AN ORDINANCE **2017-05-18-0333**

AUTHORIZING AN AMENDMENT TO THE ANNUAL CONTRACT WITH NETSMART TECHNOLOGIES, INC. TO EXTEND THE TERM THROUGH SEPTEMBER 30, 2020, FOR AN ESTIMATED TOTAL COST OF $193,000.00 FOR NETSMART INSIGHT SUPPORT.

* * * * *

WHEREAS, the City has a contract with NetsMart Technologies, Inc. to provide support for NetsMart Insight software which provides the City with a Tuberculosis Case Management System; and

WHEREAS, the City wishes to amend the contract to extend the term through September 30, 2020 to provide continued updates, maintenance and support to the Tuberculosis Case Management System; and

WHEREAS, all expenditures will be in accordance with the applicable fiscal year's budget approved by City Council; **NOW THEREFORE:**
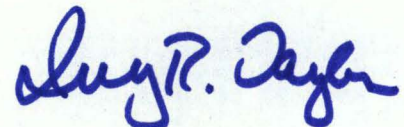
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager, her designee, the Deputy Chief Financial Officer, and his designee, are authorized to execute the amendment with NetsMart Technologies, Inc. in the form attached hereto, and incorporated herein, as **Exhibit I**.

SECTION 2. Funds will be encumbered upon issuance of purchase orders, and payment is authorized to NetsMart Technologies, Inc. All expenditures will be in accordance with the Fiscal Year 2017 budget and such other appropriations necessary to fund the contract through its term as evidenced by subsequent ordinances.
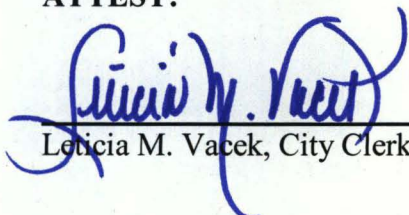
SECTION 3. This ordinance is effective immediately upon passage by eight affirmative votes; otherwise it is effective on the tenth day after passage.
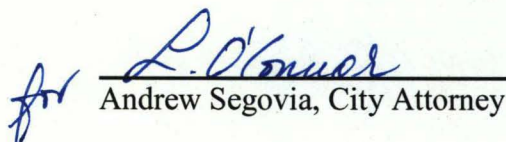
PASSED and APPROVED this 18th day of May, 2017.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Andrew Segovia, City Attorney

Agenda Item:	7 (in consent vote: 5, 6, 7, 8, 9, 11, 13, 14, 15A, 15B, 17, 19, 21, 22, 23, 24, 25A, 25B, 25C)
Date:	05/18/2017
Time:	09:21:19 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing an amendment to the annual contract with NetsMart Technologies, Inc. for an estimated total cost not to exceed $193,000.00 for NetsMart Insight Support. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Deputy Chief Financial Officer, Finance]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				x
Michael Gallagher	District 10		x			x	

EXHIBIT I

City of San Antonio
Bid Tabulation

Opened:	December 1, 2009		NetsMart Technologies, Inc 3500 Sunrise Hwy, Suite D122 Great River, NY 11739
For:	BMC Service Desk Software Maintenance & Support		
#6100001477		GDL	
Item	**Description**	**Qty**	800-421-7503
1	Upon Award - 9/30/2017		$32,930.30
2	10/1/2017 - 9/30/2018		$34,433.82
3	10/1/2018 - 9/30/2019		$35,811.17
4	10/1/2019 - 9/30/2020		$37,243.62
5	Contingency Funds		$52,859.00
	Estimated Total Award		**$193,277.91**

FOURTH AMENDMENT TO THE
REQUEST FOR OFFER (SOLE SOURCE) TUBERCULOSIS CASE MANAGEMENT SYSTEM
OFFER NO. 09-128-WF

STATE OF TEXAS   §

                        §

COUNTY OF BEXAR   §

This FOURTH AMENDMENT TO THE REQUEST FOR OFFER (SOLE SOURCE) TUBERCULOSIS CASE MANAGEMENT SYSTEM OFFER NO. 09-128-WF ("Amendment 4") is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") and Netsmart Technologies, Inc., ("Netsmart"), both of which may be referred to herein collectively as the "Parties."

On or About July 28, 2009, the Parties executed the REQUEST FOR OFFER (SOLE SOURCE) TUBERCULOSIS CASE MANAGEMENT SYSTEM OFFER NO. 09-128-WF ("Agreement").

Subsequent to the approval of the Agreement and later amendments, it is necessary to amend the Agreement to add professional services and software subscriptions.

The parties agree to amend the Agreement as follows:

1. Netsmart shall provide the City with the services, licenses and subscriptions as detailed in Exhibit I, attached hereto and incorporated by reference for all purposes.

2. Netsmart and City shall execute HIPAA BUSINESS ASSOCIATE AGREEMENTS for users as required by the agreement, in the form as attached as Exhibit II, attached hereto and incorporated by reference for all purposes. Exhibit II replaces any former HIPPA Business Associate Agreements previously used.

