ADDENDUM 1 TO
STATE OF OKLAHOMA CONTRACT WITH NETSMART TECHNOLOGIES, INC.
RESULTING FROM STATEWIDE CONTRACT NO. 1112

This Addendum 1 ("Addendum") is an Amendment to the Contract awarded to Netsmart Technologies, Inc. in connection with Statewide Contract No. 1112 resulting from RFP Solicitation #0900000373 dated March 28, 2019 and Netsmart's Response dated April 25, 2019 ("Solicitation") and is effective December 7th, 2020, ("Effective Date").

Recitals

Whereas, the State issued a Solicitation for proposals to provide hosting for Electronic Health Records, as more particularly described in the Solicitation;

Whereas, Netsmart Technologies, Inc. submitted a proposal which contained exceptions to the Solicitation terms and various other Contract Documents; and

Whereas, the State and Netsmart Technologies, Inc. have negotiated the final terms under which Netsmart Technologies, Inc. will perform the Services under the Contract.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. **Addendum Purpose.**

   This Addendum memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to Netsmart Technologies, Inc. as of even date with execution of this Addendum. The parties agree that Supplier has not yet begun performance of work contemplated by the Solicitation.

2. **Negotiated Documents of the Contract**.

   2.1.   The parties have negotiated certain terms of the Contract as follows:

         i.   certain exceptions to the Solicitation as contained in Attachment A to this Addendum titled "Negotiated Vendor Exceptions";

         ii. revisions to Netsmart Technologies, Inc. proposed "Master Services Agreement" as contained in Attachment B to this Addendum titled "MSA"

iii. inclusion of State of Oklahoma Hosting Terms as contained in Attachment C to this Addendum entitled "Data Security Agreement"

Contract Documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. The Solicitation is incorporated into this contract by reference to provide an overall description of the electronic health record system functions and capabilities in response to the RFP. To the extent that Netsmart proposed alternative functionality in its response to a specific functional or business requirement in the RFP, including a response that expressly limited the functions and capabilities of its software in relation to the published specifications, the RFP must be read in conjunction with the Netsmart Response.

2.2. Accordingly, any reference to a Contract Document refers to such Contract Document as it may have been amended by the parties. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.

State of Oklahoma

By: _____

Name: D. Jerry Moore

Title: Chief Information Officer

Date: Dec 8, 2020

Netsmart Technologies, Inc.

By: _____

Name: Netsmart - Joe McGovern

Title: EVP

Date: Dec 8, 2020

ATTACHMENT A
Negotiated Vendor Exceptions to the Solicitation

The Solicitation is hereby amended as set forth below and supersedes all prior Exceptions submitted by **Netsmart Technologies, Inc.** or discussed by the parties.

Any Requested Exception Not Appearing Below Have Been Declined by The State.

RFP Section	Exception
A.43.2 High Technology System Performance and Upgrades	**This section is hereby deleted in its entirety and replaced with the following:** Any Acquisition pursuant to this Contract of an upgrade or enhancement, that is made generally available to all of Supplier's Clients, to a high technology system shall be conditioned upon the Acquisition being provided at no charge to the State; the Acquisition being provided to the State at no additional charge pursuant to a previous agreement with the Supplier; the Supplier providing documentation that any required or recommended upgrade will enhance or is necessary for performance of the applicable State agency duties and responsibilities; or the Supplier providing documentation that it will no longer supply maintenance assistance to the applicable State agency and the applicable State agency documenting that the functions performed by the high technology system are necessary for performance of the State agency duties and responsibilities.
A.44. Emerging Technologies	**This section is hereby deleted in its entirety and replaced with the following:** The State of Oklahoma reserves the right to modify the terms of this Contract at any time to allow for technologies not identified in this Contract. If there are repeated requests for an "emerging technology" and the State feels it is warranted to add such technologies, the State reserves the right to include such technology hereunder by an Amendment to this Contract executed by both parties.
A.45 Ownership Rights	**This section is hereby deleted in its entirety.**
A.45.2 – A.45.7	**These sections are deleted in their entirety.**
A.46.1 Source Code Escrow- Reference Title 62 O.S. § 34.31	**This section is hereby added:** To the best of the parties knowledge at the time of execution, customized computer software developed or modified exclusively for the State is not within scope of this Contract.
A.47. Right to Renegotiate	**This section is hereby deleted in its entirety and replaced with the following:** Prior to exercising the State's right to cancel this Contract, the State may renegotiate the Contract for the purpose of obtaining more favorable terms for the State, provided that the term of the Contract is not modified. Any changes or modifications to the Contract or any agreement shall be done in writing and mutually executed by the parties.
Additional Licensing Terms and Conditions to be Included:	1. <u>**LICENSED PROGRAMS**</u> a) Netsmart hereby grants Licensee: i) a non-exclusive, perpetual (subject only to termination under Section 11) non-transferable license to use the Licensed Programs

RFP Section	Exception
	in object code form only for Licensee's internal business purposes and not to process the data of any other entity;
	ii) to support one production Licensee Databases and the number of named users of the Netsmart Programs set forth in Schedule [unless the license is an Enterprise type License];
	iii) on the number of servers, operating system and for access by the maximum number of simultaneous users or other such restrictions of the Third Party Products as set forth in Schedule;

The foregoing license grant may be exercised by Licensee and its employees and independent contractors (provided that such independent contractors undertake in writing to be bound by all applicable restrictions in this

Agreement) (collectively, "Licensee Personnel") on Licensee's equipment for Licensee's internal business purposes provided they are added as named users for the Licensed Programs.

b)   Except as expressly stated in this Agreement, no other rights, express, implied or otherwise are granted to Licensee.

c)   Nothing in this Agreement will be deemed to convey any title or ownership interest in the Licensed Programs to Licensee. Licensee will not sell, disclose, lease, sublease, lend or otherwise make the Licensed Programs available to anyone who does not need access to the Licensed Programs in order for Licensee use the Licensed Programs to accomplish their intended purpose.

d)   Licensee agrees to reproduce any copyright notices and/or other proprietary legends, regardless of form, con- tained in, affixed to, or appearing on the Licensed Programs.

e)   Licensee will not disassemble or reverse engineer any of the Licensed Programs nor attempt to access or modify the source code version of the Licensed Programs and will not make any derivations, adaptations, or translations of the Licensed Programs in whole or in part, nor use the Licensed Programs to develop functionally similar computer software or to otherwise compete with Netsmart.

2. WARRANTIES

a)   Netsmart warrants that the Licensed Programs will substantially conform in all material respects with their Specifications. Netsmart will correct any Problems or Defects in accordance with its Support Services program as then in effect.

b)   Netsmart further represents and warrants that it has the right to grant the licenses granted to Licensee hereunder and that to the best of Netsmart's knowledge the Licensed Programs do not infringe upon or violate the United States patent rights of any third party and do not infringe upon or violate the copyright, or trade secret right of any third party.

RFP Section	Exception
	c) If any modifications, additions or alterations of any kind or nature are made to the Licensed Programs without authorization by Netsmart or anyone acting with the consent of or under the direction of Netsmart,

MASTER SERVICE AGREEMENT

TERMS AND CONDITIONS

1. **DEFINITIONS**

This Master Service Agreement ("Agreement") is entered into by Netsmart and the State of Oklahoma, by and through the Office of Management and Enterprise Services ("State") and is a Contract Document stemming from Oklahoma Statewide Contract No. 1112 ("SW1112"). "Client" shall mean any Authorized User. Terms not defined herein shall have the meaning set forth in SW1112. Each capitalized term used in this Agreement shall have the following meaning:

1.1   "Authorized User" means members or departments within the State workforce or the workforce of the State (including independent contractors); to whom the State has assigned passwords or otherwise permitted access to or use of the Software Service, and who have signified their agreement to terms and conditions of use of the Licensed Software and the Software Services that are consistent with this Master Service Agreement, including use of the Licensed Software and Software Service only for the purposes permitted by this Master Service Agreement.

