

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

230



FROM: Riverside County Department of Mental Health

SUBMITTAL DATE:
March 16, 2010

SUBJECT: Approval of a four-year agreement with Netsmart Technologies, Inc. to provide a Behavioral Health Information System (BHIS).

RECOMMENDED MOTION: That the Board of Supervisors approve and:

1. Authorize the Chairman of the Board to sign four (4) copies of the attached four (4) year Agreement between the County of Riverside and Netsmart Technologies, Inc. for the aggregate amount of \$2,212,887 for a four year period upon execution of the agreement;
2. Authorize the Purchasing Agent to sign ministerial amendments and exercise the contract renewal option annually on behalf of the Riverside County Department of Mental Health; and authorize the Director of Mental Health, or designee, to administer Agreements with Netsmart Technologies, Inc.;
3. Authorize the Riverside County Purchasing Agent to competitively bid and purchase from the County awarded vendors, on behalf of the Riverside County Department of Mental Health, additional equipment related to this project as listed in the attached Schedule A (Department of Mental Health Budget Adjustment); and
4. Authorize the County Auditor-Controller to make a budget adjustment as outlined in the attached Schedule A (Department of Mental Health Budget Adjustment).

(Background on the following page)

FORM APPROVED COUNTY COUNSEL
BY: Neal R. Kipnis DATE 3/11/10

Jerry A. Wengerd

Jerry A. Wengerd
Director of Mental Health

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 1,425,136	In Current Year Budget:	No
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	Yes
	Annual Net County Cost:	\$ 0	For Fiscal Year:	FY 09/10

SOURCE OF FUNDS: Mental Health Services Act (MHSA) – State Funds	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input checked="" type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

County Executive Office Signature BY: Debra Cournoyer
Debra Cournoyer

Prev. Agn. Ref.: | **District:** All | **Agenda Number:**

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.46

PURCHASING & FLEET SERVICES: *Robert Howdyshell*, Director
 FISCAL PROCEDURES APPROVED BY: *Robert E. Byrd*, AUDITOR-CONTROLLER
 BY: *Susan Garofalo*, SUSAN GAROFALO, CLERK
 DATE: *3/11/10*
 Departmental Concurrence: *Grey*

Consent
 Policy
 Consent
 Policy
 Recomm.:
 ec. Ofc.:

TO: BOARD OF SUPERVISORS

DATE: March 16, 2010

PAGE: 2

SUBJECT: Approval of a four-year agreement with Netsmart Technologies, Inc. to provide a Behavioral Health Information System (BHIS).

BACKGROUND:

State and Federal law requires that all healthcare providers migrate from traditional paper-based health records to Electronic Health Records (EHRs) by 2014. The National Institutes of Health have concluded that EHRs result in (a) "improved quality and patient care," (b) "more efficient tracking of patients and costs," (c) "benefits to the business of healthcare," (d) "better documentation and improved audit capabilities," and (e) "avoidance of repeating expensive tests and more time spent with patients." On July 24, 2008 the State Department of Mental Health released the funding for Capital Facilities and Technological Needs component of Prop 63 Mental Health Services Act. On January 6, 2009, item #3.19, the Board received and filed MHSA State Agreement which included \$4.5M funding for the new BHIS. Over the next several years, the department anticipates a significant investment will be made to fully implement the BHIS including all software, enhancements, labor, maintenance and hardware. The MHSA Capital Facilities and Technological Needs component proposal will soon be submitted to the state for project and funding approval.

On April 21, 2009, the Riverside County Purchasing Department, on behalf of the Riverside County Department of Mental Health (RCDMH), issued Request for Proposal (RFP) #MHARC0-050 for a new Behavioral Health Information System (BHIS). Under this RFP the County was seeking a state-of-the-art electronic integrated BHIS for supporting all RCDMH programs and related financial activities. This BHIS will bring RCDMH into compliance with the State and Federal requirements for an EHR by replacing existing paper-based health records and replacing two existing core legacy applications that have been in place for over 20 years.

The RFP was sent to 8 organizations and advertised on the County's website. Four organizations submitted proposals, of which three were determined to be responsive in meeting the minimum requirements stipulated in the RFP.

After careful review, the Evaluation Committee determined that Netsmart Technology, Inc. was the most responsive bidder. Netsmart Technology, Inc. has been in the health and human services marketplace since 1968. Starting in public sector substance abuse and mental health systems, the vendor has recently expanded into the area of public health. 50% (29) of California's counties have selected Netsmart to implement their EHRs. The vendor's prior experience has made it possible to offer Riverside County products that have been developed specific to California requirements and Medi-Cal billing procedures.

FINANCIAL DATA:

Funding for this contract is provided through the Prop 63 Mental Health Services Act (MHSA) funds – Capital Facilities and Technological Needs. No additional County funds are required. The contract contains a termination provision in the event of the unavailability of any Federal and/or State funds. The Department of Mental plans to spend \$1,425,136 of the MHSA Capital Facilities and Technology funds in FY 09/10 for the BHIS system, and the remaining balance of the vendor's contract of \$2,212,887 and other related MHSA Capital Facilities and Technology funds will be budgeted in the DOMH's budgets for subsequent fiscal years.

TO: BOARD OF SUPERVISORS

DATE: March 16, 2010

PAGE: 3

PRICE REASONABLENESS:

The Evaluation Committee and RCDMH determined that Netsmart's cost proposal for core products and services was reasonable and in line with the costs that are necessary to effectively implement a project of this scope and magnitude. When compared to proposals from other bidders, Netsmart's cost was the overall best value to the County. In addition to the core products and services awarded under this contract, Netsmart offered the widest array of optional products and services at the best rates. The total cost for the four year Agreement is \$2,212,887, which includes a full-time, dedicated Project Manager provided by the vendor. Netsmart agreed to a discounted hourly rate for the Project Manager resulting in \$192,000 in savings. RCDMH will return to the Board for approval of optional products and services as listed in Schedule E of the Agreement, upon completion of the project plan by Netsmart and RCDMH.

SCHEDULE A

Department of Mental Health

Increase Appropriations:

10000	4100400000	523680	Office Equip-Non Fixed Assets	\$	352,640
10000	4100400000	525440	Professional Services	\$	397,496
10000	4100400000	546160	Equipment-Other	\$	675,000
				\$	1,425,136

Increase Estimated Revenues:

10000	4100400000	751040	CA - Mental Health Service Act	\$	1,425,136
				\$	1,425,136

Capital Equipment Requested:

Quantity	Item Description	Unit Cost	Total Cost		
1	UPS Upgrade	\$ 50,000	\$	50,000	
1	Generator	\$ 100,000	\$	100,000	
8	Data Center upgrade	\$ 8,750	\$	70,000	
10	Network Upgrade	\$ 7,000	\$	70,000	
18	Servers	\$ 16,722	\$	300,996	
7	Printers	\$ 12,000	\$	84,000	
				\$	674,996



★
Behavioral Health
Information System
(BHIS)

Contract
Between

Riverside County
Department of Mental Health
And

Netsmart Technologies, Inc
License and Service
Agreement

AGREEMENT	7
RECITALS	7
TERMS AND CONDITIONS	8
1. <u>Description of Services</u>	8
2. <u>Intellectual Properties</u>	9
3. <u>Period of Performance</u>	10
4. <u>Compensation</u>	11
5. <u>Assignment</u>	12
6. <u>Hold Harmless/Indemnification</u>	13
7. <u>Waiver of Default</u>	14
8. <u>Availability of Funding</u>	14
9. <u>Inspection of Service</u>	14
10. <u>Termination</u>	15
11. <u>Alteration</u>	16
12. <u>Independent Contractor</u>	17
13. <u>Subcontract for Work or Services</u>	17
14. <u>Interest of Contractor</u>	17
15. <u>Conduct of Contractor</u>	18
16. <u>Disallowance</u>	18
17. <u>Disputes</u>	18
18. <u>Governing Law: Jurisdiction: Severability</u>	19
19. <u>Insurance</u>	20
20. <u>Licensing and Permits</u>	23
21. <u>Air, Water Pollution Control, Safety and Health</u>	23
22. <u>OSHA Regulations</u>	23
23. <u>Right to Acquire Equipment and Services</u>	24
24. <u>Contractor's Responsibility</u>	24
25. <u>Conflict of Interest</u>	25

26.	<u>Non-Discrimination</u>	25
27.	<u>Records and Documents</u>	26
28.	<u>Monitoring</u>	26
29.	<u>Confidentiality</u>	26
30.	<u>Publication Reproduction and Use of Material</u>	27
31.	<u>Administration/Contract Liaison</u>	28
32.	<u>Project Manager & Key Personnel</u>	28
33.	<u>Notices</u>	29
34.	<u>Force Majeure</u>	29
35.	<u>Mutual Cooperation</u>	30
36.	<u>EDD Reporting Requirements</u>	30
37.	<u>Calendar Days</u>	31
38.	<u>Change of Ownership</u>	31
39.	<u>Errors and Omissions</u>	31
40.	<u>Sanctions</u>	31
41.	<u>Order of Precedence</u>	32
42.	<u>Entire Agreement</u>	32
	<u>SIGNATURES</u>	33
	<u>DEFINITIONS</u>	34
1.	<u>Keywords and Meanings</u>	34
	<u>SCHEDULES</u>	35
A.	<u>Products – One-Time Costs</u>	35
1.	Core Products	35
2.	Third-Party Products	37
3.	Products One-Time Costs Totals	37
B.	<u>Services – One-Time Costs</u>	38
1.	Core Products Services	38
C.	<u>Annual-Recurring Costs</u>	39

1.	Core Products Support.....	39
2.	Third-Party Products.....	40
3.	Other Annual-Recurring Costs	40
4.	Annual-Recurring Costs Total	40
D.	<u>Total Costs</u>	41
1.	Total One-Time and Annual-Recurring Costs.....	41
E.	<u>Additional Product and Service Options</u>	42
1.	Products and Services Purchased Under This Agreement.....	42
2.	Additional/Custom Professional Service Rates	42
3.	Optional and Additional Products	43
F.	<u>Payment Schedule</u>	48
1.	Deliverables, Milestones and Payments.....	48
2.	Additional Products.....	50
3.	Additional Services	50
4.	Travel and Living Expenses	50
5.	Shifting of Funds.....	51
G.	<u>Statement of Work (Scope and Deliverables)</u>	52
1.	Scope of Work.....	52
2.	Location of Work.....	60
3.	Project Timeline.....	60
4.	Deliverables Schedule.....	61
5.	Resources	62
6.	Applicable Standards.....	62
7.	Acceptance Criteria	63
8.	Special Requirements	63
9.	Assumptions, Constraints and Risks	63
H.	<u>Project Management</u>	65
1.	Principles and Practices	65

2.	Initiation Phase	65
3.	Planning Phase	66
4.	Execution Phase.....	68
5.	Closure Phase.....	69
I.	<u>Testing and Acceptance</u>	70
1.	Acceptance Test Plan.....	70
2.	Acceptance Test Plan Approval	70
3.	Setup Test Environment.....	71
4.	Acceptance Testing	71
5.	Acceptance Testing Approval.....	71
6.	Production Deployment.....	72
7.	Production Monitoring.....	72
8.	Deficiency Dispute Resolution.....	72
9.	Production Approval	72
10.	Production Use	73
11.	Final System Approval.....	73
J.	<u>Maintenance and Support Services</u>	74
1.	Support.....	74
2.	Maintenance	74
3.	Support Services	74
4.	Support Services Charges.....	75
5.	Updates, Enhancements and New Products	76
6.	Third-Party Products.....	77
7.	Deficiencies	77
8.	COUNTY Error	78
9.	Support Services Hours.....	78
10.	Support Features and Performance Standards	79
11.	On-Site Visits.....	81

K.	<u>Business Associates Agreement (BAA)</u>	82
1.	County of Riverside HIPAA BAA	82
L.	<u>Escrow Services</u>	90
1.	Possession and Use of Source Code	90
2.	Escrow Charges	90
3.	Escrow Agreement	90
M.	<u>Additional Terms for License</u>	91
	ATTACHMENTS.....	94
1.	<u>Preliminary Project Plan</u>	94
2.	<u>Three-Party Escrow Agreement</u>	95

AGREEMENT

This Agreement, made and entered into this _____ day of _____ 2010, by and between "Netsmart Technologies, Inc.", (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (herein referred to as "COUNTY").

RECITALS

Whereas, COUNTY is seeking a "state of the art" electronic integrated Behavioral Health Information System ("BHIS") for the support of all Mental Health programs and related financial activities and,

Whereas, COUNTY released, on April 21, 2009 a Request for Proposal, RFP No MHARC-050, seeking a "state of the art" electronic integrated Behavioral Health Information System "BHIS" and detailing the requirement specifications for the support of all COUNTY Mental Health programs and their related financial activities and to replace the current legacy system at COUNTY and,

Whereas, CONTRACTOR represented, via its Response to COUNTY RFP, dated April 21, 2009, an electronic suite of software modules, which would meet the stated specifications of COUNTY, COUNTY evaluated the RFP written response plus the Best and Final response and selected the CONTRACTOR for its new BHIS project and,

Whereas, Government Code Section 31000 et. Seq. authorizes the COUNTY to contract for services with a CONTRACTOR who is trained and experienced, and who is competent to perform the services required; and

Whereas, CONTRACTOR has the expertise, special skills, knowledge and experience to perform the duties set out herein for the BHIS Implementation Project.

Now, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

TERMS AND CONDITIONS
Professional Service Agreement
Between
COUNTY and CONTRACTOR

GENERAL: The services and products set forth in this Agreement shall be furnished by CONTRACTOR subject to all the terms and conditions listed herein which CONTRACTOR agrees to be bound by and to comply with in all particulars. No other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing signed by an authorized representative of each of the parties. Written acceptance or the beginning of performance of all or any portion of the services or provision of products herein shall constitute unqualified acceptance of all these terms and conditions.

1. Description of Services

- 1.1. CONTRACTOR shall provide all services and products as outlined and specified in the Schedules A thru M and Attachment 1, Preliminary Project Plan and Attachment 2, Three-Party Escrow Agreement, attached hereto and by this reference incorporated herein, or as otherwise required by this Agreement.
- 1.2. CONTRACTOR represents and maintains that it is skilled to perform all services; duties and obligations required by this Agreement to fully and adequately complete the project. CONTRACTOR shall perform the services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. CONTRACTOR further represents and warrants that it has all licenses, permits, qualifications and approvals of whatever nature as legally required to practice its profession/service. CONTRACTOR further represents that it shall keep all such licenses and approvals in effect during the Term of this Agreement. CONTRACTOR is not to perform services outside of the contract without prior written approval.

2. Intellectual Properties

2.1. Ownership of Data and Intellectual Property

All documents, records, data, memoranda, and other materials developed under this Agreement exclusively for COUNTY (other than modifications or enhancements which are made to the code of the software including source code) shall be considered property of the COUNTY upon delivery to and payment by the COUNTY. COUNTY will retain ownership interest in any pre-existing processes or methodologies ("Know How") that are implemented in software work flows by Contractor. Contractor will not use this Know How except as required for internal business purposes and completion of its performance under this Agreement.

Notwithstanding the foregoing, nothing in this Agreement will be deemed to convey any title or ownership interest in the licensed software (including any software owned by a third party and licensed under this Agreement) to COUNTY. Title to any modifications or enhancements of Contractor's software will belong to Contractor (or the owner of third party software), and will be licensed to COUNTY under the terms of this Agreement.

2.2. Infringement Indemnity

In the event of a claim or suit against COUNTY alleging (a) the Product as sold by Contractor or (b) COUNTY use of the Product as sold by Contractor infringes any patent issued by or copyright registered in the country in which the Product was sold to COUNTY, Contractor shall defend COUNTY to the extent the claim or suit concerns such infringement, provided COUNTY gives Contractor prompt notice of such claim or suit and continuous cooperation is such defense.

In any claim or suit against COUNTY that is defended by Contractor pursuant to paragraph 1, Contractor shall control the defense, shall pay all litigation costs, including attorney's fees incurred by Contractor in such defense, and shall indemnify COUNTY for all damages awarded by a court or settlement payments approved by Contractor.

If in any claim or suit against COUNTY that is defended by Contractor pursuant to paragraph 1, as a result of a court order not subject to further appeal or a settlement approved by Contractor, COUNTY is enjoined or otherwise prevented from using the Product as sold by Contractor, Contractor, at its option, may (a) procure for COUNTY the right to continue

using the Product, (b) replace or modify the Product to avoid infringement, or (c) repossess the Product in exchange for a refund of the depreciated value of the Product. Contractor's option selected under this paragraph shall be the COUNTY sole remedy for any prospective effects of any court order or settlement.

Contractor's total, cumulative liability under paragraphs 2 and 3 shall be limited to the price paid to Contractor by COUNTY for the Product.

Notwithstanding any other provision of this Article, Contractor 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 Product was made by Contractor pursuant to specifications supplied by COUNTY, or (b) the alleged infringement is based on use by COUNTY, without Contractor's permission, of the Product as sold by Contractor in combination with another item not sold by Contractor, 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 Product as modified by COUNTY without Contractor's permission.

