

APPROVED

AI-77080

Purchasing Department
20. E. 2.

CC REGULAR AGENDA SPECIAL Health & Human Services Dept.
MTG

Meeting
Date: 09/01/2020

Submitted Marty Salazar, PURCHASING DEPT.

For:

Submitted Yolanda Velasquez, PURCHASING DEPT.

By:

Department: PURCHASING DEPT.

Information

CAPTION

A. "Discussion, consideration, and action to approve a necessary CARES Act Relief Fund expenditure to cover the estimated cost not accounted for in the current budget and cannot be lawfully funded by line item, allotment or allocation, for the additional Electronic Medical Records Module and the implementing of the migration and supplies, in order to assist with County Public Health expenses addressing the ongoing COVID-19 public health emergency; the Court having reviewed the Agenda Item Briefing, herein finds that such expenditure is reasonable and necessary for the intended use.";

B. Exemption from the competitive bidding requirements, pursuant to Texas LGC 262.024 (a)(1): an item that must be purchased in case of a public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens; (2) an item necessary to preserve and protect the public health and safety of the citizens;

C. The Health and Human Services Department (HHSD) has identified a need to add a module available through Electronic Medical Records (EMR) software system which was procured through Netsmart (AI 75841 on 06/30/20) and an Amendment to Master Agreement to include this software module for direct communication to the State of Texas Immunizations Registry is required.

BACKGROUND

Compliance with HB 1295

Fiscal Impact

CALENDAR YEAR: 2020 ACCT. #: 0-1287-441-42-115-096-0-751

FUNDS AVAILABLE Y/N?: Y MATCHING FUNDS Y/N?: N

BUDGETARY IMPACT:

This item was deemed eligible through CARES Act Relief Funds.
Funds available as of 9/1/2020; obj. 751

Attachments

Amendment

Legal Review and OK

Netsmart Quote

Briefing

1295 Form

Form Review

Inbox	Reviewed By	Date
Purchasing - Internal	Marty Salazar	08/28/2020 02:43 PM
Budget & Management	Veronica Ortiz	08/28/2020 02:49 PM
Final Approval	Monica Salinas	08/28/2020 06:48 PM
Form Started By: Yolanda Velasquez		Started On: 08/26/2020 08:53 AM
Final Approval Date: 08/28/2020		



MASTER AGREEMENT FOR SAAS LICENSED SOFTWARE & SERVICES

Effective as of the date this Master Agreement is last signed by the parties (the “Effective Date”)

By and Between Netsmart Technologies, Inc. 11100 Nall Avenue Overland Park, KS 66211 (“Netsmart”)	And Hidalgo County, TX 1304 S 25 th Ave Edinburg, TX 78539 EIN: State tax exempt: No
Attention: Joseph McGovern, EVP Telephone No: (631) 968-2012 E-mail Address: jmcgovern@ntst.com Notices to be sent to: Contracts_Notice@ntst.com	Attention: Elena Gomez Telephone No: 956.318.2629 E-mail Address: elena.gomez@co.hidalgo.tx.us Notices to be sent to (if different):

This Master Agreement for SAAS Licensed Software and Services sets forth the terms and conditions under which Netsmart shall license the software programs and provide support services described herein.

The term “Master Agreement” means this Signature Page, the attached Master Agreement Expenditures page, the attached Terms and Conditions, all Schedules and addendums attached hereto, the referenced BAA and SOW, and any subsequent mutually executed amendment(s) or addendum(s).

IN WITNESS WHEREOF, the parties hereto have executed this Master Agreement as of the date(s) written below.

Netsmart Technologies Inc. BY: <u></u> _____ Joseph McGovern _____ (PRINTED NAME) TITLE: <u> EVP </u> _____ DATE: <u> 06 - 26 - 2020 </u> _____	Hidalgo County, TX BY: <u></u> _____ Richard F. Cortez _____ (PRINTED NAME) TITLE: <u> County Judge </u> _____ DATE: <u> 6/30/20 </u> _____
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APPROVED BY
 COMMISSIONERS' COURT
 ON: 6/30/20

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Title	Description
Master Agreement Expenditures	Charges and payment terms
Master Agreement Terms and Conditions	Governing terms and conditions of the Agreement
Schedule A	Support Services for Licensed Software
Schedule A-1	Hosting Service Level Agreement (SLA)
Schedule B	Hardware Configuration
Schedule C	Changes to the Master Agreement
Netsmart Subscription Addendum	Supplemental terms for Subscription Products
BAA	Business Associate Agreement
SOW	Scope Document for Plexus Implementation Plan

Master Agreement Expenditures

ONE-TIME CHARGES:

<u>Netsmart Services</u>	<u>Qty</u>	<u>Charges (\$)</u>	<u>Payment Terms</u>
myInsight Implementation	1	177,400.00	Due on Agreement execution
myInsight Conversation	1	45,000.00	Due on Agreement execution
myInsight Hosting Set Up Fee	1	9,500.00	Due on Agreement execution
Order Connect Implementation	1	9,600.00	Due on Agreement execution
Care Connect implementation <i>*Includes CareConnect Inbox, Lab Orders, Lab Results and HIE Connector</i>	1	30,000.00	Due on Agreement execution

RECURRING CHARGES:

<u>Netsmart Annual SaaS Subscription</u>	<u>Qty</u>	<u>Charges (\$)</u>	<u>Payment Terms</u>
myInsight SaaS Named User *Annual price is based upon a rate of \$28.45 per named user per month and a minimum purchase of 142 named users per month per year. Additional named users can be added at a rate not less than \$28.45 per named user per month for a period of one year from the date of this Master Agreement.	142	48,478.80	Prorated Annual fee (from signing through end of then current year) due on the Effective Date. Annual payments beyond Year 1 prorated fee are due on each January 1 and are subject to increases as per the Master Agreement.

<u>Netsmart Subscriptions</u>	<u>Qty</u>	<u>Charges (\$)</u>	<u>Payment Terms</u>
OrderConnect:			
OrderConnect Base Fee	1	1,500.00	Prorated Annual fee (from project kickoff through end of then current year) due on the project kickoff date. Subsequent renewal terms payable on each January 1 and are subject to increases as per the Master Agreement.
OrderConnect Full Suite Prescribers	5	6,240.00	Prorated Annual fee (from project kickoff through end of then current year) due on the project kickoff date. Subsequent renewal terms payable on each January 1 and are subject to increases as per the Master Agreement.
OrderConnect Non-Prescribers	137	21,372.00	Prorated Annual fee (from project kickoff through end of then current year) due on the project kickoff date. Subsequent renewal terms

			payable on each January 1 and are subject to increases as per the Master Agreement.
CareConnect:			
CareConnect Inbox (Includes Direct Secure Messaging)	142	8,520.00	Prorated Annual fee (from project kickoff through end of then current year) due on the project kickoff date. Subsequent renewal terms payable on each January 1 and are subject to increases as per the Master Agreement.
HIE Connector	1	2,400.00	Prorated Annual fee (from project kickoff through end of then current year) due on the project kickoff date. Subsequent renewal terms payable on each January 1 and are subject to increases as per the Master Agreement.
Lab Results Inbound Interface	1	2,400.00	Prorated Annual fee (from project kickoff through end of then current year) due on the project kickoff date. Subsequent renewal terms payable on each January 1 and are subject to increases as per the Master Agreement.
Lab Order Outbound Interface	1	2,400.00	Prorated Annual fee (from project kickoff through end of then current year) due on the project kickoff date. Subsequent renewal terms payable on each January 1 and are subject to increases as per the Master Agreement.
Third Party Subscriptions			
	<u>Qty</u>	<u>Charges (\$)</u>	<u>Payment Terms</u>
Diagnosis Content On Demand *Includes Access to the DSM5 Library or 28 Named Users	1	1,425.72	Prorated Annual fee (from project kickoff through end of then current year) due on the project kickoff date. Subsequent renewal terms payable on each January 1 and are subject to increases as per the Master Agreement.
Ultimedex Prescriber User Subscription	1	204.00	Prorated Annual fee (from project kickoff through end of then current year) due on the project kickoff date. Subsequent renewal terms payable on each January 1 and are subject to increases as per the Master Agreement.



