SOFTWARE LICENSE AND SUPPORT SERVICES AGREEMENT
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
NETSMART TECHNOLOGIES, INC.
FOR FISCAL YEARS 2023-2024 THROUGH 2024-2025

This Agreement, entered into this ____ day of _____, 2024, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Netsmart Technologies, Inc., a Delaware corporation, hereinafter referred to as "COMPANY," is made upon the following considerations:

WHEREAS, COUNTY, by and through its Department of Health and Human Services – Behavioral Health ("DHHS – Behavioral Health"), desires to retain a qualified professional organization to provide, support and maintain an electronic health record software system; and

WHEREAS, such work involves the performance of professional, expert and technical services of a temporary and occasional character; and

WHEREAS, COUNTY has no employees available to perform such services and is unable to hire employees for the performance thereof for the temporary period; and

WHEREAS, COMPANY represents that it is adequately trained, skilled, experienced and qualified to provide, support and maintain the electronic health record software system required by COUNTY.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. GRANT OF LICENSE AND DESCRIPTION OF SERVICES:

   A. Grant of License to Use Licensed Programs. Subject to the terms and conditions of this Agreement, COMPANY hereby grants to COUNTY a non-exclusive, and non-transferable license to use, in object code only, the Netsmart and third-party computer programs ("Licensed Programs") set forth in Exhibit A – Ordering Document, which is attached hereto and incorporated herein by reference as if set forth in full.

   B. Provision of Support and Maintenance Services. Subject to the terms and conditions of this Agreement, COMPANY shall provide the support and maintenance services set forth in Exhibit B – Scope of Support and Maintenance Services, which is attached hereto and incorporated herein by reference as if set forth in full.

2. SCOPE OF LICENSE:

   A. Use of Licensed Programs. Subject to the terms and conditions of this Agreement, the Licensed Programs may be used for COUNTY's internal business purposes and not to process the data of any other entity, to support one (1) COUNTY database and the number of named users of the Licensed Programs, on the number of servers, operating system and for access by the maximum number of simultaneous users or other such restrictions set forth in Exhibit A – Ordering Document and technical requirements set forth in Exhibit C – Hardware Configuration, which is attached hereto and incorporated herein by reference as if set forth in full. The license granted hereunder may be exercised by COUNTY, and its agents, officers, officials, employees and independent contractors, provided that such agents and independent contractors agree in writing to be bound by all of the applicable terms and conditions of this Agreement, on COMPANY's

hosting equipment for COUNTY's internal business purposes, provided they are added as named users for the Licensed Programs.

B. Ownership of Licensed Programs. COMPANY shall own and retain all rights, title and interest, including, without limitation, any and all patents, copyrights, trademarks and other intellectual property rights, in and to the Licensed Programs, as well as any and all ideas, concepts, techniques, inventions, processes, software, works of authorship and other confidential information developed, comprising, embodied in, or practiced in connection therewith, including, without limitation, any and all modifications, enhancements, configurations, upgrades and interfaces thereto, except as set forth in Section 17 – Intellectual Property Rights and as required by the Mental Health Managed Care Agreement (State Standard Agreement No. 22-20103) that COUNTY has with California Department of Health Care Services ("DHCS").

C. License Restrictions. As a condition of the license granted hereunder, COUNTY shall not, and shall not allow any third party to:

1. Decompile, disassemble or otherwise reverse engineer the Licensed Programs or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the Licensed Programs by any means whatsoever.

2. Copy the Licensed Programs, or any portion thereof, without the prior written consent of COMPANY, except for backup purposes in accordance with normal data processing practices.

3. Remove or reproduce any product identification, proprietary, copyright trademark, service mark or other notices contained in the Licensed Programs.

4. Modify any portion of the Licensed Programs, create a derivative work of any portion of the Licensed Programs or incorporate any portion of the Licensed Programs into or with other computer programs or systems, except to the extent expressly authorized in writing by COMPANY.

5. Utilize any equipment, device, software or other means designed to circumvent or remove any form of copy protection used by COMPANY in connection with the Licensed Programs, or use the Licensed Programs together with any copy protection device not supplied by COMPANY or an authorized partner thereof.

6. Use the Licensed Programs to develop a product which is competitive with any of COMPANY's product offerings.

7. Export or re-export, either directly or indirectly, the Licensed Programs, or any copies thereof, in such a manner as to violate the export laws and regulations of the United States or any other applicable jurisdiction that may be in effect from time to time.

D. Proprietary Information. In the performance of this Agreement, each party may receive information of the other party that is not generally known to the public, including, without limitation, trade secrets, know-how, inventions, techniques, algorithms programs, documentation and data which may be designated as being confidential, or which under the circumstances surrounding disclosure, ought to be treated as confidential (collectively, "Proprietary Information"). Each party shall use and disclose only the minimum amount of Proprietary Information necessary to accomplish the intended purpose of this Agreement. Each party further agrees to protect all Proprietary Information in accordance with any and all

applicable state and federal laws, regulations, policies, procedures and standards. The prohibitions contained in this provision shall not apply to information which:

1. Is known by recipient prior to its receipt from the disclosing party or is, or becomes, public knowledge without the fault of the recipient.

2. Is independently developed by a party without causing a breach of the terms of this Agreement.

3. Is received from a source other than a party to this Agreement who lawfully has the right to disclose such information.

4. Is required to be disclosed by court order or applicable law, including, without limitation, the California Public Records Act, provided that advance written notice of the disclosure is provided to other party.

