

Software License Agreement

This Software License Agreement (the "Agreement") is effective as of March 29, 2013 ("Effective Date"), and is made by and between Netsmart Technologies, Inc. ("Licensor") and the State of Iowa ("State"), acting by and through the Iowa Department of Public Health ("Agency") (the State and the Agency shall be referred to individually and collectively as "Licensee").

SECTION 1. DEFINITIONS

In addition to any other terms that may be defined elsewhere in this Agreement, the following terms shall have the following meanings:

"Agency" means the entity identified that is issuing the Contract and any other agency that purchases from the Contract.

"Authorized User" means any of the following persons or entities with whom the Licensee has entered into a written agreement to use the Software consistent with the rights granted under this Agreement: (a) a state agency, state or county medical examiner, local board of health, county recorder, or other governmental entity as defined in Iowa Code section 8A.101(4); (b) a hospital as defined in Iowa Code section 135B.1(3); (c) a funeral establishment as defined in Iowa Code section 156.1(5); (d) a health care professional as defined in Iowa Code section 147A.1(6); (e) the judicial branch and its courts as defined in Iowa Code section 602.1102; (f) a person or entity required to access the Software to perform an activity authorized by law; and (g) any other person or entity designated as an Authorized User by the Licensee in conformance with this Agreement.

"Confidential Information" means, subject to any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22 and 144, any confidential or proprietary information or trade secrets disclosed by the Agency to the Vendor that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the Vendor from a source other than the Agency party prior to the time of disclosure of the information by the Agency to the Vendor; (ii) was known to the Vendor prior to the disclosure of the information by the Agency; (iii) was disclosed to the Vendor without restriction by an independent third party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the Vendor in violation of this Agreement or in breach of any other agreement with the Agency; (v) is independently developed by the Vendor without any reliance on Confidential Information disclosed by the Agency; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (vii) is disclosed by the Vendor with the written consent of the Agency.

"Deficiency" means a defect, flaw, failure, omission, interruption of service, or other problem of any nature whatsoever with respect to a Deliverable, which results in the failure of the Deliverable to conform to or meet an applicable Specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable.

"Documentation" means any and all technical information, commentary, explanations, design and system architecture documents, database layouts, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation and materials related to or

used in conjunction with the Software, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media.

“Enhancements” means all updates, upgrades, patches, additions, modifications or other enhancements to the Software provided or made by Licensor or any Third Party, any new releases of Software, and all changes to the Documentation and Source Code as a result of such Enhancements.

“Public Code” means any software that contains or is derived in any manner (in whole or in part) from free or open source software or software subject to similar licensing or distribution requirements; that requires as a condition of its use, modification or distribution that such software (or other software incorporated into, derived from or distributed with such software) be either (a) disclosed or distributed in source code form; (b) licensed for the purpose of making derivative works; or (c) redistributable at no charge.

“Services Contract” means the Professional Services Agreement by and between the Agency and Netsmart Technologies, Inc. (“Vendor”) dated March 29, 2013, and all schedules, exhibits, and other attachments to that agreement, including, without limitation, the Statement of Work.

“Software” means the Iowa Electronic Vital Records System and all other software, programs, applications, modules and components listed in Schedule A, in object code form, all related Documentation and Enhancements, and all copies of the foregoing. In the event Licensee accesses or receives the Source Code in accordance with the terms of Section 2.2 of this Agreement, the term “Software” as used throughout this Agreement shall be deemed to include and apply to Source Code.

“Source Code” means the human-readable source code, source program, scripts and/or programming language, including HTML, XML, XHTML, Visual Basic, and JAVA, for or related to the Software. Source Code includes all source code listings, instructions (including compile instructions), programmer’s notes, commentary and all related technical information and Documentation, including all such information and Documentation that is necessary or useful for purposes of maintaining, repairing, or making modifications or enhancements to the Software and the Source Code.

“Specifications” mean all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Software stated or expressed in this Agreement, the Services Contract, Documentation, the Licensee’s Request for Proposal No. 1113588298 for the Iowa Electronic Vital Records System (“RFP”), and the Vendor’s proposal dated September 28, 2012, in response to the RFP (“Proposal”). Specifications shall include the Acceptance Criteria and any specifications, standards or criteria stated or set forth in any applicable state, federal, laws, rules and regulations. The Specifications are incorporated into this Agreement by reference as if fully set forth in this Agreement

“System” means Iowa Electronic Vital Records System as more fully described in the Agreement (including the Statement(s) of Work, RFP, and Proposal) and all component parts and Deliverables which comprise the System.

“Third Party” means a person or entity (including, but not limited to any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to this Agreement.

“Toolsets” means the business process modeling tool and any other programming, integrated development environment (IDE), or business analysis tool or set of tools used by the Vendor for development or implementation of the requirements of RFP No.1113588298, accepted in the Proposal and included in this Agreement.

“Warranty Period” shall mean the initial twelve (12) months commencing as of the delivery of the Software in which maintenance and support services are provided at no additional cost.

All other capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Services Contract.

SECTION 2. SOFTWARE LICENSE

2.1 License. Licensor hereby grants to Licensee and to Authorized Users a nonexclusive, irrevocable, perpetual, fully paid up, royalty-free, worldwide right and license for use by the Agency, Authorized Users, their employees, volunteers, agents and contractors who are bound by License terms to:

2.1.1 Use, install, host, access, execute, copy, modify (using tools that are provided for that purpose with the Software), format, maintain, support, repair, enhance, test, demonstrate and display (distribute copies of, perform) and create reports, screens, and other enhancements using the functionality delivered with the Software;

2.1.2 Use the Software with other software, firmware, Public Code and hardware that is compatible with the Software;

2.1.3 Allow employees, volunteers, agents and contractors who are bound by the terms of this License to access and use the Software and its functions.

2.1.4 Support an enterprise level, unlimited user, state of Iowa Vital Records single production database to support the Vital Records business of the State.

All Software subject to this Agreement may be used on any one or more of the computers, data center locations, networks, Internet or intranet sites, servers or other systems of Licensee, any Authorized Users, or any Authorized Vendor ("Licensee Systems"). For purposes of this Agreement, the parties agree that if the Licensee or any Authorized Users makes any modifications or enhancements to the Software (whether directly or indirectly through an Authorized Vendor), the Licensee or Authorized Users who makes such modification or enhancement owns such modifications or enhancements.

The foregoing license grants and rights include a license under any current or future patents owned or licensable by Licensor to the extent necessary: (i) to exercise any license right granted herein; and (ii) to combine the Software with any other Deliverables provided under the Services Contract, including with any hardware and software.

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

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

Licensee agrees to reproduce any copyright notices and/or other proprietary legends, regardless of form, contained in, affixed to, or appearing on the Licensed Software. Licensee will not disassemble or reverse engineer any of the Licensed Software nor attempt to access or modify the source code version of the Licensed Software and will not make any derivations, adaptations, or translations of the Licensed Software in whole or in part, nor use the Licensed Software to develop functionally similar computer software or to otherwise compete with Licensor.

2.2 Escrow of Source Code and Documentation.

Licensor has established a source code escrow program with Lincoln-Parry Softescrow Inc., ("Escrow Agent") under which it has deposited a copy of the Software Source Code and Source Code

Documentation in electronic format with the Escrow Agent. Licensor shall deposit with the Escrow Agent, updates, changes, alterations, or modifications to the code for the Software on a quarterly basis.

The terms of the escrow program provide for release of the source code materials to a named beneficiary, including Licensee, under the escrow program in the event any of the following occur:

- (1) A petition in bankruptcy, or an assignment for the benefit of creditors of the Licensor is filed by the Licensor, or a third party against the Licensor and is not dismissed within 30 days of its filing;
- (2) A cessation of normal business operations by the Licensor during the term of this agreement;
- (3) A failure or refusal by the Licensor to provide the Software maintenance and support services required of it under its Software agreement with the Licensee, which failure has been preceded by a notice in writing to the Licensor that its continued default would cause the Licensee to invoke its rights under this agreement fifteen (15) days after the date of the said notice;

As a beneficiary under this program, in the event the Source Code is released to Licensee, Licensee shall have the right to use the source materials as needed to continue to enjoy the benefits afforded to Licensee under the License Agreement but is required to maintain the confidentiality of the Source Code, and not to use it for any other purpose (including; no resales, distribution, or similar commercial purposes not contemplated by the license).

In the event Licensee accesses or receives the Source Code in accordance with the terms of this Section 2.2, all of the rights and privileges granted under this Agreement with respect to the Software shall apply to the Source Code, and Licensee, Authorized Users shall be entitled to exercise all of such rights and privileges with respect to the Source Code, including all rights to maintain, modify, enhance, and prepare derivative works based upon, the Software and/or the Source Code.