3. Period of Performance

- 3.1. The Period of Performance (Term of Agreement) shall be set for an initial period of four (4) years upon execution of this Agreement as stated in Schedule G, Statement of Work (Scope and Deliverables), attached hereto and by this reference incorporated herein. The Agreement may be renewed in one (1) year increments thereafter, for up to four (4) additional years, upon mutual, written consent and signature by both parties involved, unless terminated as specified in Section 10 Termination.
- 3.2. CONTRACTOR shall commence performance of requested services upon written notification and shall diligently perform such services. CONTRACTOR must perform all work as set forth in the Statement of Work and Project Plan; or otherwise required by the Agreement. Failure of the CONTRACTOR to comply with the Project Plan due to reasons solely under the control of the CONTRACTOR, or which could not be reasonably anticipated by CONTRACTOR, may be considered by the COUNTY to be a material breach.
- 3.3. It is mutually agreed to and understood by both Parties that the obligation of the COUNTY is limited by and contingent upon the availability of COUNTY funds for the reimbursement of CONTRACTOR fees under this Agreement. In the event that such funds are not available for any reason, COUNTY shall immediately notify CONTRACTOR in writing of such unavailability of funds. This Agreement shall therefore be terminated and have no further force and effect immediately upon receipt of COUNTY'S notification to CONTRACTOR

in such instances. In the event of such termination, CONTRACTOR shall be entitled to reimbursement of its costs incurred as of that date in accordance with Section 4 Compensation. In addition, CONTRACTOR may require payment in advance for certain products, services, or efforts if it reasonably believes that the COUNTY may not meet its payment obligations for those products, services, or efforts.

4. Compensation

- 4.1. The COUNTY shall pay the CONTRACTOR for services performed and expenses incurred in accordance with the terms of Schedule F, Payment Schedule, attached hereto and by this reference incorporated herein. Maximum payments by COUNTY to CONTRACTOR shall not exceed two million two hundred twelve thousand eight hundred eighty-seven dollars (\$2,212,887) for the Term of Agreement including all expenses for the Scope of Work, effort, services and products outlined in this Agreement. This is a fixed price Agreement. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products beyond those specified within this Agreement.
- 4.2. The said compensation shall be paid in accordance with an invoice submitted to COUNTY by CONTRACTOR.
- 4.3. During the Term of this Agreement, no price increases will be permitted for the products, services and efforts included in this Agreement. No retroactive price adjustments will be considered. The COUNTY may negotiate/escalating price contracts as it sees fit. Thereafter, annual increases shall not exceed the Consumer Price Index - Information and Information Processing – Greater Los Angeles, Riverside and Orange COUNTY areas and be subjected to satisfactory performance review by the using COUNTY agency and approved for budget funding by the COUNTY Board of Supervisors.
- 4.4. The CONTRACTOR shall prepare invoices in duplicate. For this contract, send the original and duplicate copies of invoices to:

County of Riverside
 Department of Mental Health
 Attn: Dr. Ryan Quist, PhD
 P.O. Box 7549
 Riverside, CA 92513

If CONTRACTOR chooses to send the invoices via overnight delivery, certified mail, or other form of direct delivery, use the following street address:

County of Riverside
Department of Mental Health
Attn: Dr. Ryan Quist, PhD
4095 County Circle Drive
Riverside, CA 92503

- 4.4.1. Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; "bill-to" and "ship-to" addresses of ordering department/division; contract number (to be provided upon award); quantities; item descriptions (e.g. position/title), unit prices (e.g. rate/hr), extensions (e.g. hours), sales/use tax if applicable, and an invoice total.
- 4.4.2. Payment of invoices will be made within thirty (30) days upon the Auditor Controller's receipt of approved journal entries submitted in accordance with the payment terms specified in Schedule F. The total retention amount due the CONTRACTOR shall be payable upon final project completion and acceptance of all deliverables/milestones, as set forth in Schedule I. Unless otherwise agreed to in writing by COUNTY, 1) acceptance shall not be deemed complete unless in writing and until all the services have actually been received, inspected, and tested to the satisfaction of COUNTY, and 2) payment shall be made in arrears after satisfactory acceptance.
- 4.4.3. In the State of California, government agencies are not allowed to pay excess interest and late charges, per Government Code section 927.6.

5. Assignment

- 5.1. CONTRACTOR shall not delegate or assign any interest in this Agreement, and shall not transfer any interest in the same, whether by operation of law or otherwise, without the prior written consent of COUNTY, provided, however, that Contractor may assign this agreement to an affiliate (i.e. an entity directly related to Contractor through common ownership and control) or to an affiliate created as a result of a merger or acquisition of the business of Contractor who continues to carry on the business of Contractor as it existed on the date of the assignment. COUNTY consent will not be unreasonably withheld.

6. Hold Harmless/Indemnification

- 6.1. The CONTRACTOR agrees to and shall indemnify and hold harmless the COUNTY from:
 - 6.1.1. All liability for personal injury or property damage, including, but not limited to loss, suits, claims, demands, actions, or proceedings to the extent caused by any alleged or actual negligence, recklessness, willful misconduct, error or omission of CONTRACTOR, its directors, officers, partners, employees, agents or representatives or any person or organization for whom CONTRACTOR is responsible, arising out of Contractor's negligent or intentional acts related to performance under this Agreement.
- 6.2. As respects each and every indemnification herein CONTRACTOR shall defend and pay, at its sole expense, all costs and fees incurred by COUNTY in the course of defense including but not limited to attorney fees, cost of investigation, and defense and settlements or awards against the County.
- 6.3. With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to COUNTY as set forth herein.
- 6.4. CONTRACTOR obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.
- 6.5. The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR obligations to indemnify and hold harmless the COUNTY herein from third party claims.
- 6.6. Notwithstanding the foregoing, CONTRACTOR liability under Section 6 shall in any event not exceed 2.0 times the aggregate total of fees payable to the CONTRACTOR under the terms of this Agreement, and shall be limited to direct damages only. 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.
- 6.7. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782.

Such interpretation shall not relieve the CONTRACTOR from indemnifying the COUNTY to the fullest extent allowed by law.

7. Waiver of Default

- 7.1. Any waiver by either party of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term hereof. Failure on the part of COUNTY to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms hereof, or stopping COUNTY from enforcement hereof.

8. Availability of Funding

- 8.1. The COUNTY obligation for payment of any contract beyond the current fiscal year end is contingent upon the availability of COUNTY funding from which payment can be made. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be terminated and have no further force and effect. CONTRACTOR may require payment in advance for certain products, services, or efforts if it reasonably believes that the COUNTY may not meet its payment obligations for those products, services, or efforts.

9. Inspection of Service

- 9.1. All performance (which includes services, materials, supplies and equipment furnished or utilized in the performance of this contract, and workmanship in the performance of services) shall be subject to inspection and test by the COUNTY at all times during the Term of the Agreement. The CONTRACTOR shall provide adequate cooperation to any inspector assigned by the COUNTY to permit him/her to determine the CONTRACTOR conformity with these specifications and the adequacy of the services being contractually provided. All inspections by the COUNTY shall be made in such a manner as to not unduly interfere with CONTRACTOR performance. If any services performed hereunder are not in conformity with the specifications and requirements of this contract, the COUNTY shall have the right to require the CONTRACTOR to perform the services in conformity with said specifications and requirements at no additional increase in total contract amount. When the services to be performed are of such nature that the difference cannot be corrected, the COUNTY shall have the right to require the CONTRACTOR immediately to take all necessary steps to ensure future performance of the

Termination

Revision: February 9, 2010

services in conformity with requirements of the contract within a period of time to be agreed between the COUNTY and CONTRACTOR.

- 9.2. In the event the CONTRACTOR fails to perform the services promptly or to take necessary steps to ensure future performance of the service is in conformity with specifications and requirements of the contract, the COUNTY shall have the right to either: (1) have the services performed in conformity with the contract specifications and charge to the CONTRACTOR all reasonable costs occasioned to the COUNTY that are directly related to the performance of such services; or (2) terminate this contract for default as provided in the Termination Clause. Notwithstanding the foregoing, CONTRACTOR total aggregate liability in the event that the COUNTY chooses alternative (1) shall not exceed the total amount payable to CONTRACTOR by COUNTY under this Agreement.
- 9.3. CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess or evaluate CONTRACTOR performance under this Agreement at any time upon reasonable notice to CONTRACTOR.

10. Termination

- 10.1. COUNTY may terminate this Agreement without cause upon 30 days written notice served upon the CONTRACTOR stating the extent and effective date of termination.
- 10.2. COUNTY may, upon thirty (30) days written notice, terminate this Agreement for CONTRACTOR default, if CONTRACTOR refuses or fails to comply with the provisions of this Agreement or fails to make progress so as to endanger performance and does not cure such failure within a reasonable period of time. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper to COUNTY.
- 10.3. After receipt of the Notice of Termination pursuant to paragraph 10.1 or 10.2 above, CONTRACTOR shall:
 - 10.3.1. Stop all work under this Agreement on the date specified in the Notice of Termination.
 - 10.3.2. Transfer to COUNTY and deliver in the manner, and to the extent, if any, as directed by COUNTY, any equipment, data or reports which, if the Agreement had been completed, would have been required to be furnished to COUNTY;
- 10.4. After termination pursuant to paragraph 10.1 or 10.2 above, COUNTY shall make payment for all services performed in accordance with this

Alteration

Revision: February 9, 2010

Agreement to the date of termination, according to the charges set forth in Schedule F – Payment Schedule.

- 10.5. Notwithstanding any of the provisions of this Agreement, CONTRACTOR rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty, or a willful or material breach of this Agreement by CONTRACTOR.

11. Alteration

- 11.1. The Board of Supervisors is the only authorized COUNTY representative who may at any time, by written amendment, approve alterations to the terms of this Agreement, including the Scope of Work to be performed and the time for performance. COUNTY may at any time, by written notice to the CONTRACTOR, make a request for changes to this Agreement. If any such change shall cause an increase or decrease in the cost of, or the time required for the performance of any part of the work under this Agreement, CONTRACTOR shall consider such request and respond in writing, within five (5) days of receipt of such written request from the COUNTY, or a longer period if it is unreasonable to expect CONTRACTOR to complete its analysis of the change request in five days, with the CONTRACTOR proposal for addressing such change in the work. CONTRACTOR response shall include without limitation, updated timelines, deliverables, and fee schedule(s). The parties agree that until such time as this Agreement is amended in writing, if necessary, to reflect any requested changes from COUNTY, CONTRACTOR shall continue to perform its obligations pursuant to the existing terms of this Agreement. The parties agree that COUNTY has the option to request CONTRACTOR to temporarily suspend the work (which shall include suspension of the project timeline) at no cost to COUNTY until Agreement is reached by the parties on the requested changes, as COUNTY may determine in its best interest. Should the parties be unable to reach Agreement on the requested changes, they shall proceed pursuant to the Disputes Section of this Agreement. In the event COUNTY suspends the work, for its convenience, Contractor may, at its option, terminate the Contract if any delay or suspension continues beyond 180 days. In that event, Contractor will be entitled to payment for work performed and materials provided prior to the termination date.
- 11.2. Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional

payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

12. Independent Contractor

- 12.1. The CONTRACTOR is, for purposes arising out of this contract, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR shall in no event, as a result of this contract, be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. CONTRACTOR hereby holds COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.
- 12.2. It is further understood and agreed by the parties hereto that CONTRACTOR in the performance of its obligation hereunder is subject to the control or direction of COUNTY merely as to the result to be accomplished by the services hereunder agreed to be rendered and performed and not as to the means and methods for accomplishing the results.

13. Subcontract for Work or Services

- 13.1. No contract shall be made by the CONTRACTOR with any party for furnishing any of the work or services herein contained without the prior written approval of the COUNTY Purchasing Agent but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned for services there under, or for parties named in the proposal and agreed to under any resulting contract.

14. Interest of Contractor

- 14.1. The CONTRACTOR covenants that it presently has no interest, including but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. The CONTRACTOR further covenants that in the performance of this contract, no person having any such interest shall be employed or retained by it under this contract.
- 14.2. CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement

by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims or encumbrances other than third part software which is licensed from the owner of that software and sublicensed to COUNTY.

15. Conduct of Contractor

- 15.1. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR interest, if any, which are or which the CONTRACTOR believes to be incompatible with any interest of the COUNTY.
- 15.2. The CONTRACTOR shall not, under circumstances which might reasonably be interpreted as an attempt to influence the recipient in the conduct of his duties, accept any gratuity or special favor from individuals or organizations with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under the contract.
- 15.3. The CONTRACTOR shall not use for personal gain or make other improper use of privileged information, which is acquired in connection with this contract. In this connection, the term 'privileged information' includes, but is not limited to, unpublished information relating to technological and scientific development; medical, personnel, or security records of the individuals; anticipated materials requirements or pricing actions; and knowledge of selection of contractors or subcontractors in advance of official announcement.
- 15.4. The CONTRACTOR or employees thereof shall not offer gifts, gratuities, favors, or entertainment directly or indirectly to COUNTY employees.

16. Disallowance

- 16.1. In the event the CONTRACTOR receives payment for services under this Agreement which is later disallowed for nonconformance with the terms and conditions herein by the COUNTY, the CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request, or at its option, the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR under any contract with the COUNTY.

17. Disputes

- 17.1. The parties through the Department of Mental Health Project Director on behalf of the COUNTY and the Project Manager on behalf of the CONTRACTOR agree to use all reasonable efforts to resolve any dispute, whether arising during the Term of Agreement or at any time after the expiration or termination of this Agreement, which touches upon the

validity, construction, meaning, performance or effect of this Agreement or the rights and liabilities of the parties, promptly and in an amiable manner by negotiation between the parties. If any such dispute cannot be resolved between the COUNTY Project Director and the CONTRACTOR Project Manager within 5 working days, the parties agree to escalate responsibility for resolving the dispute to the Project Executive on behalf of the CONTRACTOR and to the Department of Mental Health Assistant Director on behalf of the COUNTY. If the parties are still unable to resolve the dispute within 5 working days, each party shall escalate the dispute further to the Western Region Vice President for Support Services on behalf of the CONTRACTOR and to the Director of Purchasing and Fleet Services on behalf of the COUNTY. If the parties are still unable to resolve the dispute within 5 working days, each party shall escalate the dispute further to the Executive Vice President of Operations on behalf of the CONTRACTOR and to the Director of Purchasing and Fleet Services on behalf of the COUNTY. The parties acknowledge and agree that if the dispute remains unresolved after each of these escalation steps, the parties may bring the dispute before the relevant courts for resolution. This process shall apply to any disputes or delays including but not limited to the following:

- 17.1.1 Meeting project timelines;
- 17.1.2. Resolving personnel issues; and/or
- 17.1.3 Responding to product related issues.

17.2. Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

18. Governing Law: Jurisdiction: Severability

18.1. This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed in the Federal District Court having jurisdiction in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

19. Insurance

Without limiting or diminishing the CONTRACTOR obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the Term of this Agreement.

19.1. Workers' Compensation

If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than **\$1,000,000** per person per accident. The policy shall be endorsed to waive subrogation in favor of the COUNTY of Riverside, and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

19.2. Commercial General Liability

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of CONTRACTOR performance of its obligations hereunder. Policy shall name all Agencies, Districts, Special Districts, and Departments of the County of Riverside, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insured's. Policy's limit of liability shall not be less than **\$1,000,000** per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

19.3. Vehicle Liability

If CONTRACTOR vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than **\$1,000,000** per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

19.4. Professional Liability Insurance

CONTRACTOR shall maintain Professional Liability Insurance providing coverage for the CONTRACTOR performance of work included within this Agreement, with a limit of liability of not less than **\$1,000,000** per occurrence and **\$2,000,000** annual aggregate. If CONTRACTOR Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the Term of this Agreement and CONTRACTOR shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that CONTRACTOR has maintained continuous coverage with the same or original insurer. Coverage provided under items, 1), 2) or 3) will continue for a period of five (5) years beyond the termination of this Agreement.

19.5. General Insurance Provisions – All Lines

- 19.5.1.** Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the COUNTY Risk Manager. If the COUNTY Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
- 19.5.2.** The CONTRACTOR insurance carrier(s) must declare its insurance deductibles or self-insured retentions. If such deductibles or self-insured retentions exceed \$500,000 per occurrence such deductibles and/or retentions shall have the prior written consent of the COUNTY Risk Manager before the commencement of operations under this Agreement. Upon notification of deductibles or self insured retentions unacceptable to the COUNTY, and at the election of the County's Risk Manager, CONTRACTOR carriers shall either; 1) reduce or eliminate such deductibles or self-insured retentions as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- 19.5.3.** CONTRACTOR shall cause CONTRACTOR insurance carrier(s) to furnish the COUNTY with either 1) a properly executed original Certificate(s) of Insurance, or 2) if requested to do so in writing by the COUNTY Risk Manager, provide

Insurance

Revision: February 9, 2010

access to the COUNTY Risk Manager to review the original copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect at the CONTRACTOR head office located in Vancouver, British Columbia, Canada. Further, said certificate(s) and policies of insurance shall contain the covenant that the insurance carrier(s) shall endeavor to provide the COUNTY with thirty (30) days written notice prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the COUNTY receives, prior to such effective date, another properly executed original Certificate of Insurance or if requested to do so in writing by the COUNTY Risk Manager, access to review the original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. **CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate(s) of Insurance as required in this Section. An individual authorized by the insurance carrier to do on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.**

Notwithstanding anything to the contrary herein, COUNTY hereby acknowledges and agrees that any and all information concerning the CONTRACTOR insurance coverage's, policies, endorsements or other information pertaining to such insurance coverage is highly sensitive and confidential in nature and that in the event that CONTRACTOR is requested to disclose such information to COUNTY pursuant to the terms of this section 19.5.3, then COUNTY shall only disclose any such information to those COUNTY personnel who need to know such insurance information and shall not, under any circumstances, disclose such information to any COUNTY personnel who do not need to know such insurance information or to any third parties for any reason whatsoever

- 19.5.4.** It is understood and agreed to by the parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary insurance, and the COUNTY insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

- 19.5.5. The COUNTY Reserved Rights--Insurance. If, during the Term of this Agreement or any extension thereof, there is a material change in the Scope of Work; or, there is a material change in the equipment to be used in the performance of the Scope of Work (such as the use of aircraft or watercraft) the COUNTY reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage's currently required herein, if; in the COUNTY Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.
- 19.5.6. CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- 19.5.7. The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

20. Licensing and Permits

- 20.1. Attention is directed to the provisions of Chapter 9 of Division 3 of the Business and Professions Code concerning the licensing of contractors. All offerers and contractors shall be licensed, if required, in accordance with the laws of this State and any offerer or contractor not so licensed is subject to the penalties imposed by such laws.
- 20.2. CONTRACTOR further warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for the provision of services hereunder and required by the laws and regulations of the United States, State of California, the COUNTY and all other appropriate governmental agencies, and shall maintain these throughout the Term of this Agreement.