E. Protection of Hosted Data. All data submitted to COMPANY in connection with COUNTY's use of the Licensed Programs ("Client Data") shall remain the sole property of COUNTY. COUNTY shall have the sole responsibility for the accuracy, quality, integrity, legality, appropriateness and use of all Client Data. COUNTY hereby warrants that the transfer of any Client Data pursuant to the terms and conditions of this Agreement will not violate any rights of any third parties, including, without limitation, any rights or obligations under any agreement between COUNTY and any third-party software or service provider. Upon termination of this Agreement, COMPANY will make a machine-readable SQL formatted copy of the Data available to COUNTY.

F. Escrow Program. The license granted to COUNTY hereunder does not include any rights to the source code for the Licensed Programs. COMPANY 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 source code, and source code documentation, for the Licensed Programs in electronic format with the Escrow Agent. COMPANY shall deposit with the Escrow Agent, updates, changes, alterations or modifications to the source code and source code documentation, for the Licensed Programs on a quarterly basis. If COUNTY elects to receive the benefit of the escrow program in accordance with its terms, COUNTY will pay the annual subscription fee set forth in Exhibit A – Ordering Document.

3. TERM:

This Agreement shall begin on July 1, 2023 and shall remain in full force and effect until December 31, 2024, unless extended by a valid amendment hereto or sooner terminated as set forth herein.

4. TERMINATION:

A. Termination for Cause. Either party may terminate this Agreement, in the event the other party materially defaults in performing any obligation set forth herein, or violates any local, state or federal laws, regulations or standards applicable to its performance hereunder, and such default or violation continues uncured for a period of thirty (30) days following written notice thereof.

B. Termination without Cause. COUNTY may terminate this Agreement without cause upon thirty (30) days advance written notice which states the effective date of the termination.

C. Termination due to Insufficient Funding. COUNTY's obligations under this Agreement are

contingent upon the availability of local, state and/or federal funds. In the event such funding is reduced or eliminated, COUNTY shall, at its sole discretion, determine whether this Agreement shall be terminated. COUNTY shall provide COMPANY seven (7) days advance written notice of its intent to terminate this Agreement due to insufficient funding.

D. Compensation upon Termination. In the event this Agreement is terminated, COMPANY shall be entitled to compensation for uncompensated license and service fees incurred hereunder through and including the effective date of the termination. However, this provision shall not limit any damages owed to COUNTY due to a breach of this Agreement by COMPANY.

5. COMPENSATION:

A. Maximum Amount Payable. The maximum amount payable by COUNTY for any and all licenses and support and maintenance services provided, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement is Two Hundred Thirty Thousand Eight Hundred Twenty-Three Dollars and Sixty-Nine Cents. ($230,823.69). In no event shall the maximum amount paid under this Agreement exceed One Hundred Seventy-Seven Thousand One Hundred Sixty-Four Dollars and Four Cents ($177,164.04) for fiscal year 2023-2024 and Fifty-Three Thousand Six Hundred Fifty-Nine Dollars and Sixty-Five Cents ($53,659.65) for fiscal year 2024-2025. COMPANY hereby agrees to provide any and all licenses and support and maintenance services required by this Agreement for an amount not to exceed such maximum dollar amount. However, if local, state or federal funding or allowance rates are reduced or eliminated, COUNTY may, by amendment, reduce the maximum amount payable hereunder or terminate this Agreement as set forth herein.

B. Schedule of Rates. The specific rates and costs applicable to this Agreement are set forth in Exhibit A – Ordering Document.

C. Additional Licenses and Services. Any additional licenses and/or support and maintenance services not otherwise set forth herein shall not be provided by COMPANY, or compensated by COUNTY, without COUNTY's prior written authorization. Any and all unauthorized costs and expenses incurred above the maximum payable amount set forth herein shall be the responsibility of COMPANY.

D. Taxes. COUNTY shall be responsible for the payment of any and all taxes associated with the licenses and support and maintenance services provided pursuant to the terms and conditions of this Agreement other than federal taxes based on COMPANY's net income.

6. PAYMENT:

A. Invoices. COMPANY shall submit to COUNTY semi-annual invoices substantiating the costs and expenses incurred pursuant to the terms and conditions of this Agreement no sooner than February 1, 2023. Invoices shall be prepared using a format that is substantially similar to Exhibit D – Sample Invoice Form, which is attached hereto and incorporated herein by reference as if set forth in full. Payment for any and all costs and expenses incurred pursuant to the terms and conditions of this Agreement shall be made within thirty (30) days after the receipt of an approved invoice. Any and all invoices submitted pursuant to the terms and conditions of this Agreement shall be sent to COUNTY electronically at the following address:

COUNTY: Humboldt County DHHS – Behavioral Health
Attention: Financial Services
MHBFinancialServices@co.humboldt.ca.us

B. Disputed Costs. COUNTY shall have the right to reasonably and in good faith dispute any portion of any amount billed by COMPANY. If COUNTY believes that COMPANY has billed COUNTY incorrectly, COUNTY must contact COMPANY's customer support department no later than thirty (30) days after the date on the invoice in which the error or problem appeared, in order to discuss a potential adjustment or credit. Such notification shall include written documentation which identifies and substantiates the disputed amount. Notwithstanding the foregoing, COUNTY shall submit to COMPANY, prior to the invoice due date, full payment of the undisputed portion of any fees billed by COMPANY.

