\$0	Already licensed under Prior Agreement
<u>Third Party Products and Services</u>			
Avatar Perceptive POS Scanning License	1	\$0	Already licensed under Prior Agreement
Avatar Cache Elite, Multi Server Platform Specific License – Concurrent	54	\$0	Already licensed under Prior Agreement (ongoing maintenance fees apply and are listed below)
Avatar Cache Enterprise License, Platform Specific, Single Server	63	\$0	Already licensed under Prior Agreement (ongoing maintenance fees apply and are listed below)
Avatar Cache Enterprise License, Platform Specific, Single Server	5	\$0	Already licensed under Prior Agreement (ongoing maintenance fees apply and are listed below)
<u>Annual Recurring Charges and Subscriptions</u>			
Annual Maintenance and Support		\$81,141.07 annually	Due annually 12/31 with 4% annual increase
Additional Named User Maintenance purchased 04/18/14		\$12,579.84 Annually	Due annually 12/31 with 4% annual increase
Additional Cache Maintenance purchased 04/18/14		\$9,271.66 annually	Due annually 12/31 with 4% annual increase
Annual Iron Mountain Escrow		\$3,500.00 annually	Due annually 12/31 with 4% annual increase
<u>Netsmart Services</u>			
Order Entry and eMAR Implementation		\$0	50% due at execution, Balance due upon project completion or 90 Days

*Potential need for additional Professional Services may be required and will be purchased from Plexus Advanced Professional Services listed in Schedule A			from Execution Date, whichever occurs first
Perceptive Document/Data Conversion		Not to exceed \$25,000 (one-time fee)	50% due at execution, Balance due upon project completion or 90 Days from Execution Date, whichever occurs first
PLEXUS ADVANCED PROFESSIONAL SERVICES (275 AT \$225/HOUR)	1	\$61,875	Invoiced monthly for hours used
AVATAR WEB SERVICES	1	\$20,000	One-time Fee, 100% due at contract execution
AVATAR WEB SERVICES MAINTENANCE	1	\$4,200	Prorated first year from contract execution date to 12/31 and invoiced annually thereafter
DIAGNOSIS CONTENT ON DEMAND SUBSCRIPTION (ICD10/DSM5)	1	\$4,956	Invoiced annually
TRAVEL AND LIVING AND TRAVEL TIME EXPENSES Travel time will be billed at a rate of \$150 per hour Billed monthly as incurred at the most economical rates Travel and Living Expenses are as follows Meals Netsmart's current daily per diem rate is \$65.00 Airline Coach Class on Major Airlines including any additional fees applied by the airline Vehicle Vehicle usage will be reimbursed at the current IRS Allowance Rental Car Mid-Size vehicle at local rates plus fuel, tolls, parking Hotel At local rates			

Exhibit 1 – Schedule B Scope of Work

Order Entry, eMAR, Perceptive POS, and Perceptive Document/Data Conversion Scope of Work

1. Purpose

The purpose for this statement of work is to outline the requirements and deliverables for the implementation and project management of the Licensee's Implementation. The scope is based on the latest generally available software release, project timeline, and use of Plexus Foundations implementation methodology, Plexus Home content and recommendations. The details of the scope of services are included below.

2. Project Duration

The following project start and end dates are estimates, and are subject to adjustment based upon the Effective Date of the Agreement and both parties overall cooperation of such implementation. Netsmart requires a minimum of sixty (60) days following the Effective Date of this Agreement to accommodate pre-project activities such as planning, staffing and technology activities. The overall duration of this project, based on the scope of work detailed herein is expected to be 4 months. Additional services will be applicable for any project where the duration from project kick-off to go-live is in excess of 12 months.

Notice of Changes or Delays

In the event Netsmart determines, in good faith, at any time during the course of the project implementation, that failure, delay, inadequacy of performance by Licensee in performance of its obligations, or Licensee requested changes to the scope of work, as specified in the statement of work, may prevent Netsmart from completing any of Netsmart's obligations in the agreed upon time frame or cause Netsmart to incur additional or unanticipated costs or expenses, Netsmart will promptly notify Licensee's Project Manager in writing, which notice shall specify in reasonable detail: (1) any alleged failure, delay or inadequacy of performance by Licensee and (2) the estimated impact including the resulting costs or expenses of such alleged failure, delay or inadequacy of performance on Netsmart's obligations. Licensee will respond to the notice, specifying any grounds for disagreement, within ten (10) working days from receipt of the notice. Absent any disagreement, the date for Netsmart's completion of such obligation may be appropriately extended and Licensee agrees to pay the corresponding additional costs or expenses as determined by Netsmart. In the event of a disagreement, Netsmart retains the option to either stop or continue with the work, and will begin the dispute resolution steps included in the agreement between the parties.

In the event action or inaction by Licensee delays the project, Netsmart may, at its option, terminate the Agreement if any delay continues beyond 180 days. In that event, Netsmart will be entitled to payment for work performed and materials provided prior to the termination date and recover any damages permitted under the relevant agreement between the parties. Licensee will also be responsible for payment of the cost of reengaging on a project that has been placed on hold by Licensee for longer than 180 days.

Cancellation of events associated with travel must be given 2 weeks prior to scheduled onsite or Licensee will still be charged for travel that has been booked.

3. Scope of Services

Avatar Order Entry	Scope of Services
Avatar Order Entry - Avatar Order Entry supports nursing and other unit staff in the completion of their day-to-day clinical activities.	
Order Management	Includes ability to enter multiple types of orders
	Review all available orders and associated details
	Appropriate staff can validate orders
	Order Entry functions security configured at role and individual levels
	Includes ability to setup Frequency codes. Netsmart will setup up to 100. After initial 100 it is the responsibility of the Facility Post Go Live
	Includes ability to setup Order Groups. Netsmart will setup up to 5 Order Groups. After initial 5, it is the responsibility of the Facility Post Go Live
	Order Codes loaded via First Data Bank or Micromedex. (* Note – If First Data Bank or Micromedex is not purchased please discuss importance of FDB / Micromedex for updates, Drug to Drug Interaction, and Allergy to Drug Interaction. Client Alignment must be notified immediately to determine LOE, cost etc. to manually build Order Codes as this is NOT included in scope)
	Allergy Codes loaded via First Data Bank or Micromedex. (* Note – If First Data Bank or Micromedex is not purchased please discuss importance of FDB / Micromedex for updates, Drug to Drug Interaction, and Allergy to Drug Interaction. Client Alignment must be notified immediately to determine LOE, cost etc. to manually build Order Codes as this is NOT included in scope)
Reports	Includes ability to use Pre Authorized Orders (Sometimes known as Standing Orders)
	<ul style="list-style-type: none"> - Orders - Can be filtered by Order Type, Treatment Setting, Episode, orders Selected - Details of Selected orders - Client Information - Preview of Order - File Data and Print Order - All Users Assigned Practitioners Report - User Roles Report - Orders Requiring Validation Reports - Client Doctor orders Report - Print Patient Drug Education Monographs - Print Current orders and Order Changes - Orders Requiring Validation Report - Orders Due For Renew Report - List All Frequency Codes Report - List All Order Codes Report - View All Order Groups Report - Additional Reports may be written using Crystal Reports. Additional Reports are the responsibility of the Licensee Post Go Live.
Print notifications:	Ability to Print Notifications: <ul style="list-style-type: none"> - To specified printers - To a Unit - To a Program

