

**AMENDMENT NO. 3 TO AGREEMENT
BETWEEN THE COUNTY OF SAN MATEO AND
NETSMART TECHNOLOGIES, INC.**

THIS AMENDMENT TO THE AGREEMENT, entered into this _____ day of _____, 20_____, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and NETSMART TECHNOLOGIES, INC., hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, the parties entered into an Agreement to install and maintain a Behavioral Health Information System at the San Mateo County Health Department on February 26, 2008, as amended on October 7, 2010, and November 1, 2010 (the "Agreement");

WHEREAS, the parties want to change or supplement the terms of that Agreement to incorporate the implementation of a Family Health Services Information System ("FHSIS") that supports the client care, monitoring and documentation needs of the Family Health Services Division;

WHEREAS, the scope of the project includes the equipment, software, hosting and support services required for the installation and operation of the system as defined in County of San Mateo Family Health Services Information System RFP #1109, Netsmart's December 2, 2009 response to RFP #1109, and all subsequent clarifications by both parties; and

WHEREAS, the parties wish to amend the Agreement to add \$889,034.00 to the Agreement, for a new total maximum fiscal obligation of no more than \$4,648,443.00.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Exhibits AA through QQ, as listed below and attached to this Amendment, are incorporated into the Agreement. Existing Exhibits A through P to the Agreement are not changed by addition of these new exhibits. The new additional exhibits are:

Exhibit AA – Deliverables, Payments and Key Staffing
Exhibit BB – Equipment and Software Configuration
Exhibit CC – Performance Standards

Exhibit DD – Support Services Program
 Exhibit EE – Software Development, Interfaces, Conversion
 Exhibit FF – Two-Party Escrow Service Agreement (with Exhibits)
 Exhibit AA to Exhibit FF – Escrow Service Work Request
 Exhibit BB to Exhibit FF – Deposit Material Description
 Exhibit CC to Exhibit FF – Release of Deposit Materials
 Exhibit EE to Exhibit FF – Enrollment Form
 Exhibit GG – Business Associate Terms
 Exhibit HH – Project Work Plan
 Exhibit II – Request for Proposal – On file with the County Manager's Office (CMO)
 Exhibit JJ – Request for Proposal Clarifications – On file with the County Manager's Office (CMO)
 Exhibit KK – Netsmart Programs
 Exhibit LL – Third-Party Programs
 Exhibit MM – Additional Purchase Options
 Exhibit NN – InfoScriber End-User License
 Exhibit OO – ASP Migration Services and Fees
 Exhibit PP – Licensed Program Specifications
 Exhibit QQ – Netsmart Hosting
 Schedule 3(a) to Exhibit QQ – Client Hardware
 Schedule 3(b) to Exhibit QQ – Netsmart Professional Services
 Schedule 3(c) to Exhibit QQ – Third Party Products
 Schedule 3(d) to Exhibit QQ – Recurring Monthly Charges
 Schedule 3(e) to Exhibit QQ – Service Level Agreement for Hosting Account Services

2. All references in the Agreement to each of Exhibits A through P, respectively, will be interpreted as referencing each of Exhibits A through P, respectively, in relation to the Behavioral Health Information System project and as referencing each of the double letter counterpart Exhibits AA through PP, respectively, in relation to the FHSIS project.
3. All references in the Agreement to the RFP will be interpreted as referencing Schedule J or Schedule JJ, accordingly, under the guidelines listed in Section 2 of this Amendment, above.
4. Section 3.4, "Maximum Amount," is replaced with the following language to reflect the addition of the FHSIS project:

"3.4 Maximum Amount. The overall Maximum Amount payable under the terms of this Agreement shall be Four Million Six Hundred Forty Eight Thousand Four Hundred Forty Three Dollars (\$4,648,443.00). However, separate not-to-exceed amounts apply to the work performed in relation to the Behavioral Health Information System project on the one hand and in relation to the FHSIS project on the other hand. Specifically, the Maximum Amount payable under the terms of this Agreement, as amended, for the Behavioral Health Information System project shall be Three Million Seven Hundred Fifty Nine Thousand Four Hundred Nine Dollars (\$3,759,409.00), and the Maximum Amount payable under the

terms of this Agreement, as amended, for the FHSIS project shall be Eight Hundred Eighty Nine Thousand Thirty Four Dollars (\$889,034).

5. Schedule QQ has been added to define the terms and conditions for hosting services to be provided by Netsmart as part of the FHSIS project.
6. Section 21.24.1 of the Agreement, "Notices," shall be modified to add the following for Notices related to the terms of this Amendment:

Director, Family Health Services Division
2000 Alameda de las Pulgas Suite 235
San Mateo, CA 94403

7. Section 8.1, "Grants," is revised to read as follows:

"8.1 Grants. Contractor hereby grants to County a nonexclusive, perpetual, irrevocable license (subject only to termination for breach of Contractor or Third Party license terms that protect their intellectual property in the licensed intellectual property) to use for the number of licensed users specified in Exhibit A and for a collection of data records that are maintained as a unified logical area on a unified/clustering computer system or on a Contractor hosted computer system, and to demonstrate, modify and reproduce the Third Party Software and Contractor Technology, which Contractor provides to County or makes available to County in hard copy or Object Code format, and the Specifications for County's internal business purposes for use by County's internal departments and its grantees and contractors.

"County shall have the right at any time during the term of the Agreement to add additional licensed users in excess of the number specified in Exhibit A and to subtract licensed users to a number less than the number specified in Exhibit A for calculation of maintenance and support charges. On each anniversary of the Effective Date, County shall provide Contractor with the maximum number of users who have had access to the System during the prior twelve (12) month period, and if the maximum number of users increased, Contractor shall invoice County for the additional licenses and annual support added by County for the twelve (12) month period concerned. If the maximum number of licensed users decreased, then County will pay annual support fees based on the decreased number of named users commencing with such next Anniversary Date. Such invoices, unless disputed by County, shall be paid to Contractor according to the terms of the Agreement."

"Contractor hereby grants to County a nonexclusive, perpetual, irrevocable license (subject only to termination for breach of Contractor or Third Party license terms that protect their intellectual property in the licensed intellectual property) to use, reproduce and modify the Deliverables, for County's internal business purposes, and for use by County departments, and its grantees and contractors. County may

provide such modified Deliverables (other than Software) to other licensees of the Software and Contractor Technology in California. County shall advise Contractor in the event it provides such modified Deliverables to any such other licensees. County shall have the right to request Contractor's consent for County to exercise rights in addition to those granted when necessary for County to realize the intended benefits of the license which shall not be unreasonably denied."

8. Section 8.2, "Term of License, is replaced with the following language: "The license is a perpetual license and will continue after the expiration of this Agreement."

9. Section 8.14 is added to the Agreement as provided below:

"8.14 Contractor Hosting. Contractor, at County request and through an amendment to this Agreement, may host the Contractor's licensed Software for the County and shall provide hosting-related maintenance including, without limitation, back-ups, server maintenance and trouble-shooting to County on substantially the same terms and conditions as provided by Contractor to similar customers in the State of California."

10. The parties have executed this Amendment by their authorized representatives with the intent to create a legally binding obligation.
11. All other terms and conditions of the agreement dated February 26, 2008, as amended, between the County and Contractor shall remain in full force and effect until it is terminated or expires in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
Richard S. Gordon, President
Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

Netsmart Technologies, Inc.



Contractor's Signature

Date: 10/21/10

San Mateo County FHSIS

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Schedule 3(e) to Exhibit QQ – Service Level Agreement for Hosting Account

Services

EXHIBIT AA
DELIVERABLES, PAYMENTS AND KEY STAFF

1. Installation Services, Licensed Software and Annual Support Fees

The following is a list of Fees for Implementation Services, Software Development Services, Licensed Software, Annual Support Fees, Other Fees and Change Orders with their related Maximum Payments:

Services and Software	Maximum Payment
Services:	
Fixed-Fee Professional Services related to project management, training, software installation and implementation per <u>Exhibit HH</u> , Project Work Plan	\$262,500
Fixed-Fee Professional Services related to Hosting Set-up per <u>Exhibit QQ</u>	\$7,500
Fixed-fee software development services defined in <u>Exhibit EE</u> , Software Development	\$15,000
Time and Materials software development services defined in <u>Exhibit EE</u> , Software Development	\$6,000
Joint Development software development services defined in <u>Exhibit EE</u> , Software Development	\$0
Licensed Programs:	
Netsmart Programs per <u>Exhibit KK</u>	\$95,000
3 rd Party Programs per <u>Exhibit QQ</u>	\$ 0
Annual Support Services:	
Netsmart Programs Annual Maintenance and Support – term of contract per <u>Exhibit KK</u>	\$128,216
Annual Maintenance for Software Development – term of contract per <u>Exhibit EE</u> . Additional maintenance for time-and-materials Software Development will apply as development is completed; development that becomes part of the core product will no longer require maintenance and support fees upon inclusion of said development in core product.	\$0
3 rd Party Programs Annual Maintenance and Support – term of contract per <u>Exhibit LL</u>	\$ 0
Other Fees:	
Hosting Fee per <u>Exhibit QQ</u>	\$249,387
Out of Pocket Expenses – term of contract	\$19,060
Escrow Services – term of contract per <u>Exhibit FF</u>	\$6,371
Subtotal	\$789,034
Change Orders per Agreement <u>Section 14</u>	\$ 100,000
Total Maximum Amount	\$ 889,034

2. Maximum Amount.

Maximum Amount is \$ 889,034 of which \$ 100,000 is Change Order contingency which shall be used on mutual agreement of the parties as outlined in Section 14 of the Agreement.

3. Payment Schedule.

Payments for Software Development and Licensed Software shall be made in accordance with the completion of milestones. County shall retain a Holdback of 10% of Charges for Professional Services and Purchase Prices for each Deliverable for which County has provided Acceptance. County will pay Contractor the Holdback 30 days following receipt by County of an invoice which is issued following Final Acceptance as defined in the table below. The total Holdback under this Agreement is \$37,250.

Software Licensing	Contract Value	Payment
Netsmart Programs	\$95,000	
Software Certification (excluding Software Development)	50%	\$ 47,500
Acceptance of the System	20%	\$ 19,000
Final Acceptance of the first FHS Program Area implementation	20%	\$ 19,000
Holdback due 30 days after Final Acceptance of the first FHS Program Area implementation applicable to the Licensed Avatar Programs	10%	\$ 9,500
Third Party Programs	\$ 0	
Delivery of Third-Party Software	100%	\$ 0
Escrow	\$ 1,200	
Amendment #3 Effective Date and on Amendment anniversary date thereafter.		\$ 1,200

Hosting Services	Est. Contract Value	Monthly Payment
Hosting Services Software Certification (excluding Software Development). Note: First 6 months discounted 25%	\$249,387	
		\$ 5,142

Professional Services	Contract Value	Payment
Fixed-fee Software Development (all payment	\$ 15,000	

milestones are specific to the software developed)			
Acceptance of the Statement of Work	20%	\$	3,000
Acceptance of Specifications	20%	\$	3,000
Software Certification	25%	\$	3,750
Acceptance of the System	25%	\$	3,750
Holdback due 30 days after Final Acceptance	10%	\$	1,500
Time-and-materials Software Development	\$ 6,000		
To be paid monthly based on billable services as incurred.		\$	6,000
Hosting Set-up	\$ 7,500		
Software Certification (excluding Software Development)		\$	7,500
Implementation Services	\$ 262,500		
Acceptance of the Statement of Work	10%	\$	26,250
6 Monthly payments commencing the month following Acceptance of the Statement of Work	80%	\$	210,000
Holdback due 30 days after Final Acceptance of the Pre-to-3 FHS Program Area Implementation.	10%	\$	26,250
Expenses	\$ 19,060		
As incurred not to exceed \$19,060.00		\$	19,060

4. Professional Service Terms

All stated professional services prices and terms will be Fixed-fee, Time-and-Materials or Joint Development.