2.3 Licensee Not Required to Accept or Install Enhancements. Licensor shall not condition any of the Licensee's rights and remedies, or the Licensor's obligations to support the current core version or one prior core version of the Software, under this Agreement or any other agreement related to the Software, on the Licensee accepting or installing any Enhancements or additional functionality provided by Licensor.

SECTION 3. TERM

The term of this Software Agreement and the license granted hereunder shall be perpetual unless terminated by either party only in accordance with the express terms of this Software Agreement.

SECTION 4. DELIVERY AND INSTALLATION.

Licensor shall deliver the Software to Agency and setup and install the Software (either directly, or indirectly, through Vendor) for use on the Licensee Systems specified by Licensee in accordance with the Services Contract and the Statement of Work. Licensor shall bear all freight, shipping, handling and insurance costs for delivery of the Software and shall bear all risk of loss with respect to the Software, including any losses resulting from any damage to or destruction of the Software, in whole or in part, which may occur prior to installation of the software.

SECTION 5. COMPENSATION.

5.1 License Fee. In consideration of the grant of the perpetual license and all other rights granted to Licensee and Authorized Users under this Agreement, Licensor shall be entitled to receive the amount specified in Schedule A to license the Software, subject to all of the terms and conditions of this Agreement and the Services Contract. Such amount, when paid, shall be deemed a fully paid-up license fee, and Licensee and Authorized Users shall not be required to pay any additional license fees, expenses, costs, charges or other amounts in connection with this Agreement and the rights granted hereunder, unless otherwise agreed by Licensee in writing.

5.2 Invoice and Payment. Upon Licensors receipt of a copy of Licensees written notice to Vendor of Licensees Acceptance of the Software delivery, Licensor shall submit an invoice to the Agency requesting payment of the license fee specified in Schedule A. In submitting its invoice, Licensor shall comply with all applicable rules concerning the payment of fees, charges or other claims, and Licensor will include with its invoice appropriate documentation as necessary to support the fees stated on the invoice and all information reasonably requested by the Agency. The Agency shall pay all approved invoices in accordance with and subject to the terms and conditions of the Services Contract, including Sections 5.1- 5.4, 5.6, 5.7 and 10.4 thereof. Notwithstanding anything herein to the contrary, the Agency shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Agency believes the invoice is inaccurate or incorrect in any way.

5.3 Set Off. In the event that Licensor owes the Agency or the State any sum under the terms of this Agreement, the Services Contract, any other agreement, pursuant to a judgment, or pursuant to any law, the Agency may set off such sum against any sum invoiced to the Agency in the Agency's sole discretion unless otherwise required by law. Amounts due to the Agency or State as liquidated damages or any other damages awarded by a court, an administrative law judge, or any other similar entity, may be deducted by the Agency from any money or sum payable by the Agency to Licensor pursuant to this Agreement or any other agreement between Licensor and the Agency or the State.

5.4 Withholding. In addition to pursuing any other remedy provided herein or by law, the Agency may withhold compensation or payments to Licensor, in whole or in part, without penalty or legal liability to Licensee or work stoppage by Licensor, in the event: (i) Licensor fails to provide Software or correct any Deficiencies with respect to any Software to Licensees reasonable satisfaction; (ii) Licensor fails to perform any of its other material obligations as set forth in this Agreement and/or the Services Contract; or (iii) the Software or any portion thereof fails to meet or conform to any applicable Specifications. No interest shall accrue or be paid to Licensor on any compensation or other amounts withheld or retained pursuant to the Section 5.4.

SECTION 6. REPRESENTATIONS, WARRANTIES AND COVENANTS.

6.1 Licensor represents and warrants that during the Warranty Period, the Software shall: (i) be free from material Deficiencies; (ii) conform to and operate in accordance with all Specifications; and (iii) be compatible with and interoperate fully and correctly with the current versions of the Licensee Systems specified in Schedule B. Licensor warrants that all media containing or relating to the Software furnished hereunder shall be free from defects in material and workmanship. During the Warranty Period, Licensor shall, at Licensees request and at Licensors expense, repair, correct or replace any Software that fails to comply with the warranties and requirements of this Section 6.1 in accordance with the Netsmart Maintenance and Support Agreement. During the Warranty Period, if Licensor is unable to repair, correct or replace such Software to Licensees reasonable satisfaction within the time periods for the priority condition as specified in the maintenance and support Agreement, Licensor shall refund the fees or other amounts paid for such affected Software (The foregoing shall not constitute an exclusive remedy under this Agreement, and Licensee shall be entitled to pursue any other available contractual, legal or equitable remedies subject to the limitations of liability and limitations for damages applicable under this Agreement or any related Agreement.

6.2 Licensor represents and warrants that Licensor is fully aware of Licensees business requirements and intended uses for the Software to the extent these were set forth in the RFP, accepted in the Proposal and included in this Agreement. Vendor warrants that the Deliverables shall satisfy such requirements, and the Software shall satisfy such requirements in all material respects and is fit for such intended uses.

6.3 Licensor represents and warrants that: (i) it is the owner of the Software and any and all intellectual property rights in and to such Software, including, but not limited to, copyrights, trademarks, trade secrets, trade dress, and/or patent rights; (ii) it owns, possesses, holds, and has received all rights, permits, permissions, licenses and authority necessary to provide all Software to Licensee hereunder and to grant and convey the benefits, licenses and other rights granted or conveyed to Licensee and

Governmental Entities hereunder without violating any rights of any Third Party; (iii) the Software shall be wholly original with and prepared solely by Licensor; (iv) Licensor has not previously and will not grant any rights in the Software to any Third Party that are inconsistent with the rights granted herein; and (v) Licensee and Governmental Entities shall peacefully and quietly have, hold, possess, use and enjoy all Software without suit, disruption or interruption.

6.4 Licensor represents and warrants that: (i) the Software (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to, the Software); (ii) Licensee's (and any Authorized Users) use of the Software in accordance with the terms of this Agreement; and (iii) Licensee's (and any Authorized Users) exercise of the rights, licenses and benefits granted or conveyed hereunder, do not and will not misappropriate a trade secret or infringe upon any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any Third Party. Licensor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Software. Licensor shall immediately inform Licensee in writing upon becoming aware of any actual, potential or threatened claim of infringement or violation of any intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Software. If such a claim arises or is likely to arise, then Licensor shall, at the Licensee's request: (i) procure for the Licensee and Authorized Users the right or license to continue to use the Software at issue; (ii) replace such Software with functionally equivalent or superior Software free of any such infringement, violation or misappropriation; or (iii) modify or replace the affected portion of the Software with functionally equivalent or superior Software free of any such infringement, violation or misappropriation. In the event Licensor is unable to fulfill its obligation under (i), (ii) or (iii) above as requested, Licensor shall accept the return of the Software and refund to the Licensee all one time fees, charges paid by the Licensee with respect to such Software and in the case of maintenance, pre-paid maintenance for the unexpired period covered by the payment reduced by one sixtieth for each full month beginning on the second anniversary of the date of first use of the Licensed Software, until the date of termination. In addition, Licensor agrees to fully indemnify, defend, protect and hold harmless the Licensee, Authorized Users and their officers, directors, employees, officials and agents as provided in the Indemnification section of this Agreement. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Licensee and shall survive termination of this Agreement.

6.5 The Licensor represents and warrants that all Software provided under this Agreement which uses date data shall accurately process data, including but not limited to, calculating, comparing and sequencing from, into, between and among the nineteenth, twentieth and twenty-first centuries, including leap year calculations, integral calculations, day-in-year calculations, day-of-week calculations and week-of-year calculations; and not experience abnormal ending and/or produce invalid or incorrect results in the operation of the Software or Licensee's System. If the Software is to perform as a system with other hardware and/or software, then this warranty shall apply to the Software as it processes, transfers, sequences data, or otherwise interacts with other software, hardware, components or other parts of the system, provided that such other software, hardware, components or parts do not fail to meet any applicable requirements of this Section 6.5. The remedies available to the Licensee for breach of this warranty include, but are not limited to, repair or replacement of non-compliant Software. Nothing in this warranty shall be construed to limit any rights or remedies of the Licensee under this Agreement with respect to Deficiencies in the Software other than data processing compliance.

6.6 The Licensor represents and warrants that all Software and Enhancements do not and shall not as delivered or provided by Licensor contain an anti-use device, a disabling device, lockup program, a so-called "time bomb" or "drop dead" device, "back door," instructions, contaminants, viruses, Trojan Horses, worms, cancelbots, or any other mechanism, code or computer programming routine that will disable, damage, impair or impede, lock-up, alter, halt, abnormally end, surreptitiously intercept, expropriate or interfere with the Software, Licensee Systems or any data or information of Licensee. Licensor further represents and warrants that all Software and Enhancements do not contain any other programming or device of any kind that would allow unauthorized access to the Software by Licensor or any other person or any Third Party. Licensor covenants that it will not under any circumstance, including enforcement of a

valid contract right, (i) install or trigger a lockup program or disabling device, or (ii) take any step that would in any manner interfere with Licensee's use of the Software or Licensee Systems, or restrict Licensee from accessing its data files or in any way interfere with the transaction of Licensee's business. For any breach of this provision, Licensor shall, immediately after receipt of notification of the breach, cure the breach to Licensee's satisfaction, including, without limitation, repairing, at Licensor's expense, any damage done to the Software or Licensee Systems or any other property.