eMAR	Scope of Services
eMAR improves safety by minimizing transaction errors and automating processes. eMAR is designed to replace the traditional paper MAR and is integrated with Avatar Order Entry for inpatient environments. Medication orders recorded through either of these applications automatically appear within the Avatar Electronic Administration Record	
Administration	Record administration events, review details and documents results for any eligible orders.
	Includes watermarks to identify expired, discontinued orders and those on hold.
	Track user given medication, patient, dosage, witnesses, if required and any actual errors and near misses for each dose given.
	Includes entry for pain scales and temperature, if fever is present.
Filtering	Can filter order by: - Caseload (via Nursing Caseload Assignment) - Unit - Administration Date - Administration Time - Order Type - Medications/Treatments - Client/Episode - Routine Orders/PRN Orders/Other/STAT Orders
Reporting	Standard reports available in the system to include the following: - Client eMAR Hard-Copy Report - eMAR Administration Event Report - eMAR Missing Administration Events Report Authorized users will be able to create modified reports from the standard reports available.
Orders	For 100 Order Codes the following eMAR functionality may be added to each Order Code: - Blood Glucose - Blood Pressure - Heart Rate - Oxygen Saturation - Respiration Rate - Temperature - Pain Scale For any order codes beyond the 100 it will be the Licensee responsibility to set these up Post Go Live.
Perceptive Point of Service (POS) Scanning	Scope of Services
Provides staff the ability to quickly and easily scan, capture and organize low volume scanned images.	
Point of Service Scanning	Point of Service (POS) Imaging solutions include: - Installation of 2 ImageNow Licensee Workstations- Additional stations will need to be set up by the Licensee or additionally contracted. - Up to 5 pre-defined CaptureNow Profiles - 25 unique Document Types and up to 10 Custom Properties - 3 ImageNow Document/Project Views

	- 5 ImageNow Groups with Security Structure
Training	Provide up to 4 Hours Administration Training for designated solution administrator to be completed during the implementation process (shadow)
	Provide up to 2 hours Solution Training Session for "Super Users" at a single location for up to 5 individuals, using a "Train the Trainer" approach
Licensee Responsibility Prior to Implementation	Provide a complete list of users needing access to the content management solution along with the security designation of those users regarding scanning/importing, viewing, printing
	Provide a complete list of form/document types to be configured for the POS solution
	Capture workstations being installed/configured by Netsmart resources must be in place and ready for install prior to the scheduled implementation
	For non-Hosted Licensees, all server infrastructure based on the provided Technical Specifications document should be in place and ready
	Provide detailed solution hardware information - Number of scanners with designated use (Point of Service, Batch, Both) - Scanner Make/Model and Location - Workstation Machine ID for Point of Service Scanners
	Systems administrator and/or DBA must be available throughout the implementation for assistance as needed to shadow the relevant installation/Configuration of solution components

PERCEPTIVE DOCUMENT CONVERSION SCOPE OF SERVICES

OBJECTIVES

The general objectives for this deployment address the following business needs

- Provide a Conversion Solution for 6 million document pages into Perceptive Content from the ScerIS system at Licensee

SERVICES OVERVIEW

Netsmart Technologies or its subcontracted entity (PROVIDER) will design and implement a Conversion Process for Licensee

PROVIDER DELIVERABLES

- **Conversion Requirements Document** – During the design phase, the conversion requirements document will be created to document the specific index fields that will be utilized for the conversion. Prior to Implementation of the conversion, the Conversion Requirements Document must be signed off by Client. Any modifications made to the

Conversion Requirements Document following sign-off will be considered a scope change

PROVIDER RESPONSIBILITIES

Perceptive Software is responsible for the planning, solution design, installation, configuration and testing of the proposed conversion as illustrated in this document. Specific schedules and project plans will be developed for each customer uniquely.

Conversion Design

- Consultant will work with the Licensee to design the conversion specifications that will drive the import process
- Conversion design specification will include up to 20 different indexing structures to apply to documents
- Work with Licensee to develop QA Test Cases for import process

Implement and Verify

- Utilize the Licensee-provided indexing file and associated images to develop a process to import and index images into Perceptive Content. Only simple business logic for translating provided metadata to values to be applied in Perceptive Content is included.
- Set up and execute test conversions in the provided Client system test and production environments that include approximately 10 % of the total pages that will be converted.
- Provide training and guidance to Client to ensure that they can successfully execute the remainder of the conversion not executed during the test conversions.

LICENSEE RESPONSIBILITIES

The services estimated for this conversion are based on a proactive customer who assumes heavy responsibility for the project as well as tight scope management. Licensee will be responsible for the following:

Conversion Design

- Attend all scheduled meetings as well as independently meeting outside of scheduled calls to complete deliverables and finalize requirements
- Provide indexing information in a delimited text file (indexing file). Each line of indexing file will contain all metadata needed for conversion as well as a reference to the corresponding image file to be imported.
- Provide images referenced by indexing file at a location accessible by the Perceptive Content server.

Implement and Verify

- Validating all indexing information necessary for conversion within the provided indexing file. Only simple business logic for translating provided metadata to values to be applied in Perceptive Content is included.
- Validate and sign off on test conversions in both the provided Client test and production environments prior to execution of the full length conversion.
- Executing the remainder of the conversion not included in the test conversions.
- Transfer images and metadata files to a location on the Perceptive Content server or to a place accessible by the Perceptive Content destination server.

Technical Environments

- Providing an environment to be utilized for testing of the conversion from the legacy imaging system to Perceptive Content.

- Ensure that production target environment will have sufficient storage to import additional metadata and images related to the conversion of these legacy documents.

EXCLUSIONS

This scope does not include:

- Assistance from Perceptive Content on extraction of data and document objects from source/legacy system.
- Conversion of location-based annotations associated to documents.
- Conversion of digital signatures associated to documents.
- Conversion of images or electronic forms from native format to another image or content format.
- Conversion of images from native format to single page TIF. If conversion volume is under 6 million pages conversion to TIF can be included in a process post-conversion but this is not included in this scope.
- Conversion of workflow history or status associated to legacy documents.
- Conversion of audit history on metadata elements associated to legacy documents.
- Conversion of historical versions of documents.
- Submission of documents to a content extraction or recognition products such as Content Server or Recognition Agent.
- External file or DB lookups to retrieve additional metadata to be applied at the time of conversion.
- Population of Perceptive Content eForm(s) as part of the conversion process.
- Extraction of images or metadata from optical devices.

4. Assumptions

- Netsmart will devote sufficient resources and timely communication to the project in order to assure its reasonable success.
- New hardware will be delivered by the date required in the Project Schedule.
- Licensee will use Crystal v.9 Professional or later for all report development
- Licensee will provide resources as identified in the work breakdown structure of the project plan.
- A training room will be available for the training sessions with working equipment and appropriate software loaded if it is part of the planning and expectations for the project.
- Individuals scheduled to attend training will attend.
- Netsmart will provide recommended practices during the implementation.
- The project will be executed according to the event-based Netsmart Plexus Foundation Methodology as outlined below.
- Licensee resources will travel to the designated event location for identified events in the Netsmart Plexus Foundation Methodology.
- Any usage of diagnosis and/or procedure code content that is utilized within the Netsmart solutions must be fully licensed by the Licensee. Additionally, the Licensee must provide proof of this licensing. This includes Micromedex content, CPT or DSM codes.

5. Location of Work & Client Responsibilities

The location of work by Netsmart and Licensee staff identified in the detailed project schedule and Plexus event descriptions is work performed either on-site at Licensee location(s), at a Netsmart regional office or conducted remotely. A high-level outline for work location and Licensee responsibilities is provided below.



6. Plexus Events, Expectations & Deliverables

The following section of this document details the main deliverables of the Licensee Implementation.

6.1 Sales to Operations Transition

Our implementation services begin with a formal transition from our Sales Team to our Project Management Team. This thorough transition process ensures that the expectations set and project management scoped during the sales process is reviewed including all agreement components, and operational flows gathered during the sales cycle.