5. Acceptance and Payment of Milestones and Deliverables

Contractor shall submit invoices in accordance with the payment terms. Contractor shall submit invoices for payments for Software Development Services and Licensed Software once County issues Acceptance of milestones stated in the payment schedules of Exhibit AA Section 3. Payment of invoices shall be in accordance with Agreement Section 3 Financial Matters.

6. Annual Support Services

Fees for Support Services are paid according to Exhibit DD.

Annual Support Services payments for Software licensed by Named User, module or development that does not become part of core product are twenty one percent (21%) of the Fees.

Annual Support Services payments begin following County Acceptance of Production Test milestones of the first FHS Program Area Implementation.

7. Change Orders

\$ 100,000 is the contingency for Change Orders which shall be used on mutual written agreement of the parties as outlined in Section 14 of the Agreement.

Payment terms for services approved by Change Orders will be either Time and Materials or Fixed-fee as determined by mutual agreement of County and Contractor on a case-by-case basis.

Payment terms for Time and Materials software development: to be paid monthly based on billable services.

Payment schedule for Fixed-fee software development is:

Acceptance of Software Development Specifications	40%
Delivery of Software Development	25%
of Software Development Production Tests	25%
Final Acceptance of Software Development	10%

8. Key Staff

Key staffing for this project requires the positions listed below and Netsmart will assign staff to the following positions:

- a. System Implementation: Project Manager and Project Executive
- b. Customization Projects: V.P., Development
- e. Conversion: Senior Vice President, Development

9. Maximum Out of Pocket Contractor Expenses: \$19,060

All travel shall be pre-approved by the County for all Contractor out-of-pocket expenses. Not to Exceed Estimate is based on an assumed maximum of 23 person-trips using California-based Netsmart resources.

10. Fee Increases

No fee increases for items outlined in Exhibit AA during the existing Term except for Maintenance and Support, Third Party licenses and InfoScriber. Fee increases shall be applied at the beginning of County fiscal year – July 1.

EXHIBIT BB EQUIPMENT AND SOFTWARE CONFIGURATION

Netsmart warrant that the specifications for Equipment and Software Configuration it is providing in this Exhibit represent all components required to satisfy the performance provisions of the deliverable within the parameters described in Exhibit CC (ASP). In the event material omissions or errors are incurred, Netsmart will bear the cost of remediation.

Base Desktop or Laptop Configuration

- Processor Intel Pentium IV, or greater
- Operating System Windows XP, or later
- RAM 1 GB, or higher
- Hard Disk Space 512 MB, or higher
- Monitor VGA or higher (1024 x 768 pixels)
- Mouse Microsoft Mouse, or compatible pointing device
- Browser Internet Explorer 6.0, or higher.

Recommended Desktop or Laptop Configuration

- Processor Intel Pentium IV, or greater
- Operating System Windows XP, or later
- RAM 2 GB, or higher
- Hard Disk Space 512 MB, or higher
- Monitor VGA or higher (1024 x 768 pixels)
- Mouse Microsoft Mouse, or compatible pointing device
- Browser Internet Explorer 6.0, or higher

Tablet PC's are not recommended.

The Netsmart solution uses the local printer drivers and settings for printing to both local or networked printers, accessible to the end user.

EXHIBIT CC **PERFORMANCE STANDARDS**

1	Maintenance and Support	<p>Level 5 - Emergency - The System no longer functions.</p> <ul style="list-style-type: none"> Performance Standard for responding to Deficiency call is 60 minutes during Normal Business Hours after an inquiry is made to the help desk. Performance Standard for reporting recommended resolution and fix date/time for all System components is two business hours during Normal Business Hours after an inquiry is made to the help desk, except that Contractor shall respond in two hours if an inquiry is made before the end of the Normal Business Hours. Based on the event the County may at its sole discretion extend the reporting period. Performance Standard for providing County a plan for correction of Deficiency associated with System component is 24 hours from the time of notification by County via phone or online customer service tracking system utilized by Contractor. Performance Standard that Contractor shall use its best efforts to respond to Deficiency calls within 60 minutes outside Normal Business Hours after an inquiry is made to the help desk. If upon initial evaluation by Contractor, the failure is determined to not be a result of the Application Software or other components of the System controlled by Contractor, it will notify the County. <p>Level 4 - Disabled, no Workaround – A business function or System component does not work as required, and no acceptable workaround is available.</p>	<p>\$100/day</p> <p>\$200/day</p> <p>\$300/day</p> <p>Less than 24 hours</p> <p>25 – 48 hours</p> <p>More than 48 hours</p>
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- Performance Standard for responding to Deficiency call is 60 minutes during Normal Business Hours after an inquiry is made to the help desk.
- Performance Standard for reporting recommended resolution and fix date/time for all System components is two business hours during Normal Business Hours and after an inquiry is made to the help desk, except that Contractor shall respond in two hours if an inquiry is made before the end of the Normal Business Hours.
- Performance Standard for providing County a plan for correction of Deficiency associated with System component is 48 hours.
- If upon initial evaluation by Contractor, the failure is determined to not be a result of the Application Software or other components of the System controlled by Contractor, it will notify the County.

Level 3 - Disabled, Workaround – A business function or System component does not work as required, but a workaround that is acceptable to County is available.

- Performance Standard for responding to Deficiency call is 60 minutes during Normal Business Hours and after an inquiry is made to the help desk.
- Performance Standard for reporting recommended resolution and fix date/time for all System components is two business hours during Normal Business Hours and after an inquiry is made to the help desk.
- Performance Standard for providing County a plan for correction of Deficiency associated with System component is 3 business days.
- If upon initial evaluation by Contractor, the failure is determined to not be a result of the Application Software or other components of the System controlled

			by Contractor, it will notify the County.
		<p>Level 2 - Minor - Noncritical, but having a negative effect on one or more business functions or System components.</p> <ul style="list-style-type: none"> • Performance Standard for responding to problem call is two hours during Normal Business Hours and after an inquiry is made to the help desk. • Performance Standard for reporting recommended resolution and fix date/time for all System components is four hours during Normal Business Hours and after an inquiry is made to the help desk. • Performance Standard for providing County a plan for correction of problem associated with System component is five business days. • If upon initial evaluation by Contractor, the failure is determined to not be a result of the Application Software or other components of the System controlled by Contractor, it will notify the County. 	
		<p>Level 1 - Cosmetic – Cosmetic and Inconsequential Deficiencies.</p> <ul style="list-style-type: none"> • Performance Standard for responding to Deficiency call is two hours during Normal Business Hours and after an inquiry is made to the help desk. • Performance Standard for providing County a plan for correction of Deficiency associated with System component is 10 business days. • If upon initial evaluation by Contractor, the failure is determined to not be a result of the Application Software or other components of the System controlled by Contractor, it will notify the County. 	

2	Help Desk	Contractor must provide and staff a toll-free Help Desk for reporting all System Deficiencies. Help Desk must be available 100% of the time during Normal Business Hours exclusive of Contractor holidays.	\$100/day \$200/day \$300/day	Less than 24 hours 25 – 48 hours More than 48 hours
3	System Performance Standards – Response Times	<p>Contractor must meet the following response time Performance Standards for the System, as defined in the Agreement.</p> <p>Record Search and/or Retrieval Time: The time elapsed after the search command is entered until the list of matching records begins to appear must not exceed 4 seconds for 95% of all record searches/retrievals.</p> <p>Screen Edit Time: The time elapsed after the last field is filled on the screen and the enter command executed until all fields entries are edited and the screen refreshed with the errors highlighted must not exceed 2 seconds for 95% of the time.</p> <p>Next Screen Page Time: The time elapsed from the request of a new screen until the new screen and data appears must not exceed 2 seconds for 95% of the time.</p> <p>Print Initiation Time: The elapsed time from the command to print a screen or report until it starts being built in the appropriate queue must be within three seconds for 98% of the time.</p> <p>Response Time Performance Standards must be measured over a minimum period of 2 hours. Response times do not include any wide area network delays.</p>	\$100/day \$200/day \$300/day	Less than 24 hours 25 – 48 hours More than 48 hours

EXHIBIT DD SUPPORT SERVICES PROGRAM

1. Basic Maintenance Obligations.

Contractor shall maintain the then-current version of the Software as well as one previous version of the Software to perform without Deficiency, in accordance with its Specifications and in accordance with the following terms and conditions during the Term.

- Contractor shall promptly repair or replace, without any additional charge other than charges specified in Exhibit AA, the Software or any portion thereof that has Deficiencies during the Term.
- Contractor shall provide its Services during Normal Business Hours.
- Contractor shall re-perform any Service that fails to meet the requirements of this Support Services Program at no additional cost, coordinate with County all tasks related to correcting Deficiencies connected with the Software, and execute on-line diagnostics from a remote Contractor location solely to assist in the identification and isolation of suspected Deficiencies.

2. Telephone Assistance.

Contractor shall respond to the inquiry with the following in accordance with the performance standards in Exhibit CC, as applicable:

- Responses to questions relating to the Software;
- Access to specialists for Deficiency definition assistance and, if required, the development, on a best efforts basis, of a temporary solution to or an emergency bypass of the Deficiency;
- Corrections and repairs of errors, problems or Deficiencies with the Software, to the extent feasible over telephone communications and/or other means; and
- Clarification of Documentation.

3. Remedial Maintenance Services/Dispatch of Contractor Personnel.

Contractor shall assign trained and qualified Services Staff to County's applicable Site in the event that:

- (i) such assistance as described in Section 2 above does not resolve Deficiencies or problems related to County's inquiries regarding Software at such Site within 24 hours after Contractor's response to County;
- (ii) the System is non-Operational; and

(iii) County requests additional onsite assistance and Contractor believes in its reasonable opinion that such a site visit will best serve to remedy the Deficiency.

If the System is non-Operational, any such Contractor staff who visit the Site shall remain at the Site on a seven-days-a-week basis repairing the applicable Software until it operates in accordance with its Specifications.

In the event that onsite assistance as described above does not resolve Deficiencies or problems related to County's inquiries regarding such Site for other types of conditions than described above within 24 hours of Contractor's response to County, and County requests additional assistance and Contractor believes in its reasonable opinion that such a Site visit will best serve to remedy the Deficiency, Contractor shall assign trained and qualified Services Staff to the designated Contractor service center within four hours of County's request and such Staff must be at the designated Contractor service center within 24 hours of County's request for additional assistance or as soon as reasonably possible thereafter.