6.7 Licensor represents, warrants and covenants that it has complied with, and shall comply with, all applicable federal and state laws, rules, regulations, codes, orders and ordinances in connection with its performance of this Agreement.

6.8 Licensor represents and warrants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of its obligations under this Agreement.

6.9 Licensor represents and warrants that the Software and the license, use and other rights granted hereunder comply with, and shall comply with, all applicable federal and state laws, rules, regulations, codes, orders and ordinances in effect as of the date of this Agreement, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board and the Iowa Agency of Administrative Services, Information Technology Enterprise.

6.10 Licensor represents and warrants that it has not incorporated and will not incorporate, without the prior written consent of Licensee, any Public Code, in whole or in part, into any part of the Software or any Enhancement, or use Public Code, in whole or in part, in the development of any part of the Software or any Enhancement in a manner that may subject the Software or any Enhancement, in whole or in part, to all or part of the license obligations of any Public Code, except that Licensee has consented to the use and incorporation of Public Code into the Software as described in Schedule A. Licensor represents and warrants that nothing in Licensor's agreements with Third Parties for use and incorporation of Public Code into the Software conflicts or will conflict with the terms of this Agreement, or interferes or will interfere in any manner with Licensee's (and any successor entity's or Authorized Users) full exercise of the rights, licenses and benefits granted or conveyed herein.

6.11 Licensor represents and warrants that all Documentation will accurately reflect the operation of the Software or other Deliverables to which the Documentation pertains and will enable the Licensee to use, the Software fully and completely.

6.12 Licensor's warranties provided in this Section 6 are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Licensee.

6.13 If any modifications, additions or alterations of any kind or nature are made to the Licensed Software without authorization by Licensor or anyone acting with the consent of or under the direction of Licensor, all warranties will immediately terminate and Licensor will have no further warranty obligation to Licensee.

6.14 THE FOREGOING EXPRESS WARRANTIES ARE THE ONLY WARRANTIES MADE BY LICENSOR. THERE ARE NO IMPLIED WARRANTIES. LICENSOR DOES NOT WARRANT "MERCHANTABILITY" SINCE THE CONCEPT OF MERCHANTABILITY IS VAGUE AS APPLIED TO THE SOFTWARE.

SECTION 7. TERMINATION.

7.1 Termination by Licensee for Cause. The Licensee may terminate this Agreement, without penalty or legal liability, upon written notice for the breach by Licensor of any material term, condition or provision of this Agreement, if such breach is not cured within any time period specified in the notice of breach or any subsequent notice delivered by Licensee to Licensor, assuming cure is feasible. The Licensee's right to terminate this Agreement shall be in addition to and not exclusive of other remedies available to the Licensee.

7.2 Termination by Licensee for Reasons Other Than Cause. Licensee may terminate this Agreement for any of the reasons for which the Agency may terminate the Services Contract (including Sections 10.2 and 10.3, but excluding Section 10.1) upon providing any applicable written notice expressly required to be provided pursuant to the Services Contract. For purposes of this Section 7.2, all references in the Services Contract to the terms "State," "Agreement," "Deliverables," and "Vendor," shall be deemed to include and additionally refer to the terms "Licensee," "Agreement," "Software," and "Licensor," respectively, as used herein. Licensee's right to terminate this Agreement for any of the reasons provided herein shall survive termination of the Services Contract.

7.3 Termination by Licensor for Cause. Licensor may only terminate this Agreement and revoke the license and other rights granted under this Agreement if Licensee has breached this Agreement by failing to pay in full the license fee specified in Section 5.1 in accordance with the terms of this Agreement and the Services Contract, or if Licensee commits a material breach of Section 2 or 9.2 of this Agreement, provided in either event that Licensor first gives Licensee written notice of the alleged breach and a 60-day period in which to cure the breach. Licensor may not terminate this Agreement and revoke the license and other rights granted hereunder if Licensee's failure to pay any portion or all of the license fee or other amounts arises from or relates to Licensee's withholding or retention of such amounts in accordance with this Agreement or the Services Contract. Upon termination of this Agreement by Licensor in accordance with this Section 7.3, Licensee will return the Software to Licensor or will certify in writing to Licensor that it has destroyed all copies of the Software. Except as expressly provided in this Section 7.3, Licensor shall not be entitled to terminate this Agreement or revoke the license and other rights granted herein.

7.4 Limitation of the Licensee's Payment Obligations. In no event shall Licensee be required to pay any amounts other than those expressly stated in Section 5.1 of this Agreement. The Licensee (and Authorized Users) shall not be liable, under any circumstances and regardless of termination of this Agreement, for any of the following:

7.4.1 The payment of unemployment compensation to Licensor's employees;

7.4.2 The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;

7.4.3 Any costs incurred by Licensor in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement and/or the Services Contract;

7.4.4 Any damages or other amounts for or relating to the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement, the Services Contract or any agreement with Third Parties;

7.4.5 Any taxes Licensor may owe in connection with the performance of this Agreement or the Services Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

SECTION 8. INDEMNIFICATION.

8.1 Licensor and its successors and permitted assigns shall indemnify and hold harmless the Licensee and Authorized Users and their employees, officers, directors, agents, and officials (individually and collectively "Indemnitees") from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) related to, resulting from or arising out of this Agreement, including, but not limited to, any claims related to, resulting from, or arising out of:

8.1.1 Any violation or breach of any term or condition of this Agreement by Licensor; or

8.1.2 Any negligent acts or omissions, intentional or willful misconduct, or unlawful acts of Licensor, its officers, employees, agents, directors, contractors or subcontractors; or

8.1.3 Failure by Licensor or its employees, agents, officers, or directors to comply with any applicable state, and federal laws, rules, ordinances or regulations; or

8.1.4 Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any Third Party, including any claim that the Software or any use thereof (or the exercise of any rights with respect thereto) infringes, violates or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any Third Party.

8.2 Licensor shall be liable for any personal injury or damage to property caused by the fault or negligence of Licensor, its officers, directors, employees, agents, contractors and subcontractors.

8.3 Licensor's duties as set forth in this Section 8 shall survive the termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the performance of this Agreement regardless of the date any potential claim is made or discovered by the Licensee or any other Indemnitee.

8.4 Limitation of Liability. In no event will either party be liable for any indirect, special, incidental, consequential, punitive, or exemplary damages (including a claim for damages based on the higher cost of substitute goods not marketed by Licensor). The maximum liability of the Licensor under this Agreement for direct damages shall be the sum of one-time license fees and costs of professional services paid by the Licensee to the Licensor under the entire term of the Agreement, including all renewals and extensions); **provided, however** that the foregoing limitation shall not apply to:

8.4.1 Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, or gross negligence of Licensor, its officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors,

8.5.2 Claims related to death, bodily injury, or damage to real or personal property,

8.5.3 Any contractual obligations of the Licensor pertaining to indemnification, intellectual property, liquidated damages, compliance with applicable laws, or confidential information.

8.5.4 Claims arising under provisions of the Agreement calling for indemnification of the Licensee for Third-Party claims against the State for bodily injury to persons or for damage to real or tangible personal property caused by the negligence or willful conduct of Licensor, its officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors.

SECTION 9. CONTRACT ADMINISTRATION.

9.1 Independent Contractor. The status of the Licensor shall be that of an independent contractor. Licensee shall not provide the Licensor with office space, support staff, equipment or tools, or supervision beyond the terms of this Agreement. Neither the Licensor nor its employees shall be considered employees of the State of Iowa. Neither the Licensor nor its employees are eligible for any State employee benefits, including but not limited to, retirement benefits, insurance coverage or the like. Neither the Licensor nor its employees shall be considered employees of the Licensee or the State of Iowa for federal or state tax purposes. Licensee shall not withhold taxes on behalf of the Licensor (unless required by law). The Licensor shall be responsible for payment of all taxes in connection with any income earned in connection with this Agreement.