21. Air, Water Pollution Control, Safety and Health

- 21.1. CONTRACTOR shall comply with all air pollution control, water pollution, Safety and Health Ordinances and statutes, which apply to the work performed pursuant to this contract, including any requirements, specified in state government codes.

22. OSHA Regulations

- 22.1. CONTRACTOR hereby certifies awareness of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by

the U.S. Department of Labor, and the derivative Cal/OSHA standards, laws and regulations relating thereto, and verifies that all performance under this Agreement shall be in compliance therewith.

23. Right to Acquire Equipment and Services

- 23.1. Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment and/or service from other sources, when deemed by the COUNTY to be in its best interest.

24. Contractor's Responsibility

- 24.1. It is understood that the CONTRACTOR has the skills, experience and knowledge necessary to perform the services agreed to be performed under this Agreement, and that the COUNTY relies upon the CONTRACTOR representations about its skills, experience and knowledge to perform the CONTRACTOR services in a competent manner. Acceptance by the COUNTY of the services to be performed under this Agreement does not operate as a release of said CONTRACTOR from responsibility for the work performed.
- 24.2. It is further understood and agreed that the CONTRACTOR is apprised of the scope of the work to be performed under this Agreement and the CONTRACTOR agrees that said work can and shall be performed in a fully competent manner.
- 24.3. The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of selection of CONTRACTOR, subcontractors or suppliers in advance of official announcement.
- 24.4. The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in

writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

- 24.5. The CONTRACTOR is subject to and shall operate in compliance with all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, enacted August 21, 1996, and the related laws and regulations promulgated subsequent thereto.

25. Conflict of Interest

- 25.1. CONTRACTOR shall have no interest, and shall not acquire any interest, direct or indirect, which will conflict in any manner or degree with the performance of services required under this Agreement.
- 25.2. CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation. To the extent COUNTY or local law or regulation relates to the content or output of CONTRACTOR software, and not to the general operation of its business, County will notify CONTRACTOR as to same prior to CONTRACTOR acceptance of those special requirements. Otherwise they will be addressed as a change order to the contract.

26. Non-Discrimination

- 26.1. CONTRACTOR shall not discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement, and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352), and the Americans with Disabilities Act of 1990 (42 U.S.C. §1210 et seq.) and all other applicable laws or regulations.

27. Records and Documents

27.1. CONTRACTOR shall make available, upon written request by any duly authorized Federal, State or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the costs of the services provided by CONTRACTOR. All such books and records shall be maintained by CONTRACTOR for at least five years from the termination of this Agreement and be available for audit by the COUNTY and State Officials. CONTRACTOR shall provide COUNTY and State Officials with reports and information relative to this Agreement and in accordance with terms set forth herein, upon reasonable prior notice and at mutually convenient places and times, when requested by COUNTY or State Officials.

In the event the CONTRACTOR does not make available its books and financial records at the location where they are normally maintained, the CONTRACTOR agrees to pay all necessary and reasonable expenses, incurred by COUNTY in conducting such an audit

28. Monitoring

28.1. CONTRACTOR shall employ its procedures for self-monitoring and shall permit an appropriate official of the COUNTY, State or Federal government to monitor, assess or evaluate CONTRACTOR performance under this Agreement upon reasonable notice to CONTRACTOR and at any reasonable time.

29. Confidentiality

29.1. CONTRACTOR and COUNTY acknowledge that in the course of performing under this Agreement, they may learn confidential, trade secret, or proprietary information concerning the other or of third parties to whom the COUNTY has an obligation of confidentiality (Confidential Information). Without limiting the foregoing, Confidential Information shall include information regarding business and operations, reports, clients, providers, premiums and claims data, software and hardware performance, source code, trade secrets, and other know how. Each party agrees that (a) it will use such information only as may be necessary in the course of performing duties under this Agreement, (b) it will treat such information as confidential and proprietary, (c) it will not disclose such information orally or in writing to any third party without the prior written consent of the discloser, (d) it will take all reasonable precautions to protect the Confidential Information, and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Without limiting the foregoing, CONTRACTOR and

COUNTY agree to take at least such precautions to protect the other's confidential and proprietary information as it takes to protect its own confidential and proprietary information. In addition, CONTRACTOR agrees not to disclose or utilize individual clients, provider or medical claim information in any way that would violate any state or federal laws or regulations. CONTRACTOR shall abide by Title 42, Code of Federal Regulations, Part 2. Upon termination or expiration of this Agreement, CONTRACTOR and COUNTY will return to the disclosing party or certify as destroyed all tangible items containing any of the disclosing party's proprietary or confidential information.

29.2. Notwithstanding Section 29.1, no duty of confidentiality will exist with respect to any information, whether or not visibly classified as Confidential Information, which the receiving party can demonstrate:

29.2.1. Was already known to it at the time of disclosure;

29.2.2. Was or is independently developed by without reference to or use of the Confidential information;

29.2.3. Was lawfully received from a third party;

29.2.4. Became known to persons knowledgeable in the industry or became public knowledge; or

29.2.5. Is required to disclose by law or as a result of court or administrative order.

30. Publication Reproduction and Use of Material

30.1. The CONTRACTOR agrees that all materials, reports or products in any form, including electronic files, (but not including software and software code documentation) created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be included in the license of materials by the CONTRACTOR to the COUNTY and may be used by the COUNTY for any internal purpose COUNTY deems to be appropriate, including, but not limit to, duplication and/or distribution within the COUNTY or to third parties who have a need to use such information to support COUNTY functions. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports or products that are unique to the COUNTY use of the system, without prior written authorization of the COUNTY. COUNTY agrees that nothing in this Agreement prohibits CONTRACTOR from developing similar reports, materials and products for other customers in the ordinary course of its business.

31. Administration/Contract Liaison

31.1. The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Agent is to serve as the COUNTY liaison with CONTRACTOR in connection with this Agreement.

32. Project Manager & Key Personnel

32.1. The COUNTY and the CONTRACTOR shall each appoint individuals to act as liaison between each entity during the Term of this Agreement. The COUNTY Project Director shall coordinate the activities of the COUNTY staff assigned to work with the CONTRACTOR.

32.2. **CONTRACTOR shall provide a full-time, dedicated Project Manager for the 24-month BHIS Implementation Period.**

32.3. The COUNTY Project Director shall have the right to require the removal and replacement of the CONTRACTOR Project Manager and key personnel. The COUNTY Project Director shall notify the CONTRACTOR in writing of such action. The CONTRACTOR shall accomplish the removal within fourteen (14) calendar days after written notice by the COUNTY Project Director. The COUNTY Project Director shall review and approve the appointment of the replacement for the CONTRACTOR Project Manager and key personnel. Contractor will make a reasonable effort to replace any Project Staff within thirty (30) calendar days. Said approval shall not be unreasonably withheld.

32.4. The key personnel listed below and in the Statement of Work and Resource Plan to be completed during the Planning Phase of the BHIS Implementation Project are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must: (1) Notify the COUNTY Project Director in advance; (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and (3) obtain the COUNTY Project Director's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity the Contractor may remove or suspend such person at once, although the Contractor must notify the COUNTY Project Director prior to or concurrently with such action.

32.5. The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

Netsmart Staffing Team

- John Fitzgerald, PMP – Vice President, California Operations
- John Marnell – Project Manager/Project Executive
- Stephanie Leigh, PMP, Project Contract Manager
- Kristy Stephan – Practice Management Implementation Analyst
- Kevin Sullivan – Clinical Workstation Implementation Analyst
- Lindsey Mack – Managed Care Implementation Analyst

32.6. CONTRACTOR Project Manager will respond to COUNTY requests for service and/or assistance within one business day.

33. Notices

33.1. All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two business days after their deposit in the United States mail, postage prepaid:

COUNTY OF RIVERSIDE:

Department of Mental Health
4095 County Circle Drive
Riverside, CA 92503
Attn: Dr. Ryan Quist, PhD
BHIS Project Director

CONTRACTOR:

Netsmart Technologies, Inc.
3500 Sunrise Hwy, Suite D122
Great Rivers, NY 11739
Attn: Anthony Grisanti,
Chief Financial Officer

34. Force Majeure

34.1. In the event CONTRACTOR is unable to comply with any provision of this Agreement due to causes beyond its reasonable control such as acts of God, acts of war, civil disorders, or other similar acts, CONTRACTOR shall not be held liable to COUNTY for such failure to comply.

34.2. In the event COUNTY is unable to comply with any provision of this Agreement due to causes beyond its reasonable control relating to acts of God, acts of war, civil disorders, or other similar acts, COUNTY shall not be held liable to CONTRACTOR for such failure to comply.

35. Mutual Cooperation

- 35.1.** The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR performance of services for the COUNTY under this Agreement, including providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information and personnel. The COUNTY shall be responsible for the performance of its employees and agents and for the accuracy and completeness of all data and information provided to the CONTRACTOR.
- 35.2.** In the event Contractor determines at any time that failure, delay or inadequacy of performance by COUNTY in performance of its obligations may prevent Contractor from completing any of Contractor's obligations in a timely manner or cause Contractor to incur additional or unanticipated costs or expenses, Contractor will promptly notify COUNTY Project Director in writing, which notice shall specify in reasonable detail: (1) any alleged failure, delay or inadequacy of performance by COUNTY and (2) the estimated impact of such alleged failure, delay or inadequacy of performance on Contractor's obligations. COUNTY will respond to the notice, specifying any grounds for disagreement, within thirty (30) working days from receipt of the notice. Absent any disagreement the date for Contractor's completion of such obligation may be appropriately extended, as determined in the sole discretion of COUNTY Project Director. In the event of a disagreement, the Contractor will proceed with the work, and file a claim under the dispute resolution procedures of this Agreement.

36. EDD Reporting Requirements

- 36.1.** In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent CONTRACTOR(s) form **DE 542** to the Employment Development Department. The selected CONTRACTOR agrees to furnish the required CONTRACTOR data and certifications to the COUNTY within 10 days of notification of award of contract when required by the EDD.
- 36.2.** It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders and for no other purposes and will be held confidential by those agencies. Failure of the CONTRACTOR to timely submit the data and/or certificates required may result in contract being awarded to another CONTRACTOR. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of contract. Failure to cure

such breach within 60 calendar days of notice from the COUNTY shall constitute grounds for termination of the contract.

- 36.3. CONTRACTOR may call (916) 657-0529 with any questions concerning this reporting requirement. CONTRACTOR may also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department," or refer to the Internet site at www.edd.ca.gov.

37. Calendar Days

- 37.1. Any reference to the word "day" or "days" herein mean calendar day or calendar days, respectively, unless a CONTRACTOR holiday or otherwise expressly provided.

38. Change of Ownership

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

39. Errors and Omissions

- 39.1. All reports, files, and other deliverables prepared and submitted by CONTRACTOR shall be complete and shall be carefully checked by the professional(s) identified by CONTRACTOR as project manager and key personnel attached hereto, prior to submission to the COUNTY. If the COUNTY discovers any material errors or omissions:
- 39.1.1. Prior to approving and accepting CONTRACTOR reports, files, or other deliverables, the reports, files, or deliverables will be returned to CONTRACTOR for correction.
 - 39.1.2. After COUNTY approval or acceptance thereof COUNTY shall return such reports, files or deliverables to CONTRACTOR for correction.

40. Sanctions

Failure by the CONTRACTOR to comply with any material provision, covenant, requirement, or condition of this Agreement including, but not limited to, reporting and evaluation requirements that are a deliverable under the contract, shall be a material breach of this Agreement. In such event, the COUNTY will provide no less than thirty (30) days' notice to CONTRACTOR and may immediately

terminate this Agreement if CONTRACTOR has not cured the breach by the expiration of that period. Termination is not an exclusive remedy and COUNTY may pursue other remedies available by law, or otherwise specified in this Agreement. The COUNTY may also:

- 40.1. Discontinue reimbursement to the CONTRACTOR for, and during the period in which the CONTRACTOR is in breach, and/or
- 40.2. Withhold funds pending a cure of the breach; and/or
- 40.3. Offset against any monies billed by the CONTRACTOR but yet unpaid by the COUNTY, the value of any services or products that are not being delivered as a result of the breach. The COUNTY shall give the CONTRACTOR notice of any action pursuant to this paragraph, the notice of which shall be effective when given.

41. Order of Precedence

- 41.1. The following documents shall be part of this Agreement:
 - 41.1.1. This Agreement and all Schedules and Attachments
 - 41.1.2. Contractor's response to the Request for Proposal; and
 - 41.1.3. The Request for Proposal.

In the event of a conflict between these documents, the documents shall govern in the order set out immediately above.

42. Entire Agreement

- 42.1. This Agreement, including any Schedule(s) and Attachment(s) entered into pursuant to it, constitutes the entire Agreement of the parties hereto with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

TERMS AND CONDITIONS

Contract #: MHARC-92045-019-03/14

SIGNATURES

Revision: February 9, 2010

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement.

COUNTY:

County of Riverside
Board Of Supervisors
County Administrative Center
4080 Lemon Street, 5th Floor
Riverside, CA 92501

CONTRACTOR:

Netsmart Technologies, Inc.
3500 Sunrise Hwy.
Suite D122
Great River, NY 11739

Signature: _____

Print Name: Marion Ashley

Title: Chairman of the Board

Dated: _____

Signature: _____

Print Name: Joseph McGovern

Title: Executive Vice President

Dated: 2-11-2010

County Counsel:

Approved as to Form by:

FORM APPROVED COUNTY COUNSEL

BY: Neal R. Kipnis DATE 3/1/10

DEFINITIONS

1. Keywords and Meanings

The purpose of this section is to clarify keywords that are not defined in the context where they are used in this Agreement. Required definitions will be identified and incorporated into this section of the Agreement during contract negotiations.

	Keywords	Meaning
A.	BHIS Implementation Period	Shall be the first two years of the project as defined in Schedule G of the Agreement, and shall commence upon the date of execution of the Agreement.
B.	Phase I and Phase II	BHIS Project shall consist of Phase I and Phase II as defined Scheduled G of this Agreement under the Deliverables Schedule
C.		
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SCHEDULES

The pricing for products, professional services and support services in the following schedules will hold firm for the Term of the Agreement from the Agreement execution date.

A. Products – One-Time Costs

The following are the CONTRACTOR products being purchased under this Agreement by the COUNTY. In the event that additional licenses must be purchased, the prices will remain the same for the Term of Agreement (4 years). However, Third-Party prices are subject to change. The County reserves the right to make adjustments to reallocate Netsmart licensed product funding to different licensed products, if necessary. For example, General Ledger Interface funding can be utilized to purchase additional RADplus named users. Additional CONTRACTOR products and/or services may be purchased using a contract addendum.