Contractor shall provide a plan to resolve Deficiencies (other than Cosmetic Deficiencies) no later than one business day after notice by County to Contractor of such Deficiency or problems.

4. Database.

Contractor shall maintain and make available online to County a database of all Change Requests, Deficiencies, other problems reported by County or known to Contractor in the Software, and each visit by such Services Staff as described above in Remedial Maintenance Services/Dispatch of Contractor Personnel. The database shall include, as a minimum, the following:

- Date and time Contractor was notified;
- Date and time of arrival or inquiry response;
- Time spent for resolution of Deficiencies;
- Description of Deficiency;
- Description of severity level of Deficiency, e.g., emergency;
- Description of Deficiency resolution;
- Date of entry or logging onto the System in connection with Contractor's obligations under this Support Services Program; and
- Date of resolution.

5. Enhancements.

Contractor shall provide County with all Enhancements and associated Documentation that are provided as general releases to the Software, in whole or in part, at no additional cost. Such Documentation shall be adequate to inform County of the problems resolved including any significant differences resulting from the release which are known by Contractor. Contractor warrants that each such Enhancement general release shall have been tested and shall perform according to the Specifications.

Contractor agrees to correct corrupted Data that may result from any System Deficiency introduced by the Enhancement.

In addition, Contractor shall produce such Enhancements as County requests in a commercially reasonable time and at an additional charge, subject to and in accordance with the Change Order process described in Section 14 of the Agreement.

Enhancements to correct any Deficiency shall be provided to County at no additional cost and without the need for a Change Order.

6. Bug Reports Contractor shall provide to County, within 15 days of the Effective Date and the end of each calendar quarter thereafter, a list and description of all potential or actual problems, bugs, errors and Deficiencies known by Contractor to be in any version of the Proprietary Software and Third Party Software used by County, along with a schedule for resolution thereof. Deficiencies, problems, errors and bugs causing crashes or corruption of the Data shall be reported by Contractor to County within eight hours of their becoming known to Contractor. Contractor may provide a system that the County can access to obtain information above.

7. Fees, Taxes and Invoices.

(a) Payment of Fees. Service Charges for Support Services are described in Exhibit AA to the Agreement. Service Charges for Support Services will begin after County provides Final Acceptance of the first FHS Program Area Implementation. Such Service Charges will be paid annually within 30 days of the beginning of each County Fiscal Year in accordance with the following schedule:

Estimated Annual Support Fee Schedule

	FY 07- 08	FY 08- 09	FY 09- 10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	TOTALS
Netsmart Programs				\$ 24,150	\$ 24,875	\$ 25,621	\$ 26,389	\$ 27,181	\$ 128,216
Escrow Services				\$ 1,200	\$ 1,236	\$ 1,273	\$ 1,311	\$ 1,351	\$ 6,371
Software Development				\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Third Party Programs				<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>
TOTALS				\$ 25,350	\$ 26,111	\$ 26,894	\$ 27,700	\$ 28,532	\$ 134,587

(b) Fee Increases. Contractor may increase Annual Support Fees at the beginning of each County fiscal year of the Agreement by providing County with 90 days advanced written notice. There shall be no Annual Support Fee increase until 12 months after the Effective Date of this Amendment. Annual Support Fee increases shall

not exceed the CPI or 3% whichever is less. Notwithstanding any agreement to the contrary, the County agrees to pay all increases in maintenance for third party products provided for in this Agreement which the County acknowledges are outside the control of the Contractor.

EXHIBIT EE **SOFTWARE DEVELOPMENT, INTERFACES, AND CONVERSION**

1. Fixed-fee Software development and interfaces (Note: numbered items correspond to specifications.)

Requirement	Proposed Solution	Requirements of County Staff during Implement	Requirements of County Staff Ongoing	Fixed Fee Cost	Annual Fees - SW Dev	County Document Name
<u>Conversion</u>						
AFLP, BIH, Field Nursing (Pre-to-3 Conversion is not included in this fixed fee requirement)	<i>Netsmart Standard data conversion as defined in "Avatar PM 2008 Standard Electronic Conversion July-2008"</i>	Defined in Facility Responsibilities on page 7 of "Avatar PM 2008 Standard Electronic Conversion July-2008"	Defined in Facility Responsibilities on page 7 of "Avatar PM 2008 Standard Electronic Conversion July-2008"	\$15,000	\$ 0	
TOTALS				\$15,000	\$ 0	

Data Conversion Iterations

The County will have three iterations of data conversion per conversion outlined above. The first data conversion iteration will identify errors encountered during the conversion process. The County will have the opportunity to correct these errors prior to the second conversion iterations. The second conversion iteration is to confirm that previously identified errors are corrected prior to final conversion. The third iteration of conversion is the final conversion.

2. Labor Rates – for all work other than the Fixed-fee items listed above, the following rates will apply.

Labor Classification	Standard Hourly Rate	County Hourly Rate
Project Executive	\$250.00	\$200.00
Project Manager	225.00	160.00
Trainer	187.50	160.00
Interface Developer	210.00	187.50
Software Developer	210.00	187.50
RAD Implementer	200.00	175.00
SQL / Crystal Report Writer	200.00	175.00
Documenter	187.50	160.00
Software Engineer	187.50	160.00
InfoScriber Implementer	200.00	187.50

All non-Fixed-fee software development will be:

1. Authorized in writing by the County
2. Fully described and specified by the Contractor based on mutually developed and agreed specifications
3. Quoted in accordance with the labor rates shown in the chart above
4. Include all necessary labor for execution of the work, plus, for software development, any applicable maintenance fees that may apply

3. Time and Materials – the following development items and interfaces may be developed on a Time and Materials basis.

Requirement	Estimated Effort (Days)	Notes
<u>Feature Customization</u>		
PM 160 Report Build RAD screen to accommodate data entry of the PM 160 form fields.	4	

Requirement	Estimated Effort (Days)	Notes
Medi-Cal Eligibility Checking Netsmart will implement its <i>On-Line MEDS Update Request</i> option for FHS. This feature allows the user to request On-Line MEDS Eligibility Information based on required information entered by the user.	Included	
<u>Interfaces</u>		
<i>None Required</i>		

4. Joint Development – the following development items and interfaces may be developed in conjunction with other Netsmart customers.

Requirement	Estimated Effort (Days)	Notes
<i>Not Applicable</i>		

EXHIBIT FF

TWO-PARTY ESCROW SERVICE AGREEMENT

Deposit Account Number: _____

1. Introduction.

This Escrow Service Agreement (the "**Agreement**") is entered into by and between Netsmart Technologies, Inc. (the "**Depositor**") and Depositor's affiliates and subsidiaries and by Iron Mountain Intellectual Property Management, Inc. ("**Iron Mountain**") on this ____ day of _____, 2010 (the "**Effective Date**"). Depositor and Iron Mountain may be referred to individually as a "**Party**" or collectively as the "**Parties**" throughout this Agreement.

The use of the term services in this Agreement shall refer to Iron Mountain services that facilitate the creation, management, and enforcement of software or other technology escrow accounts as described in Exhibit AA attached hereto ("**Services**"). Depositor shall request Services under this Agreement by submitting a work request for certain Iron Mountain Services ("**Work Request**") via written instruction or the online portal maintained at the website located at www.ironmountainconnect.com or other website owned or controlled by Iron Mountain that are linked to that website (collectively the "**Iron Mountain Website**").

The Beneficiary and Depositor have, or will have, entered into a license agreement or other agreement conveying intellectual property rights to the Beneficiary, and the Parties intend this Agreement to be considered as supplementary to such agreement, pursuant to Title 11 United States [Bankruptcy] Code, Section 365(n).

2. Depositor Responsibilities and Representations.

- (a) Depositor shall make an initial deposit that is complete and functional of all proprietary technology and other materials covered under this Agreement ("**Deposit Material**") to Iron Mountain within thirty (30) days of the Effective Date. Depositor may also update Deposit Material from time to time during the Term of this Agreement provided a minimum of one (1) complete and functional copy of Deposit Material is deposited with Iron Mountain at all times. At the time of each deposit or update, Depositor will provide an accurate and complete description of all Deposit Material sent to Iron Mountain using the form attached hereto as Exhibit BB.
- (b) Depositor represents that it lawfully possesses all Deposit Material provided to Iron Mountain under this Agreement free of any liens or encumbrances as of the date of their deposit. Any Deposit Material liens or encumbrances made after their deposit will not prohibit, limit, or alter the rights and obligations of Iron Mountain under this Agreement. Depositor warrants that with respect to the Deposit Material, Iron Mountain's proper administration of this Agreement will not violate the rights of any third parties.
- (c) Depositor represents that all Deposit Material is readable and useable in its then current form; if any portion of such Deposit Material is encrypted, the necessary decryption tools and keys to read such material are deposited contemporaneously
- (d) Depositor may enroll one or more beneficiary ("**Beneficiary**") under this Agreement. To enroll a Beneficiary, Depositor will either (i) execute and submit to Iron Mountain a Beneficiary Enrollment

Form, referenced in this Agreement as Exhibit EE, listing each Beneficiary to be enrolled under the Agreement or (ii) enroll the Beneficiary via the online portal maintained at the Website located at www.ironmountainconnect.com. Upon Iron Mountain's receipt of Exhibit EE or any additional Exhibit EE thereto, Iron Mountain will issue an enrollment letter and a copy of Exhibit CC of this Agreement to the Beneficiary. Depositor shall use commercially reasonable efforts to assure that all Beneficiary information contained in Authorized Persons/Notices Table of each Exhibit EE submitted to Iron Mountain is current. For avoidance of doubt, Depositor may remove an enrolled Beneficiary from this Agreement by written notice to Iron Mountain. Once such notice is received by Iron Mountain, the Beneficiary shall no longer have any rights under this Agreement.

3. Iron Mountain Responsibilities and Representations.

- (a) Iron Mountain agrees to use commercially reasonable efforts to provide the Services requested by Authorized Person(s) (as identified in the "Authorized Person(s)/Notices Table" below) representing the Depositor in a Work Request and permitted requests from a Beneficiary. Iron Mountain may reject a Work Request (in whole or in part) that does not contain all Required Information at any time upon notification to the Depositor.

Exhibit FF and its Exhibits

- (b) Iron Mountain will conduct a visual inspection upon receipt of any Deposit Material and associated Exhibit BB. If Iron Mountain determines that the Deposit Material does not match the description provided by Depositor represented in Exhibit BB attached hereto, Iron Mountain will notify Depositor of such discrepancies and notate such discrepancy on the Exhibit BB.
- (c) Iron Mountain will hold and protect all Deposit Material in physical or electronic vaults that are either owned or under the direct control of Iron Mountain, unless otherwise agreed to by the Parties.