1.2   **"Data"** means all information collected, stored, processed or generated through Client's use of the Licensed Software or Software Services.

1.3   "**Documentation**" means the description and features of the Licensed Software and Software Services as set forth on the Netsmart Wiki, which includes release notes. The Netsmart Wiki can be accessed via the application or the Netsmart Cares Portal.

1.4   "**First Productive Use**" means the date that Data is being accessed or entered in the Hosted System for processing or review in Client's commercial environment.

1.5   "**Hardware Configuration**" means the hardware required to install and/or operate the Licensed Software or Software Services as set forth at https://wikihelp.ntst.com/special:Userlogin, Username: Netsmart_Prospect and Password: Netsmart1.

1.6   "**Hosted System**" means the hardware and software in Netsmart's data center that are used to provide Client with access to the Licensed Software or Software Services.

1.7   "**Licensed Software**" means the Netsmart commercial computer software programs in object code form listed in a Purchase Agreement and their associated Documentation.

1.8   "**Problem or Defect**" means any failure of the Licensed Software or Software Services to operate in substantial conformance with the Documentation.

1.9   "**Purchase Agreement**" means a document executed by the parties (such as a quote or addendum) setting forth the items being purchased by Client, which will subject to and incorporated into this Agreement.

1.10   "**Scope of Use**" means a metric used to define the limits of the products and services as provided for in the Agreement (i.e. number of concurrent users).

1.11   "**Services**" means the implementation, training, Software Services, Support Services and other services to be provided by Netsmart under this Agreement.

1.12   "**Software Services**" or "**SaaS**" means the right to access the Licensed Software in the Hosted System in accordance with the SOW, together with the Support Services.

1.13   "**Statement of Work**" or "**SOW**" means the scope for the implementation of the Licensed Software and Software Services.

1.14   "**Support Services**" means the application maintenance and support services provided by Netsmart for the Licensed Software and Software Services.

1.15   "**Third Party Products**" means any commercial software product acquired by Netsmart from an outside vendor on behalf of Client.

1.16   "**Work Product**" means any documentation, technique, methodologies, inventions, reports, software, or procedures developed, conceived or introduced by Netsmart during the course of this Agreement, whether acting alone or in conjunction with Client or its employees, Users or others. Work Product does not include any Client confidential information or Data.

2.   LICENSED SOFTWARE, SOFTWARE SERVICES AND HOSTED PROGRAMS

2.1   Licensed Software License. Netsmart grants Client a non-exclusive, perpetual, non-transferable license to use the Licensed Software only:

  i.   for Client's internal business purposes and not to process the data of any other entity; and
  ii.   to support one production database within the Scope of Use for the Licensed Software set forth on the applicable Purchase Agreement.

2.2   Software Services License. Netsmart hereby grants Client a non-exclusive, royalty-free, non-transferable subscription license to use the Software Services only:

  i.   for Client's internal business purposes and not to process the data of any other entity; and
  ii.   to support the Scope of Use for the Software Services set forth on the applicable Purchase Agreement(s).

2.3   License Rights. The license rights granted in this section may be exercised by Client, its employees and independent contractors (each a "**User**"). Client shall be responsible for each User(s) compliance with the terms of this Agreement.

2.4   License Restrictions. Except as expressly stated in this Agreement, no other rights, express, implied or otherwise, are granted to Client and Netsmart reserves all rights not expressly granted herein. Client will not knowingly permit the Licensed Software, Third Party Products or the Hosted System (i) to be disassembled or reversed engineer, (ii) to be sold, disclosed, leased, subleased, lended or otherwise made available to others including third party hosting providers, (iii) to be or attempted to be accessed, modified, make additions to or altered, (iv) make any derivations, adaptations, or translations of the Licensed Software in whole or in part, and (v) to be used to develop functionally similar computer software or to otherwise compete with Netsmart. No copies of the Licensed Software, Third Party Products or the Hosting System may be made by Client without the prior written consent of Netsmart except for backup purposes in accordance with normal data processing practices. Client agrees to reproduce any copyright notices and/or other proprietary legends, regardless of form, contained in, affixed to, or appearing on the Licensed Software and Third Party Products.

2.5   Hosted System. Netsmart grants Client a non-transferable, non-exclusive right to access the Hosted System during the Initial Term (and any Option Term).

2.6   Third Party Products. Third Party Products are licensed subject to the same restrictions as are set forth in this Agreement. Third Party Products are also subject to and Client agrees to the pass through terms that apply to those Third Party Products at https://www.ntst.com/lp/pass-through-terms. Notwithstanding the foregoing, nothing contained in the third party pass through terms will diminish Netsmart's obligations, reduce any right of Client or enlarge any obligation of the Client under this Agreement. Prior to executing a Purchase Order with Client, Netsmart shall notify Client of Netsmart's intent to provide Third Party Products and provide Client a copy of Third Party Products' terms.

2.7   Software Title. The Licensed Software and Software Services are proprietary to Netsmart and are based upon and contain trade secrets and other Confidential Information. Netsmart reserves title to the Licensed Software and Software Services and all other rights not expressly granted herein.

2.8   Scope of Use Audit. Client acknowledges that Netsmart has access to view Client's actual Scope of Use and will verify Client's actual Scope of Use of the Licensed Software or Software Services no more than one per calendar year unless in Netsmart's reasonable discretion, an action by the State gives rise to verifying Scope of Use sooner. In the event Client is self-hosted, Client will provide Netsmart with verification as to the Scope of Use of the Licensed Software or allow Netsmart or its authorized agent to independently audit Client's database to verify the same. Should this verification identify usage of the Licensed Software in excess of the Scope of Use contracted for, Client agrees to true-up the Scope of Use annually to the current usage levels.

3.   SERVICES

3.1   Implementation. The Statement of Work will set forth the tasks to be performed by each party, the time frames in which such tasks will be performed, and will identify the roles and responsibilities of the persons who will be provided by Client to support the implementation.

3.2   Support Services. Netsmart agrees to provide Support Services in accordance with the terms set forth on Schedule A.

3.3   Data Services. The parties acknowledge that certain Services provided by Netsmart hereunder utilize de-identified PHI to provide the applicable Service. Client grants Netsmart the right to de-identify data and store such de-identified data to provide the Services, including comparing aggregated data among other clients and providing comparative analysis, in accordance with HIPAA and applicable laws. Netsmart will not commercialize, sell, or market any PHI.

3.4   Data Security. Netsmart has a risk-based, independent third-party-audited Information Security Management System ("**ISMS**") designed to enable Software Services and Support Services to be delivered in a secure manner and protect against threats to the security or integrity of Client's confidential information. Netsmart aligns its ISMS to the ISO 27001/27002 information technology standards established by the International Organization for Standardization (ISO). Netsmart annually agrees to undergo SSAE18 SOC 2 Type 2 review of its data center operations and agrees to provide a summary of the report to Client upon Client's request.