1. Core Products

Core Product Name – Description	Unit Type	Units	Unit Cost	Total Cost
RADplus named users – Named-user licenses.	Users	650	\$800	\$520,000
RADplus test-server licenses (includes 8 RADplus users) – Dedicated testing environment software	Server licenses	1	\$10,000	\$10,000
Avatar Cal-PM – Practice Management Module The California-specific practice management module. Functionality includes registration/admission, transfer, all billing functionality.	Module	1	\$10,000	\$10,000
General Ledger Interface – Interface to General Ledger (per Netsmart standard specifications). Flat-file export of financial data to allow it to be picked up by a General Ledger system.	Interface	1	\$20,000	\$20,000
Avatar Clinician Workstation – The clinical module within the Avatar suite – includes Progress Notes, Treatment Plans and Assessments	Module	1	\$10,000	\$10,000
Addiction Severity Index – Clinical assessment.	Assessment	1	\$7,500	\$7,500
Avatar MobileConnect – disconnected laptop data collection tool. Data is synchronized	Module/ workstations	60	\$498	\$29,880

SCHEDULES - A

Contract #: MHARC-92045-019-03/14

A. Products – One-Time Costs

Revision: February 9, 2010

Core Product Name – Description	Unit Type	Units	Unit Cost	Total Cost
with the central database/system upon returning from the field.				
Incident Tracking – specifically designed to allow data collection and reporting related to incident tracking	Module	1	\$2,500	\$2,500
Managed Services Organization – Managed-care module. Managed care functionality to include ability to manage authorizations, adjudicate claims and provide EOBs to non-County providers.	Module	1	\$10,000	\$10,000
HL7 Interfaces – Hospital (two-way) (Pricing based on Netsmart standard HL7 specifications; additional costs with third-party vendor likely will apply).	Interfaces	2	\$15,000	\$30,000
Data Warehouse Middleware – Daily extract of data from the Avatar System to County data warehouse (MS SQL or Oracle database - not included)	Extract	1	\$35,000	\$35,000
Avatar Executive Reporting System – Pre-compiled suite of executive reports so executives can access data quickly and easily.	Module	1	\$50,000	\$50,000
Electronic Signature Module – Allows for capture of graphical image of client signature (requires hardware – see Schedule D – Additional Product and Service Options for signature-pad pricing)	Module	1	\$10,000	\$10,000
Point-of-Service Scanning – Allows for low-volume scanning of documents	Module	1	\$7,500	\$7,500
Batch Scanning – Allows for high-volume scanning (requires third-party Kofax software and additional hardware the cost for which is determine by scanning volumes and numbers of scanning workstations – see Schedule D – Additional Product and Service Options for sample pricing)	Module	1	\$6,500	\$6,500
Core Products Subtotal:				\$758,880

A. Products – One-Time Costs

Revision: February 9, 2010

2. Third-Party Products

Third-Party Product Name – Description	Unit Type	Units	Unit Cost	Total Cost
Intersystems Cache Single-Server – Concurrent Database Licenses – Enterprise Level. Used by Avatar Cal-PM, Avatar Clinician Workstation (CWS), Avatar RADplus, and Avatar MSO.	Concurrent User	163	\$595	\$96,985
Intersystems Cache Multi-Server – Concurrent Database Licenses – Enterprise Level – Required for Avatar ERS and ECP	Concurrent User	163	\$149	\$24,287
Intersystems Cache Test-Server – Concurrent Database Licenses – Enterprise Level – Requires additional server provided by COUNTY	Concurrent User	4	\$579	\$2,316
Third-Party Products Subtotal:				\$123,588

3. Products One-Time Costs Totals

Products	Unit Type	Units	Unit Cost	Total Cost
Core Products Subtotal:				\$758,880
Third-Party Products Subtotal:				\$123,588
Products One-Time Costs Total:				\$882,468

B. Services – One-Time Costs

The following are the fixed-fee CONTRACTOR professional services to implement the BHIS for the COUNTY under this Agreement. The following fixed-fee professional services are based on a fixed scope. If the project scope changes, as stated in the Project Plan, then fees will change accordingly.

1. Core Products Services

Category	Hours	Rate / Hr	Cost	Description
Project Executive	136	\$ 250.00	\$ 34,000.00	Project Management oversight, Steering Committee participation
Project Management	3,200	\$ 165.00	\$528,000.00	Full-time, dedicated Project Manager
Training	828	\$ 193.18	\$159,950.00	Quick start, file build, applications, end-user support
Installation	104	\$ 205.77	\$ 21,400.00	Product installation & configuration (core, 3rd party)
File Build / Development	216	\$ 193.98	\$ 41,899.50	RADplus Screen / Report Creation, HL-7 configuration
Conversion	305	\$ 187.50	\$ 57,187.50	Demographics, Movement History, Managed Care
Go-Live Support	144	\$ 191.67	\$ 27,600.00	Practice Management, Clinician Workstation, Managed Care
InfoScriber Go-Live	40	\$ 193.75	\$ 7,750.00	Installation, training, and implementation services
Total:	4,973	\$ 176.51	\$877,787	

C. Annual-Recurring Costs

The following are the annual-recurring costs for the CONTRACTOR Support Services and other products with annual-recurring costs for the BHIS under this Agreement. Annual Recurring Support costs are for the Term of the Agreement. Prices do not include travel costs or any Optional Products.

Annual recurring maintenance fees are by product line item and are not quantified by units.

1. Core Products Support

Core Product Support Name - Description	Unit Type	Units	Unit Cost	Annual Cost
RADplus named users	NA			\$109,200
RADplus test-server licenses (includes 8 RADplus users)	NA			\$2,100
Avatar Cal-PM	NA			\$2,100
General Ledger Interface (per Netsmart standard specifications)	NA			\$4,200
Avatar Clinician Workstation	NA			\$2,100
Addiction Severity Index	NA			\$1,575
Avatar MobileConnect (number of users can be modified based on County needs – support and licensing amount presented is based on 60 users).	NA			\$5976
Incident Tracking	NA			\$525
Managed Services Organization	NA			\$2,100
HL7 Interfaces (pricing based on Netsmart standard HL7 specifications; additional costs with third-party vendor likely will apply).	NA			\$6,300
Middleware Data Warehouse	NA			\$0
Avatar Executive Reporting System	NA			\$10,500
Electronic Signature Module	NA			\$2,100
Point-of-Service Scanning	NA			\$2,000
Batch Scanning	NA			\$940
Core Products Support Subtotal:				\$151,716

C. Annual-Recurring Costs

Revision: February 9, 2010

2. Third-Party Products

Third-Party Product Name – Description	Unit Type	Units	Unit Cost	Total Cost
Intersystems Cache Single-Server – Concurrent Database Licenses – Enterprise Level. Used by Avatar Cal-PM, Avatar Clinician Workstation (CWS), Avatar RADplus, and Avatar MSO.	Concurrent User	163	\$130.90	\$21,337
Intersystems Cache Multi-Server – Concurrent Database Licenses – Enterprise Level – Required for Avatar ERS and ECP	Concurrent User	163	\$32.78	\$5,344
Intersystems Cache Test-Server – Concurrent Database Licenses – Enterprise Level – Requires additional server provided by COUNTY	Concurrent User	4	\$127.25	\$509
Third-Party Products Subtotal:				\$27,190

3. Other Annual-Recurring Costs

Other Annual-Recurring Cost Name - Description	Unit Type	Units	Unit Cost	Annual Cost
InfoScriber - (195 Named Users: 65 Prescriber FTE, 65 prescribing agent users, and 65 non-prescribing users). Unit Cost is per month	Licenses and Support Per Month	65	\$55	\$42,900
Infoscriber - System Administrator – monthly subscription	Licenses	2	\$15	\$ 360
InfoChannel Application Annual Fee (Optional) – provides ongoing system data transfer to InfoScriber from facility's host system	Annual Fee	1	\$750	\$ 750
BackChannel Application Annual Fee (Optional) – sends data file sent to customer on predetermined frequency for use in reporting back into COUNTY host system	Annual Fee	1	\$750	\$ 750
Other Annual-Recurring Costs Subtotal:				\$44,760

4. Annual-Recurring Costs Total

Support	Total Cost
Core Products Support Subtotal:	\$151,716
Third-Party Products Support Subtotal:	\$27,190
Other Annual-Recurring Costs Subtotal:	\$44,760
Annual-Recurring Costs Total:	\$223,666

D. Total Costs

This section summarizes the totals from the above schedules for one-time and annual-recurring costs for the Term of the Agreement.

Prices do not include additional product and services options listed in Schedule E.

1. Total One-Time and Annual-Recurring Costs

- a. One-Time Products Costs:
These costs are listed in Schedule A.
- b. One-Time Services Costs:
These costs are listed in Schedule B.
- c. Annual Recurring Costs:
These costs include Support and other annual-recurring costs listed in Schedule C.

Total Costs	Schedule	Total Cost
One-Time Products	A	\$882,468
One-Time Services	B	\$877,787
Annual Recurring Costs for 2 Years	C	\$447,332
Escrow Costs for 4 Years	F	\$5,300
Total Cost For Term of Agreement:		\$2,212,887

E. Additional Product and Service Options

Additional CONTRACTOR programs/products, associated support, and/or services may be purchased during the Term of the Agreement. Any Additional, products and/or services must be requested by COUNTY in writing. CONTRACTOR shall invoice COUNTY for Additional Maintenance Support Fees as used.

The following products have not been purchased at the execution of this Agreement. The following pricing will hold firm for the Term of the Agreement. Third Party prices are subject to change. After the Term of Agreement, additional products and services may be purchased at the then-current price.

1. *Products and Services Purchased Under This Agreement*

To purchase additional products, services and annual support for products purchased at Agreement execution see Schedules A, B and C.

2. *Additional/Custom Professional Service Rates*

The following lists the rates for all additional/custom professional services (Development and Implementation) that are available for the Term of the Agreement to meet additional BHIS requirements not included in this Agreement.

Additional/Custom Professional Service Name - Description	Unit Cost (per hour)
Project Executive*	\$250
Project Management*	\$225
End-user Training*	\$187.50
RADplus modeling Assistance*	\$187.50
Conversion*	\$187.50
Netsmart SQL Advanced Data-set Training	\$200
Technical Training*	\$187.50
Development*	\$200

* Note: Travel costs for product and service options are additional as stipulated in Schedule F of this agreement.

CONTRACTOR may provide additional services at an additional charge as specified above. If charges are not identified and included in this Agreement, charges will be at current prices in effect at the time products or services are provided. Any service requested by COUNTY and determined by CONTRACTOR to be billable must be identified as a chargeable service prior to

E. Additional Product and Service Options

Revision: February 9, 2010

the service being performed and must be approved in writing in advance by COUNTY Project Director. Additional products and services include, but are not limited to, the following:

3. Optional and Additional Products

a. New Products:

- Software modules may be developed by CONTRACTOR to address areas of information management not currently or significantly addressed by existing modules. The license for any such "optional" new software modules will be available to COUNTY at the then-current pricing. Currently available software products and annual support at contract execution are outlined in Schedules A and C.

b. Existing Products:

- Prices for additional products and support during the Term of this Agreement are outlined in Schedules A and C.
- The following products have not been purchased at the execution of this Agreement. If they are purchased anytime during the Term of the Agreement, then the following license and annual support rates apply, after that the then current rates apply.

Optional Software Products

Optional Software Product Name - Description	Unit Type	Units	Unit Cost	Total Cost	Annual Cost
Miscellaneous					
Avatar Order Entry	Module	1	\$75,000	\$75,000	\$15,750
Electronic Medication Administration Record (EMAR) up to 100 beds	Module	1	\$100,000	\$100,000	\$21,000
Electronic Medication Administration Record (EMAR) – up to 200 beds	Module	1	\$180,000	\$180,000	\$37,800
Electronic Medication Administration Record (EMAR) – up to 300 beds	Module	1	\$260,000	\$260,000	\$54,600
Electronic Medication Administration Record (EMAR) – up to 400 beds	Module	1	\$330,000	\$330,000	\$69,300
Electronic Medication Administration Record (EMAR) – up to 500 bed	Module	1	\$400,000	\$400,000	\$84,000
Minimum Dataset (MDS)	Module	1	\$7,500	\$7,500	\$1,575
Master Patient Index	Module	1	\$75,000	\$75,000	\$15,750
Client Funds Management System	Module	1	\$50,000	\$50,000	\$10,500

SCHEDULES - E

Contract #: MHARC-92045-019-03/14

E. Additional Product and Service Options

Revision: February 9, 2010

Optional Software Product Name - Description	Unit Type	Units	Unit Cost	Total Cost	Annual Cost
CareLink (Named User License per seat per year). Price increases 5% annually start with year two. Requires minimum of 50 seats and three-year agreement.	Module	1	\$495 each	TBD based on number of licenses selected	
Requires purchase of validated web server hosted by Netsmart Requires minimum of 50 seats and minimum three-year agreement					
Web Services					
Web Services - RADplus -All modeled forms		1	\$50,000	\$50,000	\$10,000
RADplus User Definition – Create User Identity Management		1	\$10,000	\$10,000	\$2,000
RADplus User Definition – Activate User Identity Management		1	\$3,000	\$3,000	\$600
RADplus User Definition – Deactivate User Identity Management		1	\$3,000	\$3,000	\$600
RADplus User Definition – Does User Exist Identity Management		1	\$3,000	\$3,000	\$600
RADplus User Definition – Is User Active Identity Management		1	\$3,000	\$3,000	\$600
RADplus User Definition – Generate Password Identity Management		1	\$3,000	\$3,000	\$600
Avatar PM Practitioner Enrollment Identity Management		1	\$10,000	\$10,000	\$2,000
Avatar PM Identity Management – package		1	\$25,000	\$25,000	\$5,000
Avatar PM Admission A/D/T **		1	\$15,000	\$15,000	\$3,000
Avatar PM Discharge A/D/T **		1	\$5,000	\$5,000	\$1,000
Avatar PM Program Transfer A/D/T **		1	\$5,000	\$5,000	\$1,000
Avatar PM Return from Leaves A/D/T **		1	\$5,000	\$5,000	\$1,000
Avatar PM Individual Cash Posting Client Service and Payment		1	\$10,000	\$10,000	\$2,000
Avatar PM Update Client Data A/D/T **		1	\$10,000	\$10,000	\$2,000
Avatar PM Client Charge Input Client Service and Payment		1	\$10,000	\$10,000	\$2,000
Avatar PM Financial Eligibility **		1	\$15,000	\$15,000	\$3,000
Avatar PM Client Appt. Scheduling		1	\$5,000	\$5,000	\$1,000
Avatar PM Practitioner Termination		1	\$5,000	\$5,000	\$1,000
Avatar MSO Member Enrollment MSO Member Transactions		1	\$15,000	\$15,000	\$3,000

E. Additional Product and Service Options

Revision: February 9, 2010

Optional Software Product Name - Description	Unit Type	Units	Unit Cost	Total Cost	Annual Cost
Avatar MSO Member Termination MSO Member Transactions		1	\$5,000	\$5,000	\$1,000
Avatar MSO Service Authorization MSO Member Transactions		1	\$10,000	\$10,000	\$2,000
Avatar MSO Batch Creation MSO Claims Adjudication		1	\$3,000	\$3,000	\$600
Avatar MSO Create Voucher MSO Claims Adjudication		1	\$3,000	\$3,000	\$600
Avatar MSO Create EOB MSO Claims Adjudication		1	\$3,000	\$3,000	\$600
Avatar MSO Claims Processing MSO Claims Adjudication		1	\$15,000	\$15,000	\$3,000
Wiley Treatment Plan Libraries – Library use by up to 225 named users	Libraries	2	\$8,500	N/A	\$17,000
Optional Software Products Subtotal:					

Optional Hardware Products

Kofax Scanning Hardware/Software and Support:

Pricing based on two scanners and two scanning workstations.

Item	Description	Vendor Part #	Qty	Unit cost	Total
Scanner	Scanner - Fujitsu 6240, 40ppm/80 ipm, 50-page (ADF), Flatbed, Card Scanning with VRS 4.2 Professional, USB Cable, & 1-Year Advanced Exchange	FUJ-FI-6240	2	\$2,495	\$4,990
Scanner Maintenance	Fujitsu Post Warranty Service at Point of Sale 5x9x24 for Advance Exchange on Workgroup Scanners	CG01000-514801	2	\$99	\$198
Language	Kofax Capture v8.0 English	AE#0100-0008.0	2	N/A -	N/A
Concurrent License (1)	1 Concurrent Station	AE#T024001U	2	\$2,205	\$4,410
Image Volume Yearly (1)	Image Volume 300K/yr	AE#Y024300K	2	\$1,600	\$3,200

E. Additional Product and Service Options

Revision: February 9, 2010

SW Assurance	SW Assurance - 1 Year	MC-18000100	2	\$684.90	\$1,369.80
PC	Dell OptiPlex 360 Core 2 Duo E7300/2.66GHz, 2GB memory, and APC Back-UPS ES 750VA	Quote # 471132071 Date: 1/22/09	2	\$1,452	\$2,904

Scanning Workstation Services

Item/Description	Total
Scan Station Build with no on-site installation (The System is Built and shipped from Netsmart's Dublin, Ohio Office). Pricing is based on purchase of hardware from Netsmart.	\$5,000
Installation of Ascent Capture into equipment purchased from another vendor (Services provided at COUNTY site. Kofax Capture must be purchased from Netsmart).	\$9,600

Electronic Signature Pad Devices

Model	Per-unit cost
Topaz SigLite 1x5 S460-HSB	\$95-\$100 depending on number of units purchased
Topaz SigLite Blacklit LCD 1x5 LBK460-HSB	\$230-\$245 depending on number of units purchased
Topaz SignatureGem Blacklit LCD 1x5 LBK462-HSB	\$330-\$360 depending on number of units purchased
Topaz Signature Devices: SignatureGem™ LCD 4X3 USB; T-L755-USB	\$560 per unit

Optional Training Products

Netsmart University

- ASP Full Time (Yearly fee)..... \$75,000**
- 1,000 Seat Licenses for Learning Management System and
 - Unlimited Course Content (includes CEUs)
 - Unlimited Report Generation
 - Supervisor-level access management

E. Additional Product and Service Options

Revision: February 9, 2010

- ASP hosted hardware at Netsmart facility
- Toll-free phone based technical support

Setup & Training (One-time fee)..... \$2,500
First Year Total: \$

Ancillary Products Available

- Articulate Presenter Pro (Course Builder)..... \$799 per copy
(one time fee)
- Quizmaker (Add-on to Course builder).....\$399 per copy
(one time fee)
- Camtasia (Screen Movie Maker).....\$299 per copy
(one time fee)
- Snagit (Screen Recorder).....\$40 per copy
(one time fee)
- BLR (Business & Legal Reports) (HR Database).....\$450 per year