7. NOTICES:

Any and all notices required to be given pursuant to the terms and conditions of this Agreement shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: Humboldt County DHHS – Behavioral Health
Attention: Emi Botzler-Rodgers, Behavioral Health Director
720 Wood Street
Eureka, California 95501

COMPANY: Netsmart Technologies, Inc.
Attention: Corporate Counsel
11100 Nall Avenue
Overland Park, Kansas 66211
Contracts_notice@ntst.com

8. REPORTS:

COMPANY hereby agrees to provide COUNTY with any and all reports that may be required by any local, state and/or federal agencies for compliance with this Agreement. COMPANY shall submit one (1) hard copy and one (1) electronic copy of any and all reports required pursuant to the terms and conditions of this Agreement in a format that complies with the Americans with Disabilities Act and any other applicable local, state and federal accessibility laws, regulations and standards. Any and all reports required pursuant to the terms and conditions of this Agreement shall be submitted in accordance with any and all applicable timeframes using the format required by the State of California as appropriate. For the absence of doubt, the reporting requirements set forth herein do not apply to reports generated by, or related to, COUNTY data contained in the Licensed Programs database.

9. RECORD RETENTION AND INSPECTION:

A. Maintenance and Preservation of Records. COMPANY hereby agrees to timely prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the licenses and support and maintenance services provided pursuant to the terms and conditions of this Agreement, and to maintain and preserve said records for at least three (3) years from the date of final payment hereunder, 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 therefrom. Such records shall be original entry books with a general ledger itemizing all debits and credits for the licenses and support and maintenance services provided pursuant to the terms and conditions of this Agreement.

B. Inspection of Records. Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of COMPANY, and its subcontractors, related to the

licenses and Support and maintenance services provided pursuant to the terms and conditions of this Agreement, shall be subject to the examination and audit of the California State Auditor and any other duly authorized agents of the State of California for a period of three (3) years after final payment hereunder. Upon advance written notice to COMPANY, COMPANY hereby agrees to make all such records available during normal business hours to inspection, audit and reproduction by COUNTY and any other duly authorized local, state and/or federal agencies. All examinations and audits conducted hereunder shall be strictly confined to those matters connected with the performance of this Agreement, including, without limitation, the costs associated with the administration of this Agreement.

C. Audit Costs. In the event of an audit exception or exceptions related to the licenses and support and maintenance services provided pursuant to the terms and conditions of this Agreement, the party responsible for not meeting the requirements set forth herein shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because COMPANY's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by COUNTY.

10. MONITORING:

COMPANY hereby agrees that COUNTY has the right to reasonably monitor any and all activities related to this Agreement, including, without limitation, the right to review and monitor COMPANY's records, policies, procedures and overall business operations, at any time, in order to ensure compliance with the terms and conditions of this Agreement. COMPANY shall reasonably cooperate with a corrective action plan, if deficiencies in COMPANY's records, policies, procedures or business operations are identified by COUNTY. However, COUNTY is not responsible, and shall not be held accountable, for overseeing or evaluating the adequacy of COMPANY's performance hereunder.

11. CONFIDENTIAL INFORMATION:

A. Use and Disclosure of Personally Identifiable Information. In the performance of this Agreement, COMPANY may receive personally identifiable information that is confidential under local, state or federal law. COMPANY hereby agrees to protect all personally identifiable information obtained pursuant to the terms and conditions of this Agreement in accordance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards, including, without limitation: California Welfare and Institutions Code Sections 827, 5328, 10850 and 14100.2; California Health and Safety Code Sections 1280.15 and 1280.18; the California Information Practices Act of 1977; the California Confidentiality of Medical Information Act ("CMIA"); the United States Health Information Technology for Economic and Clinical Health Act ("HITECH Act"); the United States Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any current and future implementing regulations promulgated thereunder, including, without limitation, the Federal Privacy Regulations contained in Title 45 of the Code of Federal Regulations ("C.F.R.") Parts 160 and 164, the Federal Security Standards contained in 45 C.F.R. Parts 160, 162 and 164 and the Federal Standards for Electronic Transactions contained in 45 C.F.R. Parts 160 and 162, all as may be amended from time to time.

B. HIPAA Business Associate Requirements. CONTRACTOR hereby agrees to adhere to the terms and conditions set forth in Exhibit E – County of Humboldt HIPAA Business Associate Agreement, which is attached hereto and incorporated herein by reference as if set forth in full.

C. Continuing Compliance with Confidentiality Requirements. Each party hereby acknowledges that local, state and federal laws, regulations and standards pertaining to confidentiality,

electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance therewith. Each party agrees to enter into negotiations concerning an amendment to this Agreement embodying written assurances consistent with the requirements of any applicable local, state and federal laws, regulations or standards.

12. NON-DISCRIMINATION COMPLIANCE:

A. Professional Services and Employment. In connection with the execution of this Agreement, COMPANY, and its subcontractors, shall not unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of: race; religion or religious creed; color; age, over forty (40) years of age; sex, including, without limitation, gender identity and expression, pregnancy, childbirth and related medical conditions; sexual orientation, including, without limitation, heterosexuality, homosexuality and bisexuality; national origin; ancestry; marital status; medical condition, including, without limitation, cancer and genetic characteristics; mental or physical disability, including, without limitation, HIV status and AIDS; political affiliation; military service; denial of family care leave; or any other classifications protected by any and all applicable local, state and federal laws, regulations and standards, all as may be amended from time to time. Nothing herein shall be construed to require the employment of unqualified persons.

B. Compliance with Anti-Discrimination Laws. COMPANY further assures that it, and its subcontractors, shall abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, *et seq*.; California Government Code Sections 4450, *et seq*.; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state or federal laws, regulations or standards, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in Sections 8101, *et seq*. of Title 2 of the California Code of Regulations are incorporated herein by reference as if set forth in full.