3.5   Suspension of Services. Netsmart may, upon advance written notice to Client, suspend Services without liability to Client in the event of (i) a threat to the security of Netsmart's systems, the Services, Client Data or (ii) Client's undisputed invoices are overdue, in addition to any other rights or remedies, including termination of the Agreement. In the event of such suspension, Netsmart will refund any fees prepaid but not used during such suspension period.

4.   PAYMENTS

4.1   Payments. Invoices are payable net forty-five (45) days after receipt of proper invoice. Client will pay a finance charge on all undisputed amounts past due at a rate of 2.28% per annum or the highest interest rate permitted by law. Failure to make timely payment is considered a material default of the Agreement.

4.2   Annual Increases. Unless otherwise stipulated in Netsmart's Response to the RFP, Netsmart agrees that it will not revise any recurring fees during the first year of this Agreement. Thereafter, any recurring fees will be increased at a rate of 2% annually. Netsmart may further increase recurring fees for Third Party Products, if such increase from Netsmart's third party supplier exceeds the amount permitted under this Section. Netsmart agrees any such additional increase shall be at the same rate charged by the third party supplier.

4.3   Reserved

5.   WARRANTIES

Functionality Warranty. Netsmart warrants that the Licensed Software and Software Services will substantially conform in all material respects with the Documentation, provided Client is on the most current or next to most current version of the Licensed Software and no modifications, additions or alterations of any kind have been made without written direction from Netsmart. In the event of a breach of the foregoing warranty and provided Client is receiving Support Services, Netsmart will (i) correct any reproducible Problems or Defects in the Licensed Software or Software

Services which prevent it from operating in substantial conformance with the Documentation, or, (ii) provide a commercially reasonable alternative that will substantially conform with the Documentation in accordance with the Support Services provisions set forth in Schedule A. The foregoing warranty will only apply if Client meets the Hardware Configuration. UNLESS OTHERWISE PERMITTED UNDER STATE LAW, CLIENT'S EXCLUSIVE REMEDY UNDER THIS SECTION AND NETSMART'S SOLE OBLIGATION IS TO MODIFY THE LICENSED SOFTWARE OR SOFTWARE SERVICES TO ELIMINATE THE PROBLEM OR DEFECT. IN THE EVENT NETSMART CANNOT MODIFY OR ELIMINATE THE PROBLEM OR DEFECT, CLIENT MAY TERMINATE THE PURCHASE AGREEMENT AND SEEK ALL AVAILABLE REMEDIES AT LAW AND IN EQUITY. IN THE EVENT CLIENT TERMINATES THE PURCHASE AGREEMENT DUE TO NETSMART'S INABILITY TO MODIFY OR ELIMINATE THE PROBLEM OR DEFECT, NETSMART WILL REFUND TO CLIENT (I) FOR PERPETUAL LICENSES, THE AMOUNT OF THE LICENSE FEE PAID BY CLIENT, REDUCED BY ONE-TWELFTH FOR EACH FULL MONTH FROM THE DATE OF FIRST USE OF THE LICENSED SOFTWARE, UNTIL DATE OF TERMINATION, OR (II) FOR SOFTWARE SERVICES, A PRO RATA REFUND OF FEES PREPAID FOR SOFTWARE SERVICES NOT YET PROVIDED.

5.1   Services Warranty. Netsmart warrants that the Services will be performed in a professional manner in accordance with the terms in this Agreement. In the event Services are not performed in a professional manner, Netsmart shall re-perform the Services in accordance with the Statement of Work agreed to by the parties.

5.2   Disclaimer Of All Other Warranties. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESS OR IMPLIED, WHETHER IN RELATION TO THE LICENSED SOFTWARE, HARDWARE OR THE PROVISION OF ANY SERVICES INCLUDING, BUT NOT LIMITED TO, THOSE CONCERNING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ARISING BY TRADE USAGE OR COURSE OF DEALING.

6.   **LIMITATION OF LIABILITY**
6.1   LIMITATION ON DAMAGES**.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES.

6.2   LIMITATION ON CUMULATIVE LIABILITY. TO THE EXTENT ALLOWED BY APPLICABLE LAW, THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY FOR ANY ACTUAL OR ALLEGED DAMAGES ARISING OUT OF, BASED ON OR RELATING TO SW1112, WHETHER BASED UPON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR ANY OTHER LEGAL THEORY, WILL NOT EXCEED THE FEES PAID TO NETSMART IN THE CURRENT TERM GIVING RISE TO THE CAUSE OF ACTION.

6.3   EXCEPTIONS: NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE FOREGOING PROVISIONS OF THIS SECTION SHALL NOT APPLY TO OR LIMIT DAMAGES, EXPENSES, COSTS, ACTIONS, CLAIMS, AND LIABILITIES ARISING FROM OR RELATED TO PROPERTY DAMAGE, BODILY INJURY OR DEATH CAUSED BY NEGLIGENT OR WILLFUL ACTS OF NETSMART; NETSMART'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 7.1 HEREUNDER; NETSMART'S DATA SECURITY AND BREACH OBLIGATIONS UNDER SECTION 6 OF ATTACHMENT C (DATA SECURITY AGREEMENT-BREACH RESPONSIBILITIES); GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF NETSMART OR ITS EMPLOYEES, AGENTS, AND SUBCONTRACTORS, OR OTHER ACTS FOR WHICH APPLICABLE LAW DOES NOT ALLOW EXEMPTION FROM LIABILITY.

7.   **INDEMNIFICATION**
7.1   Infringement Indemnification. Netsmart will defend, indemnify and hold harmless Client and its officer, directors, employees and agents from and against third party claims, liabilities, obligations, judgements, causes of actions (the "**Claim**"), and associated costs and expenses (including reasonable attorneys' fees) to the extent arising out of an allegation that the use of the Licensed Software or Software Services infringes a third party's U.S. patent, trademark, copyright or other third party intellectual property right. In the event such an infringement is found, Netsmart will at its option and expense, and as Client's sole and exclusive remedy, procure the right to continued use of the Licensed Software or Software Services, replace or modify the Licensed Software or Software Services with a non-infringing program, or terminate the license of the Licensed Software or Software Services, and will refund to Client (i) for perpetual licenses, the amount of the license fee paid by Client, reduced by one-twelfth for each full

month from the date of first use of the Licensed Software, until the date of termination, or (ii) for Software Services, a pro rata refund of fees prepaid for Software Services not yet provided. Netsmart's indemnification obligations will not apply to the extent the Claim is based upon (i) the use of the Licensed Software or Software Services by the Client in violation with the terms of Section 2 of this Agreement; (ii) the use of the Licensed Software of Software Services by the Client in combination with other products or services not made or furnished by Netsmart, provided that the Licensed Software or Software Services alone are not the cause of such Claim; (iii) the modification, additions or alterations of the Licensed Software or Software Services by the Client or any portion without permission from Netsmart, provided that the Licensed Software or Software Services in unmodified form are not the cause of such Claim; or (iv) the use of Licensed Software or Software Services not updated to the latest version offered by Netsmart, where such version cures the infringement.

7.2   Reserved.

7.3   Indemnification Process. Upon becoming aware of any matter which is subject to the provisions of the Indemnification Section, the Client must give prompt written notice of such Claim to Netsmart. The defense shall be coordinated by Netsmart with the Office of the Attorney General when Oklahoma state agencies are named defendants in any lawsuit and Netsmart may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General if such settlement imposes any obligations on the State In the event the Office of the Attorney General does not concur with Netsmart's proposed settlement and the proposed settlement does not impose any obligations on the named Oklahoma state agency, Netsmart shall have no further obligation to defend and indemnify Client.

