

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



ITEM: 3.14  
(ID # 17139)

**MEETING DATE:**

Tuesday, September 21, 2021

**FROM :** RUHS-BEHAVIORAL HEALTH:

**SUBJECT:** RIVERSIDE UNIVERSITY HEALTH SYSTEM - BEHAVIORAL HEALTH: Approve the Fifteenth Amendment to the Behavioral Health Agreement with Netsmart Technologies, Inc. to Provide Maintenance and Support Services for the Behavioral Health Information System Without Seeking Competitive Bids, All Districts. [\$5,212,150 Total for 3 Years; Up to \$521,215 in Additional Compensation; 40% Federal Funds, 60% State Funds]

**6RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve and authorize the Chairman of the Board to execute the Fifteenth Amendment to the Behavioral Health Agreement with Netsmart Technologies, Inc. (Netsmart) to provide products, maintenance, support services for the Behavioral Health Information System (BHIS) without seeking competitive bids in the amount of \$5,212,150 for the term July 1, 2021 through June 30, 2024;
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, based on the availability of funding and as approved by County Counsel to: to: a) sign amendments that exercise the options of the Agreement including modifications to the statement of work that stay within the intent of the Agreement, and b) sign amendments to the compensation provisions that do not exceed the sum total of ten percent (10%) of the total annual cost of the contract through June 30, 2024.

**ACTION:**

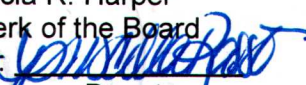
  
Matthew Chang, Director 8/30/2021

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**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Washington, seconded by Supervisor Jeffries and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt  
Nays: None  
Absent: None  
Date: September 21, 2021  
xc: RUHS-Behavioral Health

Kecia R. Harper  
Clerk of the Board  
By:   
Deputy

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<b>FINANCIAL DATA</b>	<b>Current Fiscal Year: 21/22</b>	<b>Next Fiscal Year: 22/23</b>	<b>Next Fiscal Year: 23/24</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$1,685,945	\$1,736,554	\$1,789,651	\$ 5,212,150	\$0
<b>NET COUNTY COST</b>	\$0	\$0	\$0	\$0	\$0
	<b>SOURCE OF FUNDS: 40% Federal, 60% State</b>			<b>Budget Adjustment:</b>	
				No	
				<b>For Fiscal Year: 21/22 – 23/24</b>	

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

Riverside University Health System – Behavioral Health (RUHS-BH) operates a continuum of care that consists of County-operated and contracted service providers delivering a variety of behavioral health treatment services within each geographic region of Riverside County. To support the Behavioral Health Information System (BHIS), RUHS-BH utilizes myAvatar a Netsmart product, for Electronic Health Record (EHR) services. The National Institutes of Health have concluded that use of an EHR results in improved quality and patient care, more efficient tracking of patients and costs, and better documentation and improved audit capabilities. The agreement with Netsmart enables RUHS-BH to be in compliance with State and Federal laws, meets the State requirements for billing Short-Doyle Medi-Cal, and ensures revenue to fund the County's behavioral health care services.

Amendment Fifteen to the agreement with Netsmart provides provisions for maintenance and support services for existing components, maintenance, telehealth and support services required by State and Federal EHR regulations.

**Impact on Residents and Businesses**

The myAvatar EHR is a component of the department's System of Care aimed at improving the health and safety of consumers and the community.

**Additional Fiscal Information**

There are sufficient funds in the Department's FY21/22 budget and no additional County funds are required.

**Contract History and Price Reasonableness**

On April 21, 2009, the Riverside County Purchasing Department, on behalf of the Riverside County Department of Mental Health (RCDMH), issued RFP #MHARC0-50 for a new 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 was needed to bring RCDMH into compliance with the State and Federal requirements for an EHR by replacing



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existing paper-based health records and replacing two existing core legacy applications that were in place for over 20 years.

The RFP was sent to eight 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. Netsmart was determined to be the lowest, responsive and responsible bidder and was recommended to be awarded the BHIS contract.

On March 16, 2010 (3.46), August 31, 2010 (3.61) June 17, 2014 (3.41), May 3, 2016 (3.17), June 20, 2017 (3.35), and June 26, 2018 (3.52), the Board approved the agreement and subsequent amendments with Netsmart to provide, implement, and support the BHIS through June 30, 2021.