6.2 Hardware Network OS/Installation

If Licensee-Hosted:

The Licensee is responsible for providing the hardware, operating system software, and the network upon which the licensed programs operate. In the event hardware is purchased through Netsmart Technologies, its installation is coordinated and managed by Netsmart. Netsmart's engineers require the completion of a hardware/network survey prior to installation of any solutions. This ensures that all equipment meets application and performance requirements before Netsmart Technologies installs the programs.

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If Netsmart Hosted:

The Licensee is responsible for providing the desktop hardware, operating system software, LAN/WAN network, and Internet connectivity upon which the licensed programs operate. Netsmart's engineers require the completion of a desktop hardware, network, and bandwidth survey prior to installation of any solutions. This ensures that all equipment and connectivity methods meet minimum application and performance requirements before Netsmart Technologies installs the programs.

6.3 Software Delivery and Installation

If Licensee-Hosted:

Licensed software solutions and keys are delivered via FTP with User Documentation that describes the application and database organization.

Netsmart's system engineers install the solution on the system hardware/server and a subset of Licensee workstations. This software installation is performed remotely via VPN connection and includes the following:

- Loading the InterSystems Cache database products needed by the application
- Loading purchased Netsmart's Licensed Programs that make up the solution
- Testing the software to ensure access from the Licensee workstations
- Training the Licensee on installing workstation software
- Training the Licensee on basic operation tasks related to system start-up, shut-down, back-up and recovery procedures

Netsmart engineers will create and install Plexus Home, BUILD, TEST and LIVE environments for all applications purchased.

If Netsmart Hosted:

User documentation is delivered via FTP which describes the application and database organization. Netsmart's system engineers install the solution on server system hardware within Netsmart's Plexus Cloud hosting environment. Netsmart will also assist the client in connecting to the hosting environment and connecting a subset of client workstations. Netsmart's Plexus Cloud installation will include:

- Loading the InterSystems Cache (for Avatar) or SQL (for TIER) database products needed by the application on all applicable servers
- Loading purchased Netsmart's Licensed Programs that make up the solution
- Testing the software to ensure access from the client workstations
- Training the Licensee on installing workstation software

Netsmart engineers will create and install Plexus Home, BUILD, TEST and LIVE environments for all applications purchased.

6.4 Project Planning

The Project Planning Event is an opportunity to begin preparing your project team. The Licensee project team will be introduced and the team's responsibilities will be discussed. The Plexus Foundations implementation methodology is introduced and the different events within the methodology presented, outlining the objectives of each event and the roles and responsibilities of

each member of the team. Additionally project tools that will be used will be shown through demonstration and hands-on experience.

If purchased, Super User Solution web-based training courses are provided to up to 25 named Project Team users via the myLearningPointe (www.mylearningpointe.com) online platform. Individual user training access is distributed and available to Project Team users starting at the Project Kick Off Plexus Methodology event and concludes at initial Go Live event. Users will have unlimited access to the provided solution training courses during the implementation.

Objectives:

- Review project management principles
- Review event-based Netsmart Plexus Foundations methodology
- Provide hands on experience with solutions
- Introduction to tools to be used during the project
- Introduction to Starter Kit questions
- Introduce Plexus Home & scripts
- Introduce myLearningPointe training classes (where applicable)
- Conduct project Planning Assessment (Gate 1)
- Plan for next event

Licensee Responsibilities:

- Identify Licensee project team and develop Licensee Staffing Plan
- Ensure correct Licensee personnel attends the Project Planning event
- Provide necessary facilities and equipment to support session if applicable
- Complete Starter Kit questions
- Complete myLearningPointe training classes (where applicable)
- Review and sign Communication Management, Change Management & Risk Management Plans

6.5 General Project Management

Active throughout the project lifecycle and fundamental to it is a monitoring and measurement process that consists of numerous cost and scope control, testing, quality assurance and acceptance activities. These ongoing activities are supplemented by critical control points, progress checkpoints, called Plexus Gates are included to ensure that the project cannot advance to the next phase until the required activities and acceptance factors are successfully met. The monitoring and measurement process employed by Netsmart Technologies ensures that projects are properly stewarded to both a time and cost budget. This critical process transcends across the entire project implementation process to help ensure on-time project completion within estimated cost parameters along with properly managed and approved schedule and scope changes.

- ☐ Status meetings & Project Status Reports
- ☐ Licensee signoff and acceptance letters
- ☐ Project plan change requests
- ☐ Product Change Requests
- ☐ Product Improvement Forms
- ☐ Plexus Gates

6.6 Project Kickoff

The Project Kickoff consists of three discrete activities: Project Kickoff presentation, Workflow Assessment and Scope Review.

The project kickoff presentation gives the Licensee Executives, project sponsors and project leadership an opportunity to create excitement for the organization and the project as well as pass down key messages and expectations.

The scope review session includes breakout sessions led by SA's to review in detail the agreement scope.

During the Workflow Assessment the Netsmart Solution Architect (SA) and Licensee departmental/solution representatives, which could include a combination of IT analysts, departmental heads and/or key stakeholders from that department, will walk through the departments to get an understanding of the Licensee's unique workflow and processes and how it aligns with Netsmart's recommended practices. The walkthrough will be facilitated using both the Starter Kit questions, having already been completed, as well as the Workflow Assessment which will serve as a framework for questions and documentation of the discussions that occurred during the assessment. During the Workflow Assessment portion of the event, the discussions are a continuation of the data collection started during Project Planning. The Solution Architect will provide a demonstration of basic departmental workflow, if applicable, providing context for additional design decisions to be made. This event will represent the culmination of data collection and design decisions leading to the building of a complete and functional system.

Licensee leaves the Project Kickoff event with assignments to be performed over the next several weeks. The assignments will be documented along with expected due dates and can be reviewed as a part of the Event Summary Document. The Netsmart project team will work with the Licensee to establish these deadlines and schedule conference calls to provide guidance and ensure the Licensee is on track.

Objectives:

- ☐ Conduct official project kickoff meeting
- ☐ Introduce Netsmart Solution Architects
- ☐ Review Starter Kit outstanding items
- ☐ Conduct Workflow Assessment
- ☐ Identify improvement opportunities
- ☐ Conduct scope review
- ☐ Identify project risks & scope concerns
- ☐ Present datacollection materials
- ☐ Conduct Plexus Project Kickoff Assessment (Gate 2)
- ☐ Conduct integration discussions
- ☐ Discuss data collection materials
- ☐ Identify Policies & Procedures requiring change
- ☐ Review the event summary and sign-off
- ☐ Plan for next event

Licensee responsibilities:

- ☐ Deliver Project Kickoff presentation (with Netsmart leadership support)
- ☐ Complete Starter Kit questions prior to the event
- ☐ Complete any required data collection, following the event, by deliverable due dates
- ☐ Participate and provide feedback during departmental walkthroughs
- ☐ Participate in scope review discussions
- ☐ Provide knowledge of requested data and current departmental processes and workflow
- ☐ Identify Standard Operating Policies & Procedures for organization that will require change
- ☐ Make design decisions for future state processes
- ☐ Complete data collection assignments by defined due dates

- ☐ Identify process improvement opportunities
- ☐ Provide necessary facilities and equipment to support the event if applicable

6.7 Final Review & Validation

This event consists of three discrete parts: Final Review & Application Training, System Testing & Learning Plan discussions.

The Final Review discussion is intended to present the design decisions and data collection as it is now represented in the Licensee's completed system and confirm their accuracy. Additionally, as a part of Final Review, application training relevant to testing and training is delivered to the Licensee personnel.

The System Testing Session will include a starter set of test scripts, examples upon which they can customize their own scripts, as well as instruction on testing principles, policies and procedures. During this session, there will also be discussion regarding the development of a Licensee testing strategy/plan for which the Licensee will be given a sample on which to build their own.

The Learning Plan session is included to help Licensees develop a solid plan to ensure end-users will be effectively trained prior to go-live. This will be critical to the success of the project as well as adoption of the solutions. The plan will include training strategies, resource requirements, any required technologies and/or logistics, timelines, goals and objectives.