8.   TERM AND TERMINATION

8.1.   Term. The Term of the Service(s) is set forth on the applicable Purchase Agreement(s).

8.2.   Termination. Netsmart or State may terminate this Agreement for cause if the other party is in material breach by sending a written notice specifying each breach with reasonable detail, unless (i) the breaching party has cured the breach within thirty (30) days of receipt of written notice, or (ii) with respect to a breach which may not be reasonably cured within the 30-day period, the breaching party is diligently pursuing cure of,, cures the breach as soon as practicable and the non-breaching party agrees to such extension, which shall not be unduly withheld. Netsmart or Client may terminate a Purchase Agreement for cause if the other party is in material breach by sending a written notice specifying each breach with reasonable detail, unless (i) the breaching party has cured the breach within thirty (30) days of receipt of written notice, or (ii) with respect to a breach which may not be reasonably cured within the 30-day period, the breaching party is diligently pursuing cure of, cures the breach as soon as practicable and the non-breaching party agrees to such extension, which shall not be unduly withheld. In the event a Purchasing Agreement is terminated due to a breach by Client, within thirty (30) days of the date of termination of the Purchase Agreement, Client will erase from all computer storage any image or copies of the Licensed Software, related documentation and at Netsmart's written request, will certify in writing to Netsmart that the original and all copies of such property have been destroyed. For the avoidance of doubt, nothing herein absolves either party of any other termination rights set forth in SW1112. To the extent a Purchase Agreement is terminated for any reasons, Netsmart shall refund any fees prepaid but not used at the effective date of termination.

8.3.   Reserved.

8.4.   Copy of Data upon Termination. Upon expiration, non-renewal or termination of a Purchase Agreement, Netsmart will make a machine readable backup copy of the Data available to Client at no additional cost, in an SQL backup file (.bak) format. The backup file will be delivered via Secure FTP or on an encrypted disc as requested by Client. Netsmart retains no rights or ownership to the Data.

8.5.   Survival. Notwithstanding any termination of this Agreement for any reason, the terms and conditions set forth in the following Sections of this Agreement will survive and will be binding on the representatives, successors, heirs and assignees of the parties: Limitation of Liability, Indemnification (with respect to claims arising prior to termination), Confidentiality, and General Provisions.

9.   CONFIDENTIALITY

9.1.   Confidential Information. By virtue of the Agreement, Client may be exposed to or be provide with certain confidential and proprietary information of Netsmart. Netsmart shall clearly mark such information as confidential ("Confidential Information"). For the absence of doubt the parties acknowledge that Netsmart's intellectual property

is considered Confidential Information. Client is a state agency and subject to the Oklahoma Open Records Act and Netsmart acknowledges information marked Confidential Information will be disclosed to the extent permitted under Client's Open Records Act and in accordance with this Section. Except as permitted in this Agreement, Client will not and will not permit their employees, agents, attorneys or independent contractors to, disclose, use, copy, distribute, sell, license, publish, reproduce, or otherwise make available Confidential Information. Client agrees to secure and protect Netsmart's Confidential Information using the same standard of care, but in no event less than reasonable care, that it uses to protect its own confidential information. Client agrees to require their respective employees, agents, attorneys, and independent contractors who have a need to access Confidential Information to be bound by confidentiality obligations sufficient to protect the Confidential Information. Client may disclose the other party's Confidential Information to the extent required by applicable law or regulation, provided that it notifies the other party in writing as soon as practicable prior to such disclosure.

HIPAA. Netsmart and Client agree to execute and comply with a Business Associate Agreement ("BAA") attached hereto.

10. **INTELLECTUAL PROPERTY**

Netsmart retains all right, title and interest, including intellectual property rights and all other rights in the Licensed Software, Services and Work Product. Netsmart grants to Client a non-exclusive, non-transferable license to use Work Product for Client's own internal business purposes in conjunction with the Licensed Software and Services during the Term and for no other purpose.

11. **FORCE MAJEURE**

Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. In the event that a party's performance of its obligations is materially hindered as a result of a force majeure event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the force majeure event and steps it is taking, and plans to take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable. Subject to the conditions set forth above, such non-performance shall not be deemed a default. However, a Client may terminate a purchase order if Netsmart cannot cause delivery of Products or Services in a timely manner to meet the business needs of the Customer.

12. **GENERAL PROVISIONS**

12.1   Governing Law. This Agreement will be interpreted and enforced in accordance with the laws of the State of Oklahoma. Venue for any action, claim, dispute, or litigation relating in any way to the Contract Documents shall be in Oklahoma County, Oklahoma, or in the case of an Interlocal Entity, as agreed to between such Interlocal Entity and Netsmart or as otherwise provided by applicable law.

12.2   Amendment. There are no promises, covenants or undertakings contained in any other written or oral communication. This Agreement may not be modified except in writing and signed by authorized representatives of Netsmart and the State.

12.3   Notices. Except as otherwise required by SW1112, any notices required or permitted to be sent hereunder will be in writing and will be sent, deposited with the U.S. Postal Service (certified mail, return receipt requested). Notices to Client will be sent to the addresses first set forth in the Contract Document. Notices to Netsmart will be sent "Attention: Corporate Counsel" and emailed to Contracts_Notice@ntst.com. Delivery is effective upon valid receipt.

12.4   Waiver. A waiver or consent to any term, condition, right or remedy under this Agreement must be in writing to be effective. Failure of either party to enforce any term or condition of this Agreement will not constitute a waiver of such term or condition. No wavier or consent for any one matter will be a waiver or consent for any subsequent or different matter.

12.5   Insolvency. In the event that Netsmart will cease conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for

its business or assets, or avails itself of, or becomes subject to, any proceeding under a Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, which is not discharged within ninety (90) days, then (at the option of the State) this Agreement will terminate and be of no further force and effect and any property or rights of such other party, whether tangible or intangible, will forthwith be returned to it.

12.6   Assignment. Neither party may assign this Agreement or any licenses herein without the prior written consent of the other party, which shall not be unduly withheld. Rights granted under the terms of this Agreement may be assigned or transferred, at no additional cost, to other entities within the state.

12.7   Reserved.

12.8   Equitable Relief. It is specifically agreed that the breach of this Agreement, and in particular the provisions concerning non-disclosure of confidential information may result in irreparable injury. .

12.9   Dispute Resolution. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement by negotiation. No action, regardless of form, arising out of this Agreement will be brought more than five (5) years after the cause of action accrues.

12.10   Practice of Medicine and Accuracy of Information. Client acknowledges and agrees that the Licensed Software, Software Services and Services are information management tools, many of which contemplate and require the involvement of professional medical personnel. The duty to diagnose and treat a patient lies solely with Client and use of information provided by Netsmart, in no way replaces or substitutes for the professional judgment or skill of Client.

12.11   Reserved.

12.12   Reserved.

12.13   Headings. The headings of the paragraphs and sections of this Agreement are for convenience only and will not control or affect the meaning or construction of any provision of this Agreement.