Due to the amount of money, time and resources already invested into this system, it would not be cost-effective nor in the best interest of the County to go back out to bid for these services. The department requested and received a single source approval.

  
Tina Grande, Director of Purchasing and Fleet Services 9/8/2021

  
Jacqueline Ruiz, Sr. Management Analyst 9/13/2021

**FIFTEENTH AMENDMENT TO THE AGREEMENT  
EFFECTIVE MARCH 16, 2010 (THE "AGREEMENT")  
BETWEEN  
NETSMART TECHNOLOGIES, INC. ("CONTRACTOR")  
AND  
COUNTY OF RIVERSIDE ("COUNTY")**

That certain Agreement between the County of Riverside (COUNTY) and Netsmart Technologies, Inc. (CONTRACTOR), originally approved by the Riverside County Board of Supervisors on March 16, 2010, Agenda Item 3.46 for FY 2009/2010; amended for the first time by the Board of Supervisors on August 31, 2010, Agenda Item 3.61 for FY 2010/2011; amended for the second time by the Riverside County Purchasing Agent on June 30, 2011 for FY 2010/2011; amended for the third time by the Riverside County Purchasing Agent on August 31, 2011 for FY 2011/2012; amended for the fourth time by the Riverside County Purchasing Agency on September 28, 2011 for FY 2011/2012; amended for the fifth time by the Riverside County Purchasing Agent on June 13, 2012 for FY 2011/2012, amended for the sixth time by the Riverside County Purchasing Agent on June 17, 2014 for FY 2013/2014, amended for the seventh time by the Riverside County Purchasing Agent on December 17, 2014 for FY 2014/2015, amended for the eighth time by the Riverside County Purchasing Agent on September 22, 2015 for FY 2015/2016, amended for the ninth time by the Riverside County Purchasing Agent on May 8, 2016 for FY 2015/2016, amended for the tenth time by the Riverside County Purchasing Agent on December 20, 2016 for FY 2016/2017, amended for the eleventh time by the Riverside County Purchasing Agent on June 20, 2017 for FY 2017/2018, amended for the twelfth time by the Riverside County Purchasing Agent on March 16, 2018, amended for the thirteenth time by the County Purchasing Agent on September 20, 2019 for FY 19/20, amended for the fourteenth time by the Riverside County Purchasing Agent on January 7, 2021 for FY 20/21 and is hereby amended for the fifteenth time. This amendment increases the contract value by a total of \$5,212,147.75 based upon the increases for FY2021/2022, FY2022/2023 and FY2023/2024.

Except as set forth herein, the Agreement between CONTRACTOR and COUNTY shall remain unchanged and in full force and effect.

Effective July 1, 2021, the parties hereby agree that the Agreement is amended as follows:

A. Extension of Term for Support and Subscription Services

1. The initial four (4) year term of the Agreement expired on March 16, 2014 and was extended by Amendment #6 to June 30, 2017, and extended further by Amendment #11 to June 30, 2018 and further extended by Amendment #12 to June 30, 2021. Pursuant to paragraph 3 (Period of Performance), section 3.1, the parties agree to extend the term of the Agreement through June 30, 2024.
2. Extend the term for provision of CONTRACTOR supplied Support Services (Core Products Support), Third Party Support, and other products with annual recurring costs (Subscription Services) from the initial term expiration date of March 16, 2014 through June 30, 2024.
3. A list of the specific CONTRACTOR supplied services, annual-recurring costs and payment terms is attached hereto as Exhibit A.
4. All previous references to these services in the Agreement and subsequent Amendments are replaced with the terms of Exhibit A.



**B. Additional Software, Services and Support**

1. Remove Exhibit B in its entirety.

**C. Business Associate Agreement**

1. The Business Associate Agreement ("BAA"), attached hereto as Exhibit C, is fully incorporated in and subject to the terms of the Agreement.

This Amendment together with the Agreement, represents the entire agreement of the parties. In the event of any conflict between the terms of this Amendment and the Agreement, the terms of this Amendment shall control.

Except as set forth herein, the Agreement between CONTRACTOR and COUNTY shall remain unchanged and in full force and effect.