The same group of Licensee that attended Solution Review should attend the Final Review & Validation event. Additionally, while it may be the same individuals, depending on your staffing plan, the event should also include any individuals who will be expected to conduct system testing and/or end-user training. It is recommended that trainers participate in testing. It affords them an opportunity to practice and become familiar with the system.

Objectives (Final Review)

- Provide in-depth demonstration of the solutions and build using the Licensee's domain
- Review and confirm design decisions and build
- Confirm the solution workflow
- Complete design process
- Provide hands-on solution training
- Conduct Plexus Final Design Assessment (Gate 3)
- Plan for next event

Objectives (System Validation)

- Provide training on test script development and testing concepts
- Begin development of Licensee-specific system test scripts
- Plan for next event

Objectives (Learning Plan Development)

- Conduct Learning Plan session
- Begin development on Learning Plan
- Plan for next event

Licensee responsibilities:

- Participate in Final Review & Validation event
- Provide appropriate resources to attend sessions
- Complete data collection assignments
- Validate design and build
- Signoff design decisions

- Customize sample test scripts to use during system and integration testing
- Customize sample training materials in preparation for end-user training
- Develop Learning Plan & execute against plan for end-user training

6.8 Go-Live Preparation

The Go-Live Preparation event is the official milestone to transition project ownership from the Netsmart project team to the Licensee. Solution and project management discussion are delivered during this week and focus, in preparation for go-live, on assessing the Licensee's knowledge of the system as well as preparing the Licensee for their training events and go-live. In the solution discussions, the Licensee trainers are expected to provide a live demonstration of the system back to the Netsmart project team to confirm their understanding of the system and to confirm they are prepared to effectively train the end-user population.

System Testing, while not complete, should be well underway. Netsmart Project Management will facilitate the event at the Licensee site, while the rest of the Netsmart project team participates via a conference call.

In addition to the above, during this event, the Licensee will receive training on how to maintain the system using Netsmart maintenance tools. The event includes training on commonly used maintenance activities, *not* design and build activities. After maintenance training, the Licensee is equipped to make changes, modifications and updates to their implemented system.

Licensee representatives who will maintain and support the production system should attend this event, although not always, this is commonly IT personnel.

Those attending the event should be the same as the Final Review and Validation attendees. Department heads and/or key departmental representatives should attend the solution activities along with the Licensee representative responsible for testing coordination.

Solution-Specific Activities & Objectives

- Licensee to demo system using the Licensee demo script exhibiting a clear understanding of the solution functionality and departmental processes
- Understand open issues, escalate, and plan as appropriate
- Review completed training materials
- Review Go-Live Readiness Assessment
- Prepare Licensee representatives to make common data base updates
- Train Licensee to locate supporting documentation and to use the appropriate tools to manage system maintenance
- Educate Licensee on troubleshooting tools and techniques

Project Management Activities & Objectives

- Initiate ownership transition process
- Confirm system testing is in process, on track and scheduled for completion prior to Integration Testing
- Confirm and Finalize Integration Testing Plan if applicable
- Confirm Client policies and procedures have been updated
- Initiate Go-Live Planning
- Conduct Plexus Go-Live Preparation Assessment (Gate 4)
- Plan for next event

Licensee Responsibilities:

- Demonstrate understanding of system and departmental processes by leading a demonstration of the application
- Finalize Training Strategy/Plan
- Provide adequate training facilities
- Provide completed testing materials
- Schedule and perform end-user training
- Finalize Integration Testing scripts and Integration Testing Plan
- Confirm users will be trained and available for Integration Testing
- Confirm facilities and hardware is in place to support Integration Testing
- Develop and own the Go-Live Plan
- Attend database maintenance training
- Learn the application tools needed to maintain the production system

6.9 Integration Testing

One round of Integration Testing will be conducted according to the Licensee's Integration Testing Plan. Integration Testing will be executed at the Licensee's site and will be led by the Licensee project management team with assistance from the Netsmart project team.

IT will allow the system testers to flow a complete patient experience, "a day in the life" of a patient, using the system including all involved, major workflow processes. This event also allows the Licensee to validate SOPs and end-user training prior to conversion.

Objectives

- Complete Integration Testing according to plan
- Confirm Go-Live preparedness
- Ensure all critical path issues have an action plan
- Conduct Plexus Go-Live Assessment (Gate 5)
- Plan for next event

Licensee responsibilities:

- Lead and direct integration testing activities
- Conduct application integrated testing
- Conduct operational testing
- Document integrated test results
- Troubleshoot and resolve testing issues
- Update issues list with any unresolved integration test findings

6.10 Go-Live:

Go-Live is the event when solutions are moved into productive use by the end-user population. It will take place at the Licensee site, supported by both project teams. Netsmart support will include remote support from the Netsmart Delivery Consultants/Analysts.

Objectives:

- Begin functional use of Netsmart solutions
- Transition support from Netsmart project team to the Licensee
- Gather and document feedback regarding project experience, including methodology & project team resources

Licensee responsibilities:

- Develop and complete go-live plan
- Confirm all systems, resources and 3rd parties are scheduled and prepared for go-live

- Conduct go-live plan meetings to outline plan for all solutions and users
- Execute go-live plan
- Document go-live issues

Exhibit 1 – Schedule C
Hardware Configuration

Licensee is not purchasing hardware from Netsmart.

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

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

User's Computer (Minimum)

Processor	1 gigahertz (GHz) or faster 32-bit (x86)
Operating System	Windows 7, 8 (8.1)
RAM	1 GB or greater
Hard Disk Space	1 GB or greater
Monitor	VGA or higher (1024 x 768 pixels)
Mouse	Microsoft Mouse, or compatible pointing device
Browser	IE 9 (Windows 7), IE 10 (Windows 7, 8), IE 11 (Windows 7, 8.1) (IE 32 bit only in compatibility mode) Chrome (16-27), Firefox (10-22)
Java Requirement	JRE 1.6.0_22 -49(32-bit only) JRE 1.7.0_45 (32-bit only) JRE 1.7.0_51-55 & 1.8.0-u5 (32-bit only, RADplus 2011+ MW Build 2014.01.00.1276)

User's Computer (Recommended)

Processor	2 gigahertz (GHz) or faster 32-bit (x86) or 64-bit
Operating System	Windows 7, 8 (8.1)
RAM	2 GB or greater
Hard Disk Space	2 GB or greater
Monitor	VGA or higher (1024 x 768 pixels)
Mouse	Microsoft Mouse, or compatible pointing device
Browser	IE 9 (Windows 7), IE 10 (Windows 7, 8), IE

	11 (Windows 7, 8 1) (IE 32 bit only in compatibility mode)
	Chrome (16-27), Firefox (10-22)
Java Requirement	JRE 1 6 0_22 -49(32-bit only) JRE 1 7 0_45 (32-bit only) JRE 1 7 0_51-55 1 8 0-u5 (32-bit only, RADplus 2011+ MW Build 2014 01 00 1276)

Exhibit 1 – Schedule D
Support Services

- 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) 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.
- d) 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.
- e) 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.
- f) 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.
- g) The initial term for provision of Support Services for Licensed Programs will begin on the Effective Date and end on December 31 of the then-current year, with the following January 1 being the "Anniversary Date". After the initial term, Support Services will be automatically renewed on an annual basis as of each Anniversary Date ("Option Term") unless Licensee gives Netsmart 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.
- h) 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 will not be increased for any renewal term by more than the most recent increase in the US Bureau of

Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) - Medical Care or 4%, whichever is higher.