Netsmart is not a distributor for the AMA CPT Licenses. Client is required by the AMA to license and pay all applicable fees for the right to use the AMA CPT codes.			
<u>TRAVEL AND LIVING AND TRAVEL TIME EXPENSES</u> Refer to Statement of Work for travel.			See Statement of Work

**MASTER AGREEMENT TERMS AND
CONDITIONS**

1. SCOPE OF MASTER AGREEMENT

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

- (a) Grant Subscriber the rights to use and operate certain proprietary computer programs and related documentation on a non-exclusive basis;
- (b) Provide services such as project management, installation, training and support services to Subscriber and;
- (c) provide software SaaS services and permit Subscriber to load Data in the Netsmart SaaS Environment via a virtual private network ("VPN") or Secure Socket Layer ("SSL").

2. DEFINITIONS

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

- (a) "Changes" All Changes to the terms of this Master agreement will be contained in Schedule C.
- (b) "Charges" means the amounts to be paid by Subscriber and the payment terms for the right to use the Software Services, for all services provided to Subscriber and for hardware or other Third Party Products acquired by Subscriber under the terms of this Master Agreement. The Charges and payment terms are described on the Master Agreement Expenditures page attached hereto.
- (c) "Data" means all information acquired from Client that will reside on a Netsmart secure server and be maintained for Subscriber during the performance of this Master Agreement.
- (d) "Hardware Configuration" means the computer hardware required to install and operate the Software Services. A description of the recommended Hardware Configuration is set forth in Schedule B attached hereto.
- (e) "Month 1" means the first day of the first month after mutual contract execution.
- (f) "Netsmart Programs" means the Netsmart commercial computer programs in object code form and their associated documentation listed on the Master Agreement Expenditures page.
- (g) "Problem or Defect" means any failure of the Software Services to operate in substantial conformance with the Specifications.
- (h) "SaaS Environment" means the hardware and software in Netsmart's data center that are used to provide access to the Software Services as defined in this Master Agreement.
- (i) "Scope Document for Plexus Implementation Plan" or "SOW" means the detailed work plan

incorporated by reference and attached to this Master Agreement.

- (j) "Services" means the installation, training and other services to be provided by Netsmart as described in the SOW.
- (k) "SLA" is an abbreviation for Service Level Agreement. The SLA describes the functions, features and performance capabilities of the SaaS Environment as available at Client's site and is set forth in Schedule A-1.
- (l) "Software Services" means the right to access the Netsmart Programs in accordance with the SOW in the Netsmart SaaS Environment.
- (m) "Specifications" means the description and features of the Software Services as set forth in the (electronic or physical) commercial computer software documentation relating to the Software Services supplied to Subscriber by Netsmart hereunder.
- (n) "Support Services" means the maintenance and support services to be provided by Netsmart in accordance with Schedule A.
- (o) "Third Party Products" means any commercial software products acquired by Netsmart from an outside vendor on behalf of Subscriber under the terms of this Master agreement. Third Party Products consisting of software are called Third Party Programs.
- (p) "Year 1" means the period from the Effective Date through its one year anniversary.

3. SOFTWARE SERVICES

- a) Software Services. Netsmart hereby grants Subscriber a non-exclusive, royalty-free, non-transferable subscription license to use the Software Services in object code form only:
 - i) for Subscriber's internal business purposes and not to process the data of any other entity;
 - ii) to support the number of users of the Software Services set forth on the Master Agreement Expenditures page;
 - iii) for the Initial Term and any subsequent Option Terms.

The foregoing license grant may be exercised by Subscriber and its employees and independent contractors (provided that such independent contractors undertake in writing to be bound by all applicable restrictions in this Master Agreement) on Subscriber's equipment for Subscriber's internal business purposes provided they are added as named users for the Software Services.

- b) SaaS Environment. Netsmart hereby grants Subscriber a non-transferable, non-exclusive right to access the SaaS Environment from Netsmart's

- data center for the Initial Term (and any Option Term).
- c) Except as expressly stated in this Master Agreement, no other rights, express, implied or otherwise are granted to Subscriber.
 - d) The Third Party Products are licensed subject to the same restrictions as are set forth in 3(a) above as well as such other restrictions as may be set forth in this Master Agreement.
 - e) Nothing in this Master Agreement will be deemed to convey any title or ownership interest in the Software Services or the SaaS Environment to Subscriber. Subscriber acknowledges Netsmart's rights and the rights of the owner of the Third Party Products in the Software Services and agrees that the Software Services are trade secrets and unpublished works on which Netsmart and such third party(s) hold and will hold the sole and exclusive copyright. Subscriber will not dispute the rights of Netsmart and the third party(s) in the Software Services and will not sell, disclose, lease, sublease, lend or otherwise make the Software Services or SaaS Environment available to others including third party hosting providers.
 - f) No copies of the Software Services may be made by Subscriber without the prior written consent of Netsmart except for backup purposes in accordance with normal data processing practices. Subscriber agrees to reproduce any copyright notices and/or other proprietary legends, regardless of form, contained in, affixed to, or appearing on the Software Services.
 - g) Subscriber will not disassemble or reverse engineer any of the Software Services nor attempt to access or modify the source code version of the Software Services and will not make any derivations, adaptations, or translations of the Software Services in whole or in part, nor use the Software Services to develop functionally similar computer software or to otherwise compete with Netsmart.
 - h) If suggestions made by Subscriber are incorporated into subsequent versions of the Software Services, Subscriber hereby assigns to Netsmart all rights Subscriber may have in and to any suggestions, concepts, or improvements concerning the Software Services that may result from Subscriber communications to Netsmart.
 - i) Subscriber agrees to permit Netsmart to verify the number of users using the Netsmart Programs and Third Party Products. Should this verification identify usage of the Netsmart Programs and Third Party Products in excess of the number of licensed users, Subscriber agrees to immediately pay Netsmart's invoice for the then-current prices for such Netsmart Programs and Third Party Products for each additional user license.
 - j) If certain Third Party Products are being licensed under this Agreement, Subscriber agrees to the pass through terms that apply to those Third Party Products at <http://www.ntst.com/passthroughterms/index.aspx>. Notwithstanding the foregoing, nothing contained in the third party pass through terms will diminish Netsmart's obligations under this Agreement and as between Netsmart and Subscriber, in the event of a conflict of terms, the terms of this Agreement shall prevail.
 - k) Protection of Subscriber's Data. Netsmart's data center facility is located in the United States. Netsmart will maintain the Data in accordance with generally accepted security standards applicable to protected health information and as required by law. Under no circumstance shall Netsmart attempt to access or permit access to Data that is not required for the performance of Netsmart's obligations under this Master Agreement. Upon termination of this Master Agreement, for any reason, Netsmart will make a machine readable copy of the Data available to Subscriber. Netsmart retains no rights or ownership to the Data.
4. **TERM**
- a) The Initial Term of this Master Agreement will be 60 months from the Effective Date ("Initial Term") subject to earlier termination when permitted under Section 12.
 - b) After the first thirty six (36) months of the Initial Term, either party may terminate this Master Agreement with or without cause upon 90 day written notice of termination.
5. **IMPLEMENTATION**
- The Scope Document for the Plexus Implementation Plan will set forth the tasks to be performed by each party, the time frames in which such tasks will be performed, and will identify the roles and responsibilities of the persons who will be provided by Subscriber to support the implementation.
6. **CHARGES AND PAYMENT TERMS**
- a) In consideration of the Software Services granted hereunder, Services to be performed and Third Party Products to be provided by Netsmart. Subscriber agrees to pay Netsmart the Charges at the times and in the amounts set forth in the