Schedule A: Support Services

The following is a description of the Support Services to be performed by Netsmart during the time period in which Client is purchasing Support Services.

a) Netsmart will maintain the then-current version of the Licensed Software in substantial conformance with applicable Federal laws.

b) Priority 1 issues must be called in directly to the Netsmart Support department. Client will make requests for Support Services by giving Netsmart written notice specifying a Problem or Defect in the Licensed Software. In making a verbal request for Support Services, Client will provide Netsmart within twenty-four (24) hours after such verbal notice with such written information and documentation as may be reasonably prescribed by Netsmart.

c) If self-hosted, Client will provide and maintain, at its expense, hardware and/or software to allow Netsmart to access Client's system remotely.

d) Netsmart will also provide Client with:

    (i)   updates that are distributed without charge to other similar clients which reflect modifications and incremental improvements made to the Licensed Software by Netsmart;

    (ii)   an opportunity to obtain enhancements to the Licensed Software for which fees are imposed on the same terms as such enhancements are generally made available to other clients.

e) Netsmart will make technical support personnel available from 9:00 a.m. to 6:00 p.m., Client's local time Monday through Friday, exclusive of Federal holidays.

f) Client agrees to grant Netsmart access to the Licensed Software on Client's system(s) for the sole purpose of performing Netsmart's obligations under this Agreement. Netsmart will ensure all connectivity to Client's system is through the NetsmartCares single point of connectivity utility which audits Netsmart's activity on Client's system(s) when Netsmart is connected to Client's system(s). These audit logs are retained for 90 days.

g) If reasonable analysis by Netsmart indicates that a reported Problem or Defect is caused by a problem related to hardware used by Client, the hardware's system software, or applicable software other than Licensed Software, or Client 's misuse or modification of the Licensed Software, Netsmart's responsibility will be limited to the correction of the portion, if any, of the problem caused by a Problem or Defect in the Licensed Software.

h) If Client has missed any mandatory upgrades Netsmart will charge, and Client will pay, for software and services necessary to bring the Licensed Software up to Netsmart's then-current level before Netsmart will certify that Client is again eligible for Support Services hereunder.

i) When generally made available, Netsmart's Guardian software diagnostic tool is included, configured, and maintained at no additional charge provided Client is current on Support Services. The Guardian software monitors the health of Client's instance of the Licensed Software, and provides information technology personnel with the ability to review technical configuration and metric data including: configuration changes, support case activities, system usage, application events, licensing, user activity, and installed updates in a dashboard view.

j) If analysis by Netsmart indicates that a reported problem is caused by a reproducible Problem or Defect, Netsmart will use commercially reasonable efforts to provide Support Services in accordance with the following prioritization of reported problems:

Priority	Definition
1 - Critical	**Priority 1:** will be assigned when the Licensed Software or a material functional component thereof is non-operational as a result of a defect, in the production environment only, such as the production system cannot be accessed or utilized in any capacity, a direct patient safety issue is present, or a HIPAA compliance violation as a result of a server incident or Netsmart application defect. Best efforts will be made to correct Priority 1 problems, or to provide a plan for such correction, within two (2) business days. Notwithstanding the above, Netsmart will work continuously toward resolution. *Client's Commitment:* • This case Priority must be called in directly to the Netsmart Support department. • Client provides specific, detailed information required for troubleshooting/investigation. • Client provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate client resources, the case will be downgraded to Priority 2 after three business days.
2 – High	**Priority 2:** will be assigned to defects in the live production environment that have a significant negative impact on daily operations but do not cause a "System Down". A workaround may be available and/or the capacity to maintain daily business functionality. Commercially reasonable efforts will be made to correct Priority 2 problems, or to provide a plan for such correction, within five (5) business days. *Client's Commitment:* • Client provides specific, detailed information required for troubleshooting/investigation. • Client provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate client resources, the case will be downgraded to Priority 3 after six business days.
3-Medium	**Priority 3:** will be assigned for system defects that result in functions that have no major impact on daily operations. An issue that allows the continuation of function, including issues in which a reasonable workaround is available. Commercially reasonable efforts will be made to correct Priority 3 problems, or to provide a plan for such correction, within ten (10) business day. *Client's Commitment:* • Client provides specific, detailed information required for troubleshooting/investigation. • Client provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate client resources, the case will be downgraded to Priority 4 after eleven (11) business days.
4 – Low	**Priority 4:** will be assigned to cosmetic defects that do not affect system usability or non-defect related requests including, but not limited to, system set up/configuration, training, functionality questions, documentation, portal access, and upgrade requests. Commercially reasonable efforts will be made to address Priority 4 issues, or to provide a plan for such correction, within fifteen (15) business day. *Client's Commitment:* • Client provides specific, detailed information required for troubleshooting/investigation. • Client provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate client resources, the case will be closed following our Case Closure Notification policy.

1. Definitions.
    i. "**Major System Change**" means a material change to the system, including a backend upgrade, operating system upgrade, new release upgrade, SAN upgrade, database upgrade.
    ii. "**Service Package**" means software designed to fix identified Problems or Defects in the Licensed Software or Software Services, including documentation and release notes made available with such patch or service pack.
    iii. "**System Stabilization Period**" is the period during the seventy-two (72) hour window following the First Productive Use and following a Major System Change.

2. **Coverage**

This Section sets forth the System Availability commitments for Software Services or Hosting Services. If monthly System Availability (as defined below) falls below 99.9%, Netsmart will provide a credit against the Client's next monthly recurring hosting or Software Services fees to account for the downtime. If Client pays annually in advance, service credits accrued during the contract year will be applied to the next term. If no additional terms, or if Contract should terminate for any reason prior to the next term, Netsmart shall refund all credits accrued through end of current term or effective date of termination. The appropriate credit percentage (%) will be determined based on the following table.

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

3. **System Availability Calculation**

a) Netsmart will calculate System Availability as set forth below for each month during the Term.

b) System Availability will be calculated as follows (and will be rounded to up to the next one tenth of a percentage point):
"**System Availability**" = [(Base Time – Unscheduled Downtime) / (Base Time)] x 100

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

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

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

c) Client is permitted to audit Unscheduled Downtime based on the methodology established below. Netsmart agrees to cooperate with Client in connection with any audit of Unscheduled Downtime. This audit must take place within 30 days of the month end.

d) Netsmart recommends that Client implement, on a timely basis, the Service Packages that will be provided to Client by Netsmart on a periodic basis. Netsmart will advise Client on Service Packages that may enhance performance and availability and will advise Client of the advantages of implementing the Service Packages as well as the implication of electing not to implement the Service Packages. Netsmart will perform the technical requirements needed for Client to use the Service Packages that Client elects to implement, at no additional charge and as part of the recurring SaaS/Hosting fees. Client and Netsmart will work together to establish a mutually

agreeable implementation schedule for the Service Packages. Upon written notice to Client that the system's performance and availability will be adversely affected if Client elects not to implement a Service Package, Client will waive any credits set forth above, until such time as Client performs its obligations as necessary to implement the required Service Packages.

e)   Client must allow Netsmart to implement the latest Netsmart supported layered software version (i.e. OS, DBMS, etc.) and patches within six (6) months of the general support announcement from Netsmart. Netsmart will advise Client regarding the layered software enhancements as well as the implications of electing not to implement the layered software enhancements. Netsmart will perform the technical requirements needed for Client to use the layered software enhancements that Client elects to implement as part of the fees. Client and Netsmart will work together to establish an implementation schedule for the layered software enhancements. If Netsmart provides written notice to Client that the system's performance and availability will be adversely affected if Client elects not to implement the layered software enhancements, Client waives its right to any credits set forth above until Client implements the required layered software enhancements.

f)   If Client is operating beyond the Scope of Use limits, Client waives its right to any credits set forth above until Client is in compliance with Scope of Use.

g)   During a System Stabilization Period, changes to the System may be required to achieve optimal performance and Unscheduled Downtime or Scheduled Downtime minutes do not apply.