- i) 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.
- j) Guardian is included at no charge provided Client is current on maintenance. Guardian is a diagnostic tool that monitors the health of Client's licensed Netsmart solutions and provides the ability to review technical configuration and metric data not limited to; configuration changes, support case activities, system usage, application events, licensing, user activity, and installed updates in a dashboard view.
- k) If analysis by Netsmart indicates that a reported problem is caused by a reproducible Problem or Defect, Netsmart will use commercially reasonable efforts to provide Support Services in accordance with the following prioritization of reported problems:

Priority	Definition
1 - Critical	<p>Priority 1: will be assigned when the Netsmart Program or a material Netsmart Program Function component is non-operational as a result of a defect [in Production environment only] such as the Production system cannot be accessed or utilized in any capacity, a direct patient safety issue is present, or a HIPAA compliance violation as a result of a server incident or Netsmart application defect. Best efforts will be made to correct Priority 1 problems, or to provide a plan for such correction, within two (2) business days.</p> <p><u>Licensee's Commitment:</u></p> <ul style="list-style-type: none"> • This case Priority must be called in directly to the Netsmart Support department. • Licensee provides specific, detailed information required for troubleshooting/investigation. • Licensee provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate client resources, the case will be downgraded to Priority 2 after three (3) business days.
2 - High	<p>Priority 2: will be assigned to Production defects that result in functions that have a significant negative impact on daily operations but do not constitute as a "System Down". A workaround may be available and/or the capacity to maintain daily business functionality. Commercially reasonable efforts will be made to correct Priority 2 problems, or to provide a plan for such correction, within five (5) business days.</p> <p><u>Licensee's Commitment:</u></p> <ul style="list-style-type: none"> • Licensee provides specific, detailed information required for troubleshooting/investigation. • Licensee provides appropriate staff and resources to sustain continuous

	<p>communication and work effort as required.</p> <ul style="list-style-type: none"> Without appropriate Licensee resources, the case will be downgraded to Priority 3 after six (6) business days.
3-Medium	<p>Priority 3: will be assigned for system defects that result in functions that have no major impact on daily operations. An issue that allows the continuation of function, including issues in which a reasonable workaround is available. Commercially reasonable efforts will be made to correct Priority 3 problems, or to provide a plan for such correction, within ten (10) business day.</p> <p><u>Licensee's Commitment:</u></p> <ul style="list-style-type: none"> Licensee provides specific, detailed information required for troubleshooting/investigation. Licensee provides appropriate staff and resources to sustain continuous communication and work effort as required. Without appropriate client resources, the case will be downgraded to Priority 4 after eleven (11) business days.
4 – Low	<p>Priority 4: will be assigned to cosmetic defects that do not affect system usability or non-defect related requests including, but not limited to, system set up/configuration, training, functionality questions, documentation, portal access, and upgrade requests. Commercially reasonable efforts will be made to address Priority 4 issues, or to provide a plan for such correction, within fifteen (15) business day.</p> <p><u>Licensee's Commitment:</u></p> <ul style="list-style-type: none"> Licensee provides specific, detailed information required for troubleshooting/investigation. Licensee provides appropriate staff and resources to sustain continuous communication and work effort as required. Without appropriate client resources, the case will be closed following our Case Closure Notification policy.

Exhibit 1 – Schedule E
Updated Business Associate Agreement

Recitals:

- A. Licensee, as a “Covered Entity” (defined below) wishes to disclose certain information to Netsmart, hereafter known as the “BUSINESS ASSOCIATE” in Exhibit 1 Schedule E (defined below) pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B. Licensee 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 Licensee 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 and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402].
- b. **Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.
- c. **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.
- d. **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.
- e. **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.
- f. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- g. **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.
- h. **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.
- i. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- j. **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].

- k. **Protected Information** shall mean PHI provided by Licensee to BUSINESS ASSOCIATE or created, maintained, received, or transmitted by BUSINESS ASSOCIATE on Licensee's behalf.
 - l. **Security Incident** shall have the same meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304. For purposes of this Agreement "Security Incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by Netsmart.
 - m. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
 - n. **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) and 45 C.F.R. Section 164.402.
 - o. Days shall mean business days.
2. **Obligations of Business Associate**
- a. **Permitted Uses.** BUSINESS ASSOCIATE shall use Protected Information only for the purpose of performing BUSINESS ASSOCIATE's obligations under the Agreement and as permitted or required under the Agreement, or as required by law. 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 Licensee. However, BUSINESS ASSOCIATE may use Protected Information as necessary (i) for the proper management and administration of BUSINESS ASSOCIATE; (ii) to carry out the legal responsibilities of BUSINESS ASSOCIATE; or (iii) as required by law. [45 C.F.R. Sections 164.504(e)(2), 164.504(e)(4)(i)].
 - b. **Permitted Disclosures.** BUSINESS ASSOCIATE shall disclose Protected Information only for the purpose of performing BUSINESS ASSOCIATE's obligations under the Agreement and as permitted or required under the Agreement, or as required by law. 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 Licensee. However, BUSINESS ASSOCIATE may disclose Protected Information as necessary (i) for the proper management and administration of BUSINESS ASSOCIATE; (ii) to carry out the legal responsibilities of BUSINESS ASSOCIATE; or (iii) as required by law. 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 used or disclosed only 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, suspected breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2.l. of the Agreement, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)].

- c. **Prohibited Uses and Disclosures.** BUSINESS ASSOCIATE shall not use or disclose PHI other than as permitted or required by the Agreement, or as required by law. 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) and 45 C.F.R. Section 164.522(a)(vi)]. BUSINESS ASSOCIATE shall not directly or indirectly receive remuneration in exchange for Protected Information, except with prior written consent of Licensee and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however this prohibition shall not affect payment by Licensee 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 in accordance with the Security Rule, including but not limited to, 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, procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931].
- e. **Business Associate's Subcontractors and Agents.** BUSINESS ASSOCIATE shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of Licensee, agree in writing to the same restrictions and conditions that apply to Licensee with respect to such Protected Information and implement the safeguards required by paragraph 2.d. 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 (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- f. **Access to Protected Information.** If BUSINESS ASSOCIATE maintains a designated record set on behalf of Licensee, BUSINESS ASSOCIATE shall make Protected Information maintained by BUSINESS ASSOCIATE or its agents or subcontractors in Designated Record Sets available to Licensee for inspection and copying within ten (10) days of a request by Licensee to enable Licensee to fulfill its obligations under state law [California Health and Safety Code Section 123110] and 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 Protected Information in electronic format, BUSINESS ASSOCIATE shall provide such information in electronic format as necessary to enable Licensee to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. Section 164.524.
- g. **Amendment of PHI.** If BUSINESS ASSOCIATE maintains a designated record set on behalf of Licensee, within ten (10) days of a request by Licensee for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BUSINESS ASSOCIATE and its agents and subcontractors shall make such Protected Information available to Licensee for amendment and incorporate any such amendment or other documentation to enable Licensee to fulfill its obligations

under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If an individual requests an amendment of Protected Information directly from BUSINESS ASSOCIATE or its agents or subcontractors, BUSINESS ASSOCIATE must notify Licensee in writing within five (5) days of the request and of any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