F. Payment Schedule

1. Deliverables, Milestones and Payments

1.	<p><u>Core Licensed Products</u> (Schedule A.1 Core Products)</p> <p><u>Terms:</u></p> <ul style="list-style-type: none"> . Payable in 24 equal monthly installments of \$31,620 commencing on the date of contract signing. 	\$ 758,880.00
2.	<p><u>Third Party Licensed Products</u> (Schedule A.2 Third-Party Products)</p> <p><u>Terms:</u></p> <ul style="list-style-type: none"> . Payable 100% upon installation. 	\$123,588.00
3.	<p><u>Core Products Services</u> (Schedule B.1 Core Product Services)</p> <p><u>Terms:</u></p> <ul style="list-style-type: none"> . 80% of Core Product Services (\$702,240) payable in 24 equal monthly installments of \$29,260 commencing on the date of contract signing. . 20% of Core Product Services (\$175,547) payable upon all contract deliverables being met as previously defined in this Agreement. 	\$877,787
4.	<p><u>Core Products Support</u> (Schedule C.1 Core Products Support)</p> <ul style="list-style-type: none"> . Annual Core Product Support fee is payable on the first day of the twenty fifth (25th) month following contract execution. . Annual Core Product Support fees will only be paid for those products (Practice Management <PM>, Clinician Workstation<CWS>, Managed Services Organization <MCO>) that are being, or capable of being, used for a Productive Use. All Core Products and any Optional products selected during implementation must demonstrate the core functions as defined in this agreement and duties set out herein for the BHIS Implementation Project response to the Request for Proposal. . For the Practice Management application, the ability to file an acceptable HIPAA 837 Medical claim to both the California Department of Mental Health (DMH) and 	\$151,716.00

F. Payment Schedule

Revision: February 9, 2010

	<p>California Department of Alcohol and Drug Programs (ADP) followed by the receipt of an explanation of benefits (EOB HIPAA 835) from both DMH & ADP and upon the first successful production of the Cost Settlement Report constitutes Productive Use, as stated in Schedule I. The rate must be no greater than the State average error rate. Must also be able to extract data out of the application using the General Ledger Interface.</p> <ul style="list-style-type: none"> . For the Clinician Workstation application the ability to enter progress notes, clinical assessments, and treatment plans constitutes Productive Use, as stated in Schedule I. The CWS application must work successfully with the Practice Management application and must NOT result in any increase in error rates when submitting claims to the State. Prior to COUNTY approving Clinical Workstation it must demonstrate that clinical records can be accessed by Quality Improvement with sufficient detail to adequately respond within a timely manner to any State and/or Federal records request and/or audits. . For the Managed Services Organization (MSO) application the ability to enroll members, create service authorizations, and adjudicate claims constitutes Productive Use, as stated in Schedule I. The MSO application must work successfully with the Practice Management application and must NOT result in any increase in error rates when submitting claims to the State. In addition, it must generate Explanation of Benefits (EOBs) and generate Notice of Action (NOAs) that comply with State Medi-Cal requirements. . In the event any of the Core Products have not reached Productive Use, maintenance and support payments will be pro-rated as follows; 50% for Practice Management, 35% for Clinician Workstation and 15% for Managed Services Organization. 	
<p>5.</p>	<p><u>Third Party Products Support</u> (Schedule C.2 Third Party Products Support)</p> <ul style="list-style-type: none"> . Annual Intersystems Cache maintenance and support is payable upon installation. . Annual Intersystems Cache maintenance and support amount is distributed across the three licensed products listed in Schedule A as follows; Cache Single Server (\$21,337), Cache Multi-Server (\$5,344) and Cache Test Server (\$509). 	<p>\$ 27,190</p>
<p>6.</p>	<p><u>Other Annual-Recurring Costs</u> (Schedule C.3 Other Annual-Recurring Costs)</p>	<p>\$ 44,760</p>

	<ul style="list-style-type: none"> InfoScriber annual recurring costs payable in 12 equal monthly installments of \$ 3,730 commencing on the first day of the first month following installation. 	
7.	<p><u>Escrow Charges</u> (Escrow Services)</p> <ul style="list-style-type: none"> <u>Three Party Escrow Agreement with Iron Mountain Intellectual Property Management, Inc.</u> <u>Once time Escrow set-up fee of \$2,500 due upon software installation.</u> <u>Annual Escrow deposit fee of \$700 due upon software installation.</u> 	\$ 3,200

2. Additional Products

- a. Existing Products:
 - Additional licenses for currently available products during the Term of this Agreement are outlined in Schedules A and B.

3. Additional Services

- a. Additional services are available upon request following written authorization on a time and materials basis, at CONTRACTOR then current daily rate, payable thirty (30) days after billing.

4. Travel and Living Expenses

- a. All travel and living expenses shall be pre-approved by the COUNTY Project Director. Travel and living expenses are only applicable to additional products and services that are not part of the initial products and services as stated in this Agreement
- b. All travel and living expenses shall be reimbursed in accordance with the current per diem rates established in the Board of Supervisors' County Travel Policy D-1. COUNTY and CONTRACTOR shall mutually agree on what constitutes reasonable levels of expenses in each of the following categories:
 - **Travel Time**
 - **Scheduled Travel and Living Expenses: Meals:** will be billable at the current COUNTY Per Diem rates for Meals.

F. Payment Schedule

Revision: February 9, 2010

- **Vehicle:** will be billable at the current COUNTY Mileage reimbursement Rates.
- **Airline Travel**
- **Rental Car**
- **Ancillaries:** Gas, Tolls, Parking. Rental auto for every two (2) CONTRACTOR employees.
- **Hotel:** At reasonable local rates

5. *Shifting of Funds*

Funds can be shifted on the payment schedule with written approval from the COUNTY as long as the total amount is not increased.

G. Statement of Work (Scope and Deliverables)

The following is the Preliminary Statement of Work for the BHIS Implementation Project. The Preliminary Statement of Work and the Preliminary Project Plan (Attachment 1) will be used to create their respective baselines after the Execution of this Agreement and during the Planning Phase of the BHIS Implementation.

The Statement of Work provides a documented basis for making future project decisions and for confirming or developing common understanding of project scope among the stakeholders. As the project progresses, the Statement of Work may need to be revised or refined to reflect approved changes to the scope of the project. Scope changes may require additional CONTRACTOR professional services which shall be paid for in compliance with rates and terms outlined within this Agreement. Changes during the Execution Phase must go through a Change Control Process.

1. Scope of Work

Defines the work to be done in detail and specifies the hardware and software involved and the exact nature of the work to be done.

- a. The COUNTY is seeking to replace two existing core legacy applications (InSyst and eCura) with a California Ready, integrated and state-of-the-art Behavioral Health Information System (BHIS) solution that will integrate Practice Management, Billing, Managed Care, and Clinical Electronic Health Record functionality for in-house operations. The BHIS will support all Mental Health and Substance Abuse programs at the COUNTY.
- b. The BHIS software shall conform substantially to the functional and technical (non-functional) requirements as specified in the software requirements specifications describing the Scope of Work that will consist of the following:
 - RFP #MHARC-050.
 - CONTRACTOR Response to RFP #MHARC-050.
 - CONTRACTOR BHIS product documentation and user guides both current and future revisions.
 - Any additional or updated requirements written into the Statement of Work after execution of this Agreement. This may be done during the Planning Phase of the BHIS Implementation Project if additional requirements are discovered. The Statement of Work is a living document so it may be updated with approval of COUNTY and

G. Statement of Work (Scope and Deliverables)

Revision: February 9, 2010

CONTRACTOR anytime during the BHIS Implementation Project. During the Execution Phase of the project, changes to the Statement of Work will require the changes to go through the Change Control Process.

- c. The BHIS will provide functionality which meets the following COUNTY business needs as stated in the Agreement:
- Client Provider, Practice Management
 - Call Management
 - Managed Care
 - Eligibility Verification
 - Claims Processing
 - Coordination of Benefits (COB)
 - Electronic Clinical Records
 - Electronic Digital Signatures
 - Electronic Prescription
 - Report Writing
- d. Component Replacement
- COUNTY retains the right to discontinue the use of a given component (such as Electronic Prescriptions) and to substitute a third-party component. Maintenance charges would be stopped on the discontinued component. Standard charges, as defined in this Agreement, would be applied in adapting the new component to the system. All substitutions shall require written notice of at least thirty (30) days prior to discontinuance.
- e. Additional Software Requirements
- During the Planning Phase of the BHIS Implementation Project additional requirements may be defined for but not limited to the following. These additions may require adjustments to project costs and time which will be reflected in adjustments to the Agreement charges and payments and the Project Plan.
- Custom Software
 - Requests for supplemental programming or customization of the BHIS features not covered under this Agreement are available to COUNTY during the Planning Phase. Such requests will be reviewed by CONTRACTOR and must be requested in writing in advance by COUNTY.

G. Statement of Work (Scope and Deliverables)

Revision: February 9, 2010

- Charges will be at rates identified for the Term of this Agreement.
- Specifications for any custom work must be approved by the COUNTY and CONTRACTOR in writing before any work is commenced.
- Appropriate changes to this Agreement and associated project management documentation for all custom programming will be made at the time the specifications are agreed upon. This includes but may not be limited to updates to the following documentation.
 - Agreement Charges and Payment Plan (Cost)
 - Statement of Work (Scope)
 - Project Plan (Time)
 - Risk Plan
 - Acceptance Test Plan
- Training:
 - Additional training at a COUNTY facility is available upon request by COUNTY under the terms of this Agreement.
 - All training will be performed pursuant to a Training Plan that trains COUNTY trainers that is mutually agreed to by CONTRACTOR and COUNTY.
 - Training will be provided in a classroom setting at COUNTY facilities. CONTRACTOR will provide onsite trainers at COUNTY-specified locations to which the trainees would travel. CONTRACTOR will provide training of COUNTY trainers who then will be responsible for training end users of the system, except where resources are designated specifically for end-users.
 - The training will be provided on the actual, installed BHIS operating in a training environment. This approach is to fully impart the most user familiarity with BHIS set-up and ongoing operations. Actual codes, tables, administrative reporting units, etc., are utilized in training sessions. This process helps users understand not only how their BHIS is organized during set-up, but also how the BHIS tables can be modified over time.
- Training of Trainers
 - CONTRACTOR will design a training schedule for COUNTY that is synchronized with the master implementation schedule. CONTRACTOR recommends that training be conducted over a sufficient period of time to allow trainees to absorb the new information. This training schedule is intended to offer the

G. Statement of Work (Scope and Deliverables)

Revision: February 9, 2010

opportunity to experiment and practice with the new BHIS between training sessions. These BHIS practice drill periods are absolutely essential because critical procedural issues and questions often arise during this period and thus, can be addressed in a timely fashion.

- The objectives of the "train-the-trainer" approach are two-fold.
 - To provide initial training in enough depth and to a large enough number of COUNTY staff to ensure that sufficient competence and confidence will exist to deploy the BHIS in the manner intended.
 - To provide a framework for ongoing in-house training and staff development on the BHIS to ensure continued future competence.
- Data Conversion
 - Conversion is the services for converting historical and other data for processing by the BHIS. Converted data is data which has been successfully converted by CONTRACTOR for processing by the BHIS.
 - CONTRACTOR will outline a plan for a comprehensive conversion of data from the current COUNTY Legacy System to the BHIS during the Planning Phase.
 - The conversion of data from Legacy System to BHIS plays a critical role in bringing the new application into operation. The data conversion plan will define the primary objectives, record types and process for conversion. Specific file layouts, load and error processes, data extracts and data conversion staging and sequential processing will be developed as part of the initial technical review of the project.
 - CONTRACTOR will convert at a minimum:
 - Basic client information including demographic and movement history.
 - Service / clinical data including diagnosis history, assessments, and service history.
 - Billing will not require that history or balances be converted. Billing will start clean.
 - Such conversion will be based on COUNTY-defined date ranges for date-sensitive data.
- Interfaces

G. Statement of Work (Scope and Deliverables)

Revision: February 9, 2010

- CONTRACTOR will support the use of point-to-point, HL-7, ODBC or API integration techniques. COUNTY and CONTRACTOR will be included in the Scope of Work section of the Statement of Work after Agreement execution and during the Planning Phase of the BHIS Implementation Project. Both parties will agree in writing prior to the commencement of coding. A development, testing and documentation deliverable process will be agreed to in writing by both parties. COUNTY reserves the right to eliminate or substitute any interface. Variance from CONTRACTOR standard HL7 specifications may result in additional costs. These interfaces will be installed, tested and accepted as set forth in the Project Plan and Acceptance Test Plan.
- Workflow
 - New requirements for the BHIS based on the Workflow Analysis of the COUNTY business processes will be included in the Scope of Work section of the Statement of Work after Agreement execution and during the Planning Phase of the BHIS Implementation Project.
- Reports
 - Requirements for Reports beyond the standard reports included in the BHIS will be included in the Scope of Work section of the Statement of Work after Agreement execution and during the Planning Phase of the BHIS Implementation Project.
- f. Technical Requirements Specifications

The BHIS shall conform to non-functional (technical requirements) as specified in RFP, RFP Response and the Statement of Work including the following performance requirements.

 - Response Times
 - CONTRACTOR must meet the following response time performance standards for the system, as defined in the Agreement. CONTRACTOR shall not be responsible for performance of the system due to variables outside CONTRACTOR control, including but not limited to: COUNTY desktop PC speed and COUNTY LAN speed.
 - **Record Search and/or Retrieval Time:** The time elapsed after the search command is entered until the list of matching records begins to appear must not exceed 4 seconds for 95% of all record searches/retrievals.
 - **Screen Edit Time:** The time elapsed after the last field is filled on the screen and the enter command executed until all fields

G. Statement of Work (Scope and Deliverables)

Revision: February 9, 2010

entries are edited and the screen refreshed with the errors highlighted must not exceed 2 seconds for 95% of the time.

- **Next Screen Page Time:** The time elapsed from the request of a new screen until the new screen and data appears must not exceed 5 seconds for 95% of the time.
- **Print Initiation Time:** The elapsed time from the command to print a product standard screen or report until it starts being built in the appropriate queue must be within three seconds for 98% of the time. This benchmark shall not be applicable for custom inquiries or ad-hoc reporting.

- o Response time performance standards must be measured over a minimum period of 2 hours. Response times do not include any wide area network delays.

g. COUNTY Hardware and Software Minimum Requirements

COUNTY will, at its own expense, provide all necessary COUNTY software and COUNTY hardware required to operate the BHIS. If COUNTY does not purchase hardware from CONTRACTOR, then COUNTY hardware shall meet or exceed CONTRACTOR recommendations as defined below. COUNTY shall be responsible for the proper installation and availability of the hardware in accordance with the time frames set forth in the Project Plan.

The CONTRACTOR acknowledges that the hardware configuration specified below will meet the requirements for system performance and integrity. COUNTY certifies that the minimum hardware requirements specified below by the CONTRACTOR for workstations and servers have been met.

Hardware:

- Servers

Primary Server Purpose	Qty	Number of Processors per Server	OS	Processor Speed (MHz)	Memory (GB)	Storage (GB)	Misc.
Web / Middleware Server	2	2 – Dual Intel Xeon	Windows Server 2003/2008	2.8 GHz or greater	4 or greater	RAID Controller (126MB – 256MB Cache) 146GB 10K or 15K RPM SCSI Hard Drives (Quantity of 2 – RAID 1 configuration)	<ul style="list-style-type: none"> • TCP/IP Network Adapter • Redundant Power Supplies • CD Drive
ECP – Distributed Real-Time Report Processing	2	2 – Dual Intel Xeon	Windows Server 2003/2008	2.8 GHz or greater	16	RAID Controller (126MB – 256MB Cache) 146GB 10K or 15K RPM SCSI Hard	<ul style="list-style-type: none"> • TCP/IP Network Adapter • Redundant Power

G. Statement of Work (Scope and Deliverables)

Revision: February 9, 2010

Primary Server Purpose	Qty	Number of Processors per Server	OS	Processor Speed (MHz)	Memory (GB)	Storage (GB)	Misc.
						Drives (Quantity of 2 – RAID 1 configuration)	<ul style="list-style-type: none"> Supplies CD Drive
Database Server	2	2 – Dual Intel Xeon	Windows Server 2003/2008	2.8 GHz or greater	32	<ul style="list-style-type: none"> 146GB SCSI Hard Drives (Quantity of 2 – RAID 1 configuration – OS/Journal Files) 300GB SCSI Hard Drives (Quantity of 6 – RAID 10 configuration – Database Files #1) 300GB SCSI Hard Drives (Quantity of 6 – RAID 10 configuration – Database Files #2) <p>The number of disks are utilized primarily for performance sake</p>	<ul style="list-style-type: none"> TCP/IP Network Adapter Redundant Power Supplies CD Drive
Shadow Server	1	2 – Dual Intel Xeon	Windows Server 2003/2008	2.8 GHz or greater	16	300GB SCSI Hard Drives (Quantity of 4– RAID 5 configuration)	<ul style="list-style-type: none"> TCP/IP Network Adapter Redundant Power Supplies CD Drive
Test Server	1	2 – Dual Intel Xeon	Windows Server 2003/2008	2.8 GHz or greater	16	300GB SCSI Hard Drives (Quantity of 4– RAID 5 configuration)	<ul style="list-style-type: none"> TCP/IP Network Adapter Redundant Power Supplies CD Drive
Data Warehouse Server	1	2 – Dual Intel Xeon	Windows Server 2003/2008	2.8 GHz or greater	16	300GB SCSI Hard Drives (Quantity of 4– RAID 5 configuration)	<ul style="list-style-type: none"> TCP/IP Network Adapter Redundant Power Supplies CD Drive

G. Statement of Work (Scope and Deliverables)

Revision: February 9, 2010

- Client Workstations (Desktop/Laptop)

Client Workstation	Operating System	Processor Type/Speed (MHz)	Memory (GB)	Browser Level	Required Disk Space
Desktop / Laptop	Windows 2000 or Greater	Pentium IV or greater 2.8 GHz	1 GB or greater	IE 6 or greater	500 MB of free space (recommend 2GB of free space)

- Peripherals
 - Electronic Signature Devices
 - See Schedule D – Additional Products
 - Printers
 - No Specific Minimum Requirements
 - Scanners
 - See Schedule E – Additional Products

Software:

- Reporting
 - Latest Enterprise Version of Crystal Reports
- Data Warehouse
 - Latest Version of MS SQL

h. Resource Requirements

The resource requirements including roles, responsibilities and communication will be finalized during the Planning Phase in the following documents which are attachments that are part of the Project Charter.