4. Payment.

Depositor shall pay to Iron Mountain all fees as set forth in the Work Request form attached hereto as Exhibit AA ("**Service Fees**"). Except as set forth below, all Service Fees are due to Iron Mountain within thirty (30) calendar days from the date of invoice in U.S. currency and are non-refundable. Iron Mountain may update Service Fees with a ninety (90) calendar day written notice to Depositor during the Term of this Agreement. Depositor is liable for any taxes related to Services purchased under this Agreement or shall present to Iron Mountain an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice, to the extent possible. Any Service Fees not collected by Iron Mountain when due shall bear interest until paid at a rate of one percent 1% per month (12% per annum) or the maximum rate permitted by law, whichever is less. Depositor agrees that if this Agreement terminates during the term for any reason other than for the fault of Iron Mountain, all prepaid fees shall be non-refundable. Notwithstanding, the non-performance of any obligations of Depositor to deliver Deposit Material under the License Agreement or this Agreement, Iron Mountain is entitled to be paid all Service Fees that accrue during the Term of this Agreement.

5. Term and Termination.

- (a) The "**Term**" of this Agreement is for a period of one (1) year from the Effective Date ("**Initial Term**") and will automatically renew for additional one (1) year terms ("**Renewal Term**") and continue in full force and effect until one of the following events occur: (i) Depositor provides written instructions of its intent to cancel this Agreement within sixty (60) days to Iron Mountain; (ii) the Agreement terminates under another provision of this Agreement; or (iii) any time after the

Initial Term, Iron Mountain provides sixty (60) days' prior written notice to the Depositor of Iron Mountain's intent to terminate this Agreement. If the Effective Date is not specified in the Introduction section, then the last date noted on the signature blocks of this Agreement shall be the Effective Date.

- (b) Unless the express terms of this Agreement provide otherwise, upon termination of this Agreement, Iron Mountain shall return the Deposit Material to the Depositor. If reasonable attempts to return the Deposit Material to the Depositor are unsuccessful, Iron Mountain shall destroy the Deposit Material.
- (c) In the event of the nonpayment of undisputed Service Fees owed to Iron Mountain, Iron Mountain shall provide Depositor with written notice of Iron Mountain's intent to terminate this Agreement.. Iron Mountain shall have the right to notify any and all Beneficiaries enrolled under this Agreement of nonpayment of Service Fees. Depositor and any enrolled Beneficiary shall have the right to make the payment to Iron Mountain to cure the default. If the past due payment is not received in full by Iron Mountain within thirty (30) calendar days of the date of such written notice, then Iron Mountain shall have the right to terminate this Agreement at any time thereafter by sending written notice of termination to Depositor and enrolled Beneficiaries. Iron Mountain shall have no obligation to perform the Services under this Agreement (except those obligations that survive termination of this Agreement) so long as any undisputed Service Fees due Iron Mountain under this Agreement remains unpaid.

6. General Indemnity.

Subject to Section 9 and 10, each Party shall defend, indemnify and hold harmless the others, their corporate affiliates and their respective officers, directors, employees, and agents and their respective successors and assigns from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, reasonable attorneys' fees), arising under this Agreement from the negligent or intentional acts or omissions of the indemnifying Party or its subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them.

7. Warranties.

- (a) IRON MOUNTAIN WARRANTS ANY AND ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER. EXCEPT AS SPECIFIED IN THIS SECTION, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, AGAINST INFRINGEMENT OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. AN AGGRIEVED PARTY MUST NOTIFY IRON MOUNTAIN PROMPTLY OF ANY CLAIMED BREACH OF ANY WARRANTIES AND SUCH PARTY'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE RETURN OF THE PORTION OF THE

Exhibit FF and its Exhibits

FEES PAID TO IRON MOUNTAIN BY PAYING PARTY FOR SUCH NON-CONFORMING SERVICES. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE. THE WARRANTY PROVIDED IS SUBJECT TO THE LIMITATION OF LIABILITY SET FORTH IN THIS AGREEMENT.

- (b) Depositor warrants that all Depositor Information provided hereunder is accurate and reliable and undertakes to promptly correct and update such Depositor Information during the Term of this Agreement.
- (c) Ownership Warranty. Depositor warrants that it is the owner or legal custodian of the Deposit Material and has full authority to store the Deposit Material and direct its disposition in accordance with the terms of this Agreement. Depositor shall reimburse Iron Mountain for any expenses reasonably incurred by Iron Mountain (including reasonable legal fees) by reason of Iron Mountain's compliance with the instructions of Depositor in the event of a dispute concerning the ownership, custody or disposition of Deposit Material stored by Depositor with Iron Mountain.

8. Confidential Information.

Iron Mountain shall have the obligation to reasonably protect the confidentiality of the Deposit Material. Except as provided in this Agreement Iron Mountain shall not disclose, transfer, make available or use the Deposit Material. Iron Mountain shall not disclose the terms of this Agreement to any third party. If Iron Mountain receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Material, Iron Mountain will notify the Parties to this Agreement unless prohibited by law. After notifying the Parties, Iron Mountain may comply in good faith with such order. It shall be the responsibility of Depositor or Beneficiary to challenge any such order; provided, however, that Iron Mountain does not waive its rights to present its position with respect to any such order. Iron Mountain will cooperate with the depositor or Beneficiary, as applicable, to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Iron Mountain's standard charges or as quoted upon submission of a detailed request.

9. Limitation of Liability.

NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, ALL LIABILITY, IF ANY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, OF ANY PARTY TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT EQUAL TO ONE YEAR OF FEES PAID OR OWED TO IRON MOUNTAIN UNDER THIS AGREEMENT. IF CLAIM OR LOSS IS MADE IN RELATION TO A SPECIFIC DEPOSIT OR DEPOSITS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES RELATED SPECIFICALLY TO SUCH DEPOSITS. THIS LIMIT SHALL NOT APPLY TO ANY PARTY FOR: (I) ANY CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHT; (II) LIABILITY FOR DEATH OR BODILY INJURY; (III) DAMAGE TO TANGIBLE PROPERTY (EXCLUDING THE DEPOSIT ITEMS); (IV) THEFT; OR (V) PROVEN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

10. Consequential Damages Waiver.

IN NO EVENT SHALL ANY PARTY TO THIS AGREEMENT BE LIABLE TO ANOTHER PARTY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS

OR LOST DATA OR INFORMATION, ANY COSTS OR EXPENSES FOR THE PROCUREMENT OF SUBSTITUTE SERVICES, OR ANY OTHER INDIRECT DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EVEN IF THE POSSIBILITY THEREOF MAY BE KNOWN IN ADVANCE TO ONE OR MORE PARTIES.

11. General.

- (a) Incorporation of Work Requests. All Depositor Work Requests are incorporated into this Agreement.
- (b) Purchase Orders. In the event that the Depositor issues a purchase order or other instrument used to pay Service Fees to Iron Mountain, any terms and conditions set forth in the purchase order which constitute terms and conditions which are in addition to those set forth in this Agreement or which establish conflicting terms and conditions to those set forth in this Agreement are expressly rejected by Iron Mountain.
- (c) Right to Make Copies. Iron Mountain shall have the right to make copies of all Deposit Material as reasonably necessary to perform the Services. Iron Mountain shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on Deposit Material onto any copies made by Iron Mountain. Any copying expenses incurred by Iron Mountain as a result of a Work Request to copy will be borne by the Depositor or party requesting the copies. Iron Mountain may request Depositor's reasonable cooperation in promptly copying Deposit Material in order for Iron Mountain to perform this Agreement.
- (d) Choice of Law. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the Commonwealth of Massachusetts, USA, as if performed wholly within the state and without giving effect to the principles of conflicts of laws.
- (e) Authorized Person(s). Depositor must authorize and designate one person whose actions will legally bind such party ("Authorized Person(s)") who shall be identified in the Authorized Person(s)/Notices Table of this Agreement) and who may manage the Iron Mountain escrow account through the Iron Mountain Website or written instruction. The Authorized Person(s) for the Depositor will maintain the accuracy of Depositor and Beneficiary name and contact information provided to Iron Mountain during the term of this Agreement.
- (f) Right to Rely on Instructions. Iron Mountain may act in reliance upon any instruction, instrument, or signature reasonably believed by Iron Mountain to be genuine and from an Authorized Person(s), officer, or other employee of the Depositor or enrolled Beneficiary. Iron Mountain may assume that such representative of Depositor or enrolled Beneficiary who gives any written notice, request, or instruction has the authority to do so. Iron Mountain will not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document reasonably believed to be from such representative. With respect to Release and Destruction of Deposit Materials, Iron Mountain shall rely on an Authorized Person(s).
- (g) Force Majeure. No Party shall be liable for any delay or failure in performance due to events outside the defaulting Party's reasonable control, including without limitation acts of God, earthquake, labor disputes, shortages of supplies, riots, war, acts of terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the excused Party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.
- (h) Notices. All notices regarding Exhibit CC (release) shall be sent by commercial express mail or other commercially appropriate means that provide prompt delivery and require proof of delivery. All other correspondence, including invoices, payments, and other documents and

communications, may be sent electronically or via regular mail. Notices to Beneficiaries of Depositor under this Agreement shall be directed to such addresses as Depositor shall provide Iron Mountain. For avoidance of doubt, Iron Mountain shall only accept contact data for Beneficiaries from Depositor. Iron Mountain and Depositor shall have the right to rely on the last known address provided by the other Party. Any correctly addressed notice or last known address that is relied on herein that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be notified as provided herein shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by electronic mail, the postal authorities by mail, through messenger or commercial express delivery services.

- (i) No Waiver. No waiver of rights under this Agreement by any Party shall constitute a subsequent waiver of this or any other right under this Agreement.
- (j) Assignment. No assignment of this Agreement by Depositor or any rights or obligations of Depositor under this Agreement is permitted without the written consent of Iron Mountain, which shall not be unreasonably withheld or delayed. Iron Mountain shall have no obligation in performing this agreement to recognize any successor or assign of Depositor or Beneficiary unless Iron Mountain receives clear, authoritative and conclusive written evidence of the change of parties.
- (k) Severability. In the event any of the terms of this Agreement become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, such term(s) shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect. If this paragraph becomes applicable and, as a result, the value of this Agreement is materially impaired for either Party, as determined by such Party in its sole discretion, then the affected Party may terminate this Agreement by notice to the other.
- (l) Independent Contractor Relationship. Depositor understands, acknowledges, and agrees that Iron Mountain's relationship with Depositor will be that of an independent contractor and that nothing in this Agreement is intended to or should be construed to create a partnership, joint venture, or employment relationship.
- (m) Attorneys' Fees. In any suit or proceeding between the Parties relating to this Agreement, the prevailing Party will have the right to recover from the other(s) its costs and reasonable fees and expenses of attorneys, accountants, and other professionals incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of this Agreement, and shall survive and not be merged into any such judgment.
- (n) No Agency. No Party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other Party or bind the other Party in any respect whatsoever.