Master Agreement Expenditures page attached hereto.

- b) Netsmart agrees that it will not revise the Charges during the first year of this Master Agreement. Thereafter any recurring Charges are subject to a 3% increase annually. Netsmart may further increase recurring Charges for Third Party Products, if such increase from Netsmart's third party supplier exceeds the amount permitted under this Section. Netsmart agrees any such additional increase shall be at the same rate charged by the third party supplier.
- c) With the exception of the initial invoice which is due upon Master Agreement signing, invoices are payable net thirty (30) days after invoice date. Thereafter, any outstanding balance will bear simple interest at the lower of 18% per annum or the highest interest rate permitted by law. Failure to make timely payment is considered a material default of the Master Agreement. Delinquent accounts will be subject to Netsmart's Delinquent Account Escalation Policy set forth at <http://www.ntst.com/ARpolicy>.

7. TAXES

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

8. WARRANTIES

- a) Netsmart warrants that the Software Services will substantially conform in all material respects with their Specifications and the attached SOW. If a Problem or Defect occurs, Netsmart will correct the Problem or Defect in accordance with the Support Services provisions set forth in Schedule A.
- b) Netsmart further represents and warrants that it has the right to grant the subscription licenses granted to Subscriber hereunder and that to the best of Netsmart's knowledge the Software Services 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 Software

Services by Subscriber or anyone acting with the consent of or under the direction of Subscriber, then (i) with respect to the warranty made under Section 8(a), Netsmart shall have no obligation or liability to Subscriber with respect to any Problem or Defect caused by such modifications, additions or alterations, and (ii) with respect to the representation and warranty under Section 8(b), Netsmart shall have no obligation or liability to Subscriber with respect to any third party claim of patent, copyright or trade secret infringement or misappropriation arising from such modifications, additions or alterations. Subscriber will have an affirmative obligation to immediately inform Netsmart in writing of any modifications, additions or alterations.

- d) The limited warranty described herein will not apply unless the Subscriber's hardware and software system components meet Netsmart's minimum requirements as described in Schedule B.

9. LIMITATION OF WARRANTY.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESS OR IMPLIED, WHETHER IN RELATION TO THE SOFTWARE SERVICES, 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. SUBSCRIBER'S EXCLUSIVE REMEDY IN THE EVENT OF A BREACH OF THE SECTION 8(a) WARRANTY AND NETSMART'S SOLE OBLIGATION IS TO MODIFY THE SOFTWARE TO ELIMINATE THE PROBLEM OR DEFECT. IN THE EVENT NETSMART CANNOT MODIFY OR ELIMINATE THE PROBLEM OR DEFECT, SUBSCRIBER MAY TERMINATE THE MASTER AGREEMENT PURSUANT TO SECTION 11 AND MAY SEEK ALL AVAILABLE REMEDIES AT LAW AND IN EQUITY. SUBSCRIBER'S EXCLUSIVE REMEDY IN THE EVENT OF A BREACH OF THE SECTION 8(b) WARRANTY IS SET FORTH IN SECTION 11.

10. LIMITATION OF LIABILITY

a) LIMITATION ON SPECIFIED DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY



FAILS OF ITS ESSENTIAL PURPOSE. EXCEPT AS SET FORTH IN SECTION 11, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY THIRD PARTY CLAIM.

b) LIMITATION ON CUMULATIVE LIABILITY. EXCEPT AS SET FORTH IN SECTION 11, THE CUMULATIVE LIABILITY OF NETSMART TO SUBSCRIBER FOR ANY ACTUAL OR ALLEGED DAMAGES ARISING OUT OF, BASED ON OR RELATING TO THIS MASTER AGREEMENT, WHETHER BASED UPON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR ANY OTHER LEGAL THEORY, WILL NOT EXCEED THE MOST RECENT TWELVE (12) MONTHS' SUBSCRIPTION FEES PAID TO NETSMART UNDER THIS MASTER AGREEMENT.

11. INDEMNIFICATION

a) In the event of any claim by a third party against Subscriber (the "Claim"), alleging that the use of the Software Services infringes upon any intellectual property rights of such third party, Subscriber will promptly notify Netsmart and Netsmart will defend such Claim, in Subscriber's name but at Netsmart's expense, and will indemnify Subscriber against any liability paid by Subscriber, including but not limited to attorneys' fees and disbursements, arising out of such Claim. In the event such an infringement is found and Netsmart cannot either procure the right to continued use of the Software Services, or replace or modify the Software Services with a non-infringing program, then Netsmart or Client may terminate the Agreement but Netsmart will provide one-time data transition services to Subscriber at no cost to Subscriber. Netsmart will not have any liability under Section 8(b), and Netsmart will be indemnified by Subscriber with respect to any Claim, to the extent that the Claim is based upon (i) the use of the Software Services in combination with other products or services not made or furnished by Netsmart, provided that the Software Services alone are not the cause of such Claim; or (ii) the modification of the Software Services or any portion thereof by anyone other than Netsmart, provided that the Software Services in unmodified form are not the cause of such Claim.

b) To the extent allowed under the Constitution and laws of the state of Texas Subscriber will indemnify and hold harmless Netsmart from and against all claims, suits or actions by any third party against Netsmart relating to, arising out of or resulting from Subscriber's

misuse of the Software Services, or any claim by any party receiving services from Subscriber.