- Resource Plan
- Communication Plan

G. Statement of Work (Scope and Deliverables)

Revision: February 9, 2010

2. Location of Work

Describes where the work is to be performed. This also specifies the location of hardware and software and where people will meet to perform the work.

a. Facilities and Preparation

- COUNTY will, at its own expense, provide all necessary labor and materials for site preparation, electrical services, and cabling required for BHIS installation, testing and implementation.

b. Hardware

- All hardware for the BHIS will be located within COUNTY facilities.

c. Software

- All software for the BHIS will be installed on COUNTY hardware.

d. Services

- All services will be performed at COUNTY facilities except those CONTRACTOR services that can be performed remotely without adversely affecting the BHIS Implementation Project.

3. Project Timeline

This describes the basic project timeline for the BHIS Implementation Project with the size characteristics of the COUNTY. This section specifies the allowable time for the project, such as start and finish time (time frame), number of hours that can be billed per week or month, and anything else that relates to scheduling.

a. Start

- The BHIS Implementation Project starts with the Planning Phase immediately after the execution of this Agreement.

b. Duration

- The BHIS will be implemented by the end of year 2. The Maintenance Period shall commence upon upon final system acceptance as defined in Schedule I of this Agreement. It is expected that this will be years 3 and 4 of the term of this Agreement

c. Finish

- All deliverables in this Agreement will be implemented into production and this BHIS as specified in this Agreement will be completely operational and the Closure Phase of the BHIS Implementation Project will be completed.

G. Statement of Work (Scope and Deliverables)

Revision: February 9, 2010

- d. Post BHIS Implementation Project
 - The Maintenance Period will commence upon final systems acceptance.
 - After the Maintenance Period is completed, subsequent agreements will be established for maintenance and support.

4. Deliverables Schedule

This section lists the high-level deliverables, describing what is due and when. This section shall identify each major task and necessary subtasks in the Scope of Work. This section will reference the Project Plan for details.

- a. High-Level Deliverables
 - Planning Phase
 - Project Management documentation as described in the Project Management Schedule.
 - Execution Phase
 - Phase I (BHIS Core)
 - Practice Management
 - Billing
 - Managed Care
 - Phase I will address the following:
 - The initial contact with the client and extends to client registration, scheduling, service entry, and billing. As core administrative and revenue-related processes, accuracy and reliability are critical. This phase concentrates on this process. Eligibility, claims and billing, provider management and managed care operations must be blended to enable effective electronic operations which facilitate the provision of services through the appropriate, cost-effective, coordinated, and useful application of the BHIS.
 - Data must flow seamlessly and is to be picked up and shared, redistributed and passed to appropriate components such as Medi-Cal. This allows for maximization of State and Federal reimbursement via online eligibility processes, the coordination of benefits and other California-specific billing functionality within the BHIS.

G. Statement of Work (Scope and Deliverables)

Revision: February 9, 2010

- Other components of this phase must include State and Federal reporting, support of authorization of services, adjudication of claims and payment, and re-billing of provider claims.
- o Phase II (BHIS Electronic Health Record)
 - Clinical
- o Phase II will address the following:
 - Phase II adds the electronic health/clinical record (EHR.), based on and integrated with the Phase I components, and will provide a seamless, single interoperable system. The EHR utilizes data starting from point of entry, billing, quality management, progress notes, treatment plans, and assessments (including customized protocol or survey templates). The EHR will support electronic medication management services and facilitate clinical management. Reporting capacity will encompass utilization review, outcomes analysis, and other quality management standards.
- b. Payment Schedule
 - The Schedule F - Payment Schedule include herein includes the high-level deliverables and their associated payment milestones.
- c. Project Plan (Attachment 1)
 - The Project Plan describes in detail the deliverables schedule.

5. Resources

Identify who will have primary responsibility for each activity and what duties they will perform with regards to the BHIS. Resources will be included in

- a. Resource Plan
 - Describes all resources and their roles and responsibilities.
 - Completed during Planning Phase.
- b. BHIS Project Plan
 - Lists resources with the task they are assigned to and the duration for completing the task.
 - Completed during Planning Phase.

6. Applicable Standards

This section describes any industry specific standards that need to be adhered to in fulfilling the contract. The Project Management, Test and Acceptance and

G. Statement of Work (Scope and Deliverables)

Revision: February 9, 2010

Support Schedules in this Agreement have many of the applicable standards. The Resource, Communications, Change Management, Quality and Risk Plans to be prepared in the Planning Phase will describe more standards.

- a. Project Management Schedule
 - Describes the Project Management standards that will be followed for the BHIS Implementation Project. It includes the description of the phases within project management lifecycle and the processes and documentation that will be complete to successfully implement the BHIS.
- b. Support Services Schedule
 - Describes the standards and procedures for the Support and Maintenance of the BHIS. See also Schedule J.

7. Acceptance Criteria

Specifies how the COUNTY, buyer or receiver of goods, will determine if the products or services are acceptable by meeting the BHIS requirements identified in the Scope of Work and what criteria will be used to state the work is acceptable. This will be specified in detail in the Acceptance Test Plan.

- a. Acceptance Test Plan
 - The Acceptance Test Plan will be prepared during the Planning Phase of the BHIS Implementation Project. This will specify the acceptance criteria for all deliverables of the BHIS.

8. Special Requirements

This section specifies any special requirements not covered in this Agreement.

- a. Any special requirements not in this Agreement will be defined during the Planning Phase of the BHIS Implementation Project.
- b. Possible Special Requirements are:
 - Special hardware.
 - Special software.
 - Special resources.

9. Assumptions, Constraints and Risks

These will be defined during the Planning Phase in the following documentation.

- a. Project Charter

G. Statement of Work (Scope and Deliverables)

Revision: February 9, 2010

- Detailed Assumptions and Constraints plus high-level Risks.
- b. Risk Plan
 - Detailed Risk Analysis and Mitigation Plan

H. Project Management

1. Principles and Practices

- a. Project Management of the BHIS Implementation Project will follow closely to the principles and practices set forth in the current Project Management Body of Knowledge (PMBOK Guide by the Project Management Institute (PMI)).
- b. The PMBOK Guide identifies and describes the project management body of knowledge that is generally accepted. Generally accepted means that the knowledge (principles) and practices are applicable to most projects most of the time, and that there is widespread consensus about their value and usefulness. Generally accepted does not mean that practices are, or will be, applied uniformly on all projects.
- c. The CONTRACTOR Project Management Team will assist the COUNTY Project Management Team with determining the PMI Project Management Lifecycle processes and artifacts appropriate for this project. They will be stipulated and agreed upon in the Project Charter during the Planning Phase of the Project.
- d. The Project Management team is responsible for selecting appropriate processes to meet/comply with project requirements and balance the "triple constraints" (time, scope, and budget) of the project.
- e. To manage the BHIS Implementation Project the CONTRACTOR in conjunction with COUNTY shall adhere to the Project Management Nine Areas of Knowledge which include the Five Phases of the Project Management Lifecycle as listed below.
- f. Project Management Phases:
 - Initiation – RFP Evaluation/Award , Contract Negotiations and Agreement
 - Planning – Plan Implementation Activities
 - Execution – Perform Implementation and Control Activities
 - Closure – Close the BHIS Implementation Project continue with support/maintenance

2. Initiation Phase

- a. After the RFP selection process, the CONTRACTOR and COUNTY will collaborate in the preparation of the BHIS Agreement.
- b. At the execution of the BHIS Agreement the Planning Phase will begin.

3. Planning Phase

The CONTRACTOR and COUNTY will collaborate in the procedures and documentation for the Planning Phase of the BHIS Implementation Project.

Upon contract execution, a California-based project manager with prior experience in managing California clients of this scope and nature will be assigned to the COUNTY. Working with key personnel, the project manager will prepare the Planning Phase documentation listed below.

a. Project Charter

The Project Charter will be prepared at the start of the Planning Phase of the Implementation. The Project Charter will form the foundation for the management of the BHIS Implementation Project. The Project Charter will be considered a living-document that will be updated as needed throughout the Implementation. The Project Charter will be considered part of this Agreement. Each revised Project Charter shall be incorporated herein upon its Acceptance by COUNTY and CONTRACTOR.

Project Charters vary in specific content, but most include:

- Project objective statement – Identify the project vision and objectives
- High-level scope statement, describing all expected deliverables. Define the complete scope of the project. List all of the critical project deliverables
- Description of the expected users or customers
- The business case for the project (benefit or return on investment analysis)
- Rough cost estimates
- Target milestones and deadlines. Document the overall Project Plan
- Project leader and initial staffing information. State the customers and project stakeholders. List the key roles and their responsibilities
- Identified dependencies
- Key constraints and assumptions
- Known issues and high-level risks

b. Statement of Work (Project Scope)

- The Preliminary Statement of Work is in Schedule G. A baseline version of the Statement of Work will be created in the Planning Phase. The baseline version will include updates to project scope discovered during the Planning Phase. The Statement of Work will be considered a

H. Project Management

Revision: February 9, 2010

living-document that will be updated as needed throughout the Implementation. The Statement of Work will be considered part of this Agreement. Each revised Statement of Work shall be incorporated herein upon its acceptance by COUNTY and CONTRACTOR.

c. **Resource Plan and Communications Plan**

- During the Planning Phase the Resource Plan and Communication Plan will detail further the final Project Team roles and responsibilities and communication lines.

d. **Project Plan**

- The Project Plan will be used to track the completion of tasks necessary for the phased implementation of the BHIS. The first baseline Project Plan will be prepared during the Planning Phase of Implementation. A Preliminary Project Plan is included as Attachment 1. The Project Plan will be considered a living-document that will be updated as needed throughout the Implementation. The Project Plan will be considered part of this Agreement. Each revised Project Plan shall be incorporated herein upon its Acceptance by COUNTY and CONTRACTOR.

e. **Change Management Plan**

- During the Planning Phase the Change Control Process will be finalized in the Change Management Plan.
- A Change Management Plan helps control the effect of changes during the Execution Phase, thereby avoiding overruns in cost and schedule, incoherent scope and poor quality. The Change Management Plan is critical to the success of the project. There will be no change without evaluation and approval as specified in the Change Control Process.
- The Change Control Process will apply to base lined work products created or managed by the Project Team, including:
 - Hardware and Software that has been released to production.
 - Project Requirements Specifications.
 - Project procedures and processes.
 - User and technical documentation

f. **Quality Plan**

g. **Risk Plan**

h. **Acceptance Test Plan**

- See the Schedule for Test and Acceptance for further description.

H. Project Management

Revision: February 9, 2010

The Project Charter, Project Plan and Statement of Work are living documents that may be modified during the lifecycle of the BHIS Implementation Project based on changes in cost, scope, cost, and time (schedule). Or other factors like risks and constraints that may affect the project. The Statement of Work and Project Charter will be updated if needed before making updates to the Project Plan.

The Preliminary Project Plan is attached to this Agreement as Attachment 1. The Preliminary Statement of Work is included in this Agreement as Schedule G. These initial documents will only serve as a basis for the Final Statement of Work and Project Plan will be prepared during the Planning Phase to reflect any changes in Scope, Time and Cost before moving to the Execution Phase. Changes during the Execution Phase must go through the Change Management/ Change Control Process.

The Project Plan will be completed after the Statement of Work in the Planning Phase of the Implementation. The Project Charter, Statement of Work and Project Plan must be prepared to the satisfaction of the COUNTY and CONTRACTOR Project Management Team along with the other artifacts of the Planning Phase before the Execution Phase of the BHIS Implementation Project can begin.

Documents prepared or completed during the Planning Phase shall be considered part of this Agreement.

4. Execution Phase

The CONTRACTOR and COUNTY will collaborate in the procedures and documentation for the Execution and Control Phase of the BHIS Implementation Project. The following project management processes will be followed during the Execution Phase when the project deliverables are prepared, tested and deployed to production.

- a. Time Management Process
- b. Cost Management Process
- c. Quality Management Process
- d. Change Management Process
- e. Risk Management Process
- f. Issue Management process
- g. Acceptance Management Process
- h. Communications Management Process

H. Project Management

Revision: February 9, 2010

During the Execution Phase detailed weekly progress reports will be prepared by the CONTRACTOR and depending on the state of the implementation onsite meetings monthly or biweekly will be planned with the appropriate COUNTY staff to ensure compliance with schedules and plans and processes.

5. Closure Phase

The CONTRACTOR and COUNTY will collaborate in the procedures and documentation for the Closure Phase of the BHIS Implementation Project.

- a. Project Closure Report
- b. Post Implementation Review

I. Testing and Acceptance

The following describes the process and procedures for the Testing and Acceptance of each deliverable comprising the implementation of the COUNTY BHIS under this Agreement.

1. Acceptance Test Plan

- a. The Acceptance Test Plan will be prepared during the Project Planning Phase of the BHIS Implementation Project by the CONTRACTOR and COUNTY in collaboration.
- b. The Acceptance Test Plan will describe in detail the formal process for the testing and acceptance of the licensed, third-party, and custom products/deliverables to be implemented by the CONTRACTOR in accordance with the Project Plan, Statement of Work and the system requirements (functional and non-functional/technical) for the entire BHIS.
- c. The Acceptance Test Plan will describe the following:
 - Products/deliverables to be tested during implementation of the entire system.
 - Test activities including the sequence and types of tests for each deliverable
 - The criteria and standards to be met, the approval steps, formal communication and the plan for their completion
 - COUNTY and CONTRACTOR roles and responsibilities
 - The test cases/scripts, test data, and acceptance criteria for each deliverable/product with traceability to the requirements specifications.
 - The test results recording and reporting
 - Deficiency reporting and resolution
 - Deficiency dispute resolution

2. Acceptance Test Plan Approval

- a. The Acceptance Test Plan will receive formal approval by COUNTY and the CONTRACTOR as an agreement of the test and acceptance tasks to be undertaken for each product/deliverable. The formal approval of the Test Acceptance Test Plan will take place during the Project Planning Phase and before the Project Execution Phase.

I. Testing and Acceptance

Revision: February 9, 2010

3. Setup Test Environment

- a. The CONTRACTOR will assist COUNTY with creating a test environment (hardware, software and data) to simulate the actual production environment for performing CONTRACTOR system testing and COUNTY user Acceptance Testing on each product/deliverable.

4. Acceptance Testing

- a. Acceptance Testing can start only after the CONTRACTOR has completed system testing and certified that the deliverable is ready for Acceptance Testing in accordance with the Test Plan.
- b. Acceptance Testing will be performed by actual COUNTY users with assistance as needed from the CONTRACTOR and COUNTY Implementation Team members. The actual policies, procedures, manuals, operations, organization structure and controls that will be in place and required to meet the acceptance criteria (objectives) of the system must be used in the tests.
- c. The Acceptance Testing will be conducted using the Test Cases and Test Data specified in the Test Plan which are mapped to their corresponding functional and technical requirements specifications. Acceptance criteria (objectives) specified in the Test Plan will be used to determine whether specified requirement is met.
- d. The COUNTY will communicate deficiencies discovered back to the CONTRACTOR in the form of an Acceptance Test Report as specified in the Test Plan. The CONTRACTOR will correct the deficiencies within a time frame specified in the Test Plan. After the deficiencies are corrected the CONTRACTOR will notify the COUNTY so the COUNTY can conduct regression tests. The cycle of deficiency correction and regression testing will occur until deficiencies are at a level for Acceptance as specified in the Test Plan.

5. Acceptance Testing Approval

- a. Acceptance Testing will be deemed successful when all mutually agreed upon deficiencies have been corrected and the deliverable meets the acceptance criteria specified in the Test Plan.
- b. Upon successful Acceptance Testing, the COUNTY will provide formal notification and a signed acceptance test report to the CONTRACTOR to certify that the product/deliverable is ready for deployment to the production environment.

I. Testing and Acceptance

Revision: February 9, 2010

6. Production Deployment

- a. Upon Production Deployment of any component or part of the system, Go-Live or First Production Use can commence.
- b. First Production Use is the date on which COUNTY processes live data using any part or portion of the deliverable deployed to production.
- c. Go-Live is the mutually agreed to date of the First Productive Use of any part or portion of the deliverable deployed to production.
- d. Production Deployment will be performed by the COUNTY with observance and assistance by CONTRACTOR staff. Deployment to production of a deliverable can only occur after it has received Acceptance Testing Approval by the COUNTY.