13. NUCLEAR-FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

By executing this Agreement, COMPANY certifies that it is not a Nuclear Weapons Contractor, in that COMPANY 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. COMPANY agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if COMPANY subsequently becomes a Nuclear Weapons Contractor.

14. DRUG-FREE WORKPLACE CERTIFICATION:

By executing this Agreement, COMPANY certifies that it will provide a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code Sections 8350, et seq.) by doing all of the following:

A. Drug-Free Policy Statement. Publish, as required by California Government Code Section 8355(a)(1), a Drug-Free Policy Statement which notifies employees that the unlawful

manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited, and specifies the actions to be taken against employees for violations.

B. Drug-Free Awareness Program. Establish, as required by California Government Code Section 8355(a)(2), a Drug-Free Awareness Program which informs employees about the following:

1. The dangers of drug abuse in the workplace;

2. COMPANY's policy of maintaining a drug-free workplace;

3. Any available counseling, rehabilitation and employee assistance programs; and

4. Penalties that may be imposed upon employees for drug abuse violations.

C. Drug-Free Employment Agreement. Ensure, as required by California Government Code Section 8355(a)(3), that every employee who provides support and/or maintenance services pursuant to the terms and conditions of this Agreement shall:

1. Receive a copy of COMPANY's Drug-Free Policy Statement; and

2. Agree to abide by COMPANY's Drug-Free Policy as a condition of employment.

D. Effect of Noncompliance. Failure to comply with the requirements set forth herein may result in termination of this Agreement and/or ineligibility for award of future contracts.

15. INDEMNIFICATION:

A. Hold Harmless, Defense and Indemnification. COMPANY shall hold harmless, defend and indemnify COUNTY and its agents, officers, officials, employees and volunteers from and against any and all, to the extent brought by a third party, claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, COMPANY's negligent or wilfull acts of misconduct or omissions in connection with Netsmart's duties and obligations under this Agreement.

B. Third Party Infringement Claims. COMPANY shall hold harmless, defend and indemnify COUNTY from liability to third parties resulting from infringement by the Licensed Programs of any United States patent or any copyright or misappropriation of any trade secret, provided CONTACTOR is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement. COMPANY will not be responsible for any settlement it does not approve in writing. If, due to a claim of infringement, the Licensed Programs are held by a court of competent jurisdiction, or are believed by COMPANY, to be infringing, COMPANY may, at its option and expense, replace or modify the Licensed Programs to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, obtain a license which allows COUNTY to continue using the Licensed Programs or terminate this Agreement and provide COUNTY a refund of any prepaid, unused fees. The foregoing obligations shall not apply when the alleged infringement relates to:

1. Portions or components of the Licensed Programs that are modified by COUNTY after delivery by COMPANY.

2. Portions or components of the Licensed Programs that are combined with other products, processes or materials.

3. Situations in which COUNTY continues allegedly infringing activity after receiving written notice thereof or after receiving written notice of modifications that would have avoided the alleged infringement.

4. Situations in which COUNTY's use of the Licensed Programs is not strictly in accordance with this Agreement.

C. Comparative Liability. Notwithstanding anything to the contrary, in the event that both parties are held to be negligently or willfully responsible, each party will bear their proportionate share of liability as determined in any such proceeding. In such cases, each party will bear their own costs and attorney's fees.

D. Effect of Insurance. Acceptance of the insurance required by this Agreement shall not relieve COMPANY from liability under this provision. This provision shall apply to all claims for damages related to COMPANY's performance hereunder, regardless of whether any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided pursuant to the terms and conditions of this Agreement.

16. INSURANCE REQUIREMENTS:

This Agreement shall not be executed by COUNTY, and COMPANY is not entitled to any rights hereunder, unless certificates of insurance, or other proof that the following provisions have been complied with, are filed with the Clerk of the Humboldt County Board of Supervisors.

A. General Insurance Requirements. Without limiting COMPANY's indemnification obligations set forth herein, COMPANY, and its subcontractors hereunder, shall take out and maintain, throughout the term of this Agreement, and any extensions thereof, the following policies of insurance, placed with insurers authorized to do business in the State of California with a current A.M. Bests rating of no less than A: VII or its equivalent against personal injury, death and property damage which may arise from, or in connection with, the activities of COMPANY or its agents, officers, directors, employees, licensees, invitees and assignees or subcontractors:

1. 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 Two Million Dollars ($2,000,000.00) per occurrence for any one (1) incident, including, without limitation, personal injury, death and property damage. If a general aggregate limit is used, such limit shall apply separately hereto or shall be twice the required occurrence limit.

2. Automobile/Motor Liability Insurance with a limit of liability of One Million Dollars ($1,000,000.00) combined single limit coverage. Such insurance shall include coverage of all owned, hired and non-owned vehicles, and be at least as broad as Insurance Service Offices Form Code 1 (any auto).

3. Workers' Compensation Insurance, as required by the California Labor Code, with statutory limits, and Employers Liability Insurance with a limit of One Million Dollars ($1,000,000.00) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY and its agents, officers,

officials, employees and volunteers.

4. Technology Professional Liability Insurance – Errors and Omissions Coverage appropriate to COMPANY's profession and performance hereunder, with limits of $2,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by COMPANY in this Agreement. Such policy shall include, or be endorsed to include property damage liability coverage for damage to, alteration of, loss of, or destruction of COUNTY's electronic data and/or information ("property") in the care, custody, or control of COMPANY.