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

**COUNTY OF RIVERSIDE**

Riverside University Health System  
Behavioral Health  
4095 County Circle Drive  
Riverside, CA 92503

Signature: Karen S. Spiegel

Print Name: Karen Spiegel, Chair

Title: Board of Supervisors

Date: SEP 21 2021

**NETSMART TECHNOLOGIES, INC.**

11100 Nall Avenue  
Overland Park, KS 66211

Signature: [Signature]

Print Name: Joseph McGovern

**Executive Vice President  
Netsmart Technologies, Inc.**

Title: \_\_\_\_\_

Date: 9/14/2021

**COUNTY COUNSEL**

Gregory P. Priamos  
Approved as to Form

By [Signature]  
Deputy County Counsel

**ATTEST:**

**KECIA R. HARPER, Clerk**

By [Signature]  
**DEPUTY**

**Exhibit A**  
**CONTRACTOR Supplied Services, Annual-Recurring Costs And Payment Terms**

Solution	Quantity	FY 21/22 – 7/1/21 Through 6/30/22		FY 22/23 – 7/1/22 Through 6/30/23		FY 23/24 – 7/1/23 Through 6/30/24	
		Period Fees	Payment Terms	Period Fees	Payment Terms	Period Fees	Payment Terms
Avatar ASI Maintenance	1	\$2,041.45	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$2,102.69	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$2,165.77	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
Avatar CalPM Maintenance	1	\$2,727.02	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$2,808.83	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$2,893.10	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
Avatar CWS Maintenance	1	\$2,727.02	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$2,808.83	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$2,893.10	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
Avatar Electronic Signature Maintenance	1	\$2,727.02	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$2,808.83	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$2,893.10	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
Avatar Incident Tracking Maintenance	1	\$680.44	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$700.85	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$721.88	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
Avatar MSO Maintenance	1	\$2,727.02	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$2,808.83	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$2,893.10	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
Avatar RADplus Named User Maintenance	2450	\$476,711.80	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$491,013.15	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$505,743.55	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
Avatar RADplus Named User Maintenance	320	\$58,745.00	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$60,507.35	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$62,322.57	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
		FY 21/22 – 7/1/21 Through 6/30/22		FY 22/23 – 7/1/22 Through 6/30/23		FY 23/24 – 7/1/23 Through 6/30/24	
Solution	Quantity	Period Fees	Payment Terms	Period Fees	Payment Terms	Period Fees	Payment Terms



Avatar RADplus Named User Maintenance – 24x7 Lite Premium	320	\$4,909.40	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$5,056.68	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$5,208.38	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
Avatar RADplus Named User Maintenance – 24x7 Lite Premium	2450	\$50,004.32	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$51,504.45	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$53,049.58	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
Avatar RADplus Test Server Maintenance	1	\$2,707.02	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$2,808.83	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$2,893.10	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
Avatar Web Services Suite Maintenance	1	\$31,045.36	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$31,976.72	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$32,936.02	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
AmWell Telehealth Subscription	150	\$74,520.00	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$76,755.60	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$79,058.27	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
Avatar ProviderConnect Individual User Subscription	10	\$5,794.07	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$5,967.89	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$6,146.93	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
CareConnect HIE Connector (CCD Transactions) 1000+ Users	1	\$5,402.44	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$5,564.51	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$5,731.45	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
CareConnect Immunization Connector 1000+ Users	1	\$5,402.44	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$5,564.51	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$5,731.45	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)

Solution	Quantity	FY 21/22 – 7/1/21 Through 6/30/22		FY 22/23 – 7/1/22 Through 6/30/23		FY 23/24 – 7/1/23 Through 6/30/24	
		Period Fees	Payment Terms	Period Fees	Payment Terms	Period Fees	Payment Terms
CareConnect Lab Orders (Outbound) 1000+ Users	1	\$5,402.44	Payable in 12 monthly payments of each month starting on the	\$5,564.51	Payable in 12 monthly payments of each month starting on the	\$5,731.45	Payable in 12 monthly payments of each month starting on the

[illegible]