9.2 Confidentiality. Except as provided or contemplated herein, and subject to applicable federal, state or international laws, rules or regulations including Iowa Code Chapter 22 the Iowa Fair Information Practices Act, section 22.11 the Licensee shall not disclose to Third Parties (excluding Authorized Users and Authorized Contractors) any information of Licensor that is marked or otherwise clearly identified by Licensor as Confidential Information without the prior written consent of Licensor. Licensor shall limit such identification to information it reasonably believes is entitled to confidential protection pursuant to such applicable laws, rules and regulations. Notwithstanding the foregoing, the Licensee may disclose Licensor's Confidential Information pursuant to: (i) any legal, judicial, or administrative proceedings, subpoena, summons, order, ruling or other legal or administrative processes; and/or (ii) applicable laws, rules, or regulations. In such event, the Licensee shall provide prompt notice to Licensor of the circumstances giving rise to the Licensee's disclosure. Licensor acknowledges that the Licensee is subject to Iowa Code Chapters 22, 144 and other laws, rules and regulations governing public records. If a request is made to view or otherwise access Licensor's Confidential Information pursuant to such laws, rules or regulations, the Licensee will promptly notify Licensor of the request. Subject to the foregoing, the Licensee will use reasonable efforts to protect Licensor's Confidential Information provided such information can reasonably be determined to constitute a confidential record under Iowa Code Section 22.7 or other applicable laws, rules or regulations. In the event the Licensee reasonably determines that such information is not a confidential record, the Licensee may release such information unless Licensor files an action in Polk County District Court to prevent the release of the requested information within ten (10) days of receiving notice from the Licensee.

9.3 Compliance with Laws. Licensor and its employees, agents, officers, directors, contractors and subcontractors shall comply with all applicable federal, state, rules, ordinances, regulations and orders when performing within the scope of this Agreement, including, without limitation, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Administrative Services or the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws and laws relating to the use of targeted small businesses as subcontractors or suppliers. Licensor shall comply with any applicable reporting and compliance standards of the Iowa Department of Administrative Services regarding equal employment. Licensor may be required to submit its affirmative action plan to the Iowa Department of Administrative Services to comply with the requirements of 541 Iowa Administrative Code 4. Licensor represents and warrants that it has complied with all federal and state laws, codes, rules, ordinances, orders and regulations applicable to the performance of its obligations under this Agreement.

9.4 Amendments. This Agreement may be amended in writing from time to time by mutual consent of the parties. All amendments to this Agreement must be fully executed by the parties.

9.5 Third-Party Rights. No person other than the parties hereto, their respective successors and permitted assigns, Authorized Users and Authorized Contractors may rely on or derive any rights pursuant to or under this Agreement. This Agreement is intended to benefit only the Licensee, Authorized Users, Authorized Contractors, and the Licensor.

9.6 Choice of Law and Forum. This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the state of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Licensor hereby irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise. This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Licensee, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise. Licensor irrevocably consents to service of process by certified or registered mail addressed to the Licensor's designated agent. The Licensor appoints CT Corporation System, 2222 Grand Avenue, Des Moines, IA 50312, as its agent to receive service of process. If for any reason the Licensor's agent for service is unable to act as such or the address of the agent changes, Licensor shall immediately appoint a new agent and provide the Agency with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the Licensee. Nothing in this provision will alter the right of the Licensee to serve process in any other manner permitted by law. This Section 9.6 shall survive termination of this Agreement.

9.7 Assignment and Delegation. This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party, except that the Licensee may assign, transfer or convey this Agreement, in whole or in part, to any State agency, Authorized Users, or unit of State government that succeeds the Agency's rights hereunder or otherwise assumes responsibility for functions or duties currently assumed by the Agency to which the Software relates. For purposes of construing this clause, a transfer of a controlling interest in the Licensor, a merger, sale or consolidation of Licensor, or a sale of substantially all of Licensor's assets shall be considered an assignment. Licensor agrees that it shall provide Licensee with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Licensor and of any proposed merger, sale or consolidation of Licensor. Licensor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Licensor or any affiliate thereof without the prior written consent of Licensee.

9.8 Integration. This Agreement represents the entire agreement between the parties concerning the grant of the perpetual license, distribution rights and other rights granted to Licensee and Authorized Users under this Agreement, and neither party is relying on any representation that may have been made with respect thereto which is not included in this Agreement. This Agreement shall not supersede the Services Contract. Licensee shall not be bound by any "shrink-wrap" agreement, "click-wrap" agreement, "sneakwrap" agreement, or any other similar agreement that may accompany or relate to the Software. Licensor acknowledges that it has thoroughly read this Agreement and all related schedules, exhibits and other documents and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against the Licensee on the basis of draftsmanship or preparation hereof.

9.9 Headings or Captions and Terms. The paragraph headings or captions are for identification purposes only and do not limit or construe the contents of the paragraphs. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be followed by the phrase "without

limitation.” The words “thereof,” “herein,” “hereunder,” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

9.10 Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Agreement.

9.11 Obligations Beyond Agreement Term. This Agreement shall remain in full force and effect perpetually unless terminated pursuant to Section 7 of this Agreement. Licensor’s obligations under this Agreement which by their nature would continue beyond the termination of this Agreement, including, by way of illustration and not by limitation, those obligations set forth in Sections 2.1-2.3, 5.2-5.4, 6-8, 9.4, 9.2, 9.3, 9.5, 9.6, 9.8, 9.11-9.16, 9.18, 9.19, 9.22, 9.24, 9.26, and 9.29-9.33 shall survive termination of this Agreement.

9.12 Use of Third Parties. None of the services to be provided by Licensor pursuant to this Agreement shall be subcontracted or delegated to any Third Party without the prior written consent of Licensee. Licensee’s consent shall not be deemed in any way to provide for the incurrence of any additional obligation of Licensee, whether financial or otherwise. Any subcontract to which the Licensee has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement. All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that Licensee may deem necessary. Licensor is solely liable for any and all payments that may be due to the subcontractor pursuant to its subcontract agreement with Licensor. Licensor shall indemnify, defend and hold harmless the Licensee from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Licensor’s breach of any subcontract into which it enters, including Licensor’s failure to pay any and all amounts due by Licensor to any subcontractor. No subcontract or delegation of work shall relieve or discharge Licensor from any obligation, provision, or liability under this Agreement. Licensor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any such contractor or subcontractor. Any action of a subcontractor, which, if done by Licensor, would constitute a breach of this Agreement, shall be deemed a breach by Licensor and have the same legal effect.

9.13 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of Licensee and the Licensor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto.

9.14 Notices. Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice (identified below) at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to the Licensee:	Dr. Mariannette Miller-Meeks Iowa Department of Public Health Lucas State Office Building 321 East 12 th Street Des Moines, IA 50319
With copy to:	Marcia Spangler
If to Licensor:	Mr. Joseph McGovern Netsmart Technologies, Inc

	3500 Sunrise Highway Suite D122 Great River, NY 11739
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Any notice or communication sent by certified U.S. Mail under this Agreement shall be deemed given upon receipt as evidenced by the U.S. Postal Service return receipt card, or if sent by overnight delivery service, upon receipt as evidenced by the signature attained by the carrier. From time to time, either party may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

9.15 Cumulative Rights. The various rights, powers, options, elections and remedies of Licensee provided in this Agreement shall be construed as cumulative and are not exclusive of the others or exclusive of any rights, remedies or priorities allowed Licensee by law, and shall in no way affect or impair the right of Licensee to pursue any other contractual, equitable or legal remedy to which Licensee may be entitled. Licensee's election of any one or more remedies shall not constitute a waiver of the right to pursue any other available remedies.

9.16 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

9.17 Authorization. Licensors represents and warrants to Licensee that:

9.17.1 It has the right, power and authority to enter into and perform its obligations under this Agreement;

9.17.2 It has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation upon itself enforceable in accordance with its terms.

9.18 Successors in Interest. All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns, and legal representatives

9.19 Record Retention And Access. The Licensor shall maintain books, records, and documents which sufficiently and properly document all services and deliverables provided under this Agreement and calculate all charges billed to the Licensee throughout the term of this Agreement for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or completion of any required audit. The Licensor shall permit the Licensee, the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Licensor relating to orders, invoices, or payments or any other documentation or materials pertaining to this Agreement. The Licensor shall not impose or seek payment for any charge, fee or expense associated with any audit or examination of the Licensor's books and records conducted in accordance with this provision.

9.20 Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

9.21 Additional Provisions. The parties agree that if an Addendum, Schedule, Rider or Exhibit is attached and referred to in this Agreement then the same shall be deemed incorporated herein by reference.

9.22 Further Assurances and Corrective Instruments. Licensor agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

9.23 Award of Related Agreements. The Licensee may undertake or award supplemental or successor agreements for work related to this Agreement, the Services Contract or with respect to the Software. Licensor shall cooperate fully with other contractors, consultants and other persons who may be engaged by Licensee in connection with this Agreement, the Services Contract or with respect to any of the Software. Licensor will ensure that its subcontractors, if any, will abide by this provision.

9.24 Sovereign Immunity. The Agency, Governmental Entities and the State do not waive sovereign immunity by entering into this Agreement and specifically retain and reserve the defense of sovereign immunity and all defenses available to them under State and federal laws, rules and regulations, including, without limitation, Iowa Code Chapter 669 and the Constitution of the State of Iowa.