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

1. The Comprehensive or Commercial General Liability Policy shall provide that COUNTY, and its agents, officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by, or on behalf of, COMPANY. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY or its agents, 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 property damage caused by explosion or collapse of structures or underground damage, commonly referred to as "XCU Hazards."

   c. Is the primary insurance with regard to COUNTY.

   d. Does not contain a pro-rata, excess only and/or escape clause.

   e. Contains a cross liability, severability of interest or separation of insureds clause.

2. The above-referenced policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to CONTRACTOR who in turn will notify COUNTY in accordance with the notice requirements set forth herein. It is further understood that COMPANY shall not terminate such coverage until COUNTY receives adequate proof that equal or better insurance has been secured.

3. For claims related to this Agreement, COMPANY's insurance is the primary coverage to COUNTY, and any insurance or self-insurance programs maintained thereby are excess to COMPANY's insurance and will not be used to contribute therewith.

4. Any failure to comply with the terms and conditions of this Agreement shall not affect the coverage provided to COUNTY or its agents, officers, officials, employees and volunteers.

5. COMPANY shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement. The endorsements shall be on forms approved by the Humboldt County Risk Manager. Any deductible or self-insured retention over One Hundred Thousand Dollars ($100,000.00) shall be disclosed to, and approved by, COUNTY. If COMPANY does not keep all required policies in full force and effect, COUNTY may, in addition to any other available remedies, take out the necessary insurance and deduct the cost of said insurance from the monies owed to COMPANY under this Agreement.

6. COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered, and COMPANY shall be required to purchase additional coverage to meet the above-referenced aggregate limits.

B. Insurance Notices. Any and all notices regarding the insurance required pursuant to the terms and conditions of this Agreement shall be sent to the addresses set forth below in accordance with the notice requirements contained herein.

COUNTY: County of Humboldt
Attention: Risk Management
825 Fifth Street, Room 131
Eureka, California 95501

COMPANY: Netsmart Technologies, Inc.
Attention: Legal Department
11100 Nall Avenue
Overland Park, Kansas 66211

17. LIMITATION OF LIABILITY:

A. Warranty. COMPANY warrants that the Licensed Programs will substantially conform in all material respects to the specifications and requirements set forth in this Agreement. If the Licensed Programs fail to operate in substantial conformance with the specifications, COMPANY will repair or replace the Licensed Programs. COMPANY further represents and warrants that it has the right to grant the licenses provided hereunder and that to the best of COMPANY'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 rights of any third party.

B. Disclaimer of Additional Warranties. The foregoing warranty is in lieu of all warranties and conditions, expressed, implied or statutory, including, without limitation, any conditions or warranties of merchantability or fitness for a particular purpose on the part of COMPANY and its suppliers.

C. Limitation of Damages. Neither party shall be liable to the other for indirect, incidental, special or consequential damages, loss of profits, loss of use or data or interruption of business, even if the party has been advised of the possibility of such damages.

D. Limitation of Cumulative Liability. Without limiting COMPANY's indemnification obligations set forth herein, the maximum cumulative liability under this Agreement shall not exceed the fees paid to CONTRACTOR for the impacted products and services during the prior twelve (12) month period preceding the event giving rise to the cause of action.

18. RELATIONSHIP OF PARTIES:

It is understood that this Agreement is by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or any other similar association. Both parties hereby agree that COMPANY shall not be entitled to any benefits to which COUNTY employees are entitled, including, without limitation, overtime, retirement, leave or workers' compensation benefits. COMPANY shall be solely

responsible for the acts and omissions of its agents, officers, employees, assignees and subcontractors.

19. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND STANDARDS:

A. General Legal Requirements. Each party hereby agrees to comply with any and all local, state and federal laws, regulations and standards applicable to its performance hereunder.

B. Licensure Requirements. Each party hereby agrees to comply with any and all local, state and federal licensure, certification and accreditation requirements and standards applicable to its performance hereunder.

C. Accessibility Requirements. Each party hereby agrees to comply with any and all applicable accessibility requirements set forth in the Americans with Disabilities Act, Section 508 of the Rehabilitation Act of 1973, as amended, California Government Code Section 11135 and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, the federal accessibility standards set forth in 36 C.F.R. Section 1194.1, all as may be amended from time to time.

D. Conflict of Interest Requirements. Each party hereby agrees to comply with any and all applicable conflict of interest requirements set forth in the California Political Reform Act and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, COUNTY's Conflict of Interest Code, all as may be amended from time to time.

20. PROVISIONS REQUIRED BY LAW:

This Agreement is subject to any additional local, state and federal restrictions, limitations or conditions that may affect the terms, conditions or funding of this Agreement. This Agreement shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or incorrectly stated, the parties agree to amend the pertinent section to make such insertion or correction.

21. REFERENCE TO LAWS, REGULATIONS AND STANDARDS:

In the event any law or regulation referred to herein is amended during the term of this Agreement, the parties agree to comply with the amended provision as of the effective date thereof.

22. PROTOCOLS:

Each party hereby agrees that the inclusion of additional protocols may be required to make this Agreement specific. All such protocols shall be negotiated, determined and agreed upon by each of the parties hereto.

23. SEVERABILITY:

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

24. ASSIGNMENT:

Neither party shall delegate its duties nor assign its rights hereunder, either in whole or in part, without the other party's prior written consent except (i) in connection with a merger, consolidation,

reorganization or sale of all or substantially all assets of the assigning party, or (ii) to a party controlling, controlled by or under common control with the assigning party. Any assignment in violation of this provision shall be void, and shall be cause for immediate termination of this Agreement. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by either party to obtain supplies, technical support or professional services.