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- (o) **Disputes.** Any dispute, difference or question relating to or arising under this Agreement between the Depositor and Iron Mountain concerning the construction, meaning, effect or implementation of this Agreement will be submitted to, and settled by arbitration by a single arbitrator chosen by the corresponding Regional Office of the American Arbitration Association in accordance with the Commercial Rules of the American Arbitration Association. The Parties shall submit briefs of no more than 10 pages and the arbitration hearing shall be limited to two (2) days maximum. The arbitrator shall apply Massachusetts law. Unless otherwise agreed by the Parties, arbitration will take place in Boston, Massachusetts, U.S.A. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator. Service of a petition to confirm the arbitration award may be made by regular mail or by commercial express mail, to the attorney for the Party or, if unrepresented, to the Party at the last known business address. If however, Depositor refuses to submit to arbitration, the matter shall not be submitted to arbitration and Iron Mountain may submit the matter to any court of competent jurisdiction for an interpleader or similar action. Unless adjudged otherwise, any costs of arbitration incurred by Iron Mountain, including reasonable attorney's fees and costs, shall be paid by Depositor.
- (p) **Regulations.** Both Parties are responsible for and warrant, to the extent of their individual actions or omissions, compliance with all applicable laws, rules and regulations, including but not limited to: customs laws; import; export and re-export laws; and government regulations of any country from or to which the Deposit Material may be delivered in accordance with the provisions of this Agreement.
- (q) **No Third Party Rights.** This Agreement is made solely for the benefits of enrolled Beneficiaries and the Parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement unless otherwise agreed to by all the parties hereto. Enrolled Beneficiaries shall be considered intended third-party beneficiaries and may claim under this Agreement, but shall be bound by all terms and conditions including but not limited to the Limitation of Liability and Consequential Damages Waiver herein.
- (r) **Entire Agreement.** The Parties agree that this Agreement, which includes all the Exhibits attached hereto and all valid Work Requests submitted by the Parties, is the complete agreement between the Parties hereto concerning the subject matter of this Agreement and replaces any prior or contemporaneous oral or written communications between the Parties. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified herein. Each of the parties herein represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized and signed by a person who meets statutory or other binding approval to sign on behalf of its business organization as named in this Agreement. This Agreement may only be modified by mutual written agreement of the Parties.
- (s) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
- (t) **Survival.** Sections 5 (Term and Termination), 6 (General Indemnity), 7 (Warranties), 8 (Confidential Information), 9 (Limitation of Liability) 10 (Consequential Damages Waiver), and 11 (General) of this Agreement shall survive termination of this Agreement or any Exhibit A Attached hereto.
- (u) **Affiliates.** "Affiliates", as used herein, shall mean those entities controlled by, or under common control with the Depositor. For purposes of the foregoing definition "control" (including "controlled by" and "under common control") shall mean ownership of, or the right to acquire: (a) not less

than fifty percent (50%) of the voting stock of a corporation, (b) the right to vote not less than fifty (50%) of the voting stock of a corporation, or (c) not less than fifty (50%) ownership interest in a partnership or other business entity. It is the intention of the Depositor and Iron Mountain (i) that each Affiliate shall be bound by the terms and conditions of this Agreement, (ii) that all of the services provided under this Agreement be made available to each Affiliate, (iii) each Affiliate shall be entitled to enforce this Agreement against Iron Mountain and that (iv) each Affiliate shall be an intended third party beneficiary of this Agreement, but shall be bound by all terms and conditions including but not limited to the Limitation of Liability and Consequential Damages Waiver herein.

**NOTE: SIGNATURE BLOCKS, AUTHORIZED PERSON NOTICES TABLE, AND BILLING CONTACT INFORMATION
TABLE FOLLOW ON THE NEXT PAGE**

Exhibit FF and its Exhibits

Note: If contracting electronically via the online portal, clicking the "I Accept" button displayed as part of the ordering process, evidences Depositor's agreement to the preceding terms and conditions (the "Agreement"). If you are entering into this Agreement via the online portal on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these terms and conditions, in which case the terms "you" or "your" shall refer to such entity. If you do not have such authority, or if you do not agree with these terms and conditions, you must select the "I Decline" button.

DEPOSITOR

SIGNATURE:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS	

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

Signature:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS:	<u>ipmclientservices@ironmountain.com</u>

AUTHORIZED PERSON(S)/NOTICES TABLE

Please provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All Notices will be sent electronically and/or through regular mail to the appropriate address set forth below.

PRINT NAME:	
TITLE:	
EMAIL ADDRESS	
STREET ADDRESS 1	
PROVINCE/CITY/STATE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	

BILLING CONTACT INFORMATION TABLE

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

PRINT NAME:	
TITLE:	
EMAIL ADDRESS	
STREET ADDRESS 1	
PROVINCE/CITY/STATE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	

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

Exhibit FF and its Exhibits

MUST BE COMPLETED **EXHIBIT AA - Escrow Service Work Request**
Deposit Account Number: _____

Note: Parties may submit Work Requests via written instruction or electronically through the online portal.

SERVICE Check box(es) to order service	SERVICE DESCRIPTION – TWO PARTY ESCROW AGREEMENT All services are listed below. Services in shaded tables are required for every new escrow account set up. Some services may not be available under the Agreement.	ONE- TIME FEES	ANN UAL FEES	PAYING PARTY Check box to identify the Paying Party for each service below.
<input type="checkbox"/> Setup Fee <input checked="" type="checkbox"/> Deposit Account Fee- including Escrow Manageme nt Center Access <input checked="" type="checkbox"/> Beneficiary Fee Including Escrow Manageme nt Center Access	<p>Iron Mountain will setup a new escrow deposit account using a standard escrow agreement. Custom contracts are subject to the Custom Contract Fee noted below.</p> <p>Iron Mountain will set up one deposit account to manage and administrate access to Deposit Material that will be securely stored in controlled media vaults. Furthermore, Iron Mountain will provide account services that include unlimited deposits, electronic vaulting, access to Iron Mountain Connect™ Escrow Management Center for secure online account management, submission of electronic Work Requests, and communication of status. A Client Manager will be assigned to each deposit account and provide training upon request to facilitate secure Internet access to the account and ensure fulfillment of Work Requests. An oversize fee may apply.</p> <p>Iron Mountain will fulfill a Work Request to add a Beneficiary to an escrow deposit account and manage access rights associated with the account. ,where possible, Beneficiary will have access to Iron Mountain Connect™ Escrow Management Center for secure online account management, submission of electronic Work Requests, and communication of status. A Client Manager will be assigned to each deposit account and provide training upon request to facilitate secure Internet access to the account and ensure fulfillment of Work Requests.</p>	\$1,050	\$1000 \$200	<input checked="" type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary <input checked="" type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary <input checked="" type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Additional Beneficiary	Iron Mountain will fulfill a Work Request to add a new Beneficiary to an escrow deposit account in accordance with the service description above and the Agreement		\$195	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Deposit Tracking Notification	At least semi-annually, Iron Mountain will send an update reminder to Depositor. Thereafter, Beneficiary will be notified of last deposit. .	N/A	\$350	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Dual/Remot e Vaulting	Iron Mountain will fulfill a Work Request to store deposit materials in one additional location as defined within the Service Agreement. Duplicate storage request may be in the form of either physical media or electronic storage.	N/A	\$500	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Release Deposit Material	Iron Mountain will process a Work Request to release Deposit Material by following the specific procedures defined in Exhibit CC "Release of Deposit Materials" the Escrow Service Agreement.	\$500	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Custom Services	Iron Mountain will provide its Escrow Expert consulting based on a custom SOW mutually agreed to by all Parties.	\$150/ hour	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Custom Contract Fee	Custom contracts are subject to the Custom Contract Fee, which covers the review and processing of custom or modified contracts.	\$500	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary

EXHIBIT BB TO EXHIBIT FF

DEPOSIT MATERIAL DESCRIPTION

COMPANY NAME: _____ ESCROW ACCOUNT NUMBER: _____

DEPOSIT NAME _____ AND DEPOSIT VERSION _____ (Deposit Name will appear in account history reports)

DEPOSIT MEDIA (PLEASE LABEL ALL MEDIA WITH THE DEPOSIT NAME PROVIDED ABOVE)

MEDIA TYPE	QUANTITY	MEDIA TYPE	QUANTITY
<input type="checkbox"/> CD-ROM / DVD		<input type="checkbox"/> 3.5" Floppy Disk	
<input type="checkbox"/> DLT Tape		<input type="checkbox"/> Documentation	
<input type="checkbox"/> DAT Tape		<input type="checkbox"/> Hard Drive / CPU	
		<input type="checkbox"/> Circuit Board	

	TOTAL SIZE OF TRANSMISSION (SPECIFY IN BYTES)	# OF FILES	# OF FOLDERS
<input type="checkbox"/> Internet File Transfer			
<input type="checkbox"/> Other (please describe below):			

DEPOSIT ENCRYPTION (Please check either "Yes" or "No" below and complete as appropriate)

Is the media or are any of the files encrypted? ☐ Yes or ☐ No

If yes, please include any passwords and decryption tools description below. Please also deposit all necessary encryption software with this deposit.

Encryption tool name _____ Version _____

Hardware required _____

Software required _____

Other required information _____

DEPOSIT CERTIFICATION (Please check the box below to Certify and Provide your Contact Information)

<input type="checkbox"/> I certify for Depositor that the above described Deposit Material has been transmitted electronically or sent via commercial express mail carrier to Iron Mountain at the address below.	<input type="checkbox"/> Iron Mountain has inspected and accepted the above described Deposit Material either electronically or physically. Iron Mountain will notify Depositor of any discrepancies.
NAME:	NAME:
DATE:	DATE:
EMAIL ADDRESS:	
TELEPHONE NUMBER:	
FAX NUMBER:	

Note: If Depositor is physically sending Deposit Material to Iron Mountain, please label all media and mail all Deposit Material with the appropriate Exhibit BB via commercial express carrier to the following address:

Iron Mountain Intellectual Property Management, Inc.

Attn: Vault Administration

2100 Norcross Parkway, Suite 150

Norcross, GA 30071

Telephone: (800) 875-5669

Facsimile: (770) 239-9201

FOR IRON MOUNTAIN USE ONLY: (NOTED DISCREPANCIES ON VISUAL INSPECTION)

EXHIBIT CC TO EXHIBIT FF

Release Of Deposit materials

Iron Mountain will use the following procedures to process any Work Request to release Deposit Material.