12. TERMINATION

a) If either party is in default of any of its material obligations hereunder, and has not commenced cure within ten (10) days and effected cure within thirty (30) days of receipt of written notice of default from the other party (the "non-defaulting party"), then the non-defaulting party may terminate the Master Agreement on written notice to the defaulting party.

b) To the extent allowed by the Texas Public Information Act, Subscriber will, within thirty (30) days of the date of termination or expiration of this Master Agreement, erase from all computer storage any image or copies of the Software Services, related specifications and documentation it may have and will certify in writing to Netsmart that the original and all copies of such property have been destroyed.

c) Notwithstanding any termination or expiration of this Master Agreement for any reason, the terms and conditions set forth in the following Sections of this Master Agreement will survive and will be binding on the representatives, successors, heirs and assignees of the parties:

- i) Section 10 "Limitation of Liability"
- ii) Section 11 "Indemnification"
- iii) Section 12 "Termination"
- iv) Section 13 "Confidentiality"
- v) Section 14 "Non-Solicitation"
- vi) Section 16 "General Provisions"

13. CONFIDENTIALITY

a) Each party agrees that by reason of their engagement hereunder, they will acquire confidential information and trade secrets concerning the operations of the other party and their business methods and operations and each party (including its employees and agents) will use the same standard of care, but in no event less than reasonable care, that it uses to protect its own confidential information to protect any confidential information of the other party.

b) During the implementation phase of the project, communications between the parties, such as status reports, scheduling updates, information Subscriber provides about workflows, forms, reporting will be kept confidential to provide a candid environment for continuing discussions.

c) Netsmart recognizes and acknowledges the sensitive and confidential nature of information it may obtain with regard to Subscriber's clients and their treatment, and agrees that information with respect to Subscriber's clients and their treatment



will be kept in strict confidence in perpetuity by Netsmart. Netsmart agrees to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d (“HIPAA”) and any current and future regulations promulgated thereunder. The attached Business Associate Agreement (“BAA”) is incorporated into this Master Agreement by reference.

- d) Subscriber will take adequate steps and security precautions to prevent unauthorized disclosure of information which is proprietary to Netsmart and/or the owner of the Third Party Products including, without limitation the Software Services and to maintain the confidentiality of such information, including but not limited to: (i) instructing its employees having access to such information not to copy or duplicate the same or any part thereof and to withhold disclosure or access or reference thereto from unauthorized third parties; and (ii) effecting sufficient security measures including, at the reasonable request of Netsmart, non-disclosure agreements with its employees, to safeguard such information from theft or from access by unauthorized parties.
- e) The parties understand that this agreement is subject to the provisions of Texas Government Code 552; the Texas Public Information Act.

14. NON-SOLICITATION

During the term of this Master Agreement and for a period of one (1) year following its termination or expiration, neither party will directly or indirectly solicit for employment or as a consultant, an employee or consultant of the other party, or any person who was an employee or consultant of the other party at any time during the twelve (12) month period immediately prior to the date such employee or consultant is solicited, hired or retained.

15. FORCE MAJEURE

Neither party will be responsible for delays or failures in performance resulting from acts or events beyond its reasonable control, including but not limited to, acts of nature, governmental actions, acts of terrorism, fire, labor difficulties or shortages, civil disturbances, transportation problems, interruptions of power supply or communications or natural disasters, provided such party takes reasonable efforts to minimize the effect of such acts or events.

16. GENERAL PROVISIONS

- (a) **Governing Law.** This Master Agreement will be construed in accordance with the laws of the State of Texas, without giving effect to the conflict of law rules thereof. Both parties agree

this Master Agreement does not constitute a consumer transaction.

- (b) **Entire Master Agreement.** This Master Agreement and the schedules and exhibits attached hereto contain the entire understanding of the parties with respect to the matter contained herein. There are no promises, covenants or undertakings contained in any other writing or oral communication. In the event of any conflict between or among the documents comprising this Master Agreement, the latest dated document will prevail.
- (c) **Modifications.** This Master Agreement may not be modified except in writing signed by authorized representatives of the parties.
- (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: Corporate Counsel" and emailed to Contracts_Notice@ntst.com. Notices will be effective upon the date when delivery is either effected or refused.
- (e) **Waiver.** A waiver of a breach or default under this Master Agreement will not be a waiver of any subsequent breach or default. Failure of either party to enforce compliance with any term or condition of this Master Agreement will not constitute a waiver of such term or condition.
- (f) **Insolvency.** In the event that either party will cease conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under a Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then (at the option of the other party) this Master Agreement will terminate and be of no further force and effect and any property or rights of such other party, whether tangible or intangible, will forthwith be returned to it.
- (g) **Assignment.** The subscription license granted hereunder to Subscriber may not be assigned, or sublicensed, or shared, nor may Subscriber use the Software Services to provide the software features as a service (Software as a Service) to a third party, whether for the benefit of Subscriber or others, without the written consent of Netsmart. Subscriber may, however, assign all of its rights under this Master Agreement to an assignee who acquires all or substantially all of

the assets of Subscriber, is not a competitor of Netsmart and has financial resources at least equal to those of Subscriber. Any permitted assignee will assume in writing, all obligations of the assignor.

- (h) **Publicity.** Upon prior written approval, Subscriber authorizes Netsmart to identify Subscriber as a client, and to use Subscriber's name and logo in any of Netsmart's advertising copy, promotional material or press releases.
- (i) **Equitable Relief.** It is specifically agreed that the breach of this Master Agreement, and in particular the provisions concerning non-disclosure of proprietary information may result in irreparable injury and the party who claims such a breach will be entitled to seek specific performance and injunctive relief to correct and enjoin such breach in addition to all other remedies which might be available.
- (j) **Dispute Resolution.** The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement by negotiation. In the event they are unable to resolve the dispute, the parties agree to submit the dispute to confidential mediation under the then current CPR Mediation Procedure <http://www.cpradr.org> before resorting to litigation. Severability. If any provision of this Master Agreement is found to be invalid, illegal or unenforceable under any applicable statute or law, it is to that extent deemed to be omitted, and the remaining provisions of this Master Agreement will not be affected in any way.
- (k) This Master Agreement may be executed in two or more counterparts, each of which will be deemed an original.
- (l) **Electronic Signature.** This Master Agreement may be executed by electronic signature as follows:
 - (i) a fax copy of this Master Agreements with a signature page that displays the image of a handwritten signature; or
 - (ii) a digital file that is transmitted by one party to the other which, when displayed on an electronic video display terminal, presents an image of this Master Agreement with a signature page bearing the image of a handwritten signature.
- (m) **Headings.** The headings of the paragraphs and sections of this Master Agreement are for convenience only and will not control or affect the meaning or construction of any provision of this Master Agreement.
- (n) **Compliance with Laws.** Subscriber agrees to comply with all laws and regulations, including all United States and multilateral export laws and

regulations, to assure that the Software Services are not exported, directly or indirectly, in violation of law.

Schedule A: Support Services

The Support Services described in this Schedule will be performed by Netsmart as a part of the SaaS offering subject to the terms and conditions of this License and Service Master Agreement.