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

a.   an event of Force Majeure;
b.   Failure of access circuits to the Netsmart network, unless such failure is caused solely by Netsmart;
c.   Scheduled maintenance, scheduled backups and scheduled restores;
d.   Issues with FTP, POP, or SMTP Client access;
e.   Client's acts or omissions (or acts or omissions of others engaged or authorized by Client), including, without limitation, custom scripting or coding (e.g., CGI, Perl, Java, HTML, ASP, etc), any negligence, willful misconduct, or misuse of the Hosting Services that results in any failure or deficiency of System Availability;
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.

5.   Scheduled Maintenance. Netsmart reserves the right to establish a monthly maintenance window for the purpose of upgrading, patching, modifying, and repairing portions or the entire Netsmart system environment. The monthly window is generally scheduled on the 3rd Sunday of the month, from 2:00AM – 5:30AM EST.

6.   Credit Request and Payment Procedures.
In order to receive a credit, Client must submit a request for credit to Netsmart Accounting at AR@ntst.com, within thirty (30) days after the incident supporting the request. Each request must include Client's account number (per Netsmart's invoice) and the dates and times of the unavailability of the services. If the unavailability is confirmed by Netsmart as an incident eligible for credit, credits will be applied as set forth in Section 2 above. Credits are not refundable and can be used only towards future billing fees.

Notwithstanding anything to the contrary herein, the total amount credited to Client in a particular month under this Schedule cannot exceed the total SaaS or Hosting fees paid by Client for the month in which Services were impacted. Credits are exclusive of any applicable taxes charged to Client or collected by Netsmart. Client's remedy with respect to any failure or deficiency in level of services described in this Schedule is for the Client to apply for and receive a credit. In the event Client seeks additional remedies for which it received a service credit, such remedy shall be reduced by the amount of service credits provided herein. Nothing in this Schedule precludes Client from pursuing an alternate contract remedy for any future incident that may occur.

BUSINESS ASSOCIATE AGREEMENT

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

RECITALS

A.   The purpose of this Agreement is to comply with the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and all of the regulations promulgated under either of them, all as amended from time to time (collectively, "HIPAA"), 42 CFR Part 2.

B.   This Agreement and the Services Agreement (defined below) sets forth the terms and conditions pursuant to which Protected Health Information ("PHI") that is provided, created, received, maintained or transmitted by Netsmart to, from or on behalf of Covered Entity will be handled.

C.   Terms used in this Agreement, not otherwise defined, shall have the same meaning as set forth in HIPAA including, without limitation, 45 CFR §§164.103, 164.304, 164.501 and 164.502.

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

1.   **Services**. Netsmart provides services for Covered Entity that involve the use and disclosure of PHI. Except as otherwise specified herein, Netsmart may make any and all uses of PHI necessary to perform its obligations under any and all current mutually executed agreement(s) between the parties ("Services Agreement"). Additionally, Netsmart may use or disclose PHI for the purposes authorized by this Agreement, and, except as otherwise limited by this Agreement, for the proper management and administration of Netsmart or to carry out its legal responsibilities. Further, Netsmart may use PHI to report violations of law to appropriate Federal and State authorities consistent with 45 CFR §164.502 (j)(i); provided, however, that if such disclosures are not required by law, then (a) Netsmart must first obtain reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and (b) the person will notify Netsmart of any instances of which it is aware in which the confidentiality of the information has been breached.

2.   **Responsibilities of Netsmart**. With regard to its use and/or disclosure of PHI, Netsmart hereby agrees to do the following:

(a)   Permitted Uses and Disclosure of Protected Health Information. Use and/or disclose the PHI only as permitted or required by this Agreement, the Services Agreement, or as otherwise required by law;

(b)   Appropriate Safeguards. Use commercially reasonable efforts to maintain the security of the PHI and to prevent unauthorized use and/or disclosure of such PHI and to implement Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of PHI as required by 45 CFR Part 164 Subpart C ("Security Rule") and comply, where applicable, with the Security Rule. The additional requirements of the HITECH Act that relate to security and that are made applicable with respect to Covered Entities shall also be applicable to Netsmart and shall be and by this reference hereby are incorporated into the Agreement;

(c)   Documentation of Disclosures to Covered Entity. Upon written request, make available during normal business hours at Netsmart's offices all records, and accounts relating to the use and/or disclosure of PHI to the Covered Entity within thirty (30) days for purposes of enabling Covered Entity to determine Netsmart's compliance with the terms of this Agreement;

(d)   Provide Accounting of Disclosures. Within thirty (30) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by the Covered Entity to permit Covered Entity to respond to a request by the subject individual for amendment and accounting purposes of the disclosures of the individual's PHI in accordance with 45 C.F. R. §164.526 and §164.528. If Covered Entity provides an amendment to an individual's PHI pursuant to 45 C.F. R. §164.526, Netsmart shall incorporate such amendment;

(e)   Netsmart shall provide access to Covered Entity, within fifteen business days of written receipt of a request from Covered Entity, to PHI in a designated record set to meet the requirements of 45 C.F.R. §164.524. In the event any individual requests access to protected health information directly from Netsmart, Netsmart shall forward such request to Covered Entity within ten (10) business days after receipt;

(f)   Subcontractor and Agents. Netsmart will ensure that any agent, including a Subcontractor, to whom it provides electronic PHI agrees in a written contract to implement and use administrative, physical and Technical Safeguards that reasonably protect the Integrity and Availability of the electronic PHI;

(g)   Reports of Successful Security Incidents. Report to the designated privacy officer of Covered Entity, in writing, any use and/or disclosure of the PHI that is not permitted or required by this Agreement or a Security Incident of which Netsmart becomes aware within fifteen (15) days of Netsmart's discovery of such unauthorized use and/or disclosure. For purposes of this Agreement "Security Incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by Netsmart;

(h)   Breach of Unsecured Protect Health Information. If Netsmart maintains, retains, modifies, records, stores, destroys or otherwise holds, uses, or discloses Unsecured Protected Health Information (as defined in 45 C.F.R. Part 164.402), it shall, following the discovery of a breach of such information, notify Covered Entity of such breach. Such notice shall be in writing and include the identification of each individual whose Unsecured Protected Health Information has been or is reasonably believed by Netsmart to have been accessed, acquired or disclosed during such breach. Netsmart shall also provide to Covered Entity with any other available information that the Covered Entity is required to include in notification to the individual under 45 CFR §164.404(c) at the same time as Netsmart provides the initial notice of the breach or as promptly thereafter as information becomes available;

(i)   Mitigation. Mitigate to the extent practicable, any harmful effect that is known to it of a use and/or disclosure of PHI in violation of the requirements of this Agreement;

(j)   HITECH Act Provisions. The additional requirements of Subtitle D of the HITECH Act that relate to privacy and that are made applicable with respect to Covered Entities shall also be applicable to Netsmart and are incorporated herein by reference. In the event the Secretary issues regulations that require specific modifications to business associate agreements related to these provisions, the parties agree to take such action in good faith as is necessary to amend this Agreement to meet the requirements of these provisions of the HITECH Act and;

(k)   Access to Books and Records. Make available all of its internal practices, records, books, policies and procedures relating to the use and/or disclosure of PHI received from, or created or received by Netsmart on behalf of Covered Entity, available to the Secretary of HHS for purposes of determining Covered Entity's compliance with HIPAA;

(l)   Comply with Obligations. To the extent that Netsmart is to carry out an obligation of Covered Entity under Subpart E of 45 C.F.R. Part 164 (the "Privacy Rule"), comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation.