1. Release of Deposit Upon Depositor's Instruction. Upon receipt by Iron Mountain of written instructions directly from Depositor, Depositor's trustee in bankruptcy or a court of competent jurisdiction, Iron Mountain will release a copy of the Deposit Materials to the Beneficiary identified in the instructions. Iron Mountain is entitled to receive any fees due Iron Mountain before making the release. Beneficiary's enrollment will terminate upon the release of the Deposit Materials held by Iron Mountain.
2. Filing For Release by Beneficiary.
 - (a) Upon notice to Iron Mountain by Beneficiary of the occurrence of a Release Condition (defined hereinafter), Iron Mountain shall provide Depositor with a copy of Beneficiary's notice by commercial express mail. Such notice from Beneficiary will be signed and on company letterhead. From the date Iron Mountain mails the notice requesting release of the Deposit Materials, Depositor shall have sixty-(60) days to deliver to Iron Mountain contrary instructions ("Contrary Instructions"). Contrary Instructions shall mean the written representation by Depositor that a Release Condition has not occurred or has been cured within the allotted time period. Such notice shall be signed and on company letterhead. Upon receipt of Contrary Instructions, Iron Mountain shall not release a copy of the Deposit Material, but shall send a copy of the Contrary Instructions to Beneficiary by commercial express mail.
 - (b) If no Contrary Instructions are given to Iron Mountain, Depositor agrees that Iron Mountain shall, unless prohibited by operation of law, deliver a copy of the Deposit Materials to the Beneficiary that provides Iron Mountain with a statement, signed by an officer of the Beneficiary:
 - (i) asserting that the Beneficiary is entitled to release of the Deposit Material;
 - (ii) requesting that a copy of the Deposit Material be released and delivered to Beneficiary;
 - (iii) asserting that the copy of the Deposit Materials being released to Beneficiary will only be used as permitted under this Agreement and any other agreement(s) between Depositor and Beneficiary controlling use of the Deposit Material; and
 - (iv) stating specific delivery instructions along with any fees due Iron Mountain.
3. Release Conditions. As used in this Agreement, "Release Condition" shall mean the existence of any one or more of the following circumstances, uncorrected for more than thirty (30) days:
 - (i) Depositor's entry of an order for relief under Title 11 of the United States Bankruptcy Code;
 - (ii) The making by Depositor of a general assignment for the benefit of creditors;
 - (iii) The appointment of a general receiver or trustee in bankruptcy of Depositor's business or property; or
 - (iv) Action by Depositor under any state or federal insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.
4. Right to Use Following Release. Beneficiary has the right under this Agreement to use the Deposit Materials for the sole purpose of continuing the benefits afforded to Beneficiary by the License Agreement. Notwithstanding the preceding sentence, Beneficiary shall not have access to the Deposit Materials unless there is a release of the Deposit Materials in accordance with the Agreement. Beneficiary shall be obligated to maintain the confidentiality of the released Deposit Materials.

EXHIBIT EE TO EXHIBIT FF

Enrollment Form

Pursuant to the Two Party Escrow Service Agreement ("Agreement"), Depositor hereby enrolls the County of San Mateo as a Beneficiary:

Deposit Account Number: _____

NOTICES TABLE

All Notices to Beneficiary will be sent to the contact set forth below.

PRINT NAME:	MARY HANSELL
TITLE:	DIRECTOR, FAMILY HEALTH SERVICES
EMAIL ADDRESS	MHANSELL@CO.SANMATEO.CA.US
STREET ADDRESS 1	2000 ALAMEDA DE LAS PULGAS
PROVINCE/CITY/STATE	SAN MATEO
POSTAL/ZIP CODE	94403
PHONE NUMBER	650.573.2316
FAX NUMBER	650.578-8939

BILLING CONTACT INFORMATION TABLE

All Invoices to Beneficiary will be sent to the contact set forth below.

PRINT NAME:	DONNA SPILLANE
TITLE:	FISCAL MANAGER
EMAIL ADDRESS	DSPILLANE@CO.SANMATEO.CA.US
STREET ADDRESS 1	2000 ALAMEDA DE LAS PULGAS
PROVINCE/CITY/STATE	SAN MATEO
POSTAL/ZIP CODE	94403
PHONE NUMBER	650.573.3393
FAX NUMBER	650.578-8939

All notices to Iron Mountain should be sent to ipmcontracts@ironmountain.com OR Iron Mountain, Attn: Contract Administration, 2100 Norcross Parkway, Suite 150, Norcross, Georgia, 30071, USA.

DEPOSITOR

SIGNATURE:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS	

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

Signature:	
PRINT NAME:	
TITLE:	
DATE:	
MAIL ADDRESS:	ipmcontracts@ironmountain.com

EXHIBIT GG
BUSINESS ASSOCIATE TERMS

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement effective on _____, 2010, is entered into by and between Netsmart Technologies, Inc. and _____
_____ ("Covered Entity").

RECITALS

- A. The purpose of this Agreement is to comply with the Standards of Privacy and Security of Individually Identifiable Health Information ("protected health information") published on December 28, 2000 by the Secretary of the U.S. Department of Health and Human Services ("HHS") to amend 45 C.F.R. Part 160 and Part 164 (the "Privacy Regulation") under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and 42 CFR Part 2, and Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), including Sections 164.308, 164.310, 164.312 and 164.316 of Title 45 of the Code of Federal Regulations.
- B. This Agreement sets forth the terms and conditions pursuant to which protected health information that is provided by, or created or received by Netsmart Technologies, Inc. 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 those terms in 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 Technologies, Inc. provides services for Covered Entity that involve the use and disclosure of protected health information. Except as otherwise specified herein, Netsmart Technologies, Inc. may make any and all uses of protected health information necessary to perform its obligations under the Services Agreement between the parties. Additionally, Netsmart Technologies, Inc. may use or disclose protected health information for the purposes authorized by this Agreement, and, except as otherwise limited by this Agreement, for the proper management and administration of Netsmart Technologies, Inc. or to carry out its legal responsibilities. Further, Netsmart Technologies, Inc. may use protected health information to report violations of law to appropriate Federal and State authorities consistent with 45 CFR §164.502 (j)(i).

2. Responsibilities of Netsmart Technologies, Inc. With regard to its use and/or disclosure of protected health information, Netsmart Technologies, Inc. hereby agrees to do the following:

- (a) Use and/or disclose the protected health information only as permitted or required by this Agreement or as otherwise required by law;

(b) Mitigate to the extent practicable, any harmful effect that is known to it of a use or disclosure of protected health information by it in violation of the requirements of this Agreement;

(c) Report to the designated privacy officer of Covered Entity, in writing, any use and/or disclosure of the protected health information that is not permitted or required by this Agreement or a security incident of which Netsmart Technologies, Inc. becomes aware within fifteen (15) days of Netsmart Technologies, Inc.'s discovery of such unauthorized use and/or disclosure;

(d) Use commercially reasonable efforts to maintain the security of the protected health information and to prevent unauthorized use and/or disclosure of such protected health information and to implement Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of protected health information as required by 45 CFR Part 164 Subpart C ("Security Rule");

(e) Require all of its employees, representatives, subcontractors or agents that receive or use or have access to protected health information under this Agreement to agree in writing to adhere to the same restrictions and conditions on the use and/or disclosure of protected health information that apply herein, including the obligation to return or destroy the protected health information as provided under (h) of this section;

(f) Make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of protected health information to the Secretary of HHS for purposes of determining Covered Entity's compliance with the Privacy and Security Regulations, subject to attorney-client and other applicable legal privileges;

(g) Upon written request, make available during normal business hours at Netsmart Technologies, Inc.'s offices all records, books, agreements, policies and procedures relating to the use and/or disclosure of protected health information to the Covered Entity within thirty (30) days for purposes of enabling Covered Entity to determine Netsmart Technologies, Inc.'s compliance with the terms of this Agreement;

(h) Within forty five (45) 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 protected health information in accordance with 45 C.F. R. §164.526 and §164.528;

(i) Return to Covered Entity or destroy, as requested by Covered Entity, within thirty (30) days of the termination of this Agreement, the protected health information in Netsmart Technologies, Inc.'s possession and retain no copies or back-up tapes;

(j) If Netsmart Technologies, Inc. maintains, retains, modifies, records, stores, destroys or otherwise holds, uses, or discloses Unsecured Protected Health Information (as defined in HITECH Section 4402 (h)(i)), it shall, following the discovery of a breach of such information, notify Covered Entity of such breach. Such notice shall include the identification of each individual whose Unsecured Protected Health Information has been

or is reasonably believed by Netsmart Technologies, Inc. to have been accessed, acquired or disclosed during such breach; and

(k) Netsmart Technologies, Inc. represents that if applicable to it, it has policies and procedures in place designed to detect, prevent and mitigate the risk of Identity Theft to comply with the Federal Trade Commissions Identity Theft Prevention Red Flags Rule (16 CFR § 681.2).

3. Responsibilities of Covered Entity With regard to the use and/or disclosure of protected health information by Netsmart Technologies, Inc., Covered Entity hereby agrees:

(a) To inform Netsmart Technologies, Inc. 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 and provide Netsmart Technologies, Inc. a copy of the notice currently in use;

(b) To inform Netsmart Technologies, Inc. of any changes in, or withdrawal of, the consent or authorization provided to Covered Entity by individuals whose protected health information may be used and/or disclosed by Netsmart Technologies, Inc. under this Agreement pursuant to 45 C.F.R. §164.506 or §164.508; and

(c) To notify Netsmart Technologies, Inc. in writing and in a timely manner, of any restrictions on the use and/or disclosure of protected health information agreed to by Covered Entity as provided for in 45 C.F.R. §164.522.

(d) Covered Entity shall not request Netsmart Technologies, Inc. to use or disclose protected health information 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 Service Arrangement, Netsmart Technologies, Inc. may use or disclose Protected Health Information for Netsmart Technologies, Inc.'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, agents, representatives and members of its work force, whose services may be used to fulfill obligations under this Agreement, are or will be appropriately informed of the terms of this Agreement and are under legal obligation to fully comply with all provisions of this Agreement.

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 mutual agreement of the parties.

(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 Technologies, Inc. has breached a material provision of this Agreement, provided that Covered Entity agrees that if a breach is curable, it will: (i) provide Netsmart Technologies, Inc. with five (5) days written notice of the existence of an

alleged material breach; and (ii) afford Netsmart Technologies, Inc. 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 related agreement.

6. Survival. The respective rights and obligations of Netsmart Technologies, Inc. and Covered Entity under the provisions of Sections 2(h) and 8 will survive the termination of this Agreement indefinitely.

7. Amendment. This Agreement may not be modified or amended, except in writing as agreed to by each party.

8. 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.

9. 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: Chief Financial Officer". Notices will be effective upon the date when delivery is either effected or refused.

10. 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.

11. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA and HITECH.

12. Binding Effect. This Agreement shall be binding upon the parties hereto, and their respective legal representatives, trustees, receivers, successors and permitted assigns.

13. 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.

14. 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.

15. Security Rule Assurances

(a) Netsmart Technologies, Inc. will implement and use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity.

(b) If Netsmart Technologies, Inc. maintains, retains, modifies, records, stores, destroys or otherwise holds, uses or discloses Unsecured Protected Health Information (as defined in HITECH Section 4402 (h)(i)), it shall, following the discovery of a breach of such information, notify Covered Entity of such breach. Such notice shall include the identification of each individual whose Unsecured Protected Health Information has been or is reasonably believed by Netsmart Technologies, Inc. to have been accessed, acquired or disclosed during such breach.

(c) Netsmart Technologies, Inc. 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. Business Associates must enter into the written contract before any use or disclosure of electronic PHI by such agent. The written contract must identify Covered Entity as a direct and intended third party beneficiary, with the right to enforce any breach of the contract concerning the use or disclosure of electronic PHI. Netsmart Technologies, Inc. will provide a copy of the written contract to Covered Entity upon request. The Business Associate Agreement or written contract will include notification of a breach of unsecured protected health information as referenced in Section 2(i) herein and compliance with the Red Flags Rule as referenced in Section 2(k) herein.

(d) Netsmart Technologies, Inc. will report in writing to Covered Entity any security incident pertaining to such electronic PHI (whether involving Netsmart Technologies, Inc. or an agent, including a subcontractor). Netsmart Technologies, Inc. will provide such written report within 15 days after it becomes aware of any such security incident. Netsmart Technologies, Inc. will provide Covered Entity with the information necessary for Covered Entity to investigate any such security incident.

(e) A security incident means "the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system".