- a) Netsmart will maintain the then-current version of the Software Services in substantial conformance with its Specifications as amended from time to time by Netsmart, and with applicable Federal regulatory requirements and laws. Netsmart will either:
 - (i) Correct any reproducible Problems or Defects in the Software Services by Netsmart which prevent it from operating in substantial conformance with the Specifications and applicable Federal regulatory requirements; or
 - (ii) Provide a commercially reasonable alternative that will substantially conform with the Specifications and applicable Federal regulatory requirements and laws.
- b) Priority 1 issues must be called in directly to the Netsmart Support department. Subscriber will make requests for Support Services by giving Netsmart written notice specifying a Problem or Defect in the Software Services. In making a verbal request for Support Services, Subscriber will provide Netsmart within twenty four (24) hours after such verbal notice with such written information and documentation as may be reasonably prescribed by Netsmart.
- c) On a timely basis Netsmart will also provide Subscriber with:
 - (i) such updates as are distributed without charge to other similar Subscribers which reflect modifications and incremental improvements made to the Software Services by Netsmart;
 - (ii) an opportunity to obtain enhancements to the Software Services for which charges are imposed on the same terms as such enhancements are generally made available to other Subscribers.
- d) Netsmart will make technical support personnel available from 9:00 a.m. to 6:00 p.m., Client's local time Monday through Friday, exclusive of Federal holidays.
- e) Netsmart will ensure all connectivity to Subscriber's system is through the NetsmartCares single point of connectivity utility which audits Netsmart's activity on Subscriber's system(s) when Netsmart is connected to Subscriber's system(s). These audit logs are retained for 90 days.
- f) If reasonable analysis by Netsmart indicates that a reported Problem or Defect is caused by a problem related to Hardware used by Subscriber, the hardware's system software, or applicable software other than Software Services, or Subscriber's misuse or modification of the Software Services, Netsmart's responsibility will be limited to the correction of the portion, if any, of the problem caused by a Problem or Defect in the Software Services. Subscriber will, at Netsmart's option, pay Netsmart for the cost of analyzing the reported problem at Netsmart's then prevailing time-and-materials rate.
- g) Absent a bona fide dispute, if Subscriber fails to pay for Charges when due, Netsmart may refuse to provide Support Services until Subscriber makes payment of all Charges due.
- h) The Guardian™ software diagnostic tool is included, configured and maintained at no additional charge provided Client is up to date with its Charges. The Guardian software monitors the health of Client's instance of the Software Services, and provides information technology personnel with the ability to review technical configuration and metric data including: configuration changes, support case activities, system usage, application events, licensing, user activity, and installed updates in a dashboard view.
- i) If analysis by Netsmart indicates that a reported problem is caused by a reproducible Problem or Defect, Netsmart will use commercially reasonable efforts to provide Support Services in accordance with the following prioritization of reported problems:

(Continued on next page)

Priority	Definition
<p>1 - Critical</p>	<p>Priority 1: will be assigned when the Netsmart Program or a material Netsmart Program Function component is non-operational as a result of a defect [in Production environment only] such as the Production system cannot be accessed or utilized in any capacity, a direct patient safety issue is present, or a HIPAA compliance violation as a result of a server incident or Netsmart application defect. Best efforts will be made to correct Priority 1 problems, or to provide a plan for such correction, within two (2) business days. Notwithstanding the above, Netsmart will work continuously toward resolution.</p> <p><u>Client's Commitment:</u></p> <ul style="list-style-type: none"> • This case Priority must be called in directly to the Netsmart Support department. • Client provides specific, detailed information required for troubleshooting/investigation. • Client provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate client resources, the case will be downgraded to Priority 2 after three business days.
<p>2 – High</p>	<p>Priority 2: will be assigned to defects in the live production environment that have a significant negative impact on daily operations but do not cause a “System Down”. A workaround may be available and/or the capacity to maintain daily business functionality. Commercially reasonable efforts will be made to correct Priority 2 problems, or to provide a plan for such correction, within five (5) business days.</p> <p><u>Client's Commitment:</u></p> <ul style="list-style-type: none"> • Client provides specific, detailed information required for troubleshooting/investigation. • Client provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate client resources, the case will be downgraded to Priority 3 after six business days.
<p>3-Medium</p>	<p>Priority 3: will be assigned for system defects that result in functions that have no major impact on daily operations. An issue that allows the continuation of function, including issues in which a reasonable workaround is available. Commercially reasonable efforts will be made to correct Priority 3 problems, or to provide a plan for such correction, within ten (10) business day.</p> <p><u>Client's Commitment:</u></p> <ul style="list-style-type: none"> • Client provides specific, detailed information required for troubleshooting/investigation. • Client provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate client resources, the case will be downgraded to Priority 4 after eleven (11) business days.
<p>4 – Low</p>	<p>Priority 4: will be assigned to cosmetic defects that do not affect system usability or non-defect related requests including, but not limited to, system set up/configuration, training, functionality questions, documentation, portal access, and upgrade requests. Commercially reasonable efforts will be made to address Priority 4 issues, or to provide a plan for such correction, within fifteen (15) business day.</p> <p><u>Client's Commitment:</u></p> <ul style="list-style-type: none"> • Client provides specific, detailed information required for troubleshooting/investigation. • Client provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate client resources, the case will be closed following our Case Closure Notification policy.

Schedule A-1: Service Level Agreement for SaaS or Hosting Services

1. Coverage

This Section sets forth the System Availability commitments for SaaS. If monthly System Availability (as defined below) falls below 99.9%, Netsmart will provide a credit against the Client's next monthly recurring Charges for software services to account for the downtime. The appropriate credit percentage (%) will be determined based on the following table.

System Uptime %	Credit %
>= 99.0% and < 99.9%	5%
98.0 to 98.9%	10%
96.0 to 97.9%	15%
< 95.9 or below	25%

2. System Availability Calculation

- a) Netsmart will calculate System Availability as set forth below for each month during the Term of this Netsmart Contract Addendum.
- b) System Availability will be calculated as follows (and will be rounded to up to the next one tenth of a percentage point):

$$\text{System Availability} = [(\text{Base Time} - \text{Unscheduled Downtime}) / (\text{Base Time})] \times 100$$

"Base Time" equals the product of the number of days in the applicable month times 24 hours times 60 minutes.

"Unscheduled Downtime" equals the time (in minutes) during which the Production System is not operational (excluding "Scheduled Downtime") from Netsmart's hosting facility internet connection based on the measuring methodology documented below.

"Scheduled Downtime" equals the aggregate total of all minutes of planned and scheduled maintenance performed during the month to perform any necessary hardware, operating system, network, database, application software maintenance, repair, upgrades, and updates. Netsmart will work with Client to determine and use commercially reasonable efforts to Schedule Downtime after regular business hours, during times that minimize the disruption to operations. The amount of scheduled downtime may vary from month to month depending on the level of change to the system such as the project implementation phase, adding new products, upgrading products, etc.

- c) Client is permitted to audit the Unscheduled Downtime based on the methodology established below. Netsmart agrees to cooperate with Client in connection with any audit of the Unscheduled Downtime. This audit must take place within 30 days of the month end.
- d) Netsmart recommends that Client implement, on a timely basis, the Service Packages that will be provided to Client by Netsmart on a periodic basis. Netsmart will advise Client on Service Packages that may enhance performance and availability and will advise Client of the advantages of implementing the Service Packages as well as the implication of electing not to implement the Service Packages. Netsmart will perform the technical requirements needed for Client to use the Service Packages that Client elects to implement, at no additional charge and as part of the recurring SaaS fees. Client and Netsmart will work together to establish a mutually agreeable implementation schedule for the Service Packages. Upon notice to Client that the System's performance and availability will be adversely affected if Client elects not to implement a Service Package, Client will waive any credits set forth above, until such time as Client performs its obligations as necessary to implement the required Service Packages.