7. Production Monitoring

- a. The COUNTY with assistance from the CONTRACTOR will perform Production Monitoring for a deliverable after its deployment to the production environment to determine whether the deliverable performs without deficiency and meets production acceptance criteria for a full production cycle as specified and agreed upon in the Acceptance Test Plan.
- b. Production Deficiency Correction and Regression Testing Cycle:
 - If a deficiency occurs it will go thru a correction and regression cycle until resolved.
 - Deficiencies must be reported to the CONTRACTOR in writing. The CONTRACTOR will resolve Deficiencies and notify the COUNTY of defect resolution

8. Deficiency Dispute Resolution

The CONTRACTOR shall correct mutually agreed upon deficiencies within the time frames outlined in Schedule J of this agreement.

9. Production Approval

- a. Production Monitoring for a deliverable will be deemed successful after all deficiencies, mutually agreed upon, are corrected and the acceptance criteria for a full production cycle has been met as specified in the Test Plan.
- b. Upon the successful completion of production monitoring for a deliverable, COUNTY shall grant written production acceptance of the deliverable to be signed by both COUNTY and CONTRACTOR.

10. *Production Use*

- a. Upon completion of production monitoring and production acceptance the entire deliverable will be in Production Use. Payment of holdback will commence and Support/Maintenance service and payment will continue as started from Installation of any component of the system or deliverables (Production Deployment).

11. *Final System Approval*

- a. Occurs with the formal written acceptance of the entire BHIS signed by both the COUNTY and CONTRACTOR when all deliverables/products are in production use and all holdbacks have been paid. In the event of delay or suspension of scheduled project milestones through no fault of CONTRACTOR, the COUNTY will consider in good faith the release of payment and holdback for completed work in production.
- b. When completed the BHIS Implementation Project will be officially closed and Support/Maintenance will continue for the Term of the current Agreement from the time of Installation.

J. Maintenance and Support Services

The Support Services described in this Schedule shall be performed by the CONTRACTOR subject to the terms and conditions of this Agreement.

Support Services will commence upon Installation of any aspect of the BHIS. Support Services includes both Maintenance and Support functions to be performed by the CONTRACTOR. Payment for Maintenance and Support Services are stipulated in Schedule F.

For enhancements, updates and new products CONTRACTOR will provide COUNTY staff with instruction for loading them to the current BHIS and will be subject to the same Support Services described here.

1. Support

- a. Support shall be the technical and functional services and information to assist COUNTY in the use of the BHIS in whole or in part.

2. Maintenance

- a. Maintenance is the act of making changes and corrections in the BHIS software to fix deficiencies discovered in Production Use.

3. Support Services

- a. Support Services shall include both Maintenance and Support functions to be performed by the CONTRACTOR. Support Services shall begin upon Installation of any component of the system or deliverable.
- b. If optional hardware and third party product support is contracted for by the COUNTY under this Agreement, hardware and software purchased from the CONTRACTOR by the COUNTY and implemented as deliverables to operate the BHIS shall be included in Support Services.
- c. CONTRACTOR will maintain the then current version of the BHIS products including enhancements, updates and new products to perform without deficiency for the Term of the Agreement and shall conform in all material respects with its specifications and the terms of this Agreement as amended from time to time by CONTRACTOR or the BHIS requirements set forth in this Agreement, and with applicable State and Federal regulatory requirements and laws including but not limited to CSI, Cal-OMS and MHSA data collection and reporting requirements.

J. Maintenance and Support Services

Revision: February 9, 2010

- d. The CONTRACTOR should maintain the BHIS software to conform to Industry standards for web-based database applications. The CONTRACTOR BHIS software should be no more than one version behind in compliance with the latest infrastructure software, including but not limited to the OS (i.e. MS Windows), MS Internet Explorer, MS Office, The CONTRACTOR shall have an initial Support Services warranty period for each deliverable included as a part of the standard annual paid maintenance services. The initial warranty period shall be at least 12 months (1 year) for each deliverable commencing on the first day of the month ("Anniversary Date") following the installation use of CONTRACTOR deliverables. During this time and for as long as the COUNTY is in good standing on annual maintenance plans the CONTRACTOR will correct any deficiencies in or provide a commercially reasonable alternative for a deliverable in production use that prevents it from operating in conformance with its original requirements as defined in this Agreement.
- e. COUNTY shall provide and maintain, at its expense, the hardware and/or software required to allow CONTRACTOR to access COUNTY system remotely to perform Support Services. COUNTY shall also provide CONTRACTOR with appropriate access credentials.
- f. COUNTY and CONTRACTOR may mutually agree to on-site visits in cases where remotes services will not solve the problem. The CONTRACTOR will notify COUNTY of any applicable charges for the on-site Support Service.

4. Support Services Charges

- a. Support Service charges for the Term of the Agreement are defined in the Payment Schedule of this Agreement.
- b. After the initial Term of Agreement, Support Services shall be automatically renewed on an annual basis unless either party gives the other written notice of termination not less than sixty (60) days prior to the Anniversary Date concerned, or in accordance with other provisions of this Agreement.
- c. CONTRACTOR agrees that it will not revise the charges for Support Services for the scope of licensed CONTRACTOR products and developed software included in the original schedules of this Agreement during the Term of Agreement in which it provides such Support Services. COUNTY and CONTRACTOR agree that CONTRACTOR has no control of and makes no representations as to the future support costs for third party products covered under this Agreement.
- d. Support Services shall be provided at a predefined rate if BHIS corrections are due to County error or unauthorized access outside of normal usage defined in the BHIS documentation. Support Services provided by the CONTRACTOR are not billable separately from the Support Services in this

J. Maintenance and Support Services

Revision: February 9, 2010

Agreement when the deficiencies are caused by the BHIS or instruction/documentation provided by the CONTRACTOR.

- e. 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 will also charge, and COUNTY will pay, for software and services necessary to bring the licensed products up to CONTRACTOR then-current level before CONTRACTOR will certify that COUNTY is again eligible for Support Services.

5. Updates, Enhancements and New Products

- a. Updates which include modifications which are part of scheduled software release intended to fix or improve the functionality and/or performance of the BHIS shall be included in maintenance services provided to the COUNTY by the CONTRACTOR as long as the COUNTY is in good standing on annual maintenance payments.
- b. Updates as they are distributed without charge to other similar Counties which reflect modifications and incremental improvements made to the Software Products by CONTRACTOR shall be made available to COUNTY.
- c. Enhancements requested by and paid for by COUNTY or other Customers (Joint Development) that provide new functionality that are not part of a scheduled software release shall not be considered maintenance.
- d. On a timely basis CONTRACTOR will provide COUNTY with:
 - Updates as are distributed without charge to other similar COUNTIES which reflect modifications and incremental improvements made to the Licensed Products by CONTRACTOR
 - Opportunities to obtain enhancements to the Licensed Products for which charges are imposed on the same terms as such enhancements are generally made available to other COUNTIES.
- e. New Products which are purchased from the CONTRACTOR or a CONTRACTOR Third-Party shall not be considered maintenance.
- f. Support Services for enhancements, updates and new products shall commence upon Installation.
- g. Enhancements paid for by another CONTRACTOR customer shall be made available to COUNTY at the same cost.
- h. The CONTRACTOR shall provide the COUNTY with all updates and associated documentation that are provided as general releases to the BHIS software, in whole or in part, at no additional cost. Such documentation shall be adequate to inform the COUNTY of the problems resolved including

any significant differences resulting from the release which are known by the CONTRACTOR. The CONTRACTOR shall warrant that each such update general release shall have been tested and shall perform according to the specifications.

- i. The CONTRACTOR shall produce enhancements as the COUNTY requests and the CONTRACTOR accepts, in its sole discretion, in a commercially reasonable time as mutually agreed, and at an additional charge, subject to and in accordance with the change management process detailed and agreed upon in the Planning Phase of the BHIS Implementation Project.

6. Third-Party Products

- a. Support of Third-Party products purchased from the CONTRACTOR or other parties will generally be offered by the Third-Party unless stated otherwise in this Agreement.
- b. For any Third-Party products supported by the CONTRACTOR under this Agreement, the CONTRACTOR reserves the right to refer COUNTY to the product manufacturer for support services, if CONTRACTOR is unable to resolve a problem. Any billable Third-Party software support must be identified by CONTRACTOR as billable and approved in writing in advance by COUNTY Contract Administrator.

7. Deficiencies

- a. A Deficiency shall be considered the failure of the BHIS (or any component of the BHIS) resulting from an anomaly, bug, defect, error, omission, problem or malfunction that causes it not to conform to its expected behavior and in compliance with its requirements specifications (functional and technical), acceptance criteria in accordance with this Agreement or applicable Federal or State regulatory requirements and which causes a material adverse effect on the operation of the BHIS.
- b. A material adverse effect is a situation where the BHIS (or any component of the BHIS) is (a) unable to receive or process data or (b) renders inaccurate output or (c) negatively impacts COUNTY operations or revenue.
- c. CONTRACTOR shall promptly repair or replace without any additional charge, other than charges for support as specified in this Agreement, the BHIS or any portion thereof that has Deficiencies during the Term of Agreement
- d. CONTRACTOR will use commercially reasonable efforts to correct any reproducible Deficiencies in the then current or immediately prior release of licensed products which prevent it from operating in substantial conformance with the specifications and applicable Federal and State

J. Maintenance and Support Services

Revision: February 9, 2010

regulatory requirements; or to either provide a commercially reasonable alternative that will conform to applicable Federal and State regulatory requirements or the BHIS requirements set forth in this Agreement.

- e. Known Deficiencies shall be reported to COUNTY within 15 days of discovery in an official report. Changes to correct any Deficiency shall be provided to COUNTY at no additional cost and without the need for a change order
- f. CONTRACTOR shall coordinate with COUNTY all tasks related to correcting Deficiencies connected with the BHIS.

8. COUNTY Error

- a. COUNTY Error can occur by unauthorized modifications to the BHIS source code or data.
- b. Unauthorized access to the data is defined as any COUNTY editing of data through other than normal BHIS usage as defined in the BHIS documentation. Unauthorized access to source code is defined as any COUNTY access whatsoever to BHIS source code.
- c. If reasonable analysis by CONTRACTOR indicates that a reported Deficiency is caused by a problem related to hardware used by COUNTY, the hardware's system software, or applicable software other than licensed products, or COUNTY misuse or modification of the licensed products, CONTRACTOR responsibility will be limited to the correction of the portion, if any, of the problem caused by a Problem or Defect in the Licensed Products. COUNTY will, at CONTRACTOR option, pay CONTRACTOR for the cost of analyzing the reported problem at CONTRACTORS then prevailing time-and-materials rate.
- d. Services provided by CONTRACTOR to make corrections due to COUNTY error shall be paid for by COUNTY at CONTRACTOR service rates set forth in this Agreement. Services provided by CONTRACTOR are not billable when they result from errors caused by BHIS deficiencies and while the COUNTY is in good standing on annual maintenance payments .

9. Support Services Hours

- a. COUNTY normal business hours are 8:00 a.m. to 5:30 p.m. Pacific Time, Monday thru Thursday, except County holidays. Currently the COUNTY is subject to closure on Fridays due to mandatory furloughs. This may change during the Term of this Agreement, in which case Fridays will be then be included in normal business hours. The CONTRACTOR shall provide Support Services during normal business hours including unlimited toll-free

J. Maintenance and Support Services

Revision: February 9, 2010

phone assistance to keep the BHIS in, or restored to, a normal operating condition.

10. Support Features and Performance Standards

- a. COUNTY shall maintain an internal Help-Desk for users of the BHIS licensed products. COUNTY internal Help-Desk shall handle all first line support calls from users and COUNTY shall designate the Help Desk staff which will be primary contacts with CONTRACTOR support staff. CONTRACTOR shall have no obligation to provide direct support of any nature to COUNTY end users or otherwise to have direct contact with COUNTY end users.
- b. The CONTRACTOR shall provide the following support service features
 - Toll-free hotline
 - Remote Monitoring and Diagnostics
 - Training Tutorials
 - Support Tracking
- c. Phone assistance by the CONTRACTOR shall at minimum consist of the following:
 - Responses to questions about the licensed products and their use
 - Access to specialists for Deficiency definition assistance and, if required, the development, on a commercially reasonable effort basis, of a temporary solution to or an emergency bypass of the Deficiency.
 - Corrections and repairs of errors, problems or Deficiencies with the Software, to the extent feasible over telephone communications and/or other means.
 - Clarification of documentation.
- d. COUNTY shall make requests for Support Services by giving CONTRACTOR written notice specifying a Deficiency in the licensed products. In making a verbal request for Support Services, COUNTY shall provide CONTRACTOR within twenty four (24) hours after such verbal notice with necessary written information and documentation.
- e. Any delay or failure by the CONTRACTOR to timely perform its obligations by the dates in the Project Plan and in accordance with the performance standards will interfere with the proper and timely Implementation and maintenance of the BHIS, to the loss and damage of COUNTY. COUNTY may incur costs, in accordance with applicable state law.

J. Maintenance and Support Services

Revision: February 9, 2010

- f. If reasonable analysis by the CONTRACTOR indicates that a reported Deficiency is caused by a problem related to hardware used by COUNTY, the hardware's system software, or applicable software other than the BHIS licensed software, or COUNTY misuse or modification of the Licensed Programs, the CONTRACTORS' responsibility shall be limited to the correction of the portion, if any, of the defect caused by a problem in the licensed programs.
- g. If analysis by the CONTRACTOR indicates that a reported defect is caused by a reproducible deficiency, the CONTRACTOR will use commercially reasonable efforts to provide Support Services in accordance with the following prioritization of reported problems.
- h. Performance standards and response times for Support Services for the following levels of severity for deficiencies reported are as follows.
- Priority 1 will be assigned when the licensed program or a material licensed program functional component is not operational, such as patient registration screen input/update/inquiry. Commercially reasonable efforts will be made to correct Priority 1 problems, or to provide a plan for such correction, within two (2) business days.
 - Priority 2 will be assigned for less critical functions, such as low impact screens and report printing errors. Commercially reasonable efforts will be made to correct Priority 2 problems, or to provide a plan for such correction, within five (5) business days.
 - Priority 3 will be assigned to problems not having a major impact on the COUNTY'S ability to run the licensed program but which obviously requires correction. Commercially reasonable efforts will be made to respond to Priority 3 problems within ten (10) working days with a corrective plan and scheduled date for the implementation of the correction.
- i. The CONTRACTOR will maintain and make available online to COUNTY a log and detailed database of all change requests, Deficiencies, and other problems reported by COUNTY or known to the CONTRACTOR in the software. The database shall include, as a minimum, the following:
- Date and time CONTRACTOR was notified;
 - Date and time of arrival or inquiry response;
 - Time spent for resolution of Deficiencies;
 - Description of Deficiency;
 - Description of severity level of Deficiency;
 - Description of Deficiency resolution;

J. Maintenance and Support Services

Revision: February 9, 2010

- Date of resolution.
- j. Remote Support Services and diagnostics will be provided by the CONTRACTOR thru VPN access to the COUNTY network and BHIS. COUNTY will provide any required hardware necessary at COUNTY for CONTRACTOR VPN support.
- k. Remote VPN Diagnostics Support will include at minimum:
 - Diagnostic or corrective actions necessary to restore proper BHIS operation,
 - Diagnostic actions which attempt to identify the cause of BHIS problems, and

11. On-Site Visits

- a. CONTRACTOR will perform COUNTY on-site visits based on mutual agreement by CONTRACTOR and COUNTY that a site visit is the best approach to perform Support Services.
- b. Applicable daily rates and travel related expenses may apply as specified in this Agreement.

K. Business Associates Agreement (BAA)

1. County of Riverside HIPAA BAA

HIPAA Business Associate Agreement
Addendum to Contract

Between the **COUNTY of Riverside** and
Netsmart Technologies, Inc.

This HIPAA Business Associate Agreement Addendum ("Addendum") supplements, and is made part of the **Behavioral Health Information System (BHIS) Contract** (the "Underlying Agreement") between the COUNTY of Riverside ("COUNTY") and **Netsmart Technologies, Inc.** ("CONTRACTOR") as of the date of approval by both parties (the "Effective Date").