(f) Netsmart Technologies, Inc. will comply with any reasonable policies and procedures that Covered Entity implements to obtain compliance under the Security Rule.

IN WITNESS WHEREOF, the parties hereto hereby set their hands and seals as of the day of , 2010.

IN PRESENCE OF:

Margaret Russell
Witness

Netsmart Technologies, Inc.

By: [Signature]
Name: Alan Tillinghast
Title: Executive Vice President
Date: 10/21/10

Covered Entity

Witness

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT HH PROJECT WORKPLAN

County and Contractor have agreed on Exhibit HH Project Work plan. County and Contractor will review the Work plan during the Project Initiation Phase and may revise the Work plan based on that review. Once County provides Acceptance of the Statement of Work at the end of the Project Initiation Phase, the Project Work plan will be final and may only be revised by a Project Change Order.

**EXHBIT II
REQUEST FOR PROPOSAL**

Reference on file with the County Manager's Office (CMO).

EXHBIT JJ
REQUEST FOR PROPOSAL CLARIFICATIONS
Reference on file with the County Manager's Office (CMO)

Documents to include:

December 4, 2009 Netsmart RFP Response

1. Binder #1

- a. Binder 1 - Netsmart Final Response.doc
- b. Binder 1 - Signed Documents.PDF
- c. Binder 1 - Attachments
 - i. Sample Change Management Plan.doc
 - ii. Sample Communication Plan.doc
 - iii. Sample Data Model Diagram.gif

2. Binder #2

- a. Binder 2 - Netsmart Final Response.doc
- b. Binder 2 - Signed Documents.PDF
- c. Binder 2 Attachments
 - i. Microsoft Project Plan.mpp
 - ii. Risk Management Plan Template.dot
 - iii. System Test Plan Template.doc
 - iv. Training Plan Template.doc

3. Binder #3

- a. Binder 3 - Netsmart Final Response.doc
- b. Binder 3 - Signed Documents.PDF
- c. Binder 3 Attachments
 - i. 2006 10k.pdf
 - ii. 2007FI~1.PDF – 2007 Consolidated Financial Statements
 - iii. 2008FI~1.PDF – 2008 Consolidated Financial Statements
 - iv. Escrow Agreement.doc
 - v. STANDA~2.DOC – Netsmart Subscription and Services Standard Agreement
 - vi. Standard License and Service Agreement.doc

Netsmart Demo Clarifications

- 4. SanMateo_Responses.pdf
- 5. Avatar Product Roadmap January 2010_Final.pdf
- 6. Avatar - Virtualization Support.pdf
- 7. Log of Change Requests Record 6.4.1.pdf
 - a. Change Control Procedure 6.2.11.pdf
 - b. Change Request 6.4.8.pdf

County Contract Amendment Clarification Responses

8. San Mateo FHS NS 3-31-2010 PLAN HIGHLIGHTS RESPONSES PUBLISHED.pdf

Netsmart Technical Environment Clarifications and Responses

9. SaaS Environment Details.pdf

10. San Mateo County FHS Network Comments 20100602 Published.docx

11. Additional Information Technical Questions_FHSIS_20100709 Published.pdf

a. ASP Environment – High Level.pdf

b. Media and Information Handling Procedures 6.2.4.pdf

c. Secure Disposal of Storage Media Procedure 5.2.5.pdf

12. SanMateo_NDA_07262010.pdf

**EXHIBIT KK
NETSMART PROGRAMS**

Product	License Cost per Unit	Annual Cost per Unit	#	Total License Price	Total Annual Fees
Avatar Practice Management - 1 Licensee Database: Includes system management, client tracking, scheduling and reporting functions.	\$10,000	\$2,100	1	Included	\$2,100
Clinician Workstation – 1 Licensee Database: Includes system management, assessment, progress notes, treatment planning and reporting functions.	\$10,000	\$2,100	1	Included	\$2,100
RADplus – Named Users (any user who currently has active privileges to use the system): Includes Avatar System access and security management, modeling, table and dictionary maintenance and ad- hoc report integration.	\$614	\$128.94	110	\$67,540	\$14,183
Avatar Test Server – configuration and support of a secondary instance of all Netsmart programs.	\$10,000	\$2,100	1	Included	Included
MobileConnect (fka Avatar Mobile) — Named Users (any user who currently has active privileges to use the system): Includes detached data entry and synchronization functionality for notes, service entry and user-defined forms.	\$498	\$104.58	20	\$ 9,960	\$2,092
Document Management (POS)	\$7,500	\$1,575	1	\$7,500	\$1,575
Electronic Signature software	\$10,000	\$2,100	1	<u>\$10,000</u>	<u>\$2,100</u>
TOTALS				\$95,000	\$24,150

EXHIBIT LL
THIRD-PARTY PROGRAMS

Product	License Cost per Unit	Annual Cost per Unit	#	Total License Price	Total Annual Fees
Intersystems Cache Database – <i>All required licenses are included in the monthly Hosting fee.</i>					
TOTALS				n/a	n/a

EXHIBIT MM
ADDITIONAL PURCHASE OPTIONS

The following pricing will hold firm for a period of 36 months from Amendment Execution Date. (Third Party Prices are subject to change). All fees are subject to a Consumer Price Index (CPI) change at the conclusion of the term.

Additional Netsmart programs/products and/or services may be purchased via a purchase order or contract addendum.

NETSMART PROGRAMS

RAD_{plus} Named Users

Additional Named Users – per user	\$614.00 one-time PLUS Hosting fee defined in Exhibit QQ
Annual Maintenance: Percentage of License	21%

Avatar Order Entry

License	\$35,000
Annual Maintenance	21%

Electronic Medication Administration Record (EMAR)

License	\$ 75,000
Annual Maintenance	21%

Minimum Dataset (MDS)

License	\$ 7,500
Annual Maintenance	21%

Incident Tracking

License	\$ 2,500
Annual Maintenance	21%

Master Patient Index

License	\$35,000
Annual Maintenance	21%

Addiction Severity Index (ASI) version 5: (Requires Avatar CWS)

License	\$ 7,500
Annual Maintenance	21%

General Ledger Interface

License	\$10,000
Annual Maintenance	21%

Client Funds Management System

License	\$ 7,500
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Annual Maintenance	21%
Executive Reporting System	
License	\$50,000
Annual Maintenance	21%
MobileConnect Named Users	
Additional Named Users	\$ 498 per user
Annual Maintenance	21%
Avatar Web Services	
License	\$35,000
Annual Maintenance	21%

ANNUAL SUBSCRIPTIONS

John Wiley Treatment Planners (Requires Avatar CWS)

Two libraries, 291 Named Users – annual fee \$23,000

PROFESSIONAL SERVICES

The following rates apply to additional services requested that are outside of the fixed-fee services described in the Work Plan.

Labor Classification	Standard Rate	County Rate
Project Executive	\$250.00	\$200.00
Project Manager	225.00	160.00
Trainer	187.50	160.00
Interface Developer	210.00	187.50
Software Developer	210.00	187.50
RAD Implementer	200.00	175.00
SQL / Crystal Report Writer	200.00	175.00
Documenter	187.50	160.00
Software Engineer	187.50	160.00
InfoScriber Implementer	200.00	187.50

Development of RAD screens and Crystal Reports

Based on the types of screens and reports discussed to date, Netsmart estimates the effort required to develop a RAD screen as approximately 24 hours and a Crystal report as approximately 40 hours, both at the rate of \$175.00.

Migration from Netsmart Hosted to County-Hosted

Upon Agreement Termination and at County's option, Netsmart will work cooperatively with County to migrate the Netsmart-hosted software and data to County-managed and operated servers on a time and materials basis. This effort is currently estimated as 5 to 6 days or approximately \$7,500. Not included in this

cost to migrate the Netsmart-hosted software and data is the cost to license the InterSystems Cache database. This cost is included in the Netsmart Hosting fees.

Option to Terminate Netsmart Hosting Prior to Agreement Termination

At County's option prior to Agreement Termination, Netsmart will work cooperatively with County to migrate the Netsmart-hosted software and data to County-managed and operated servers on a time and materials basis upon payment by County of the Hosting Services Early Termination Fee defined in the following table. This effort is currently estimated as 5 to 6 days or approximately \$7,500. Not included in this cost to migrate the Netsmart-hosted software and data is the cost to license the InterSystems Cache database.

Fiscal Period in which County takes Option to Terminate Netsmart Hosting	Early Termination Fee
County FY 10-11	Fees due to date plus 80% of total fees remaining through February 1, 2015.
County FY 11-12	Fees due to date plus 70% of total fees remaining through February 1, 2015.
County FY 13-14	Fees due to date plus 60% of total fees remaining through February 1, 2015.
County FY 14-15	Fees due to date plus 50% of total fees remaining through February 1, 2015.

EXTENDED SUPPORT AGREEMENT FOR 24x7 PRIORITY ONE COVERAGE

Cost:

\$15,250 per year (first year)

Scope:

This additional support covers Priority One system failures from 6:00 pm until 9:00 am EST, as well as all weekends and holidays. As such, the resultant net coverage for Priority One issues is 24 hours per day, 7 days per week, and 365 days per year.

Priority One system failures are defined as catastrophic production issues which may severely impact the Client's production systems, or in which Client's production systems are down or not functioning; loss of production data and no procedural

work around exists. Systems include Cache, Middleware, Web Server(s) and User Interface. Priority One issues also include issues that result in an emergency condition that cause a serious security breach.

Examples of a Priority One issue would be:

- The inability to log on to the Avatar application.
- An on-screen error condition that prevents navigation through key components of the application such as the Admissions screen or the Medical Records screen.
- The inability to produce bills (file or paper/electronic format).
- Any failure of the Cache database.
- Inability to close a bill period.
- Inability to admit a client.

Process:

From 8:00 am until 9:00 am and 6:00 pm until 8:00 pm EST, Monday through Friday exclusive of scheduled holidays, contact the customary help desk channel. After 8:00 pm, and on holidays and weekends, the process is as follows:

1. Dial the primary pager directly at: 888-610-7858 and leave the call back number **including area code**. If there is a difficulty in dialing the pager, an alternate method of sending a page is by e-mail, at: 8886107858@skytel.com. The direct dial method is generally faster. Again, it is imperative that the appropriate call back number with area code is included.

A senior associate from the System Administration Group will return the call within 15 minutes (this is to account for the processing time for the paging company; an associate will return the call immediately). Netsmart associates are equipped with laptops and are capable of dialing into a system on an urgent basis.

2. If a return call is not received in 15 minutes, please call the secondary pager at: 888-610-8041. This pager can also be accessed by e-mail at: 8886108041@skytel.com. The secondary pager should only be utilized if there is a difficulty reaching the primary pager.

EXHIBIT NN
InfoScriber End-User License

The FHSIS Amendment does not include Infoscriber.

EXHIBIT OO
ASP MIGRATION SERVICES AND FEES

This Exhibit is not applicable for the ASP Agreement.