- e) Client must allow Netsmart to implement the latest Netsmart supported layered software version (i.e. OS, DBMS, etc.) and patches within six (6) months of the general support announcement from Netsmart. Netsmart will advise Client regarding the layered software enhancements as well as the implications of electing not to implement the layered software enhancements. Netsmart will perform the technical requirements needed for Client to use the layered software enhancements that Client elects to implement as part of the Service fees. Client and Netsmart will work together to establish an implementation schedule for the layered software enhancements. If Netsmart provides notice to Client that the System's performance and availability will be adversely affected if Client elects not to implement the layered software enhancements, Client waives its right to any credits set forth above until Client implements the required layered software enhancements.
- f) If Client is operating beyond the Scope of Use limits, Client waives its right to any credits set forth above until Client is in compliance with Scope of Use.
- g) The System will be considered in a System Stabilization Period during the seventy-two (72) hour window following the First Productive Use and following a Major System Change. During a System Stabilization Period, changes to the System may be required to achieve optimal performance and Unscheduled Downtime or Scheduled Downtime minutes do not apply.
- h) Definitions.
 - i. *First Productive Use* means the date that data is being accessed or entered in the Hosted System for processing or review in Client's commercial environment
 - ii. *Major System Change* means a material change to the system, including a backend upgrade, operating system upgrade, new release upgrade, SAN upgrade, database upgrade
 - iii. *Scope of Use (for hosting)* means a metric used to define the limits of the hosting services as provided for in the Master Agreement)i.e. number of named/concurrent users)
 - iv. *Service Package* means software designed to fix identified Problems or Defects in the Licensed Program(s), including documentation and release notes made available with such patch or service pack.
 - v. *System Stabilization Period* is the period during the seventy-two (72) hour window following the First Productive Use and following a Major System Change

3. Exceptions

Client shall not receive any credits under this SLA in connection with any failure or deficiency of System Availability caused or associated with:

- a. Circumstances beyond Netsmart's reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, failure of third party software (including, without limitation, web server software, FTP Servers, or statistics) or inability to obtain supplies, or power used in or equipment needed for provision of services;
- b. Failure of access circuits to the Netsmart Network, unless such failure is caused solely by Netsmart;
- c. Scheduled maintenance, scheduled backups, scheduled restores and emergency maintenance and upgrades;
- d. Issues with FTP, POP, or SMTP Client access;
- e. Client's acts or omissions (or acts or omissions of others engaged or authorized by Client), including, without limitation, custom scripting or coding (e.g., CGI, Perl, Java, HTML, ASP, etc), any negligence, willful misconduct, or misuse of the Services;



- f. E-mail or webmail delivery and transmission;
 - g. Outages elsewhere on the Internet that hinder access to your account. Netsmart is not responsible for browser or DNS caching that may make your site appear inaccessible when others can still access it. Netsmart will guarantee only those areas considered under the control of Netsmart: Netsmart server links to the Internet, Netsmart's routers, and Netsmart's servers.
 - h. Use of a VPN or similar connection which is not exclusively within Netsmart's control at both ends of such connection, and where the problem occurs in the part of the VPN which is not under Netsmart's control.
4. **Scheduled Maintenance**
Netsmart reserves the right to establish a monthly maintenance window for the purpose of upgrading, patching, modifying, and repairing portions or the entire Netsmart system environment. The monthly window is generally scheduled on the 3rd Sunday of the month, from 2:00AM – 5:30AM EST.
5. **Credit Request and Payment Procedures**
In order to receive a credit, Client must submit a request for credit to Netsmart Technologies, Inc. Accounting at AR@ntst.com, within ten (10) business days after the incident supporting the request. Each request must include Client's account number (per Netsmart's invoice) and the dates and times of the unavailability of the services. If the unavailability is confirmed by Netsmart as an incident eligible for credit, credits will be applied within two billing cycles after Netsmart's receipt of Client's request. Credits are not refundable and can be used only towards future billing charges.

Notwithstanding anything to the contrary herein, the total amount credited to Client in a particular month under this SLA cannot exceed the total SaaS fees paid by Client for the month in which Services were impacted. Credits are exclusive of any applicable taxes charged to Client or collected by Netsmart and are Client's sole and exclusive remedy with respect to any failure or deficiency in level of services described in this SLA if Client applied for and received a credit. Nothing in this SLA precludes Client from pursuing an alternate contract remedy for any future incident that may occur.

Schedule B: Hardware Configuration

Client is not purchasing hardware from Netsmart. If Client is acquiring their own hardware, Netsmart will require a detailed description of the intended server configuration for Netsmart's approval prior to purchase to ensure the hardware meets the below requirements. Technical requirements may change over the course of the Master Agreement and as such, Netsmart shall notify Client of any change in which Client is expected to reasonably adopt to meet then-current technical requirements. Access to Netsmart's required hardware configurations is located on the following link by solution:

URL: <https://wikihelp.ntst.com/special:Userlogin>

Username: Netsmart_Prospect

Password: Netsmart1



Netsmart Subscription Products Addendum (“Addendum”)

1. **Subscription Products and Services Descriptions.** This Addendum is a supplement to the Master Agreement whereas the terms and conditions of this Addendum will apply to “Subscription Products and Services” identified in Section 2.
2. Subscription Products and Services will include all generic versions, corrections, enhancements and improvements developed by Netsmart during the Term of this Addendum:

<input checked="" type="checkbox"/>	OrderConnect	<input type="checkbox"/>	Not Included
<input checked="" type="checkbox"/>	CareConnect	<input type="checkbox"/>	Not Included
<input type="checkbox"/>	CarePathways Measures Reporting	<input checked="" type="checkbox"/>	Not Included
<input type="checkbox"/>	Carequality	<input checked="" type="checkbox"/>	Not Included
<input type="checkbox"/>	KPI Dashboards	<input checked="" type="checkbox"/>	Not Included
<input type="checkbox"/>	myHealthPointe Portal	<input checked="" type="checkbox"/>	Not Included
<input type="checkbox"/>	ProviderConnect	<input checked="" type="checkbox"/>	Not Included

3. **Supplemental Definitions**

Any capitalized term not defined below but used in this Addendum will have the meaning given to that term in the Master Agreement.

“Agent” means any person who is authorized under applicable law and regulations to transmit or relay prescription authorization information between a Prescriber and a pharmacy. An Agent is typically a nurse who is authorized by a physician to communicate with a pharmacy or laboratory on behalf of a Prescriber.

“Anniversary Date” means the annual calendar anniversary of the Effective Date.

“Care Provider” means an organization that provides medical or health services and any other person or organization that furnishes, bills, or is paid for health care in the normal course of business including a



hospital, critical access hospital, skilled nursing facility, or comprehensive outpatient rehabilitation facility.

“Consumer” means an individual who is receiving services from a Care Provider, and who has the right to access specific portions of their electronic health record and the ability to exchange messages with their Care Provider through a Subscription Services Product.