3.   **Responsibilities of Covered Entity**. With regard to the use and/or disclosure of PHI by Netsmart, Covered Entity hereby agrees:

(a)   Provisions of Notice of Privacy Practices. To inform Netsmart of any changes or limitations in the form of notice of privacy practices that Covered Entity provides to individuals pursuant to 45 C.F.R. §164.520;

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

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

(d)   Request to Use or Disclose PHI. Covered Entity shall not request Netsmart to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, provided that, to the extent permitted by the Services Agreement, Netsmart may use or disclose PHI for Netsmart's Data Aggregation activities or proper management and administrative activities.

4.   **Mutual Representation and Warranty**. Each party represents and warrants to the other party that all of its employees, whose services may be used to fulfill obligations under this Agreement, are or will be appropriately informed of its obligations under HIPAA.

5.   Term and Termination.

(a)   Term. This Agreement will become effective on the Effective Date and will continue in effect until all obligations of the parties have been met, unless terminated as provided herein or by written mutual agreement of the parties. Notwithstanding the foregoing, this Agreement will remain in effect as long as Netsmart is in possession of any PHI that belongs to Covered Entity.

(b)   Termination. As provided for under 45 C.F.R. §164.504 (e)(2)(iii). Covered Entity may immediately terminate this Agreement and any related agreement if it determines that Netsmart has breached a material provision of this Agreement, provided that Covered Entity agrees that if a breach is curable, it will: (i) provide Netsmart with five (5) days written notice of the existence of an alleged material breach; and (ii) afford Netsmart an opportunity to cure said alleged material breach upon mutually agreeable terms. Failure to cure in the manner set forth in this Section is grounds for the immediate termination of the Agreement and any related agreement. If termination is not feasible, Covered Entity will report the breach to the Secretary of HHS. This Agreement will automatically terminate without any further action of the parties upon the termination or expiration of the Services agreement.

(c)   Return or Destruction of PHI. Netsmart will return to Covered Entity or destroy (when feasible), within thirty (30) days of the termination of this Agreement. If the return of the protected health information is not feasible, the protections of this Agreement shall automatically be extended to such protected health information and the further uses and disclosures shall be limited to only those purposes that make the return or destruction of the protected health information infeasible.

6.   Miscellaneous Provisions.

(a)   Survival. The respective rights and obligations of Netsmart and Covered Entity under the provision of Sections 2(h) will survive the termination of this Agreement until such information is able to be returned or destroyed.

(b)   Incorporation. The terms of this Agreement are fully incorporated in and subject to the terms of the Services Agreement.

(c)   No Third-Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor will anything herein confer, upon any person other than the parties hereto any rights, remedies, obligations, or liabilities whatsoever.

(d)   Notices. Any notices required or permitted to be sent hereunder will be in writing and will be sent, Certified Mail, Return Receipt Requested, or by a recognized international courier. Notices will be sent to the addresses first set forth above or to such other address as a party may designate by notice pursuant hereto. Notices to Netsmart will be sent "Attention: Privacy Officer" and emailed to Contracts_Notice@ntst.com. Notices to Covered Entity will be sent "Attention: ". Notices will be effective upon the date when delivery is either effected or refused.

(e)   Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA, the Privacy Rule, the Security Rule and HITECH. This Agreement may not be modified or amended, except in writing as agreed to by each party.

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

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

(h)   Severability. Should any provision of this Agreement be found unenforceable, it shall be deemed severable and the balance of the Agreement shall continue in full force and effect as if the unenforceable provision had never been made a part hereof.

(i)   Entire Agreement. The Agreement, including this BAA as its attachment, and other 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.

DATA SECURITY AGREEMENT

This Data Security Agreement ("Data Security Agreement") is a Contract Document in connection with the Contract issued as a result of <u>Solicitation No. 0900000373</u> (the "Contract") and entered into between Netsmart Technologies, Inc. ("Vendor") and the State of Oklahoma by and through the Office of Management and Enterprise Services ("State" or "Customer"), the terms of which are incorporated herein. This Data Security Agreement is applicable to any Customer Data stored or hosted by Vendor in connection with the Contract. Unless otherwise indicated herein, capitalized terms used in this Hosting Agreement without definition shall have the respective meanings specified in the Contract.

I.   **Definitions**

   a. "Customer Data" shall mean all data supplied by or on behalf of Customer in connection with the Contract, excluding any confidential information of Vendor.

   b. "Data Breach" shall mean the unauthorized access by an unauthorized person that results in the use, disclosure or theft of Customer Data.

   c. "Non-Public Data" shall mean Customer Data, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by Customer because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public Data includes any data identified as confidential pursuant to the Contract, or otherwise identified by Customer in writing as Non-Public Data.

   d. "Personal Data" shall mean Customer Data that contains 1) any combination of an individual's name, social security numbers, driver's license, state/federal identification number, account number, credit or debit card number and/or 2) contains electronic protected health information that is subject to the Health Insurance Portability and Accountability Act of 1996, as amended.

   e.   "Security Incident" shall mean the successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the hosted environment used to perform the services. .

II.   **Customer Data**

a. Customer will be responsible for the accuracy and completeness of all Customer Data provided to Vendor by Customer. Customer shall retain exclusive ownership of all Customer Data. Non-Public Data and Personal Data shall be deemed to be Customer's confidential information. Vendor shall restrict access to Customer Data to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein).

b. Vendor shall promptly notify the Customer upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Customer Data or Customer's use of the hosted environment. Vendor shall notify the Customer by the fastest means available and also in writing pursuant to Contract notice provisions and the notice provision herein. Except to the extent required by law, Vendor shall not respond to subpoenas, service or process, FOIA requests, and other legal request related to Customer without first notifying the Customer in writing and obtaining the Customer's prior approval, which shall not be unreasonably withheld, of Vendor's proposed responses. Vendor agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.

c. Vendor will use commercially reasonable efforts to prevent the loss of or damage to Customer Data in its possession and will maintain commercially reasonable back-up procedures and copies to facilitate the reconstruction of any Customer Data that may be lost or damaged by Vendor. Vendor will promptly notify Customer of any loss, damage to, or unauthorized access of Customer Data. Vendor will use commercially reasonable efforts to reconstruct any Customer Data that has been lost or damaged by Vendor as a result of its negligence or willful misconduct. If Customer Data is lost or damaged for reasons other than as a result of Vendor's negligence or willful misconduct, Vendor, at the Customer's expense, will, at the request of the State, use commercially reasonable efforts to reconstruct any Customer Data lost or damaged.