25. AGREEMENT SHALL BIND SUCCESSORS:

All provisions of this Agreement shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and permitted assigns.

26. WAIVER OF DEFAULT:

The waiver by either party of any breach 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 COUNTY constitute a waiver of any breach of this Agreement which may then exist on the part of COMPANY. Nor shall such payment impair or prejudice any remedy available to COUNTY with respect to any breach or default. COUNTY shall have the right to demand repayment of, and COMPANY shall promptly refund, any funds which COUNTY determines were not expended in accordance with the terms and conditions of this Agreement.

27. NON-LIABILITY OF COUNTY OFFICIALS AND EMPLOYEES:

No official or employee of COUNTY shall be personally liable for any default or liability under this Agreement.

28. AMENDMENT:

This Agreement may be amended at any time during the term hereof upon the mutual consent of both parties. No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by authorized representatives of the parties hereto.

29. STANDARD OF PRACTICE:

COMPANY warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. COMPANY's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

30. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California. Any dispute relating hereto 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 or 395.

31. ADVERTISING AND MEDIA RELEASE:

Any and all informational material related to this Agreement shall receive approval from COUNTY prior to being used as advertising or released to the media, including, without limitation, television, radio, newspapers and internet. COMPANY shall inform COUNTY of any and all requests for interviews by the media related to this Agreement before such interviews take place. COUNTY shall be entitled to have a representative present at any and all interviews concerning the subject matter of

this Agreement. Any and all notices required by this provision shall be given in accordance with the notice provisions set forth herein.

32. SUBCONTRACTS:

COMPANY shall obtain prior written approval from COUNTY before subcontracting any of the support or maintenance services to be provided pursuant to the terms and conditions of this Agreement. Any and all subcontracts shall be subject to all applicable terms and conditions of this Agreement, including, without limitation, the licensing, certification and confidentiality requirements set forth herein. COMPANY shall remain legally responsible for the performance of all terms and conditions of this Agreement, including, without limitation, any and all support and/or maintenance services provided by third parties under subcontracts, whether approved by COUNTY or not.

33. ATTORNEYS' FEES:

If either party shall commence any legal action, including, without limitation, an action for declaratory relief, against the other by reason of the alleged failure of the other to perform any of its obligations hereunder, the party prevailing in said action shall be entitled to recover court costs and reasonable attorneys' fees, including, but not limited to, the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal, if applicable. As used herein, the term "prevailing party" means the party who dismisses an action in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

34. SURVIVAL OF PROVISIONS:

The duties and obligations of the parties set forth in Section 2 – Scope of License, Section 4(D) – Compensation Upon Termination, Section 9 – Record Retention and Inspection, Section 11 – Confidential Information, Section 15 – Indemnification and Section 17 – Limitation of Liability shall survive the expiration or termination of this Agreement.

35. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in this Agreement, the terms and conditions set forth herein shall have priority.

36. INTERPRETATION:

This Agreement, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one (1) party on the basis that the other party prepared it.

37. INDEPENDENT CONSTRUCTION:

The titles of the sections and subsections set forth herein are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

38. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from

events beyond the reasonable control, and without the fault or negligence, of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

39. ENTIRE AGREEMENT:

This Agreement contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto. In addition, this Agreement shall supersede in their entirety any and all prior agreements, promises, representations, understandings and negotiations of the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this Agreement are hereby ratified.

40. COUNTERPART EXECUTION:

This Agreement, and any amendments hereto, may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. This Agreement, and any amendments hereto, may be signed by manual or electronic signatures in accordance with any and all applicable local, state and federal laws, regulations and standards, and such signatures shall constitute original signatures for all purposes. A signed copy of this Agreement, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement and any amendments hereto.

41. AUTHORITY TO EXECUTE:

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the first date written above.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:
(1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
(2) SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER.

NETSMART TECHNOLOGIES, INC.:

By: _____ Date: 6/18/2024

Name: Joseph McGovern

Title: Executive Vice President

By: _____ Date: 6/18/2024

Name: Lynn Marasco

Title: Corporate Secretary

COUNTY OF HUMBOLDT:

By: _____ Date: _____

Rex Bohn, Chair
Humboldt County Board of Supervisors

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: _____ Date: 06/20/2024

Risk Management

LIST OF EXHIBITS:
Exhibit A – Ordering Document
Exhibit B – Scope of Support and Maintenance Services
Exhibit C – Hardware Configuration
Exhibit D – Sample Invoice Form
Exhibit E – County of Humboldt HIPAA Business Associate Agreement

EXHIBIT A
ORDERING DOCUMENT
Netsmart Technologies, Inc.
For Fiscal Years 2023-2024 through 2024-2025