- h. **Accounting of Disclosures.** Within twenty (20) days of a request by Licensee for an accounting of disclosures of Protected Information, BUSINESS ASSOCIATE and its agents and subcontractors shall make available to Licensee the information required to provide an accounting of disclosures to enable Licensee 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 Licensee. BUSINESS ASSOCIATE agrees to implement a process that allows for an accounting to be collected and maintained by BUSINESS ASSOCIATE and its agents and 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. 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. If a patient submits a request for an accounting directly to BUSINESS ASSOCIATE or its agents or subcontractors, BUSINESS ASSOCIATE shall within five (5) days of the request forward it to Licensee in writing.
- i. **Governmental Access to Records.** BUSINESS ASSOCIATE shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Licensee 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 HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BUSINESS ASSOCIATE shall provide Licensee a copy of any Protected Information and other documents and records that BUSINESS ASSOCIATE provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- j. **Minimum Necessary.** BUSINESS ASSOCIATES, its agents and 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. Section 164.514(d)]. 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 with respect to what constitutes "minimum necessary."
- k. **Data Ownership.** BUSINESS ASSOCIATE understands that BUSINESS ASSOCIATE has no ownership rights with respect to the Protected Information.
- l. **Notification of Possible Breach.** BUSINESS ASSOCIATE shall notify Licensee within twenty-four (24) hours of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Agreement; any security incident (i.e., any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with

system operations in an information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by BUSINESS ASSOCIATE or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the BUSINESS ASSOCIATE to have been accessed, acquired, used, or disclosed, as well as any other available information that Licensee is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C F R Section 164 404 through 45 C F R Section 164 408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BUSINESS ASSOCIATE shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws [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)]

- m **Breach Pattern or Practice by Business Associate's Subcontractors and Agents** Pursuant to 42 U S C Section 17934(b) and 45 C F R Section 164 504(e)(1)(ii), if BUSINESS ASSOCIATE knows of a pattern or activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Agreement or other arrangement, BUSINESS ASSOCIATE must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, BUSINESS ASSOCIATE must terminate the Agreement or other arrangement if feasible. BUSINESS ASSOCIATE shall provide written notice to Licensee of any pattern of activity or practice of a subcontractor or agent that BUSINESS ASSOCIATE believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Agreement or other arrangement within five (5) days of discovery and shall meet with Licensee to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.
- n **Audits, Inspection and Enforcement** Within twenty (20) days of a written request by Licensee, BUSINESS ASSOCIATE and its agents and subcontractors shall allow Licensee or its agents or subcontractors to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Agreement for the purpose of determining whether BUSINESS ASSOCIATE has complied with this Agreement or maintains adequate security safeguards. BUSINESS ASSOCIATE shall notify Licensee within five (5) days of learning that BUSINESS ASSOCIATE has become the subject of an audit, compliance review, or complaint investigation of this Agreement by the Office for Civil Rights or other state or federal government entity.

3 Termination

- a **Material Breach** A breach by BUSINESS ASSOCIATE of any provision of this Agreement, as determined by Licensee, 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 Licensee, 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 Licensee, BUSINESS ASSOCIATE shall continue to extend the protections of Section 2 of this Agreement to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(ii)(2)(J)]. If Licensee elects destruction of the PHI, BUSINESS ASSOCIATE shall certify in writing to Licensee that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.

4. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, and the HIPAA regulations.

Exhibit 1 – Schedule F

3-Party Iron Mountain Escrow Agreement

Signed
Escrow
Agent
1/14



IRON MOUNTAIN

THREE-PARTY MASTER DEPOSITOR
ESCROW SERVICE AGREEMENT

EFFECTIVE DATE: March 3, 2009
MASTER DEPOSITOR ACCOUNT NUMBER: 35655

1 Introduction

This Escrow Service Agreement ("Agreement") is entered into by and between New York, Inc., ("Depositor"), Beneficiary, ("Beneficiary"), and Iron Mountain Intellectual Property Management, Inc. ("Iron Mountain").

(a) The use of the term "services" in this Agreement shall refer to Iron Mountain's 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 service to Iron Mountain's Services ("Work Request") via web site or by email to the online portal maintained at the website located at www.ironmountain.com or other website 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 ("License Agreement") covering 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 final transfer of all proprietary technology and other materials covered under this Agreement ("Deposit Materials") to Iron Mountain within thirty (30) days of the Effective Date. Depositor may also update Deposit Materials from time to time during the Term (as defined below) of this Agreement. Provided a minimum of one (1) complete and functional copy of Deposit Materials 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 Materials sent to Iron Mountain using the form attached hereto as Exhibit B.

(b) Depositor represents that it lawfully possesses all Deposit Materials provided to Iron Mountain under this Agreement and that any current or future Deposit Materials or encumbrances will not prohibit, limit, or alter the rights and obligations of Iron Mountain under this Agreement. Depositor warrants that, to the best of its knowledge and with respect to the Deposit Materials, Iron Mountain's proper administration of this Agreement will not violate the rights of any third parties. Depositor represents that all Deposit Materials are readable and usable in its then current form, if any portion of such Deposit Materials is encrypted, the necessary decryption tools and keys to read such material are deposited with Iron Mountain.

(c) Depositor agrees to use commercially reasonable efforts to provide Iron Mountain with any necessary use rights or permissions for use of Iron Mountain to verify such proprietary technology and materials upon receipt of a Work Request for such Services or for Iron Mountain to perform verification of the Deposit Materials. 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, Iron Mountain's obligation is to maintain the Deposit Materials as delivered by the Depositor and that, other than Iron Mountain's obligation under the Deposit Materials (as described in Section 4) and the performance of any of the optional verification Services listed in Exhibit A, Iron Mountain has no other obligation regarding the completeness, accuracy, or functionality of the Deposit Materials.

(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 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)/Names 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, 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 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. If the Verification Services extend beyond those described in Exhibit A, the Depositor shall be a necessary Party to the SOW governing the Services.
- (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 all 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.
- (g) Should transport of Deposit Material be necessary in order for Iron Mountain to perform Services requested by Depositor or Beneficiary under this Agreement, Iron Mountain will use a commercially recognized overnight carrier such as Federal Express or United Parcel Service. Iron Mountain will not be responsible for any loss or destruction of, or damage to, such Deposit Material while in the custody of the common carrier.

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 Request"). 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 (as defined below). The Paying Party is liable for any taxes (other than Iron Mountain income 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. Any Service Fees not collected by Iron Mountain when due shall bear interest until paid at a rate of .833% per month (10% 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") (collectively the "Term"). This Agreement shall continue in full force and effect until one of the following events occurs: (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 its 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 not less than one hundred and eighty (180) 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. Unless otherwise directed by Depositor, Iron Mountain will use a commercially recognized overnight common carrier such as Federal Express or United Parcel Service to return the Deposit Material to the Depositor. Iron Mountain will not be responsible for any loss or destruction of, or damage to, such Deposit Material while in the custody of the common carrier. 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, which includes the confidentiality obligations in Section 9) so long as any undisputed Service Fees due Iron Mountain under this Agreement remain unpaid.

7. Infringement Indemnification.

Anything in this Agreement to the contrary notwithstanding, Depositor at its own expense shall defend and hold Beneficiary and Iron Mountain (the "Indemnified Party") fully harmless against any claim or action asserted against the Indemnified Party (specifically including costs and reasonable attorneys' fees associated with any such claim or action) to the extent such claim or action is based on an assertion that Iron Mountain's proper administration of this Agreement or Beneficiary's use of the Deposit Material, within the scope of this Agreement, infringes any patent, copyright, license, or other proprietary right of any third party. When the Indemnified Party has notice of a claim or action, it shall promptly notify Depositor in writing. At its option, Depositor may elect to control defense of such claim or action and may elect to enter into a settlement agreement, provided that no such settlement or defense shall include any admission or implication of wrongdoing on the part of the Indemnified Party without such Party's prior written consent, which consent shall not be unreasonably delayed or withheld. Iron Mountain shall have the right to employ separate counsel and participate in the defense of any claim at its own expense.

8. Warranties.

- (a) IRON MOUNTAIN WARRANTS ANY AND ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER CONSISTENT WITH THE MEASURES IRON MOUNTAIN TAKES TO PROTECT ITS OWN INFORMATION OF A SIMILAR NATURE, BUT IN NO CASE LESS THAN A REASONABLE LEVEL OF CARE. EXCEPT AS SPECIFIED IN THIS SECTION, ALL CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, 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 UPON LEARNING OF ANY CLAIMED BREACH OF ANY WARRANTY AND, TO THE EXTENT ALLOWED BY APPLICABLE LAW, SUCH PARTY'S REMEDY FOR BREACH OF THIS WARRANTY SHALL BE SUBJECT TO THE LIMITATION OF LIABILITY AND CONSEQUENTIAL DAMAGES WAIVER IN THIS AGREEMENT. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE.
- (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.