“Drug Information Data” or “DID” means context-relevant drug database products licensed from one of the following publishers: Cerner Multum, Inc. (“VantageRx”), First DataBank Evaluations of Drug Interactions (“EDI”) or Thomson Reuters, Inc. (“UltiMedex”) that provides drug and allergy interaction and dosage information (collectively, “DID Publishers”).

“Non-Prescribing User” means any person who is granted limited access to OrderConnect for the purpose of editing information that is not required to be entered or modified by a Prescriber or Agent under applicable law and regulations. A Non-Prescribing User typically generates reports without modification of the information in the reports, and can update basic demographic information,

“Patient Data” or “Consumer Data” means names, addresses, social security numbers, medical records and any other information concerning or relating to Consumers which is deemed to be protected health information under the rules and regulations of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). Deidentified Data (as such term is defined by HIPAA) shall not be considered to be Patient Data.

“Prescriber” means any person who possesses a DEA number and who is authorized by law to write prescriptions.

“User” means an individual or entity, other than a Consumer, that has been granted access with a user ID and password to a Subscription Product or Service by the Licensee.

4. License Terms and Conditions

- A. The Subscription Products and Services are specifically included within the grant of license and term of license as “Netsmart Programs” under the Master Agreement.
- B. Licensee grants to Netsmart a non-exclusive, non-transferable license (the “Usage License”) to use all Patient Data for the sole purpose of operating the Subscription Products and Services for the benefit of Licensee and its clients and for maintaining the Subscription Products and Services (for example, creating backups of the Patient Data or moving it between servers) so long as Netsmart has a bona fide need to do so subject to and for the sole purpose required by this Addendum and the Master Agreement. The Usage License does not confer on Netsmart any right to share Patient Data with third parties other than Netsmart employees or consultants who are bound by agreements that contain confidentiality provisions equivalent to those contained in the Master Agreement. The foregoing restriction on Netsmart’s use of Patient Data does not prohibit Netsmart from making use of Deidentified Data as described and permitted under HIPAA.
- C. Licensee shall pay Netsmart the Charges identified for the Subscription Products and Services on the Master Agreement Expenditure page for the initial term and any associated optional renewal term(s).
- D. If certain Third Party Products are being licensed under this Addendum, Licensee agrees to the pass through terms that apply to those Third Party Products at <http://www.ntst.com/passthroughterms/index.aspx>. Notwithstanding the foregoing, nothing contained in the third party pass through terms will diminish Netsmart’s obligations under this Addendum and



as between Netsmart and Licensee, in the event of a conflict of terms, the terms of this Addendum shall prevail.

- E. The parties agree to uphold their obligations under the terms of Business Associate Agreement between the parties.
- F. Only if KPI Dashboard is licensed, these additional terms and conditions shall apply:
 - Data Exchange. The nature of the KPI Dashboards requires that Netsmart have access to data, including protected health information as that term is defined under HIPAA, in order to extract information from the data and analyze, identify patterns and processes, using this information. This extract will occur nightly, unless a different extraction timeline is requested and agreed upon in writing by both parties. Client grants Netsmart a non-exclusive, non-transferable license to extract data from Client's electronic health record system, including protected health information or personally identifiable information. CLIENT also grants Netsmart a non-exclusive, non-transferable license to receive other data from CLIENT via direct database connection, or other file transfer methodology, in order to incorporate into KPI Dashboards. CLIENT grants Netsmart the right to de-identify their data and store it in a data warehouse, including comparing aggregated data among other organizations.

5. Term and Termination

- A. Netsmart will make the Subscription Products and Services available and Charges will apply, during a five (5) year term commencing on Project Kickoff and ending coterminous with the Master Agreement (unless otherwise stated on the Master Agreement Expenditures page) ("Initial Term"). After the Initial Term, the Subscription Products and Services will continue to be available to Licensee for additional terms of twelve (12) months, commencing on each subsequent Anniversary Date, subject to any increases as stated in the Master Agreement, unless and until either party gives the other written notice of termination as stated on the Master Agreement. In the event that Licensee discontinues using the Subscription Products and Services for any reason, Licensee shall be entitled to the return of all Data entered into the Subscription Product. In the event Netsmart ceases doing business, Licensee shall also be entitled to the return of all data entered into the Subscription Product. In the event data is returned to Licensee, it will be provided in comma delimited file format or another format mutually agreed to by both parties.
- B. Either party may terminate this Addendum in the event the other is in material breach of the terms of this Addendum, or as permitted under the Master Agreement.

6. Licensee Obligations

In addition to the obligations under the Master Agreement Licensee agrees:

- A. That it has no ownership rights in data or information in the DID services or content.
- B. To restrict use of Drug Information Data to licensed healthcare professional directly connected with the Licensee, either as an employee or an authorized affiliate. Such use shall be made only under the supervision of, and reliance upon, the clinical discretion and judgment of a licensed physician. As between the Licensee and the publisher of the Drug Information Data, Licensee assumes full responsibility for ensuring the appropriateness of using and relying upon the information supplied by the Drug Information Data publisher, in view of all attendant circumstances, indications and contraindications. Except as provided above, it will not otherwise make the DID content available to any person, or entity including the government, whether affiliated or not, except as required by subpoena or other legal process and after notice to the owner of the content.



- C. To maintain accurate and up to date Patient Data in all systems covered by the Master Agreement. Licensee hereby represents and warrants that it has obtained all authorizations and consents required under all applicable laws from each individual whose Patient Data it sends, receives or accesses through the Subscription Products and Services in order for Licensee to provide Patient Data to Netsmart (and its third party vendors if applicable) and for Netsmart and its third party vendors to receive, access and use Patient Data to provide the Subscription Products and Services in accordance with this Addendum. Licensee agrees to indemnify and hold harmless Netsmart from and against all claims, suits or actions by any third party against Netsmart relating to, arising out of or resulting from a breach of this representation and warranty by Licensee.
- D. To provide support to its Users and Consumers related to their use of the Subscription Products and Services.
- E. To notify Netsmart in the event Licensee becomes aware of or suspects misuse, unauthorized access, data corruption or any other threat to the security of the Subscription Products system and related data or if Licensee receives a subpoena or other legal process requiring disclosure of Netsmart confidential information or DID content.

7. Netsmart Obligations

In addition to the obligations of the Master Agreement, Netsmart will be responsible for:

- A. Establishing SSL connectivity between the Consumer's computing device and the Care Provider's firewall;
- B. Meeting the Service Levels Agreement as stated in the Master Agreement;
- C. Keeping Patient Data confidential in accordance with the terms of the Master Agreement and as required by law.

8. Limitation on Cumulative Liability for Subscription Products

EXCEPT FOR A CONTRACTUAL OBLIGATION TO INDEMNIFY LICENSEE, THE CUMULATIVE LIABILITY OF NETSMART TO LICENSEE FOR ANY ACTUAL OR ALLEGED DAMAGES ARISING OUT OF, BASED ON OR RELATING TO THE SUBSCRIPTION PRODUCTS AND SERVICES COVERED BY THIS ADDENDUM, WHETHER BASED UPON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR ANY OTHER LEGAL THEORY, WILL NOT EXCEED THE AMOUNT OF THE CHARGES PAID TO NETSMART FOR THE SUBSCRIPTION PRODUCTS AND SERVICES UNDER THIS ADDENDUM FOR THE PRIOR TWELVE (12) MONTHS.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is effective as of the Effective Date of the Master Agreement between the parties whereas Netsmart Technologies, Inc. is a Business Associate and Client 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 thirty (30) 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: **Elena Gomez**". 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.