9.25 Reserved

9.26 Care of Property. Licensor shall be responsible for the proper custody and care of any Licensee Property furnished for Licensor's use in connection with the performance of the Agreement, and Licensor will reimburse the Licensee for any loss or damage to such property caused by Licensor, or any person, agent or subcontractor employed or utilized by Licensor, normal wear and tear excepted.

9.27 Licensor shall notify Licensee in writing if any of the following has been engaged in by or occurred with respect to Licensor or any corporation, shareholder or entity having or owning a controlling interest in Licensor:

9.27.1 Licensor files or permits the filing against it of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

9.27.2 Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; or

9.27.3 Making an assignment for the benefit of creditors; or

9.27.4 Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Licensor's performance of its obligations under this Agreement;

9.27.5 An order is entered approving an involuntary petition to reorganize the business of Licensor for all or part of its property; or

9.27.6 If a writ or warrant of attachment, execution, distraint, levy, possession or any similar process that may materially affect the operation of Licensor is issued by any court or administrative agency against all or any material portion of Licensor's property; or

9.27.7 Taking any action to authorize any of the foregoing.

9.28 Material Breaches. The references in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.

9.29 Taxes. Licensor shall be responsible for paying any taxes incurred by Licensor in the performance of this Agreement. The State and the Agency are exempt from the payment of Iowa sales and other taxes.

9.30 Obligations of Joint Entities. If Licensor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this agreement, and for any default of such activities and obligations.

9.31 Attorney's Fees and Expenses. Each party will be responsible for their respective attorneys' fees and costs of litigation.

9.32 Time is of the Essence. Time is of the essence with respect to Licensor's performance of its obligations under this Agreement. Licensor shall ensure that all personnel providing services to Licensee are responsive to Licensee's requirements and requests in all respects.

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

SECTION 10. EXECUTION.

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

Licensor
NetSMART Technologies, Inc.
By: _____

Name: Joseph McGovern
Title: Executive Vice President

Date: 3/22/13

Licensee
State of Iowa, acting by and through the Department of Public Health

By: Mariannette Miller Meeks
Name: Dr. Mariannette Miller-Meeks
Title: Director

Date: 3/26/2013

**SCHEDULE A
DESCRIPTION OF SOFTWARE AND LICENSE FEES**

Description of Software and License Fees

Module and Description*	Quantity	Cost/Unit	Firm US Dollars (Qty x cost)	Comments
1. Netsmart VRS Death Module				
Perpetual Enterprise License for use in the State of Iowa. Also includes: Netsmart VRS Framework Module, Netsmart VRS Correspondence Accounting System Module, and Netsmart VRS OVS Module.	1	\$282,427.00	\$282,427.00	One time cost.
2. Netsmart VRS Birth Module				
To be licensed in future Contract Amendment. Perpetual Enterprise License for use in the State of Iowa. Also includes: Netsmart VRS Birth-Death Cross Match.	1	\$124,735.00	\$124,735.00	One time cost.
3. Netsmart VRS Fetal Death Module				
To be licensed in future Contract Amendment. Perpetual Enterprise License for use in the State of Iowa.	1	\$40,530.00	\$40,530.00	One time cost.
4. Netsmart VRS Marriage Module				
To be licensed in future Contract Amendment. Perpetual Enterprise License for use in the State of Iowa.	1	\$22,168.00	\$22,168.00	One time cost.
5. Netsmart VRS Dissolution Module				
To be licensed in future Contract Amendment. Perpetual Enterprise License for use in the State of Iowa.	1	\$ 12,654.00	\$ 12,654.00	One time cost.
6. Netsmart VRS ITOP Module				
To be licensed in future Contract Amendment. Perpetual Enterprise License for use in the State of Iowa.	1	\$30,000.00	\$30,000.00	One time cost.

***The VRS Death Module listed in item 1 is included in this License Agreement. Modules listed in line items 2 through 6 are not being provided as part of this License Agreement however, prices listed above for said modules will remain firm for sixty (60) months from the Effective Date of this Agreement. Thereafter, prices for the above Modules will not be increased by more than the most recent increase in the US Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) - Medical Care, or 5%, whichever is higher, for each year beginning month 61 from the Effective Date.**

**SCHEDULE B
DESCRIPTION OF LICENSEE SYSTEMS**

Netsmart VRS Modules			
Product	Current Version	Quantity	Initial License Fee
Netsmart VRS Framework (Required core system to which all modules are added)*	4.1.4.2	1	Included with Death Event
Netsmart VRS Death Event*	1.4	1	\$282,427.00
Netsmart VRS OVS Interface*	1.4	1	Included with Death Event
Netsmart VRS Correspondence Accounting System*	1.4	1	Included with Death Event
Netsmart VRS Birth Event**	1.4	1	\$124,735.00
Netsmart VRS Birth-Death Cross Match**	1.4	1	Included with Birth Event
Netsmart VRS Fetal Death Event**	1.4	1	\$40,530.00
Netsmart VRS Marriage Event**	1.4	1	\$22,168.00
Netsmart VRS Dissolution Event**	1.4	1	\$12,654.00
Netsmart VRS ITOP Event**	1.4	1	\$30,000.00

***Note: Included in initial Agreement**

****Note: Anticipated to be licensed in future Amendment to Agreement**

SCHEDULE C

SOURCE CODE ESCROW AGREEMENT

Deposit Account Number: _____

1. Introduction.

This Source Code Escrow Agreement (the "**Agreement**") is entered into by and between Netsmart Technologies, Inc. (the "**Depositor**"), and by the State of Iowa, acting by and through the Department of Public Health (the "**Beneficiary**") and by [_____] ("**Escrow Agent**") on this [Effective Date] (the "**Effective Date**"). Depositor, Beneficiary, and Escrow Agent may be referred to individually as a "Party" or collectively as the "Parties" throughout this Agreement.

- (a) The use of the term services in this Agreement shall refer to Escrow Agent services that facilitate the creation, management, and enforcement of software or other technology escrow accounts as described in Exhibit A attached hereto ("**Services**"). A Party shall request Services under this Agreement by submitting a work request to the Escrow Agent for certain Escrow Agent Services ("**Work Request**") via written instruction, with a copy of such request submitted to all parties.
- (b) The Beneficiary and Depositor have, or will have, entered into a license agreement or other agreement (the "**Software License Agreement**") conveying intellectual property rights to the Beneficiary, and the Parties intend this Agreement to be considered as supplementary to the Software License Agreement, pursuant to Title 11 United States [Bankruptcy] Code, Section 365(n). Terms not defined herein shall have the meaning or definition ascribed to them in the Software License Agreement, a copy of which is attached hereto.

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, including the Source Code and Documentation, as defined and described in the Software License Agreement (collectively "**Deposit Material**") to Escrow Agent within thirty (30) days of the Effective Date. Depositor shall deposit and maintain at all times during the term of the Software License Agreement a complete copy of the Source Code (on a media and in an electronic format acceptable to Beneficiary) and all related Documentation for the most current version and immediately preceding version of the Software provided to Beneficiary under the Software License Agreement (and under any agreement involving maintenance and/or support of the Software) in escrow with Escrow Agent. As Enhancements are produced or made available by Depositor (including pursuant to any agreement involving maintenance and/or support of the Software), Depositor shall immediately thereafter deposit a complete copy of the Source Code (on a media and in an electronic format acceptable to Beneficiary) and all updated Documentation in escrow with Escrow Agent for Beneficiary's benefit. At the time of each deposit or update, Depositor will provide an accurate and complete description of all Deposit Material sent to Escrow Agent using the form attached hereto as Exhibit B.
- (b) Depositor represents and warrants that it lawfully possesses all Deposit Material provided to Escrow Agent under this Agreement free of any liens, pledges, security interests or other encumbrances as of the date of their deposit. Depositor represents, warrants and covenants that any Deposit Material liens or encumbrances made after their deposit will not prohibit, limit, or alter the rights and obligations of Escrow Agent under this Agreement. In the event the Beneficiary receives the Deposit Material in accordance with Exhibit C, Beneficiary's use of the Deposit Material shall not be limited or otherwise adversely affected by any liens, pledges, security interests or other encumbrances granted or established by or on behalf of Depositor with respect to the Deposit Material. Depositor represents and warrants that with respect to the Deposit Material, Escrow Agent'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. Depositor represents and warrants that the Deposit Material is in a form suitable for reproduction by computer equipment, and the Deposit Material

includes all necessary materials to permit a programmer to recreate executable versions of the Software from the Source Code and to maintain and support the Software.