EXHIBIT PP
LICENSED PROGRAM SPECIFICATIONS

As set forth in the following documentation:

- ❑ Avatar PM User Guide
- ❑ Avatar PM Welcome Guide
- ❑ Avatar PM Kickoff Manual
- ❑ Avatar CWS User Guide
- ❑ Avatar CWS Welcome Guide
- ❑ Avatar CWS Kickoff Manual
- ❑ RADplus User Guide
- ❑ Setup and Utilization of Third Party Reporting Software version 6.0
- ❑ System Administration Procedures for Netsmart Systems Utilizing Cache'

Note:

1 hard copy and 1 electronic copy of all documentation will be delivered with the system.

Note: Current versions of Avatar modules are as follows: PM 2008, CWS 2010, RADplus 2010

EXHIBIT QQ
Netsmart Hosting

1. **PURPOSE OF EXHIBIT** This Exhibit states the terms and conditions, under which Netsmart will provide software hosting services and permit County to load Data on the Hosted System via a virtual private network.

2. **DEFINITIONS** Capitalized terms in this Exhibit that are not defined below will have the same meaning as the terms that are given in the Agreement. All references to Schedules mean the Schedules attached to this Netsmart Hosting Exhibit unless otherwise indicated.
 - a) "Client Hardware" means the computer hardware and communications equipment required by County to log on to the System and use the Software Services and is the responsibility of County to obtain.
 - b) "Netsmart Provided Hardware" means any equipment provided to the County by Netsmart
 - c) "Data" has the meaning provided in Section 6
 - d) "Hosted System" means the hardware and software in Netsmart's data center, including the Licensed Programs as defined in the Exhibit KK that are used to provide Software Services to County.
 - e) "Service Charges" means the amount to be paid by County for
 - i) Netsmart's data center usage;
 - ii) Any Netsmart Provided Hardware;
 - iii) Any Professional Services
 - iv) The payment terms for Service Charges is set forth in Exhibit QQ Schedule 3(b) for professional services, Exhibit QQ Schedule 3(c) for third party products and Exhibit QQ Schedule 3(d) for monthly recurring charges.
 - f) "SLA" is an abbreviation for Service Level Agreement. The Service Level Agreement, or SLA, describes the functions, features and performance capabilities of the Hosted System as available at County's site and is set forth in Exhibit QQ Schedule 3(e).

3. TERM

- a) The term for the Hosting is defined in Exhibit AA.
- b) The Hosted Software Services may be used by County only:
 - i) for County's internal business purposes and not to process the data of any other entity; and
 - ii) for access by the maximum number of named users permitted under the Exhibit KK; and
 - iii) so long as the County is not otherwise in default under the Agreement or this Exhibit.
- c) This Exhibit does not convey to County any title or ownership interest in the Hosted Systems or the Licensed Programs. County has additional rights in the Licensed Programs, however, under the Agreement.
- d) The Hosting Services covered by this Exhibit are provided solely to County. County is prohibited from engaging in any activity that makes these Hosting Services available to third parties.
- e) The date on which County has access to a functional system to permit County to obtain training for its end-users and receive Hosting Services is the Effective Date.

4. CHARGES AND PAYMENT TERMS

County agrees to pay Netsmart the Service Charges in the amounts and at the times set forth in Exhibit QQ Schedule 3(c) in accordance with the payment terms of the Agreement.

5. TAXES

The Charges set forth in this Agreement do not include any taxes. Where applicable, there shall be added to such Service Charges and County shall pay amounts equal to any taxes (however designated, levied, or based) on such Service 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.

6. OWNERSHIP OF COUNTY DATA

As used in this paragraph 6, the word "Data" shall mean all information acquired from, or stored by Netsmart for County during the performance of this Agreement, including, but not limited to, all information relating to County's clients used by Netsmart in the course of providing Hosting Services to County. Netsmart acknowledges that such Data is the property of County, and shall be returned to the County upon termination of this Agreement for any reason and

will meet all compliance issues identified in the Agreement Exhibit GG The Business Associate Terms.

7. CROSS DEFAULT

A default by County and resulting termination of the Agreement will similarly terminate the license rights granted by this Exhibit. A default and termination of this Exhibit, however, will not constitute grounds for termination of the Agreement, unless the default under this Exhibit would likewise be grounds for termination of the Agreement

8. USE OF NETSMART WEBSERVICES

If separately purchased, Netsmart supports the use of Netsmart provided web services in both the SaaS and hosted environmental platforms. The only medium for transmission of webservice data into the Netsmart environment will be through VPN tunneling across the Internet. Netsmart offers two VPN offerings, depending upon the needs of the County, which include VPN client software installed on each machine submitting webservices data or VPN appliances which establish a permanent VPN tunnel between the client environment and the Netsmart SaaS data center.

9. SINGLE SIGN ON IS NOT SUPPORTED

Netsmart's Identity Manager software is required to integrate Avatar security with a client's LDAP directory structure to provide single sign-on functionality. Identity Manager is not supported in the Netsmart Hosting environment.

10. HOSTING FEE REDUCTION DUE TO NON-APPROPRIATION OF FUNDS

If the State of California fails to appropriate funds for an FHS program area served by this Netsmart Hosting Exhibit, County may reduce the number of named users for which monthly Hosting fees are calculated by the number of named users within the affected FHS program area provided:

- a) County has exhausted all reasonable efforts to pursue the appeals process with the State of California, if any, available to it as a consequence of that decision,
- b) County has given Netsmart at least ninety (90) days prior written notice of the scheduled date of non-appropriation of funds, and
- c) The total number of named users for which Hosting fees will continue to be paid does not fall below 75.

All monthly Hosting fees due after the reduction in number of named users for which monthly Hosting fees are calculated will be recalculated using the per user monthly rates described in Schedule 3(d) of this Exhibit. The State of California's non-appropriation of funds will have no effect on the County's obligation to pay monthly Hosting fees due for prior periods.

Exhibit QQ Schedule 3(a)
Client Hardware

Minimum Desktop or Laptop Configuration

- Processor Intel Pentium IV, or greater
- Operating System Windows XP, or later
- RAM 1 GB, or higher
- Hard Disk Space 512 MB, or higher
- Monitor VGA or higher (1024 x 768 pixels)
- Mouse Microsoft Mouse, or compatible pointing device
- Browser Internet Explorer 6.0, or higher.

Recommended Desktop or Laptop Configuration

- Processor Intel Pentium IV, or greater
- Operating System Windows XP, or later
- RAM 2 GB, or higher
- Hard Disk Space 512 MB, or higher
- Monitor VGA or higher (1024 x 768 pixels)
- Mouse Microsoft Mouse, or compatible pointing device
- Browser Internet Explorer 6.0, or higher

Tablet PC's are not recommended.

The Netsmart solution uses the local printer drivers and settings for printing to both local or networked printers, accessible to the end user.

Network Requirements:

Netsmart will provide to County Checkpoint VPN software, which must be utilized to connect to the Licensed Programs residing on the Netsmart server in the Data Center.

Data Communications

County is required to maintain a high speed internet access with required bandwidth of 15-25kbs per concurrent user.

**Exhibit QQ Schedule 3(b)
Netsmart Professional Services**

Item	Price	Payment Terms
Set-up Services: <ul style="list-style-type: none"> • Building the live and test databases, the reporting systems, and the web server system in the Netsmart Data Center • Installation of all Licensed Programs together with any patches for optimal performance • Configuration & testing of software programs • Establishing security infrastructure • Establishing backup/disaster recovery environments • Setting up VPN client or VPN appliance connectivity One copy of client installable Checkpoint VPN Software	\$7,500.00	On Software Certification (excluding Software Development)
Total Charges - Professional Services	\$7,500.00	

**Exhibit QQ Schedule 3(c)
Third Party Products**

Item	Price	Payment Terms
<p>County to provide VPN Appliance meeting netsmart specifications.</p> <p>Traffic passing through the VPN tunnel to the ASP Environment, must use Network Address Translation (NAT) to a Netsmart specified IP address range</p> <p>County must agree to make any firewall modifications to accommodate upgrades or changes to the NTST - ASP Firewall infrastructure.</p>	\$0.00	
Total Charges - Third Party Products	\$ 0.00	

**Exhibit QQ Schedule 3(d)
Recurring Monthly Charges**

Description	Due Monthly
<p>Hosting of Licensed Programs purchased by County as described in Exhibit AA</p> <ul style="list-style-type: none"> • Licensed Programs will be Hosted at the Netsmart Data Center. • Monthly price is based upon a rate of \$46.74 per named user per month and a minimum purchase of 110 named users per month. • Monthly fee commence upon Software Certification • Monthly fee will be reduced by 25% for the period beginning on Software Certification and continuing for 5 additional months • Additional named users can be added at a rate not to exceed \$46.74 per named user per month for a period of 36 months from the date of this Amendment. 	\$5,142.00
Checkpoint VPN Client Software Client installable on individual devices	Included
<p>Document Storage capacity of up to 10GB and throughput capacity of 1GB/sec.</p> <p>NOTE: An additional fee of \$431.46 per month will be assessed for every 10GB of storage capacity required on the Netsmart Hosted environment. An additional annual fee of \$206.30 will be assessed for every additional 1MB of throughput needed.</p>	Included
Quarterly Database Size Report for all County databases being hosted.	Included
Total Monthly Recurring Charges	\$5,142.00

Exhibit QQ Schedule 3(e)
SERVICE LEVEL AGREEMENT
For
Hosting Account Services

1. Coverage; Definitions

This Hosting Availability Service Level Agreement (SLA) applies to the following web-based services from Netsmart: Avatar or Cache hosting, e-mail hosting, or web hosting.

As used herein, the term "Hosting Availability" means the percentage of a particular month (based upon 24 hour days for the number of days in the subject month) that the Netsmart content is accessible on the Internet.

2. Service Level

- a. **Goal:** Netsmart's goal is to achieve 100% Hosting Availability.
Remedy: Subject to Sections 3 and 4 below, if the Hosting Availability is less than 99.9% in any month, Netsmart will issue a credit to County in accordance with the following schedule, with the credit being calculated on the basis of the monthly service charge for the affected service(s):

Hosting Availability	Credit Percentage
99.9 to 100%	0%
98.0 to 99.8%	5%
97.0 to 97.9%	10%
95.0 to 96.9%	15%
94.9 or below	25%

3. Exceptions

County shall not receive any credits under this SLA in connection with any failure or deficiency of Hosting 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, virus attacks or hackers, 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 County access;
- e. County's acts or omissions (or acts or omissions of others engaged or authorized by County), 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

- a. County will determine when any Netsmart Programs patches get applied to their test and/or live environment, and when Netsmart Programs version upgrades occur, or new feature releases are added, unless a patch is needed to insure system stability or system security.
- b. Netsmart reserves the right to establish a monthly maintenance window for the purpose of upgrading, patching, modifying, and repairing portions of the entire ASP/Hosting environment (e.g. database, operating system, security). The monthly window is generally scheduled on the 3rd Sunday of the month, from 5:00AM – 11:00AM EST.

5. Credit Request and Payment Procedures

In order to receive a credit, County must submit, within ten (10) business days after the incident supporting the request, a request by email to sanderson@ntst.com. Each request must include County'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 County'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 County in a particular month under this SLA cannot exceed the total hosting fee paid by County for the month in which Services were impacted. Credits are exclusive of any applicable taxes charged to County or collected by Netsmart and are County's sole and exclusive remedy with respect to any failure or deficiency in level of services described in this SLA.