OrderConnect – ePCS Subscription	100	\$10,804.89	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$11,129.04	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$11,462.91	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
OrderConnect – FULL SUITE – Prescriber Subscription	100	\$125,152.97	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$128,907.56	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$132,774.79	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
OrderConnect – FULL SUITE – Prescriber Subscription	50	\$68,186.16	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$70,231.74	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$72,338.70	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
OrderConnect – Non-Prescribing User Subscription	162	\$26,623.69	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$27,422.40	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$28,245.07	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
OrderConnect Base Fee	1	\$1,580.22	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$1,627.63	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$1,676.46	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
Avatar Cache Elite Maintenance, Single Server, Platform Specific	4	\$3,352.49	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$3,453.06	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$3,556.66	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
Avatar Cache Enterprise Maintenance, Multi-Server, Platform Specific	1115	\$411,531.94	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$423,877.90	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$435,594.24	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)

Solution	Quantity	FY 21/22 – 7/1/21 Through 6/30/22		FY 22/23 – 7/1/22 Through 6/30/23		FY 23/24 – 7/1/23 Through 6/30/24	
		Period Fees	Payment Terms	Period Fees	Payment Terms	Period Fees	Payment Terms
Avatar Cache Enterprise Maintenance, Multi-Server, Platform Specific	100	\$34,093.08	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$35,115.87	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$36,169.35	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
POS Scanning Powered by	1	\$2,128.55	Payable in 12 monthly payments of each month	\$2,202.71	Payable in 12 monthly payments of each month	\$2,268.79	Payable in 12 monthly payments of each month

Perceptive Maintenance			starting on the first day of July FY 21/22 (7/1/21)		starting on the first day of July FY 22/23 (7/1/22)		starting on the first day of July FY 23/24 (7/1/23)
Diagnosis Content on Demand Add-on	1	\$2,895.29	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$2,982.15	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$3,071.61	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
Diagnosis Content on Demand Subscription	670	\$16,160.79	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$16,645.61	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$17,144.98	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
Diagnosis Content on Demand Subscription	134	\$1,809.82	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$1,864.11	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$1,920.04	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
Direct Message Mailbox-CareConnect	1	\$135.06	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$139.11	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$143.29	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
Speech Recognition Powered by M*Modal Concurrent Users	1	\$76,709.44	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$79,010.72	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$81,381.04	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
Two Party Escrow Agreement	1	\$1,350.61	Payable in 12 monthly payments of each month starting on the first day of July FY 21/22 (7/1/21)	\$1,391.13	Payable in 12 monthly payments of each month starting on the first day of July FY 22/23 (7/1/22)	\$1,432.86	Payable in 12 monthly payments of each month starting on the first day of July FY 23/24 (7/1/23)
	FY Total	\$1,685,944.23		\$1,736,553.52		\$1,789,650.10	
TOTAL COMMITTED FUNDS \$5,212,147.75							



**Exhibit C**  
**Business Associate Agreement**

This Business Associate Agreement is effective as of the Effective Date of this Amendment between the parties whereas Netsmart Technologies, Inc. is a Business Associate and County is a Covered Entity.

**RECITALS**

- A. The purpose of this Agreement is to comply with the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and all of the regulations promulgated under either of them, all as amended from time to time (collectively, "HIPAA"), 42 CFR Part 2.
- B. This Agreement and the Services Agreement (defined below) sets forth the terms and conditions pursuant to which Protected Health Information ("PHI") that is provided, created, received, maintained or transmitted by Netsmart to, from or on behalf of Covered Entity will be handled.
- C. Terms used in this Agreement, not otherwise defined, shall have the same meaning as set forth in HIPAA including, without limitation, 45 CFR §§164.103, 164.304, 164.501 and 164.502.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter addressed, the parties agree as follows:

1. **Services.** Netsmart provides services for Covered Entity that involve the use and disclosure of PHI. Except as otherwise specified herein, Netsmart may make any and all uses of PHI necessary to perform its obligations under any and all current mutually executed agreement(s) between the parties ("Services Agreement"). Additionally, Netsmart may use or disclose PHI for the purposes authorized by this Agreement, and, except as otherwise limited by this Agreement, for the proper management and administration of Netsmart or to carry out its legal responsibilities. Further, Netsmart may use PHI to report violations of law to appropriate Federal and State authorities consistent with 45 CFR §164.502 (j)(i); provided, however, that if such disclosures are not required by law, then (a) Netsmart must first obtain reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and (b) the person will notify Netsmart of any instances of which it is aware in which the confidentiality of the information has been breached.
2. **Responsibilities of Netsmart.** With regard to its use and/or disclosure of PHI, Netsmart hereby agrees to do the following:
  - (a) **Permitted Uses and Disclosure of Protected Health Information.** Use and/or disclose the PHI only as permitted or required by this Agreement, the Services Agreement, or as otherwise required by law;
  - (b) **Appropriate Safeguards.** Use commercially reasonable efforts to maintain the security of the PHI and to prevent unauthorized use and/or disclosure of such PHI and to implement Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of PHI as required by 45 CFR Part 164 Subpart C ("Security Rule") and comply, where applicable, with the Security Rule. The additional requirements of the HITECH Act that relate to security and that are made applicable with respect to Covered Entities shall also be applicable to Netsmart and shall be and by this reference hereby are incorporated into the Agreement;
  - (c) **Documentation of Disclosures to Covered Entity.** Upon written request, make available during normal business hours at Netsmart's offices all records, and accounts relating to the use and/or disclosure of PHI to the Covered Entity within thirty (30) days for purposes of enabling Covered Entity to determine Netsmart's compliance with the terms of this Agreement;