- (d) Depositor agrees, upon request by Escrow Agent, in support of Beneficiary's request for verification Services, to promptly complete and return the Escrow Deposit Questionnaire attached hereto as Exhibit D. Depositor consents to Escrow Agent's performance of any level(s) of verification Services described in Exhibit A attached hereto and Depositor further consents to Escrow Agent's use of a subcontractor to perform verification Services. Any such subcontractor shall be bound by the same confidentiality obligations as Escrow Agent and shall not be a direct competitor to either Depositor or Beneficiary. Escrow Agent shall be responsible for the delivery of Services of any such subcontractor as if Escrow Agent had performed the Services. Depositor represents that all Deposit Material is provided with all rights necessary for Escrow Agent to verify such proprietary technology and materials upon receipt of a Work Request for such Services or agrees to use commercially reasonable efforts to provide Escrow Agent with any necessary use rights or permissions to use materials necessary to perform verification of the Deposit Material. Depositor agrees to cooperate with Escrow Agent by providing reasonable access to its technical personnel for verification Services whenever reasonably necessary.
- (e) Depositor agrees to deposit with the Escrow Agent a new copy of the Deposit Material in the event that all or any material part of the Deposit Material then on deposit with the Escrow Agent is destroyed or so corrupted as to not be compilable into machine-readable form.

3. Beneficiary Request for Verification Services.

Beneficiary may submit a verification Work Request to Escrow Agent for one or more of the Services defined in Exhibit A attached hereto and further consents to Escrow Agent's use of a subcontractor if needed to provide such Services. Beneficiary warrants that Escrow Agent's use of any materials supplied by Beneficiary to perform the verification Services described in Exhibit A is lawful and does not violate the rights of any third parties.

4. Escrow Agent Responsibilities and Representations.

- (a) Escrow Agent agrees to provide the Services requested by Authorized Person(s) (as identified in the "Authorized Person(s)/Notices Table" below) representing the Depositor or Beneficiary in a Work Request. Escrow Agent may reject a Work Request (in whole or in part), except for any Work Request by Beneficiary to Release Deposit Material, that does not contain all required information at any time upon notification to the Party originating the Work Request.
- (b) Escrow Agent will conduct a visual inspection upon receipt of any Deposit Material and associated Exhibit B. If Escrow Agent determines that the Deposit Material does not match the description provided by Depositor represented in Exhibit B attached hereto, Escrow Agent will notify Depositor and Beneficiary of such discrepancies and notate such discrepancy on the Exhibit B.
- (c) Escrow Agent will provide notice to the Beneficiary of all Deposit Material that is accepted and deposited into the escrow account under this Agreement.
- (d) Escrow Agent will work with a Party who submits any verification Work Request for Deposit Material covered under this Agreement to either fulfill any standard verification Services Work Request or develop a custom Statement of Work ("**SOW**"). Escrow Agent and the requesting Party will mutually agree in writing to an SOW on the following terms and conditions that include but are not limited to: description of Deposit Material to be tested; description of Verification testing; requesting Party responsibilities; Escrow Agent responsibilities; Service Fees; invoice payment instructions; designation of the paying Party; designation of authorized SOW representatives for both the requesting Party and Escrow Agent with name and contact information; and description of any final deliverables prior to the start of any fulfillment activity. After the start of fulfillment activity, each SOW may only be amended or modified in writing with the mutual agreement of both Parties, in accordance with the change control procedures set forth therein.
- (e) Escrow Agent will hold and protect Deposit Material in physical or electronic vaults that are either owned or under the control of Escrow Agent, unless otherwise agreed to by the Parties. Escrow Agent shall provide and exercise the same degree of care as is generally accepted to constitute industry best practices for commercial providers of source code escrow agent services

- (f) Upon receipt of written instructions by both Depositor and Beneficiary, Escrow Agent will permit the replacement or removal of previously submitted Deposit Material. The Party making such request shall be responsible for getting the other Party to approve the joint instructions.

5. Payment.

The Party responsible for payment designated in Exhibit A ("**Paying Party**") shall pay to Escrow Agent all fees as set forth in the Work Request ("**Service Fees**"). All Service Fees payable by Depositor are due within thirty (30) calendar days from the date the invoice is received by the Depositor. Escrow Agent shall submit an invoice to the Paying Party requesting payment of the Service Fees specified in Exhibit A. Any invoice submitted to the Beneficiary shall comply with any applicable State of Iowa rules or procedures concerning payment of such fees, charges or other claims and shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and all information reasonably requested by the Beneficiary. The Beneficiary shall pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514 and 11 Iowa Admin. Code 41.1(2). The Beneficiary may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514. The Beneficiary shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Beneficiary believes the invoice is inaccurate or incorrect. Any Service Fees not timely paid by the Depositor 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.

6. Term and Termination.

- (a) The "**Term**" of this Agreement is for a period of two (2) year from the Effective Date ("**Initial Term**") and will automatically renew for additional one (1) year terms ("**Renewal Term**") for up to four (4) additional one-year renewal terms and continue in full force and effect until one of the following events occur: (i) Depositor and Beneficiary provide Escrow Agent with sixty (60) days' prior written joint notice of their intent to terminate this Agreement; (ii) Beneficiary provides Escrow Agent and Depositor with sixty (60) days' prior written notice of its intent to terminate this Agreement; or (iii) the Agreement terminates under another provision of 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. Except in the event of a termination of this Agreement due to the fault of or breach by Depositor, in which case Escrow Agent shall release the Deposit Material to the Beneficiary, Escrow Agent shall return the Deposit Material to the Depositor. If reasonable attempts to return the Deposit Material to Depositor are unsuccessful, Escrow Agent shall destroy the Deposit Material.
- (c) Agent shall be permitted to terminate this Agreement and return the Deposit Material to Depositor for the failure of the Beneficiary to timely pay any undisputed Service Fees for which Beneficiary is expressly responsible under Exhibit A; provided, however, that no termination may occur for non-payment of fees by Beneficiary unless and until the Escrow Agent has provided Beneficiary with sixty (60) days notice and Beneficiary fails to pay such undisputed fees within such sixty day period. Escrow Agent also may terminate this Agreement for any failure by Depositor to pay any Service Fees for which Depositor is expressly responsible under this Agreement if the Escrow Agent provides written notice to the Parties of such failure or material breach and intention to terminate and Depositor fails to cure such failure or material breach within thirty (30) days after receipt of such notice; provided, however, that prior to any such termination becoming effective the Escrow Agent shall first deliver to the Depositor above all of the Deposit Material.

7. General Indemnity.

Subject to Section 10 and 11, Depositor shall defend, indemnify and hold harmless the other Parties, 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 Depositor or its subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them.

8. Warranties.

- (a) ESCROW AGENT REPRESENTS AND WARRANTS ANY AND ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL AND WORKMANLIKE MANNER.
- (b) Depositor represents and 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) Beneficiary warrants that all Beneficiary information provided hereunder is accurate and reliable and undertakes to promptly correct and update such Beneficiary information during the Term of this Agreement.
- (d) 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 their disposition in accordance with the terms of this Agreement. Depositor shall reimburse Escrow Agent for any expenses reasonably incurred by Escrow Agent (including reasonable legal fees) by reason of Escrow Agent'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 Escrow Agent.

9. Confidential Information.

Escrow Agent shall have the obligation to protect the confidentiality of the Deposit Material. Except as provided in this Agreement Escrow Agent shall not disclose, transfer, make available or use the Deposit Material. Escrow Agent shall not disclose the terms of this Agreement to any third Party. If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Material, Escrow Agent will notify the Parties to this Agreement unless prohibited by law. After notifying the Parties, Escrow Agent 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 Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent 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 Escrow Agent's standard charges or as quoted upon submission of a detailed request.

10. Limitation of Liability.

Escrow Agent's liability to Depositor, if any, whether arising in Contract or tort, shall be limited to the amount equal to one (1) year of all fees paid or owed to Escrow Agent under the agreement. If any 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 limit Escrow Agent's liability 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; (IV) theft; (V) negligence or willful misconduct; or (VI) Escrow Agent's failure to deliver the deposit materials to Beneficiary upon Beneficiary's written work request as provided in Exhibit C. This provision and the limitations on liability shall not apply to Beneficiary.

11. Consequential Damages Waiver.

In no event shall Escrow Agent be liable to Depositor or 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 or tort. This section 11 shall not apply to limit Escrow Agent's liability for: This limit shall not apply to limit Escrow Agent's liability 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; (IV) theft; (V) negligence or willful misconduct; or (VI) Escrow Agent's failure to deliver the deposit materials to Beneficiary upon Beneficiary's written work request as provided in Exhibit C. This provision and the limitations on liability shall not apply to Beneficiary.