SCOPE OF WORK ("SOW")

MUTUAL NON-DISCLOSURE AGREEMENT

Agreement made this **30th** day of **June, 2020** ("Effective Date") between Netsmart Technologies, Inc., a Delaware corporation with offices at 11100 Nall Avenue, Overland Park, KS 66211 ("Netsmart") and Hidalgo County, TX ("Company").

Description of Confidential Information. Company and Netsmart wish to exchange information of a proprietary and confidential nature for the purpose of evaluating potential business relationship or business transaction between them. A more specific description may be included below (the "Purpose").

Netsmart will release their standard cost per hour for project development related to the myInsight EHR under the condition that this information remains confidential and privileged between Netsmart and Hidalgo County.

Proprietary and confidential information includes, without limitation, all non-public data, materials, product specifications and information, business plans and strategies, marketing plans, financial information and projections, as well as confidential information of a party's clients, affiliates and stakeholders, and other non-public information disclosed or submitted by one party to the other ("Confidential Information").

Each party will disclose to the other party, only such Confidential Information as is necessary for purposes of facilitating the activities being conducted under this Agreement. A recipient of Confidential Information under this Agreement ("Recipient") will have a duty to protect only Confidential Information disclosed by the other party ("Discloser") that is identified herein or as confidential at the time of disclosure.

Each party is willing to disclose Confidential Information upon conditions which assure that the Confidential Information will be protected from improper use or public disclosure. To assure such protection and to clarify each party's obligations during and after disclosure of the Confidential Information the parties agree as follows:

Term. This Agreement controls only Confidential Information that is disclosed within one (1) year after the Effective Date of this Agreement.

Protection of Confidential Information. For a period of three (3) years from the Effective Date of this Agreement, Recipient will hold Discloser's Confidential Information in confidence and restrict its distribution solely to those employees or agents who have a need to use or evaluate the Confidential Information for the Purpose. Recipient agrees, unless required by law or with prior written consent from the Discloser, not to make Discloser's Confidential Information available in any form to any third party for any reason other than the Purpose and to obtain confirmations from a third party that it will comply with the terms of this Agreement. Recipient will take all steps reasonably necessary to protect and prevent unauthorized disclosure of Confidential Information but in no event exercise less than reasonable care.

Exclusions. The commitments set forth above will not extend to Confidential Information received by a party which: (a) was known to the party prior to the date of such disclosure, without an obligation of confidence, as evidenced by its written records; (b) was known to the public prior to the date that Confidential Information was received; (c) becomes known to the public subsequent to the date it was received through no act or failure to act on the part of the Recipient; (d) corresponds in substance to Confidential Information disclosed to the Recipient at any time by a third party having a bona fide right to disclose or make the same available to the Recipient; (e) is developed

by employees of the Recipient independently of and without reference to the Confidential Information; or (f) is required to be disclosed by the Recipient pursuant to judicial or other government order, provided the Recipient will give the other party reasonable notice prior to such disclosure and comply with any applicable protective order.

Proprietary Rights. Neither party to this Agreement acquires any intellectual property rights in any Confidential Information disclosed under this Agreement. Confidential Information is provided without warranty of any kind.

Limitation of Liability. It is agreed and understood that monetary damages would not be a sufficient remedy for a breach of this Agreement, and that in addition to all other remedies available at law or in equity, the parties may seek equitable relief, including injunction and specific performance, without proof of actual damages.

Independent Action. Neither party has any obligation under this Agreement to purchase or otherwise acquire any service or item from the other party. The parties do not intend to form a partnership or joint venture by executing this Agreement.

Governing Law. This Agreement will be interpreted in accordance with the laws of the State of Kansas. If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, it will be deemed stricken from this Agreement and the balance of the Agreement will remain in full force and effect.

Notices. All notices provided hereunder by a party will be sent Certified Mail Return receipt Requested to the other party at the address set forth above or at such other address as a party may provide in writing pursuant to this notice clause.

IN WITNESS WHEREOF, Company has hereto executed this Agreement as of the Effective Date first above written.

COMPANY: Hidalgo County, TX

BY: Richard F. Cortez
Richard F. Cortez
(PRINTED NAME)

TITLE: County Judge

DATE: 6/30/20

NETSMART TECHNOLOGIES INC.:
BY: Joseph McGovern
(PRINTED NAME)

TITLE: EVP

DATE: 06 - 26 - 2020

APPROVED BY
COMMISSIONERS' COURT
ON: 6/30/20

AI-75841

Purchasing Department 16. F. 2.
Health & Human Services Dept.

CC REGULAR AGENDA SPECIAL MTG

Meeting Date: 06/30/2020

Submitted For: Marty Salazar, PURCHASING DEPT.

Department: PURCHASING DEPT.

Information

CAPTION

A. "Discussion, consideration, and action to approve a necessary CARES Act Relief Fund expenditure to cover the estimated cost not accounted for in the current budget and cannot be lawfully funded by line item, allotment or allocation, for the Electronic Medical Records and the implementing of the migration and supplies, in order to assist with County Public Health expenses addressing the ongoing COVID-19 public health emergency; the Court having reviewed the Agenda Item Briefing, herein finds that such expenditure is reasonable and necessary for the intended use."

B. Exemption from competitive bidding requirements, pursuant to Texas LGC 262.024(a)(1): an item that must be purchased in case of a public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens; (2) an item necessary to preserve and protect the public health and safety of the citizens.

C. The current Electronic Medical Records system is not capable of handling and analyzing the data related to the Covid-19 infections effectively. The new systems allow for effective access to the data as well and increased user capacity. This will allow us to increase scalability in the number of remote sites needed to mitigate the impact caused by resurgence of Covid-19. It will also be able to handle a much larger quantity of clients without further stressing our own information technology infrastructure. The additional capability may integrate with the Healthcare Health Information Exchange and promote a secure patient health information exchange with local healthcare providers. Subject to compliance with 1295 Form.

BACKGROUND

Fiscal Impact

CALENDAR YEAR: 2020

ACCT. #: 0-1287-441-42-115-096-0-660

FUNDS AVAILABLE Y/N?: y

MATCHING FUNDS Y/N?: n

BUDGETARY IMPACT:

CARES Act Relief Fund

Attachments

Form 213

Project Overview

Tex. Local Gov't Code

Briefing AI-75841

Legal's approval

Form Review**Inbox**

Purchasing - Internal
Budget & Management
Final Approval
Form Started By: egomez
Final Approval Date: 06/26/2020

Reviewed By

Marty Salazar
Veronica Ortiz
Monica Salinas

Date

06/26/2020 04:15 PM
06/26/2020 04:20 PM
06/26/2020 05:43 PM
Started On: 06/04/2020 02:41 PM