III. **Data Security**

a. Vendor will use commercially reasonable efforts, consistent with industry standards, to provide security for the hosted environment and Customer Data and to protect against both unauthorized access to the hosting environment, and unauthorized communications between the hosting environment and the Customer's browser. Vendor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Vendor applies to its own personal data and non-public data of similar kind.

b. All Personal Data and Non-public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Vendor is responsible for encryption of Personal Data.

c. Vendor represents and warrants to the Customer that the hosting equipment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. Vendor and Customer will regularly update the virus definitions in their respective IT environments to ensure that the definitions are as up-to-date as is commercially reasonable. Each party will promptly purge all viruses discovered during virus checks. If there is a reasonable basis to believe that a virus may have been transmitted to Customer by Vendor, Vendor will promptly notify Customer of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means Vendor has used to remediate the virus. Should the virus propagate to Customer's IT infrastructure, Vendor is responsible for costs incurred by Customer for Customer to remediate the virus

d. Vendor shall provide its services to Customer and its users solely from data centers in the U.S. Storage of Customer Data at rest shall be located solely in data centers in the U.S. Vendor shall not allow its personnel or contractors to store Customer Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. Vendor shall permit its personnel and contractors to access Customer Data remotely only as required to fulfill Vendor's obligations under the Contract.

e. Vendor shall allow the Customer to audit conformance to the Contract terms upon no less than 30 days advance written notice with a mutually agreed upon agenda and scope of audit requirements. Notwithstanding, if reasonable evidence warrants additional audits, the parties will not be restricted under this provision from performing such additional audits. The Customer may perform this audit or contract with an independent third party (who signs a confidentiality agreement no less stringent than what Vendor and the Customer adhere to in this Contract) at its discretion and at Customer's expense.

f. Vendor shall perform an independent audit of its data centers at least annually at its expense, and provide a redacted version of the audit report upon request. Vendor may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

IV. **Security Assessment**

a. The State requires any entity or third-party vendor hosting Oklahoma Customer Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Vendor submitted to the review and met the State's minimum security standards at time the Contract was executed. Failure to make commercially reasonable efforts to maintain the State's minimum security standards during the term of the Contract, including renewals, constitutes a material breach.

b. To the extent Vendor chooses to sub-contract or otherwise move Customer data from Vendor's control the new sub-contractor is subject to the State's approval, which shall not be unreasonably withheld or delayed. Vendor agrees not to migrate State's data or otherwise utilize a different third-party hosting vendor in connection with key business functions that are Vendor's obligations under the Contract until the State approves the third-party hosting vendor's State Certification and Accreditation Review, which approval shall not be unreasonably withheld or delayed. In the event the third-party hosting vendor does not meet the State's requirements under the State Certification and Accreditation Review, Vendor acknowledges and agrees it may not utilize such third-party vendor in connection with key business functions that are Vendor's obligations under the Contract, until such third party meets such requirements.

V. **Security Incident or Data Breach Notification**: Vendor shall inform Customer of any Security Incident or Data Breach

a. Vendor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. If a Security Incident involves Customer Data, Vendor will coordinate with Customer prior to making any such communication.

b. Vendor shall report a Security Incident to the Customer identified contact set forth herein within five (5) days of discovery of the Security Incident or within a shorter notice period required by applicable law or regulation (i.e. HIPAA requires notice to be provided within 24 hours).

c. Vendor shall: (i) maintain processes and procedures to identify, respond to and analyze Security Incidents; (ii) make summary information regarding such procedures available to Customer at Customer's request, (iii) mitigate, to the extent practicable, harmful effects of Security Incidents that are known to Vendor; and (iv) documents all Security Incidents and their outcomes.

d. If Vendor has reasonable belief or actual knowledge of a Data Breach, Vendor shall (1) promptly notify the appropriate Customer identified contact set forth herein within 24 hours or sooner, unless shorter time is required by applicable law, and (2)

take commercially reasonable measures to address the Data Breach in a timely manner.

VI. **Breach Responsibilities:** This section only applies when a Data Breach occurs with respect to Personal Data or Non-Public Data within the possession or control of Vendor.

a. Vendor, unless stipulated otherwise, shall promptly notify the Customer identified contact within 24 hours or sooner, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a Data Breach. Vendor shall (1) cooperate with Customer as reasonably requested by Customer to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

b. Unless otherwise stipulated, if a Data Breach is a direct result of Vendor's breach of its obligation to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Vendor shall bear the direct and reasonable costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) credit monitoring services, up to 12 months or longer as required by state or federal law; (4) a website or toll-free numbers and call center for affected individuals required by state law – all not to exceed the agency per record per person cost calculated for data breaches in the United States on the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the Data Breach; and (5) complete all corrective actions as reasonably determined by Vendor based on root cause.

c. If a Data Breach is a direct result of Vendor's breach of its obligations to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Vendor shall indemnify and hold harmless the Customer against all penalties assessed to Indemnified Parties by federal or state governmental authorities in connection with the Data Breach.

VII. **Notice:** Contact information for Customer for notifications pursuant this Hosting Agreement are consistent with the Contract with a copy sent to:

Chief Information Officer
3115 N. Lincoln Blvd
Oklahoma City, OK 73105

And

Chief Information Security Officer

3115 N. Lincoln Blvd
Oklahoma City, OK 73105

And

OMES Information Services General Counsel
3115 N. Lincoln Blvd
Oklahoma City, OK 73105

VIII. **Vendor Representations and Warranties:** Vendor represents and warrants the following

a. The product and services provided under this Data Security Agreement do not infringe a third party's patent or copyright or other intellectual property rights.

b. Vendor will protect Customer's Non-Public Data and Personal Data from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own confidential information and, in any event, will use no less than a reasonable degree of care in protecting such confidential information.

c. The execution, delivery and performance of the Contract, the Data Security Agreement and any ancillary documents and the consummation of the transactions contemplated by the Contract or any ancillary documents by Vendor will not violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Vendor and any third parties retained or utilized by Vendor to provide goods or services for the benefit of the Customer.

d. Vendor shall not knowingly upload, store, post, e-mail or otherwise transmit, distribute, publish or disseminate to or though the Hosting Environment any material that contains software viruses, malware or other surreptitious code designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any "copy-protected" devices, or any other harmful or disruptive program.

IX. Reserved.

X. **Termination and Suspension of Service:**

ATTACHMENT C, DATA SECURITY AGREEMENT TO ADDENDUM 1, CONTRACT WITH OMES & NETSMART TECHNOLOGIES, INC.

a. In the event of a termination of the Contract, Vendor shall implement an orderly return of Customer Data in a mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of Customer Data.

b. During any period of service suspension, Vendor shall not take any action to intentionally erase any Customer Data.

c. In the event of termination of any services or agreement in entirety, Vendor shall not take any action to intentionally erase any Customer Data for a period of:

    i. 10 days after the effective date of termination, if the termination is in accordance with the contract period

    ii. 30 days after the effective date of termination, if the termination is for convenience

    iii. 60 days after the effective date of termination, if the termination is for cause

After such period, Vendor shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited or otherwise stipulated, delete all Customer Data in its systems or otherwise in its possession or under its control.

d. The State shall be entitled to any post termination assistance generally made available with respect to the services.

e. Vendor shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the Customer. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to Customer.

Request For Signature - Execution Version - SW1112 Contract Netsmart

Final Audit Report   2020-12-08

Created:	2020-12-07
By:	Sean Tolbert (Sean.Tolbert@omes.ok.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAApva4-BZtuGNxPt5HAZNUFtHEsBzLojCQ

"Request For Signature - Execution Version - SW1112 Contract Netsmart" History

📄 Document created by Sean Tolbert (Sean.Tolbert@omes.ok.gov)
2020-12-07 - 10:58:15 PM GMT- IP address: 165.225.216.85

✉ Document emailed to Netsmart - Joe McGovern (jmcgovern@ntst.com) for signature
2020-12-07 - 10:59:12 PM GMT

📄 Email viewed by Netsmart - Joe McGovern (jmcgovern@ntst.com)
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✍ Document e-signed by Netsmart - Joe McGovern (jmcgovern@ntst.com)
Signature Date: 2020-12-08 - 6:07:35 PM GMT - Time Source: server- IP address: 24.46.243.36

✉ Document emailed to Jerry Moore (jerry.moore@omes.ok.gov) for signature
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✍ Document e-signed by Jerry Moore (jerry.moore@omes.ok.gov)
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✅ Agreement completed.
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📕 Adobe Sign