- (d) Provide Accounting of Disclosures. Within thirty (30) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by the Covered Entity to permit Covered Entity to respond to a request by the subject individual for amendment and accounting purposes of the disclosures of the individual's PHI in accordance with 45 C.F. R. §164.526 and §164.528. If Covered Entity provides an amendment to an individual's PHI pursuant to 45 C.F. R. §164.526, Netsmart shall incorporate such amendment;
  - (e) Netsmart shall provide access to Covered Entity, within fifteen business days of written receipt of a request from Covered Entity, to PHI in a designated record set to meet the requirements of 45 C.F.R. §164.524. In the event any individual requests access to protected health information directly from Netsmart, Netsmart shall forward such request to Covered Entity within ten (10) business days after receipt;
  - (f) Subcontractor and Agents. Netsmart will ensure that any agent, including a Subcontractor, to whom it provides electronic PHI agrees in a written contract to implement and use administrative, physical and Technical Safeguards that reasonably protect the Integrity and Availability of the electronic PHI;
  - (g) Reports of Successful Security Incidents. Report to the designated privacy officer of Covered Entity, in writing, any use and/or disclosure of the PHI that is not permitted or required by this Agreement or a Security Incident of which Netsmart becomes aware within fifteen (15) days of Netsmart's discovery of such unauthorized use and/or disclosure. For purposes of this Agreement "Security Incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by Netsmart;
  - (h) Breach of Unsecured Protected Health Information. If Netsmart maintains, retains, modifies, records, stores, destroys or otherwise holds, uses, or discloses Unsecured Protected Health Information (as defined in 45 C.F.R. Part 164.402), it shall, following the discovery of a breach of such information, notify Covered Entity of such breach. Such notice shall be in writing and include the identification of each individual whose Unsecured Protected Health Information has been or is reasonably believed by Netsmart to have been accessed, acquired or disclosed during such breach. Netsmart shall also provide to Covered Entity with any other available information that the Covered Entity is required to include in notification to the individual under 45 CFR §164.404(c) at the same time as Netsmart provides the initial notice of the breach or as promptly thereafter as information becomes available;
  - (i) Mitigation. Mitigate to the extent practicable, any harmful effect that is known to it of a use and/or disclosure of PHI in violation of the requirements of this Agreement;
  - (j) HITECH Act Provisions. The additional requirements of Subtitle D of the HITECH Act that relate to privacy and that are made applicable with respect to Covered Entities shall also be applicable to Netsmart and are incorporated herein by reference. In the event the Secretary issues regulations that require specific modifications to business associate agreements related to these provisions, the parties agree to take such action in good faith as is necessary to amend this Agreement to meet the requirements of these provisions of the HITECH Act and;
  - (k) Access to Books and Records. Make available all of its internal practices, records, books, policies and procedures relating to the use and/or disclosure of PHI received from, or created or received by Netsmart on behalf of Covered Entity, available to the Secretary of HHS for purposes of determining Covered Entity's compliance with HIPAA;
  - (l) Comply with Obligations. To the extent that Netsmart is to carry out an obligation of Covered Entity under Subpart E of 45 C.F.R. Part 164 (the "Privacy Rule"), comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation.
3. Responsibilities of Covered Entity. With regard to the use and/or disclosure of PHI by Netsmart, Covered Entity hereby agrees:



- (a) Provisions of Notice of Privacy Practices. To inform Netsmart of any changes or limitations in the form of notice of privacy practices that Covered Entity provides to individuals pursuant to 45 C.F.R. §164.520;
  - (b) Notice of Changes to Individuals PHI. To inform Netsmart of any changes in, or withdrawal of, the consent or authorization provided to Covered Entity by individuals whose PHI may be used and/or disclosed by Netsmart under this Agreement pursuant to 45 C.F.R. §164.506 or §164.508; and
  - (c) Notification to Restrictions of PHI. To notify Netsmart in writing and in a timely manner, of any restrictions on the use and/or disclosure of PHI agreed to by Covered Entity as provided for in 45 C.F.R. §164.522.
  - (d) Request to Use or Disclose PHI. Covered Entity shall not request Netsmart to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, provided that, to the extent permitted by the Services Agreement, Netsmart may use or disclose PHI for Netsmart's Data Aggregation activities or proper management and administrative activities.
4. **Mutual Representation and Warranty.** Each party represents and warrants to the other party that all of its employees, whose services may be used to fulfill obligations under this Agreement, are or will be appropriately informed of its obligations under HIPAA.
5. **Term and Termination.**
- (a) Term. This Agreement will become effective on the Effective Date and will continue in effect until all obligations of the parties have been met, unless terminated as provided herein or by written mutual agreement of the parties. Notwithstanding the foregoing, this Agreement will remain in effect as long as Netsmart is in possession of any PHI that belongs to Covered Entity.
  - (b) Termination. As provided for under 45 C.F.R. §164.504 (e)(2)(iii). Covered Entity may immediately terminate this Agreement and any related agreement if it determines that Netsmart has breached a material provision of this Agreement, provided that Covered Entity agrees that if a breach is curable, it will: (i) provide Netsmart with five (5) days written notice of the existence of an alleged material breach; and (ii) afford Netsmart an opportunity to cure said alleged material breach upon mutually agreeable terms. Failure to cure in the manner set forth in this Section is grounds for the immediate termination of the Agreement and any related agreement. If termination is not feasible, Covered Entity will report the breach to the Secretary of HHS. This Agreement will automatically terminate without any further action of the parties upon the termination or expiration of the Services agreement.
  - (c) Return or Destruction of PHI. Netsmart will return to Covered Entity or destroy (when feasible), within sixty (60) days of the termination of this Agreement. If the return of the protected health information is not feasible, the protections of this Agreement shall automatically be extended to such protected health information and the further uses and disclosures shall be limited to only those purposes that make the return or destruction of the protected health information infeasible.
6. **Miscellaneous Provisions.**
- (a) Survival. The respective rights and obligations of Netsmart and Covered Entity under the provision of Sections 2(h) will survive the termination of this Agreement until such information is able to be returned or destroyed.

- (b) Incorporation. The terms of this Agreement are fully incorporated in and subject to the terms of the Services Agreement.
- (c) No Third-Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor will anything herein confer, upon any person other than the parties hereto any rights, remedies, obligations, or liabilities whatsoever.
- (d) Notices. Any notices required or permitted to be sent hereunder will be in writing and will be sent, Certified Mail, Return Receipt Requested, or by a recognized international courier. Notices will be sent to the addresses first set forth above or to such other address as a party may designate by notice pursuant hereto. Notices to Netsmart will be sent "Attention: Privacy Officer" and emailed to Contracts\_Notice@ntst.com. Notices to Covered Entity will be sent "Attention: \_\_\_\_\_". Notices will be effective upon the date when delivery is either effected or refused.
- (e) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA, the Privacy Rule, the Security Rule and HITECH. This Agreement may not be modified or amended, except in writing as agreed to by each party.
- (f) Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA and HITECH.
- (g) Binding Effect. This Agreement shall be binding upon the parties hereto, and their respective legal representatives, trustees, receivers, successors and permitted assigns.
- (h) Severability. Should any provision of this Agreement be found unenforceable, it shall be deemed severable and the balance of the Agreement shall continue in full force and effect as if the unenforceable provision had never been made a part hereof.
- (i) Entire Agreement. This Agreement, including such portions as are incorporated by reference herein, constitutes the entire agreement by, between and among the parties, and such parties acknowledge by their signature hereto that they do not rely upon any representations or undertakings by any person or party, past or future, not expressly set forth in writing herein.

End of Amendment