RECITALS

WHEREAS, COUNTY and CONTRACTOR entered into the Underlying Agreement pursuant to which CONTRACTOR provides services to COUNTY, and in conjunction with the provision of such services certain Protected Health Information ("PHI") and/or certain electronic Protected Health Information (ePHI) may be made available to CONTRACTOR for the purposes of carrying out its obligations under the Underlying Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act, Pub. L. No. 104-161 of 1996 ("HIPAA"), more specifically the regulations found at Title 45, CFR, Parts 160 and 164 (the "Privacy Rule") and/or Part 162 (the "Security Rule"), as may be amended from time to time, which are applicable to the protection of any disclosure of PHI and/or ePHI pursuant to the Underlying Agreement; and,

WHEREAS, COUNTY is a Covered Entity, as defined in the Privacy Rule; and,

WHEREAS, CONTRACTOR, when a recipient of PHI and/or ePHI from COUNTY, is a Business Associate as defined in the Privacy Rule; and,

WHEREAS, the parties agree that any disclosure or use of PHI and/or ePHI be in compliance with the Privacy Rule, Security Rule, or other applicable law;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

K. Business Associates Agreement (BAA)

Revision: February 9, 2010

1. Definitions. Unless otherwise provided in this Addendum, capitalized terms shall have the same meanings as set forth in the Privacy Rule and/or Security Rule, as may be amended from time to time.
2. Scope of Use and Disclosure by CONTRACTOR of COUNTY Disclosed PHI and/or ePHI
 - A. CONTRACTOR shall be permitted to use PHI and/or ePHI disclosed to it by the COUNTY:
 - (1) On behalf of the COUNTY, or to provide services to the COUNTY for the purposes contained herein, if such use or disclosure would not violate the Privacy Rule and/or Security Rule;
 - (2) As necessary to perform any and all of its obligations under the Underlying Agreement.
 - B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Addendum or required by law, CONTRACTOR may:
 - (1) Use the PHI and/or ePHI in its possession for its proper management and administration and to fulfill any legal obligations.
 - (2) Disclose the PHI and/or ePHI in its possession to a third party for the purpose of CONTRACTOR'S proper management and administration or to fulfill any legal responsibilities of CONTRACTOR. CONTRACTOR may disclose PHI and/or ePHI as necessary for CONTRACTOR'S operations only if:
 - (a) The disclosure is required by law; or
 - (b) CONTRACTOR obtains written assurances from any person or organization to which CONTRACTOR will disclose such PHI and/or ePHI that the person or organization will:
 - (i) Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose of which CONTRACTOR disclosed it to the third party, or as required by law; and,
 - (ii) The third party will notify CONTRACTOR of any instances of which it becomes aware in which the confidentiality of the information has been breached.
 - (3) Aggregate the PHI and/or ePHI and/or aggregate the PHI and/or ePHI with that of other data for the purpose of providing COUNTY with data

K. Business Associates Agreement (BAA)

Revision: February 9, 2010

analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by COUNTY.

- (4) Not disclose PHI and/or ePHI disclosed to CONTRACTOR by COUNTY not authorized by the Underlying Agreement or this Addendum without patient authorization or de-identification of the PHI and/or ePHI as authorized in writing by COUNTY.
 - (5) De-identify any and all PHI and/or ePHI of COUNTY received by CONTRACTOR under this Addendum provided that the de-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.
- C. CONTRACTOR agrees that it will neither use nor disclose PHI and/or ePHI it receives from COUNTY, nor from another business associate of COUNTY, except as permitted or required by this Addendum, or as required by law, or as otherwise permitted by law.
 - D. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or regulations are stricter in their requirements than the provisions of HIPAA and prohibit the disclosure of mental health, and/or substance abuse records, the applicable state and/or federal laws and/or regulations shall control the disclosure of records.
3. Obligations of COUNTY.
- A. COUNTY agrees that it will make its best efforts to promptly notify CONTRACTOR in writing of any restrictions on the use and disclosure of PHI and/or ePHI agreed to by COUNTY that may affect CONTRACTOR'S ability to perform its obligations under the Underlying Agreement, or this Addendum.
 - B. COUNTY agrees that it will make its best efforts to promptly notify CONTRACTOR in writing of any changes in, or revocation of, permission by any individual to use or disclose PHI and/or ePHI, if such changes or revocation may affect CONTRACTOR'S ability to perform its obligations under the Underlying Agreement, or this Addendum.
 - C. COUNTY agrees to make its best efforts to promptly notify CONTRACTOR in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect CONTRACTOR'S use or disclosure of PHI and/or ePHI.

K. Business Associates Agreement (BAA)

Revision: February 9, 2010

- D. COUNTY shall not request CONTRACTOR to use or disclose PHI and/or ePHI in any manner that would not be permissible under the Privacy Rule and/or Security Rule.
 - E. COUNTY will obtain any authorizations necessary for the use or disclosure of PHI and/or ePHI, so that CONTRACTOR can perform its obligations under this Addendum and/or the Underlying Agreement.
4. Obligations of CONTRACTOR. In connection with its use of PHI and/or ePHI disclosed by COUNTY to CONTRACTOR, CONTRACTOR agrees to:
- A. Use or disclose PHI and/or ePHI only as permitted or required by this Addendum or as required by law.
 - B. Use reasonable and appropriate safeguards to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum.
 - C. To the extent practicable, mitigate any harmful effect that is known to CONTRACTOR of a use or disclosure of PHI and/or ePHI by CONTRACTOR in violation of this Addendum.
 - D. Report to COUNTY any use or disclosure of PHI and/or ePHI not provided for by this Addendum of which CONTRACTOR becomes aware.
 - E. Require sub-contractors or agents to whom CONTRACTOR provides PHI and/or ePHI to agree to the same restrictions and conditions that apply to CONTRACTOR pursuant to this Addendum.
 - F. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use or disclosure of PHI and/or ePHI created or received for or from the COUNTY.
 - G. Obtain and maintain knowledge of the applicable laws and regulations related to HIPAA, as may be amended from time to time.
5. Access to PHI, Amendment and Disclosure Accounting. CONTRACTOR agrees to:
- A. Provide access, at the request of COUNTY, within five (5) days, to PHI in a Designated Record Set, to the COUNTY, or to an Individual as directed by the COUNTY.
 - B. To make any amendment(s) to PHI in a Designated Record Set that the COUNTY directs or agrees to at the request of COUNTY or an Individual within sixty (60) days of the request of COUNTY.

K. Business Associates Agreement (BAA)

Revision: February 9, 2010

- C. To assist the COUNTY in meeting its disclosure accounting under HIPAA:
 - (1) CONTRACTOR agrees to document such disclosures of PHI and information related to such disclosures as would be required for the COUNTY to respond to a request by an Individual for an accounting of disclosures of PHI.
 - (2) CONTRACTOR agrees to provide to COUNTY or an Individual, within sixty (60) days, information collected in accordance with this section to permit the COUNTY to respond to a request by an Individual for an accounting of disclosures of PHI.
 - (3) CONTRACTOR shall have available for the COUNTY the information required by this section for the six (6) years preceding the COUNTY'S request for information (except the CONTRACTOR need have no information for disclosures occurring before April 14, 2003).
- D. Make available to the COUNTY, or to the Secretary of Health and Human Services, CONTRACTOR'S internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining CONTRACTOR'S compliance with the Privacy Rule, subject to any applicable legal restrictions.
- E. Within thirty (30) days of receiving a written request from COUNTY, make available any and all information necessary for COUNTY to make an accounting of disclosures of COUNTY PHI by CONTRACTOR.
- F. Within thirty (30) days of receiving a written request from COUNTY, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in CONTRACTOR'S possession constitutes a Designated Record Set.
- G. Not make any disclosure of PHI that COUNTY would be prohibited from making.
- 6. Access to ePHI, Amendment and Disclosure Accounting. In the event contractor needs to create or have access to COUNTY ePHI, CONTRACTOR agrees to:
 - A. Implement and maintain reasonable and appropriate administrative, physical, and technical safeguards to protect the confidentiality of, the integrity of, the availability of, and authorized persons' accessibility to, COUNTY ePHI as applicable under the terms and conditions of the Underlying Agreement. The ePHI shall include that which the

K. Business Associates Agreement (BAA)

Revision: February 9, 2010

CONTRACTOR may create, receive, maintain, or transmit on behalf of the COUNTY.

- B. Ensure that any agent, including a subcontractor, to whom CONTRACTOR provides ePHI, agrees to implement reasonable and appropriate safeguards.
- C. Report to COUNTY any security incident of which CONTRACTOR becomes aware that concerns COUNTY ePHI.

7. Term and Termination.

- A. Term – this Addendum shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, except as terminated by COUNTY as provided herein.
- B. Termination for Breach – COUNTY may terminate this Addendum, effective immediately, without cause, if COUNTY, in its sole discretion, determines that CONTRACTOR has breached a material provision of this Addendum and no cure is possible in the opinion of the County. If the breach is susceptible to prompt cure without adverse consequences, COUNTY will provide CONTRACTOR with notice of the existence of the alleged material breach and afford CONTRACTOR with an opportunity to cure the alleged material breach. In the event CONTRACTOR fails to cure the breach to the satisfaction of COUNTY in a timely manner, COUNTY reserves the right to immediately terminate this Addendum.
- C. Effect of Termination – upon termination of this Addendum, for any reason, CONTRACTOR shall return or destroy all PHI and/or ePHI received from the COUNTY, or created or received by CONTRACTOR on behalf of COUNTY, and, in the event of destruction, CONTRACTOR shall certify such destruction, in writing, to COUNTY. This provision shall apply to all PHI and/or ePHI which are in possession of subcontractors or agents of CONTRACTOR. CONTRACTOR shall retain no copies of the PHI and/or ePHI.
- D. Destruction not Feasible – in the event that CONTRACTOR determines that returning or destroying the PHI and/or ePHI is not feasible, CONTRACTOR shall provide written notification to COUNTY of the conditions which make such return or destruction not feasible. Upon determination by CONTRACTOR that return or destruction of PHI and/or ePHI is not feasible, CONTRACTOR shall extend the protections of this Addendum to such PHI and/or ePHI and limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or

K. Business Associates Agreement (BAA)

Revision: February 9, 2010

destruction not feasible, for so long as CONTRACTOR maintains such PHI and/or ePHI.

8. Hold Harmless/Indemnification

CONTRACTOR shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the COUNTY, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any negligent or intentional act or omission of CONTRACTOR, its officers, employees, subcontractors, agents or representatives in any way relating to this Addendum, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever arising from a negligent or intentional act or omission during the performance of CONTRACTOR, its officers, agents, employees, subcontractors, agents or representatives under this Addendum. CONTRACTOR shall defend, at its sole expense, and bear all costs and fees directly resulting there from (including but not limited to attorney fees, subject to CONTRACTOR's right to use counsel of their choice as stated below), cost of investigation, defense and settlements or awards all Agencies, Districts, Special Districts and Departments of the COUNTY, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of COUNTY, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR'S indemnification to COUNTY as set forth herein. CONTRACTOR'S obligation to defend, indemnify and hold harmless COUNTY shall be subject to COUNTY having given CONTRACTOR written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at CONTRACTOR'S expense, for the defense or settlement thereof. CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

The specified insurance limits required in the Underlying Agreement of this Addendum shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the COUNTY herein from third party claims arising from the issues of this Addendum.

K. Business Associates Agreement (BAA)

Revision: February 9, 2010

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the CONTRACTOR from indemnifying the COUNTY to the fullest extent allowed by law.

In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Addendum, this indemnification shall only apply to the subject issues included within this Addendum.

9. General Provisions.

- A. Amendment – the parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for COUNTY to comply with the Privacy Rule, Security Rule, and HIPAA generally.
- B. Survival – the respective rights and obligations of this Addendum shall survive the termination or expiration of this Addendum.
- C. Regulatory References – a reference in this Addendum to a section in the Privacy Rule and/or Security Rule means the section(s) as in effect or as amended.
- D. Conflicts – any ambiguity in this Addendum and the Underlying Agreement shall be resolved to permit COUNTY to comply with the Privacy Rule, Security Rule, and HIPAA generally.
- E. Interpretation of Addendum – this Addendum shall be construed to be a part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of HIPAA.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as set forth below:

Netsmart Technologies, Inc.

COUNTY OF RIVERSIDE

By: [Signature] 2-11-2010

By: _____

Title: Executive Vice President

Title: _____

FORM APPROVED COUNTY COUNSEL
BY: [Signature]
NEAL R. KIPNIS DATE 5/11/10

L. Escrow Services

1. Possession and Use of Source Code

Source code and other material that results from custom programming by CONTRACTOR for COUNTY under this license shall be deemed to be CONTRACTOR property subject to all of the terms and conditions of the license set forth in this Agreement. Source code for the BHIS and all update/enhancements shall be placed in an escrow account with a third party at COUNTY'S expense with COUNTY as beneficiary in the event the CONTRACTOR discontinues providing Maintenance and Support (other than on account of a material breach by County) or this Agreement is terminated by COUNTY because CONTRACTOR does not provide Maintenance and Support as required by this Agreement, or bankruptcy of CONTRACTOR. Termination for breach requires materiality, notification, and an opportunity to cure as provided in this Agreement.

In the event Source Code is released to COUNTY, COUNTY'S permitted use of the custom code under this license shall be limited to use of object code Maintenance and Support of the BHIS and COUNTY's obligations with regard to CONFIDENTIALITY will apply to the source code and documentation.

2. Escrow Charges

CONTRACTOR maintains a three-Party Escrow Agreement with Iron Mountain and will include COUNTY as a beneficiary under such Escrow Agreement. The initial cost of two thousand five hundred dollars (\$2,500) and the yearly renewal cost of seven hundred dollars (\$700) for including COUNTY as a beneficiary under such Escrow Agreement shall be paid by COUNTY. CONTRACTOR 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 CONTRACTOR'S licensees.

3. Escrow Agreement

The CONTRACTOR will provide the COUNTY with the Escrow agreement for the COUNTY Purchasing Agent to sign within 30 business days following the execution of this Agreement. The resulting Escrow Agreement shall then be attached hereto as Attachment 2 (Three-Party Escrow Agreement) and incorporated herein by this reference.

M. Additional Terms for License

ADDITIONAL TERMS FOR LICENSE ARE AS FOLLOWS:

1. LICENSED PROGRAMS

- a) Netsmart hereby grants Licensee a non-exclusive, perpetual (subject only to termination under Section 10) 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 fatabases and the number of named users of the Netsmart Programs set forth in Schedule A;
 - iii) on the number of servers, operating system and for access by the maximum number of simultaneous users or other such restrictions of the Third Party Products as set forth in Schedule A;
 - iv) while Licensee is covered under by the Support Services agreement described in Schedule J.
- b) Except as expressly stated in this Agreement, no other rights, express, implied or otherwise are granted to Licensee.
- c) The Third Party Programs are licensed subject to the same restrictions as are set forth in 1(a) above as well as such other restrictions as may be set forth in Schedule A.
- d) Nothing in this Agreement will be deemed to convey any title or ownership interest in the Licensed Programs to Licensee. Licensee acknowledges Netsmart's rights and the rights of the owner of the Third Party Programs in the Licensed Programs and agrees that the Licensed Programs are trade secrets and unpublished works on which Netsmart and such third party(s) hold and will hold the sole and exclusive copyright. Licensee will not dispute the rights of Netsmart and the third party(s) in the Licensed Programs and will not sell, disclose, lease, sublease, lend or otherwise make the Licensed Programs available to others.
- e) No copies of the Licensed Programs may be made by Licensee without the prior written consent of Netsmart except for backup purposes in accordance with normal data processing practices. Licensee agrees to reproduce any copyright notices and/or other proprietary legends, regardless of form, contained in, affixed to, or appearing on the Licensed Programs.
- f) Licensee will not disassemble or reverse engineer any of the Licensed Programs nor attempt to access or modify the source code version of the Licensed Programs and will not make any derivations, adaptations, or translations of the Licensed Programs in whole or in part, nor use the Licensed Programs to develop functionally similar computer software or to otherwise compete with Netsmart.

M. Additional Terms for License

Revision: February 9, 2010

- g) If suggestions made by Licensee are incorporated into subsequent versions of the Licensed Programs, Licensee hereby assigns to Netsmart all rights Licensee may have in and to any suggestions, concepts, or improvements concerning the Licensed Programs, or other products and services that may result from Licensee communications to Netsmart.
- h) 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.
- i) 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.

2. WARRANTIES.

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

3. LIMITATION OF WARRANTY.

EXCEPT AS STATED IN THE AGREEMENT, THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESS OR

M. Additional Terms for License

Revision: February 9, 2010

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. SUBJECT TO THE TERMS OF THE AGREEMENT, LICENSEE'S EXCLUSIVE REMEDY IN THE EVENT OF A BREACH OF THE SECTION 2 ABOVE WARRANTY AS STATED AND NETSMART'S SOLE OBLIGATION IS TO ATTEMPT TO MODIFY THE SOFTWARE TO ELIMINATE THE PROBLEM OR DEFECT: IN THE EVENT NETSMART CANNOT ELIMINATE THE PROBLEM OR DEFECT, IT WILL REFUND TO LICENSEE, THE LICENSE FEE PAID TO NETSMART LESS A REASONABLE ALLOWANCE FOR ANY PRODUCTIVE USE.

4. NON-SOLICITATION

During the term of this Agreement and for a period of one (1) year following its termination, neither party will directly or indirectly solicit for employment or as a consultant, an employee or consultant of the other party, or any person who was an employee or consultant of the other party at any time during the six (6) month period immediately prior to the date such employee or consultant is solicited, hired or retained.

ATTACHMENTS

1. Preliminary Project Plan

CONTRACTOR and COUNTY will formally develop and approve a detailed Project Plan within sixty (60) days of Agreement execution. Professional Services in this Agreement shall be based on the durations contained in the Preliminary Project Plan. Updates to the Project Plan made during the Project Planning Phase after Agreement execution may require changes to the Professional services in this Agreement and will require COUNTY and CONTRACTOR approval.

2. Three-Party Escrow Agreement

Revision: February 9, 2010

2. Three-Party Escrow Agreement

This section left blank intentionally because it is based on an Escrow firm mutually agreed upon by CONTRACTOR and COUNTY.

As stated in Schedule L of this Agreement, the resulting Escrow Agreement shall be provided to the COUNTY within 30 business days following the execution of this Agreement and attached hereto as Attachment.2.