9. Confidential Information.

Iron Mountain shall have the obligation to implement and maintain safeguards designed to 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 promptly 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.

EXCEPT FOR: (I) ANY CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR TRADEMARK; (II) LIABILITY FOR DEATH OR BODILY INJURY; (III) PROVEN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR (IV) THE INFRINGEMENT INDEMNIFICATION OBLIGATIONS OF SECTION 7, ALL OTHER LIABILITY RELATED TO THIS AGREEMENT, 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 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.

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, ANY COSTS OR EXPENSES FOR THE PROCUREMENT OF SUBSTITUTE SERVICES (EXCLUDING SUBSTITUTE ESCROW 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 Person(s) Notices Table of this Agreement or such Party's legal representative) 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.** With respect to Release of Deposit Material or the destruction of Deposit Material, Iron Mountain shall rely on instructions from a Party's Authorized Person(s). In all other cases, 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 of, or evaluate the merit of, any statement or representation contained in any notice or document reasonably believed to be from such representative.
- (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, earthquakes, 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 nondefaulting Party shall be extended on a day to day basis for the time period equal to the period of the inexcusable delay.
- (h) **Notice.** All notices regarding Exhibit C (Release of Deposit Material) 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 currently addressed notice to the last known address of the other Parties that is refused, uncollected, or undeliverable shall be deemed effective as of the first date that said notice was refused, unclaimed or deemed undeliverable by electronic mail, the postal authorities or through messenger or commercial express delivery service.
- (i) **No Waiver.** No waiver of any right under this Agreement by any Party shall constitute a subsequent waiver of that 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. Notwithstanding the foregoing, Depositor may assign this Agreement to an affiliate (i.e. an entity directly related to Depositor through common ownership and control) or to an affiliate created as a result of a merger or acquisition of the business of Depositor, provided Iron Mountain receives clear, authoritative and conclusive written evidence of such affiliate relationship.
- (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 other Parties.

- (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 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 and SOWs 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 all 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 (Infringement Indemnification), 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.

(balance of this page left intentionally blank - signature page follows)

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date by their authorized representatives:

DEPOSITOR

SIGNATURE	<i>Nancy Brill</i>
PRINT NAME:	Nancy Brill
TITLE:	VP Contract Development
DATE:	3/27/09
EMAIL ADDRESS:	nbrill@nist.com

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

SIGNATURE:	<i>Mary R. English</i>
PRINT NAME:	Mary R. English
TITLE:	Director of Operations
DATE:	3/3/09
EMAIL ADDRESS:	lengle@nmti.com

Approved as to Operational Content
Iron Mountain

1 Nicole King, Esq.
Operations

Date:

Nicole King
03/03/2009

Approved as to Form and Content
Iron Mountain Legal Department
James L. Raymond
James L. Raymond, Contracts Specialist
Date: March 2, 2009

NOTE: AUTHORIZED PERSONS, NOTICES TABLE, BILLING CONTACT INFORMATION TABLE AND EXHIBITS FOLLOW

DEPOSITOR AUTHORIZED PERSON(S)/NOTICES TABLE

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

PRINT NAME	Crystal Nerwinski
TITLE	Business Systems Analyst
EMAIL ADDRESS	cnerwinski@nmt.com
STREET ADDRESS	3500 Sunrise Hwy Ste D-122
PROVINCE/CITY/STATE	Great River, NY 11739
POSTAL/ZIP CODE	
PHONE NUMBER	601-968-2028
FAX NUMBER	601-968-2123

BILLING CONTACT INFORMATION TABLE

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.

PRINT NAME	same as above
TITLE	
EMAIL ADDRESS	
STREET ADDRESS	
PROVINCE/CITY/STATE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

All notices should be sent to jamiller@services@ironmountain.com OR Iron Mountain Intellectual Property Management, Inc., Attn: Client Services, 2100 Norcross Parkway, Suite 150, Norcross, Georgia, 30071, USA.

Category	Item	Frequency	Priority	Comments
Setup Fee	Customs forms and subject to the Customs Commission Fee noted below	\$2,250	Depositor	
	From Mountain will set up a new escrow deposit account using a standard escrow agreement.			
Monthly Fee	Monthly fee for management and administration of the escrow deposit account.	\$1,000	Depositor	
	Monthly fee for management and administration of the escrow deposit account.			
Transfer Fee	Transfer fee for the transfer of the escrow deposit account to a new escrow deposit account.	\$1,000	Beneficiary	
	Transfer fee for the transfer of the escrow deposit account to a new escrow deposit account.			
Beneficiary	Beneficiary fee for the beneficiary of the escrow deposit account.	\$700	Beneficiary	
	Beneficiary fee for the beneficiary of the escrow deposit account.			
Add Additional	Add additional fee for the addition of a new escrow deposit account.	\$375	Beneficiary	
	Add additional fee for the addition of a new escrow deposit account.			
Report	Report fee for the report of the escrow deposit account.	\$2,500	Beneficiary	
	Report fee for the report of the escrow deposit account.			
Add Level 1	Add level 1 fee for the addition of a new escrow deposit account.	\$5,000 or based on custom work required	Beneficiary	
	Add level 1 fee for the addition of a new escrow deposit account.			
Deposit Complete	Deposit complete fee for the completion of the escrow deposit account.	N/A	Beneficiary	
	Deposit complete fee for the completion of the escrow deposit account.			
Add Level 3	Add level 3 fee for the addition of a new escrow deposit account.	N/A	Beneficiary	
	Add level 3 fee for the addition of a new escrow deposit account.			
Full Usability	Full usability fee for the full usability of the escrow deposit account.	N/A	Beneficiary	
	Full usability fee for the full usability of the escrow deposit account.			
Add Additional	Add additional fee for the addition of a new escrow deposit account.	\$300	Beneficiary	
	Add additional fee for the addition of a new escrow deposit account.			
Beneficiary	Beneficiary fee for the beneficiary of the escrow deposit account.	N/A	Beneficiary	
	Beneficiary fee for the beneficiary of the escrow deposit account.			
Setup Fee	Setup fee for the setup of the escrow deposit account.	\$2,250	Depositor	
	Setup fee for the setup of the escrow deposit account.			

<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 Material" the Escrow Service Agreement.	\$500	N/A	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.	\$125/hour	N/A	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	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 35655

 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 (BYTES)	NO. OF FILES	NO. OF RECORDS
<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 any of the files encrypted? ☐ Yes or ☐ No

If yes, please include any passwords and decryption tool 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 _____
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
 3100 Norcross Parkway, Suite 150
 Norcross, GA 30071
 Telephone: 800-373-3639
 Fax: 770-239-9201

FOR IRON MOUNTAIN USE ONLY (DO NOT WRITE ANY INFORMATION)

EXHIBIT C

RELEASE OF DEPOSIT MATERIAL

Deposit Account Number: 35655

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. 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 a condition of the agreement between the Depositor and Beneficiary regulating the use of the Deposit Material resulting in authorization to release the Deposit Material; or
- (ii) Failure of the Depositor to function as a going concern or 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.

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 Person(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 a Depositor Authorized Person. 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 timely Contrary Instructions from a Depositor Authorized Person, 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. This Agreement will terminate upon the release of Deposit Material held by Iron Mountain. For the avoidance of doubt, each enrollment of a Beneficiary made by the respective parties signing the Beneficiary Enrollment Form attached hereto as Exhibit E constitutes and shall be construed as a separate agreement between Iron Mountain, Depositor and the signing Beneficiary.