Solutions and Services	Quantity	July 1, 2023 - December 31, 2023	Quantity	January 1, 2024 - June 30, 2024	July 1, 2024 - December 31, 2024
Red Hat Jboss Subscription		$3,952.00		$5 ,343.11	$5,343.11
Avatar Cache Elite Maintenance, Multi-Server, Platform Specific		$7,080.67		$9 ,573.07	$9,573.07
Avatar Cache Enterprise Maintenance, Multi-Server, Platform Specific		$9,161.11		$12,385.82	$12,385.82
Two Party Escrow Agreement		$2,395.05		$3 ,238.11	$3,238.11
Document Capture Maintenance for Batch Scanning Powered by Perceptive		$1,315.64		$1 ,778.74	$1,778.74
Avatar RADplus Named User Maintenance	392	$57,310.89	72	$21,340.80	$21,340.80
Avatar Web Services Suite Maintenance		$2,657.23		Cancel	Cancel
Diagnosis Content on Demand Subscription		$3,303.60		Cancel	Cancel
OrderConnect - ePrescribing Only - Prescriber Subscription		$13,906.11		Cancel	Cancel
OrderConnect - Non-Prescribing User Subscription		$5,931.30		Cancel	Cancel
OrderConnect Base Fee		$866.69		Cancel	Cancel
OrderConnect - EPCS Subscription		$1,114.00		Cancel	Cancel
Ultimedex Suite Subscription		$1,442.12		Cancel	Cancel
AMA CPT Code Subscription				Cancel	Cancel
Avatar Order Entry Maintenance		$4,107.75		Cancel	Cancel
Total Fees		**$114,544.16**		**$53,659.65**	**$53,659.65**

EXHIBIT B
SCOPE OF SUPPORT AND MAINTENANCE SERVICES
Netsmart Technologies, Inc.
For Fiscal Years 2023-2024 through 2024-2025

CONTRACTOR shall provide all of the following support and maintenance services ("Support Services") in accordance with the terms and conditions of this Agreement:

A. Contractor shall maintain the then current version of the Licensed Programs in substantial conformance with its Specifications as amended from time to time by CONTRACTOR, and with any and all applicable state and federal laws and regulations. CONTRACTOR shall use commercially reasonable efforts to either:

1. Correct any reproductible failure of the Licensed Programs to operate in substantial conformance with the Specifications ("Problem or Defect") in the then current or immediately prior release of the Licensed Programs by CONTRACTOR which prevent it from operating in substantial conformance with the Specifications and/or any and all applicable state and federal laws and regulatory requirements; or

2. Provide a commercially reasonable alternative that will substantially conform with the Specifications and any and all applicable county, state and federal laws and regulatory requirements.

B. COUNTY shall make requests for Support Services by giving CONTRACTOR written notice specifying a Problem or Defect in the Licensed Programs. In making a verbal request for Support Services, COUNTY shall provide CONTRACTOR within twenty-four (24) hours after such verbal notice with such written information and documentation as may be reasonably prescribed by CONTRACTOR.

C. COUNTY shall provide and maintain, at its expense, hardware and/or software to allow CONTRACTOR to access COUNTY's system remotely. COUNTY shall provide CONTRACTOR with appropriate access credentials.

D. On a timely basis CONTRACTOR will also provide COUNTY with:

1. Such updates as are distributed without charge to other similar customers which reflect modifications and incremental improvements made to the Licensed Programs by CONTRACTOR; and

2. 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 customers.

E. CONTRACTOR shall make technical support personnel available from 9:00 a.m. to 6:00 p.m., Monday through Friday PST, exclusive of holidays.

F. If reasonable analysis by CONTRACTOR indicates that a reported Problem or Defect is caused by a problem related to hardware used by COUNTY, the hardware's system software, or applicable software other than the Licensed Programs, or COUNTY's misuse or modification of the Licensed Programs, CONTRACTOR's responsibility shall be limited to the correction of the portion, if any, of the problem caused by a Problem or Defect in the Licensed Programs. COUNTY shall, at CONTRACTOR's option, pay CONTRACTOR for the cost of analyzing the reported problem at CONTRACTOR's then prevailing time-and-materials rate.

G. Contractor agrees that it shall not revise the charges for Support Services during the initial term. Charges will not be increased for any extension term by more than the most recent increase in the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers – Medical Care or four percent (4%), whichever is higher.

H. Absent a bona fide dispute, if COUNTY fails to pay for Support Services when due, CONTRACTOR may refuse to provide Support Services until COUNTY makes payment of all charges due. If COUNTY has missed any mandatory upgrades CONTRACTOR shall also charge, and COUNTY shall pay, for software and services necessary to bring the Licensed Programs up to CONTRACTOR's then-current level before CONTRACTOR will certify that COUNTY is again eligible for Support Services pursuant to the terms and conditions of this Agreement.

I. If analysis by CONTRACTOR indicates that a reported problem is caused by a reproductible Problem or Defect, CONTRACTOR shall use commercially reasonable efforts to provide Support Services in accordance with the following prioritization of reported problems:

Priority	Definition
1 - Critical	**Priority 1:** Shall be assigned when the Contractor Program or a material Contractor 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 Contractor 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. *County's Commitment:* • This case Priority must be called in directly to the Contractor Support department. • County provides specific, detailed information required for troubleshooting/investigation. • County provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate County resources, the case shall be downgraded to Priority 2 after three (3) business days.
2 – High	**Priority 2:** Shall 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. *County's Commitment:* • County provides specific, detailed information required for troubleshooting/investigation. • County provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate County resources, the case shall be downgraded to Priority 3 after six (6) business days.
3-Medium	**Priority 3:** Shall 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. *County's Commitment:* • County provides specific, detailed information required for troubleshooting/investigation. • County provides appropriate staff and resources to sustain continuous communication and work effort as required. Without appropriate County resources, the case shall be downgraded to Priority 4 after eleven (11) business days.

4 – Low	**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. *County's Commitment:* • County provides specific, detailed information required for troubleshooting/investigation. • County provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate County resources, the case shall be closed following our Case Closure Notification policy.