12. General.

- (a) Incorporation of Work Requests. All valid Depositor and Beneficiary Work Requests are incorporated into this Agreement.
- (b) Right to Make Copies. Escrow Agent shall have the right to make copies of all Deposit Material as reasonably necessary to perform the Services. Escrow Agent shall copy all copyright,

- nondisclosure, and other proprietary notices and titles contained on Deposit Material onto any copies made by Escrow Agent. Any copying expenses incurred by Escrow Agent as a result of a Work Request to copy will be borne by the Party requesting the copies. Escrow Agent may request Depositor's reasonable cooperation in promptly copying Deposit Material in order for Escrow Agent to perform this Agreement.
- (c) Choice of Law. The validity, interpretation, and performance of this Agreement shall be controlled and governed by and construed under the laws of the State of Iowa, as if performed wholly within the state and without giving effect to the principles of conflicts of laws.
 - (d) Authorized Person(s). Depositor and Beneficiary must each authorize and designate one person whose actions will legally bind such party ("Authorized Person" who shall be identified in the Authorized Persons (s) Notices Table of this Agreement) and who may manage the Escrow Agent escrow account through the Escrow Agent website or written instruction. The Authorized Person for each the Depositor and Beneficiary will maintain the accuracy of their name and contact information provided to Escrow Agent during the term of this Agreement.
 - (e) Right to Rely on Instructions. Escrow Agent may act in reliance upon any instruction, instrument, or signature reasonably believed by Escrow Agent to be genuine and from an Authorized Person(s), officer, or other employee of a Party. Escrow Agent may assume that such representative of a Party to this Agreement who gives any written notice, request, or instruction has the authority to do so.
 - (f) 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.
 - (g) Notices. All notices regarding Exhibit C (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. The Parties shall have the right to rely on the last known address of the other Parties. Any correctly addressed notice to last known address of the other Parties that is relied on herein and 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.
 - (h) 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.
 - (i) 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 Escrow Agent, which shall not be unreasonably withheld or delayed. Escrow Agent shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor unless Escrow Agent receives clear, authoritative and conclusive written evidence of the change of parties.
 - (j) 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 any Party, as determined by such Party in its sole discretion, then the affected Party may terminate this Agreement by written notice to the others.
 - (k) Independent Contractor Relationship. Depositor and Beneficiary understand, acknowledge, and agree that Escrow Agent's relationship with Depositor and Beneficiary 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.
 - (l) 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 Parties or bind the other Parties in any respect whatsoever.
 - (m) Disputes. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought or commenced only in Des

Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced only in the United States District Court for the Southern District of Iowa, Central Division.

- (n) Regulations. All 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.
- (o) No Third Party Rights. This Agreement is made solely for the benefit of 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.
- (p) 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.
- (q) 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.
- (r) Survival. Sections 6 (Term and Termination), 7 (General Indemnity), 8 (Warranties), 9 (Confidential Information), 10 (Limitation of Liability) 11(Consequential Damages Waiver), and 12 (General) of this Agreement shall survive termination of this Agreement or any Exhibit attached hereto.
- (s) All of the terms, provisions and condition so this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns, and legal representatives.
- (t) The Escrow Agent shall maintain books, records, and documents which sufficiently and properly document the Escrow Agent's compliance with the terms of this Agreement and show all charges billed to or paid by the Beneficiary named above throughout the term of this Agreement for a period of at least five (5) years following the termination or expiration of this Agreement, or completion of any required audit. The Escrow Agent shall permit the Beneficiary, the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Escrow Agent relating to this Agreement. The Escrow Agent shall not impose or seek payment for any charge, fee or expense associated with any audit or examination of its books and records conducted in accordance with this provision.
- (u) Time is of the essence with respect to performance by the Escrow Agent and Depositor of their respective obligations under this Agreement.

DEPOSITOR

Company Name:	Netsmart Technologies, Inc.
Signature:	
Print Name:	
Title:	
Date:	
Email Address	

BENEFICIARY

Company Name:	State of Iowa, Iowa Department of Public Health
Signature:	
Print Name:	Dr. Mariannette Miller-Meeks
Title:	Director
Date:	
Email Address:	Mariannette.Miller-Meeks@idph.iowa.gov

ESCROW AGENT

Signature:	
Print Name:	
Title:	
Date:	
Email Address:	

DEPOSITOR – AUTHORIZED PERSON(S)/NOTICES TABLE

Provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All notices will be sent to the person(s) at the address(es) set forth below. This is required information.

Company:	
Administrative Contact Print Name:	
Title:	
Email Address	
Address 1	
Address 2	
City/State/Province	
Postal/Zip Code	
Phone Number	
Fax Number	

BENEFICIARY -- AUTHORIZED PERSON(S)/NOTICES TABLE

Provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All notices will be sent to the person(s) at the address(es) set forth below. This is required information.

Company:	State of Iowa, Iowa Department of Public Health
Administrative Contact Print Name:	Dr. Mariannette Miller-Meeks
Title:	Director
Email Address	Mariannette.Miller-Meeks@idph.iowa.gov
Address 1	Lucas State Office Building
Address 2	321 East 12 th Street
City/State/Province	Des Moines, IA
Postal/Zip Code	50319
Phone Number	
Fax Number	

ESCROW AGENT

Title:	Lincoln-Parry SoftEscrow
Email Address	<u>desk@softescrow.com</u>
Address 1	8 Faneuil Hall Marketplace
Address 2	3rd Floor
City/State/Province	Boston, MA
Postal/Zip Code	02109
Phone Number	1-888-771-2042 ext.405
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.

BENEFICIARY:

Print Name:	Marcia Spangler
Title:	Division Director
Email Address	Marcia.Spangler@idph.iowa.gov
Street Address	Lucas State Office Building 321 East 12 th Street
Province/City/State	Des Moines, IA
Postal/Zip Code	50319
Phone Number	515-281-4955
Fax Number	515-281-3789

DEPOSITOR:

Print Name:	Joseph McGovern
Title:	Executive Vice President
Email Address	<u>jmccgovern@ntst.com</u>
Street Address	3500 Sunrise Highway, Suite D122
Province/City/State	Great River, NY
Postal/Zip Code	11739
Phone Number	631-968-2012
Fax Number	631-968-2123

Purchase order #	
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Purchase order #	
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[MUST BE COMPLETED]

EXHIBIT A - Escrow Service Work Request - Deposit

Account Number: _____

Service Check box(es) to order service	Service Description – Three 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	Annual Fees	Paying Party Check box to identify the Paying Party for each service below.
<input checked="" type="checkbox"/> Setup Fee <input checked="" type="checkbox"/> Deposit Account Fee- <input checked="" type="checkbox"/> Beneficiary Fee	<p>Escrow Agent will setup a new escrow deposit account.</p> <p>Escrow Agent will set up one deposit account to manage and administrate access to Deposit Material that will be securely stored in controlled media vaults. Furthermore, Escrow Agent will provide account services that include unlimited deposits. A Client Manager will be assigned to each deposit account.</p> <p>Escrow Agent will fulfill a Work Request to add a Beneficiary to an escrow deposit account and manage access rights associated with the account. Beneficiary. A Client Manager will be assigned to each deposit account and to Beneficiary and will ensure fulfillment of Work Requests.</p>			<input checked="" type="checkbox"/> Depositor - <input checked="" type="checkbox"/> Depositor - <input type="checkbox"/> Depositor - OR - <input checked="" type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Deposit Tracking Notification	<p>At least semi-annually, Escrow Agent will send an update reminder to Depositor. Thereafter, Beneficiary will be notified of last deposit. .</p>			<input type="checkbox"/> Depositor -
<input type="checkbox"/> Add File Comparison and Analysis Test	<p>Escrow Agent will fulfill a Work Request to perform a File Comparison and Analysis Test, which includes analyzing deposit media readability, file listing, creation of file classification table, virus scan, assurance of completed deposit questionnaire, and analysis of completed deposit questionnaire. A final report will be sent to the Parties regarding the Deposit Material to ensure consistency between Depositor's representations (i.e., Exhibit B and Supplementary Questionnaire) and stored Deposit Material.</p>		N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Deposit Compile Test	<p>Escrow Agent will fulfill a Work Request to perform a Deposit Compile Test, which includes the File Comparison and Analysis Test as described above plus recreating the Depositor's software development environment, compiling source files and modules, linking libraries and</p>	Based on SOW	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary

	recreating executable code, pass/fail determination, creation of comprehensive build instructions with a final report sent to the Parties regarding the Deposit Material. The Paying Party and Escrow Agent will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.			
<input type="checkbox"/> Add Deposit Usability Test – Binary Comparison	Escrow Agent will fulfill a Work Request to perform one Deposit Compile Test Binary Comparison which includes a comparison of the files built from the Deposit Compile Test to the actual licensed technology on the Beneficiary's site to ensure a full match in file size, with a final report sent to the Beneficiary regarding the Deposit Material. The Paying Party and Escrow Agent will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.	Based on SOW	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Deposit Usability Test – Full Usability Test	Escrow Agent will fulfill a Work Request to perform one Deposit Compile Test Full Usability which includes a confirmation that the built applications work properly when installed. A final report will be sent to the Parties regarding the Deposit Material. The Paying Party and Escrow Agent will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.	Based on SOW	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Dual/Remote Vaulting	Escrow Agent 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.			<input type="checkbox"/> Depositor -
<input type="checkbox"/> Release Deposit Material	Escrow Agent will process Beneficiary's Work Request to release Deposit Material by following the specific procedures defined in Exhibit C "Release of Deposit Materials" the Escrow Service Agreement.	No Fee for Release	N/A	N/A
<input type="checkbox"/> Add Custom Services	Escrow Agent will provide its Escrow Expert consulting based on a custom SOW mutually agreed to by all Parties.	Based on SOW	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary

**EXHIBIT B
DEPOSIT MATERIAL DESCRIPTION**

COMPANY NAME: _____ **ESCROW ACCOUNT NUMBER:** _____

DEPOSIT NAME _____ **AND DEPOSIT VERSION** _____ **V 8.0** _____
(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 checked="" 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 checked="" type="checkbox"/> I certify for Depositor that the above described Deposit Material has been transmitted electronically or sent via commercial express mail carrier to Escrow Agent at the address below.	<input checked="" type="checkbox"/> Escrow Agent has inspected and accepted the above described Deposit Material either electronically or physically. Escrow Agent will notify Depositor of any discrepancies.
Name:	Name:
Print Name:	Print Name:
Date:	Date:
Email Address:	
Telephone Number:	
Fax Number:	

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

FOR ESCROW AGENT USE ONLY: (NOTED DISCREPANCIES ON VISUAL INSPECTION)

EXHIBIT C

RELEASE OF DEPOSIT MATERIAL

Deposit Account Number: _____

Escrow Agent will use the following procedures to process any Beneficiary Work Request to release Deposit Material. All notices under this Exhibit C shall be sent pursuant to the terms of Section 12(g) Notices.

1. Release Conditions. Beneficiary may submit a Work Request for the release of the Deposit Material, and the Escrow Agent will release and deliver the Deposit Material to Beneficiary, based on one or more of the following conditions (defined as “**Release Conditions**”):
 - (i) A petition in bankruptcy or an assignment for the benefit of creditors of the Licensor is filed by the Licensor, or a third party against the Licensor and is not dismissed within 30 days of its filing;
 - (ii) A cessation of normal business operations by the Licensor during the term of this agreement;
 - (iii) A failure or refusal by the Licensor to provide the Software maintenance and support services required of it under its program license agreement with the Licensee, which failure has been preceded by a notice in writing to the Licensor that its continued default would cause the Licensee to invoke its rights under this agreement fifteen (15) days after the date of the said notice;
2. Release Work Request. Beneficiary may submit a written Work Request to Escrow Agent to release the Deposit Material covered under this Agreement. In such Work Request, Beneficiary must specify the Release Condition(s) that has/have occurred. Beneficiary will transmit a copy of the Work Request to Depositor on the same day it transmits such request to Escrow Agent.
3. Release of Deposit Material. Within ten (10) days of Escrow Agent’s receipt of Beneficiary’s Work Request to release the Deposit Material, Escrow Agent will release and deliver the Deposit Material to Beneficiary.
4. Termination of Agreement Upon Release. This Agreement will terminate upon the Escrow Agent’s actual delivery of all Deposit Material to Beneficiary in accordance with the terms of this Agreement.
5. Right to Use Following Release. Upon release of the Deposit Materials, Beneficiary shall have all rights and privileges set forth in the Software License Agreement with respect to the Software and Deposit Material. Beneficiary shall be obligated to adhere to any applicable confidentiality obligations set forth in Section 9.2 of the Software License Agreement with respect to the released Deposit Material.

**EXHIBIT D
ESCROW DEPOSIT QUESTIONNAIRE**

Introduction

From time to time, Beneficiary may exercise its right to perform verification services. This is a service that Escrow Agent provides for the purpose of validating relevance, completeness, currency, accuracy and functionality of deposit materials.

Purpose of Questionnaire

In order for Escrow Agent to determine the deposit material requirements, a completed deposit questionnaire is requested. It is the responsibility of the Depositor to complete the questionnaire.

Instructions

Please complete the questionnaire in its entirety by answering every question with accurate data. Upon completion, please return the completed questionnaire to the beneficiary asking for its completion, or e-mail it to Escrow Agent.

General Description

1. What is the general function of the software to be placed into escrow?
2. On what media will the source code be delivered?
3. What is the size of the deposit in megabytes?

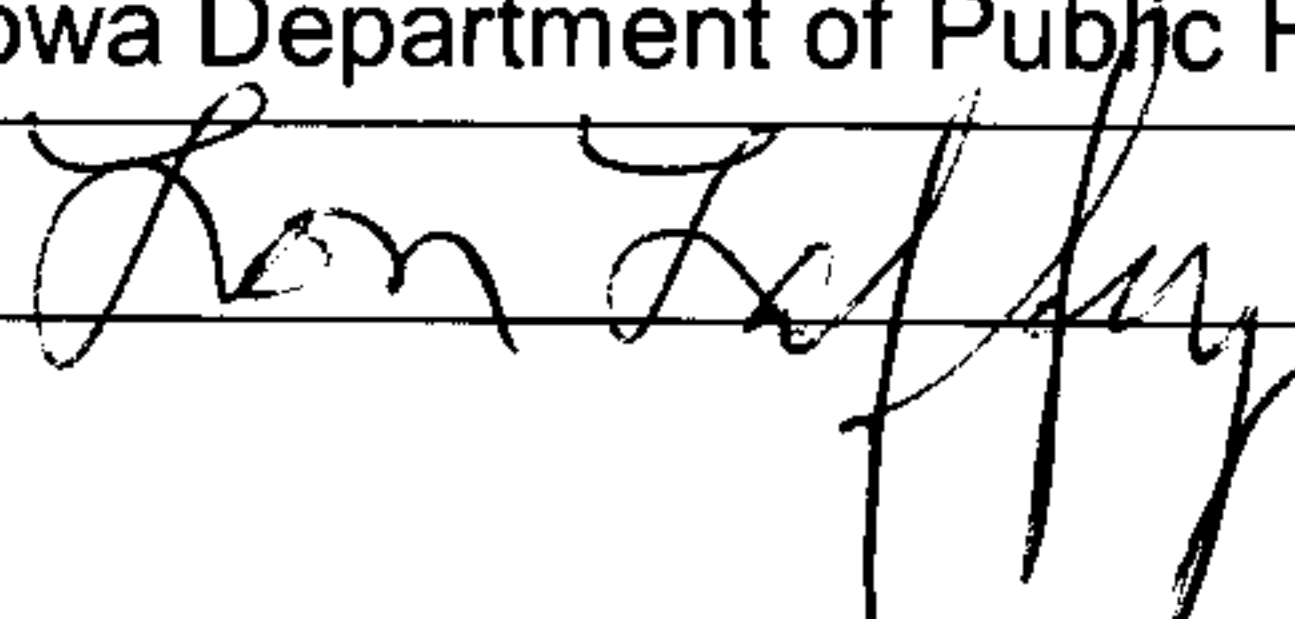
Requirements for the Execution of the Software Protected by the Deposit

1. What are the system hardware requirements to successfully execute the software? (memory, disk space, etc.)
2. How many machines are required to completely set up the software?
3. What are the software and system software requirements, to execute the software and verify correct operation?

Requirements for the Assembly of the Deposit

1. Describe the nature of the source code in the deposit. (Does the deposit include interpreted code, compiled source, or a mixture? How do the different parts of the deposit relate to each other?)
2. How many build processes are there?
3. How many unique build environments are required to assemble the material in the escrow deposit into the deliverables?
4. What hardware is required for each build environment to compile the software? (including memory, disk space, etc.)
5. What operating systems (including versions) are used during compilation? Is the software executed on any other operating systems/version?
6. How many separate deliverable components (executables, share libraries, etc.) are built?
7. What compilers/linkers/other tools (brand and version) are necessary to build the application?
8. What, if any, third-party libraries are used to build the software?
9. How long does a complete build of the software take? How much of that time requires some form of human interaction and how much is automated?
10. Do you have a formal build document describing the necessary steps for system configuration and compilation?
11. Do you have an internal QA process? If so, please give a brief description of the testing process.
12. Please list the appropriate technical person(s) Escrow Agent may contact regarding this set of escrow deposit materials.

Please provide your technical verification contact information below:

COMPANY:	Iowa Department of Public Health
SIGNATURE:	

PRINT NAME:	Lon Laffey
ADDRESS 1:	Lucas State Office Building
ADDRESS 2:	321 East 12 th Street
CITY, STATE, ZIP	Des Moines, IA 50319
TELEPHONE:	515-371-7440
EMAIL ADDRESS:	Lon.Laffey@idph.iowa.gov