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 D

AUXILIARY DEPOSIT ACCOUNT TO ESCROW AGREEMENT

Deposit Account Number: 35655Auxiliary Account Number: ir

(“Depositor”), and Iron Mountain Intellectual Property Management, Inc. (“Iron Mountain”) have entered into the above referenced Escrow Agreement (“Agreement”). Pursuant to that Agreement Beneficiary or Depositor may create additional deposit accounts (“Auxiliary Deposit Account”) for the purpose of holding additional Deposit Material in a separate account which Iron Mountain will maintain separately from other deposit accounts under this Agreement. The new account will be referenced by the following name:

(“Deposit Account Name”).

Pursuant to the Agreement, Depositor may submit material to be held in this Auxiliary Deposit Account by submitting a properly filled out Exhibit B with the Deposit Material to Iron Mountain. For avoidance of doubt, Beneficiary's rights and obligations relative to the Deposit Material held in any deposit account under this Agreement are governed by the express terms of the Agreement; this form does not provide any additional rights in the Deposit Material.

The undersigned hereby agrees that all terms and conditions of the above referenced Escrow Agreement will govern this Auxiliary Deposit Account. The termination or expiration of any other deposit account will not affect this account.

PAYING PARTY COMPANY NAME: _____

BILLING CONTACT INFORMATION TABLE

All Invoices for Deposit Account Fees will be sent to the contact set forth below.

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

DEPOSITOR

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

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

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

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

All notices should be sent to ipmclientinquiries@ironmountain.com OR Iron Mountain Intellectual Property Management, Inc., Attn: Client Services, 2100 Norcross Parkway, Suite 150, Norcross, Georgia, 30071, USA.

EXHIBIT E**BENEFICIARY ENROLLMENT FORM**

Depositor and Iron Mountain Intellectual Property Management, Inc. ("Iron Mountain"), hereby acknowledge that

BENEFICIARY COMPANY NAME: _____ is the Beneficiary referred to in the Escrow Agreement that supports Deposit Account Number: 351635 with Iron Mountain as the escrow agent. Beneficiary hereby agrees to be bound by all provisions of such Agreement.

AUTHORIZED PERSON(S)/NOTICES TABLE

Please provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All Notices will be sent electronically or through regular mail to the appropriate address set forth below. Please complete all information as applicable. Incomplete information may result in a delay of processing.

BENEFICIARY		DEPOSITOR	
PRINT NAME:		PRINT NAME:	
TITLE:		TITLE:	
EMAIL ADDRESS:		EMAIL ADDRESS:	
STREET ADDRESS:		STREET ADDRESS:	
PROVINCE/CITY/STATE:		PROVINCE/CITY/STATE:	
POSTAL/ZIP CODE:		POSTAL/ZIP CODE:	
PHONE NUMBER:		PHONE NUMBER:	
FAX NUMBER:		FAX NUMBER:	

PAYING PARTY COMPANY NAME: _____**BILLING CONTACT INFORMATION TABLE**

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

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

DEPOSITOR

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

BENEFICIARY

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

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

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

All notices to Iron Mountain Intellectual Property Management, Inc. should be sent to ipm@ironmountain.com OR Iron Mountain Intellectual Property Management, Inc., Attn: Client Services, 2100 Norcross Parkway, Suite 150, Norcross, Georgia, 30071, USA.

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 800-875-5669 or by e-mail at mailto:verification@ironmountain.com

EXHIBIT E

BENEFICIARY ENROLLMENT FORM

Depositor and Iron Mountain Intellectual Property Management, Inc. ("Iron Mountain"), hereby acknowledge that

BENEFICIARY COMPANY NAME: County of Humboldt Department of Health and Human Services is the Beneficiary referred to in the Escrow Agreement that supports Deposit Account Number: 35655 with Iron Mountain as the escrow agent. Beneficiary hereby agrees to be bound by all provisions of such Agreement.

SERVICE Check box(es) to order service	SERVICE DESCRIPTION: MASTER THREE-PARTY ESCROW AGREEMENT - DEPOSITOR All services are listed below. Shaded services are required for every new escrow account set up. All other services listed are optional, and may result in additional charges. Some services may not be available under the Agreement.	ONE- TIME FEES	ANNUAL FEES	PAYING PARTY Check box to Identify the Paying Party
<input checked="" type="checkbox"/> Add Additional Beneficiary	Iron Mountain will fulfill a Work Request to add a new Beneficiary to an escrow deposit account in accordance with the service description above and the Agreement.		\$700	<input checked="" type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Additional Deposit Account	Iron Mountain will set up one additional deposit account to manage and administer access to new Deposit Material that will be securely stored in controlled media vaults in accordance with the service description above and the Agreement that governs the Initial Deposit Account.		\$1,000	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> File List Test	Iron Mountain will fulfill a Work Request to perform a File List Test, which includes analyzing deposit media readability, file listing, creation of file classification table, virus scan, 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 Supplementary Questionnaire) and stored Deposit Material. Deposit must be provided on CD, DVD-R, or deposited by FTP.	\$2,500	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Level 1 - Inventory and Analysis Test	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.	\$5,000 or based on SOW if custom work required	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary

AUTHORIZED PERSON(S)/NOTICES TABLE

Please provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All Notices will be sent electronically or through regular mail to the appropriate address set forth below. Please complete all information as applicable. Incomplete information may result in a delay of processing.

BENEFICIARY		DEPOSITOR	
PRINT NAME:	Philip Crandall	PRINT NAME:	Crystal Norwinski
TITLE:	Director of Health and Human Services	TITLE:	Business Systems Analyst
EMAIL ADDRESS:	pcrandall@co.humboldt.ca.us	EMAIL ADDRESS:	cnorwinski@ntst.com
STREET ADDRESS:	507 P Street	STREET ADDRESS:	3500 Sunrise Hwy, Ste. D-122
PROVINCE/CITY/STATE:	Eureka, CA	PROVINCE/CITY/STATE:	Great River, NY
POSTAL/ZIP CODE:	95501	POSTAL/ZIP CODE:	11739
PHONE NUMBER:	(707) 441-5400	PHONE NUMBER:	(631) 968-2028
FAX NUMBER:		FAX NUMBER:	(631) 968-2123

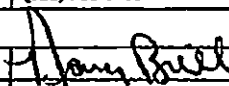
PAYING PARTY COMPANY NAME: NETEMART TECHNOLOGIES, INC.

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.

PRINT NAME:	Crystal Norwinski
TITLE:	Business Systems Analyst
EMAIL ADDRESS:	cnorwinski@ntst.com
STREET ADDRESS:	3500 Sunrise Hwy, Ste D-122
PROVINCE/CITY/STATE:	Great River, NY
POSTAL/ZIP CODE:	11739
PHONE NUMBER:	(631) 968-2028
FAX NUMBER:	(631) 968-2123

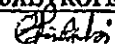
DEPOSITOR

SIGNATURE:	
PRINT NAME:	Nancy Brill
TITLE:	SVP, Operations
DATE:	
EMAIL ADDRESS:	nbrill@ntst.com

BENEFICIARY

SIGNATURE:	
PRINT NAME:	Philip Crandall
TITLE:	Director of Health and Human Services
DATE:	6/6/14
EMAIL ADDRESS:	pcrandall@co.humboldt.ca.us

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

SIGNATURE:	
PRINT NAME:	Adebola Farombi
TITLE:	Contracts Administrator
DATE:	6/17/14
EMAIL ADDRESS:	ipmclient@ironmountain.com

All notices to Iron Mountain Intellectual Property Management, Inc. should be sent to ipmclient@ironmountain.com OR Iron Mountain Intellectual Property Management, Inc., Attn: Client Services, 2100 Norcross Parkway, Suite 150, Norcross, Georgia, 30071, USA.