EXHIBIT C
HARDWARE CONFIGURATION
Netsmart Technologies, Inc.
For Fiscal Years 2020-2021 through 2023-2024

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

Hardware configuration is found: https://wikihelp.ntst.com/Special:Userlogin?returntotitle=Req#tab=login, Username: Netsmart_Prospect and Password: Netsmart1.

EXHIBIT D
SAMPLE INVOICE FORM
Netsmart Technologies, Inc.
For Fiscal Years 2023-2024 through 2024-2025

INVOICE

Contractor Name
Contract Reference
Contractor Street Address
City, State, Zip Code

Invoice Date
Invoice Period
Invoice Number

Contact Name
Contact Phone Number

Date	Quantity	Description of Service	Rate	Total
			Total Invoiced Amount	

EXHIBIT E
COUNTY OF HUMBOLDT HIPAA BUSINESS ASSOCIATE AGREEMENT
Netsmart Technologies, Inc.
For Fiscal Years 2023-2024 through 2024-2025

RECITALS:

WHEREAS, COUNTY, as a "Covered Entity" wishes to disclose certain information to CONTRACTOR, hereafter known as the "BUSINESS ASSOCIATE" pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI") (defined below).

WHEREAS, COUNTY and BUSINESS ASSOCIATE intend to protect the privacy and provide for the security of PHI disclosed to BUSINESS ASSOCIATE pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information and Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

WHEREAS, pursuant to HIPAA Regulations, the Privacy Rule and Security Rule (defined below) COUNTY is required 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.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. DEFINITIONS:

A. Breach. As used herein, the term "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. As used herein, the term "Breach of 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. As used herein, the term "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. As used herein, the term "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. As used herein, the term "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. As used herein, the term "Electronic Protected Health Information" means Protected Health Information that is maintained in or transmitted by electronic media.

G. Electronic Health Record. As used herein, the term "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.** As used herein, the term "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.** As used herein, the term "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.** As used herein, the term "Protected Health Information" ("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.** As used herein, the term "Protected Information" shall mean PHI provided by COUNTY to BUSINESS ASSOCIATE or created, maintained, received, or transmitted by BUSINESS ASSOCIATE on COUNTY's behalf.

L. **Security Incident.** As used herein, the term "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.

M. **Security Rule.** As used herein, the term "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.** As used herein, the term "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.

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 COUNTY. 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 COUNTY. 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 COUNTY 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 COUNTY to BUSINESS ASSOCIATE for services provided pursuant to the Agreement.

D. **Appropriate Safeguards.** BUSINESS ASSOCIATE shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement, including, but not limited to, administrative, physical and technical safeguards 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 COUNTY, agree in writing to the restrictions and conditions that apply to COUNTY 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 COUNTY, BUSINESS ASSOCIATE shall make Protected Information maintained by BUSINESS ASSOCIATE or its agents or subcontractors in Designated Record Sets available to COUNTY for inspection and copying within five (5) days of a request by COUNTY to enable COUNTY to fulfill its obligations under 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 COUNTY 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 COUNTY, within ten (10) days of a request by COUNTY 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 COUNTY for amendment and incorporate any such amendment or other documentation to enable COUNTY 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 COUNTY 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 ten (10) days of a request by COUNTY for an accounting of disclosures of Protected Information, BUSINESS ASSOCIATE and its agents and subcontractors shall make available to COUNTY the information required to provide an accounting of disclosures to enable COUNTY to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by COUNTY. BUSINESS ASSOCIATE agrees to implement a process that allows for an accounting to be collected and maintained by BUSINESS ASSOCIATE and its agents 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 COUNTY 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 COUNTY and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BUSINESS ASSOCIATE's compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BUSINESS ASSOCIATE shall provide COUNTY with access to a copy of any Protected Information and other records that BUSINESS ASSOCIATE provides to the Secretary concurrently with providing such Protected Information to the Secretary.

J. **Minimum Necessary.** BUSINESS ASSOCIATES and 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 ASOCIATE 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 COUNTY within

twenty-four (24) hoursof 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. 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 Business Associate. 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 COUNTY 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.l408, 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)]. Any and all notices required pursuant to the terms and conditions of this provision shall be submitted to COUNTY at the following address:

COUNTY: Humboldt County DHHS Compliance and Quality Assurance Office
Attention: Compliance and Quality Assurance Administrator & Privacy Officer
507 F Street
Eureka, California 95501
(707) 441-5410

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 COUNTY 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 COUNTY to discuss and attempt to resolve the problem as one (1) of the reasonable steps to cure the breach or end the violation.

N. **Audits, Inspection and Enforcement.** Within ten (10) days of a request by COUNTY, BUSINESS ASSOCIATE and its agents and subcontractors shall allow COUNTY 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 COUNTY within five (5) days of learning that BUSINESS ASSOCIATE has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights or other state or federal government entity.

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3. TERMINATION:

A. Material Breach. A breach by BUSINESS ASSOCIATE of any provision of this Agreement, as determined by COUNTY, shall constitute a material breach of the Agreement and shall provide grounds for *immediate* termination of the Agreement, any provision in the Agreement to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].

B. Effect of Termination. Upon termination of the Agreement for any reason, BUSINESS ASSOCIATE shall, at the option of COUNTY, return or destroy all Protected Information that BUSINESS ASSOCIATE or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by COUNTY, BUSINESS ASSOCIATE shall continue to extend the protections of Section 2 of this 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 COUNTY elects destruction of the PHI, BUSINESS ASSOCIATE shall certify in writing to COUNTY 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.