3. All other provisions of the Agreement and subsequent amendments shall remain in full force and effect.
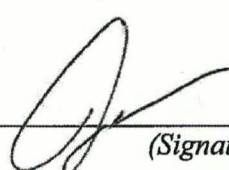
EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO   **NETSMART TECHNOLOGIES, INC.**

_____   _____
(Signature)   *(Signature)*

Printed Name: _____   Printed Name: Joseph McGovern
Title: _____   Title: Executive Vice President
Date: _____   Date: 2/10/17

Netsmart

Netsmart Technologies Incorporated

Schedule A
Description of Netsmart Programs & Third Party Products and Charges

Netsmart Programs
Appointment Scheduling
Encounter Processing
Immunization Tracking & Inventory
Laboratory Tracking
Medical Records
Patient Accounts
Patient Registration
STD
Supplies & Inventory
TB
X12-837 Professional
X12-835 Remittance Posting

User Count (if applicable):	75 Concurrent Users
Term of Agreement:	October 1, 2016 through September 30, 2017
Annual Fee (due on contract signing):	$32,930.30. Renewal for 3 additional subsequent years: October 1, 2017 through September 30, 2018 - $34,433.82 October 1, 2018 through September 30, 2019 - $35,811.17 October 1, 2019 through September 30, 2020 - $37,243.62

Travel Policy (if applicable):

TRAVEL AND LIVING AND TRAVEL TIME EXPENSES Billed monthly as incurred at the most economical rates. Travel Time will be billable at $150 per hour. Travel and Living Expenses are as follows: Meals: Charged at Netsmart's then current daily per diem rate. The current rate is $65.00 per day Airline: Coach Class on Major Airline including any additional fees applied by the airline Personal Vehicle: Personal vehicle usage will be reimbursed at the currently defined rate by the IRS Rental Car: Mid Size vehicle at local rates Ancillaries: Gas, Tolls, Parking Hotel: At local rates	Billed as incurred

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement is entered into by and between the City of San Antonio ("Covered Entity"), and Netsmart Technologies, Inc., a Business Associate ("BA").

WHEREAS, the City of San Antonio and BA have entered into a Professional Services Contract ("Service Contract"), executed on August 31, 2009, whereby BA provides medical third party administration services to the Covered Entity; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information ("PHI"); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations"), Health Information Technology for Economic and Clinical Health Act ("HITECH Act") and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations ("C.F.R."), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:

(1) "Disclosure" with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.

(2) "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

(3) "Parties" shall mean Covered Entity and BA. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103.

(4) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and Part 164, subparts A and E.

(5) "Security Rule" shall mean the HIPAA regulation that is codified at 45 C.F.R. Part 164.

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EXHIBIT II

(6) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. 164.501, limited to the information created or received by BA from or on behalf of Covered Entity. PHI includes "Electronic Protected Health Information" or "EPHI" and shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 CFR Parts 160, 162, 164, and under HITECH.

(6) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.

(7) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

(8) "PHI Breach" shall mean an acquisition, access, use, or disclosure of PHI in a manner not permitted by the Privacy Rules and such action compromises the security or privacy of the PHI.

(9) The Health Information Technology for Economic and Clinical Health ("HITECH") Act shall mean Division A, Title XII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

B.   BA Obligations and Activities. BA agrees that it shall:

(1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;

(2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of covered entity;

(3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;

(4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any security incident that BA becomes of aware of;

(5) Ensure that a business associate agreement is in place with any of its agents or subcontractors with which BA does business and to whom it provides PHI received from, created or received by BA on behalf of Covered Entity are aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards that render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI;

(6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as

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directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;

(7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;

(8) Make available to the Covered Entity or to the Secretary of the U.S. Department of Health and Human Services all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary of the U.S. Department of Health and Human Services in determining Covered Entity's compliance with the Privacy Rule;

(9) Document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;

(10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;

(11) Will immediately, and in no event later than three days from discovery, notify Covered Entity of any breach of PHI, including ePHI, and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and US Department of Health and Human Services, as required, any covered PHI breach. Breach notification to Covered Entity must include: names of individuals with contact information for those who were or may have been impacted by the HIPAA Breach; a brief description of the circumstances of the HIPAA Breach, including the dated of the breach and date of discover; a description of the types of unsecured PHI involved in the breach; a brief description of what the BA has done or is doing to investigate the breach and mitigate harm. BA will appoint a breach liaison and provide contact information to provide information and answer questions Covered Entity may have concerning the breach;

(12) Comply with all HIPAA Security Rule requirements;

(13) Comply with the provisions of HIPAA Privacy Rule for any obligation Covered Entity delegates to BA;

(14) Under no circumstances may BA sell PHI in such a way as to violate Texas Health and Safety Code, Chapter 181.153, effective September 1, 2012, nor shall BA use PHI for marketing purposes in such a manner as to violate Texas Health and Safety Code Section 181.152, or attempt to re-identify any information in violation of Texas Health and Safety Code Section 181.151, regardless of whether such action is on behalf of or permitted by the Covered Entity.

C. Permitted Uses and Disclosures by BA

(1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

(2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.

(3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).

(4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

(1) notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;

(2) notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;

(3) notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI.

(4) coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the Business Associate may use or disclose PHI for data aggregation or management and administrative activities of the BA.

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F.   Term and Termination.

   (1)   The term of this Agreement shall commence on the date on which it is fully executed. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.

   (2)   Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

   (3)   Effect of Termination.

      (a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.

      (b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.

   (4)   Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.

G. Amendment to Comply with Law. The Parties agree to take written action as is necessary to amend this Agreement to comply with any Privacy Rules and HIPAA legal requirements for Covered Entity without the need for additional council action.

H. Survival. The respective rights and obligations of the BA under Sections B, C (2) and (4), and F(3) shall survive the termination of this Agreement.

I. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.

J. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.

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K. <u>No Third Party Beneficiaries</u>. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

L. ***INDEMNIFICATION. BA WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICE AGREEMENTS, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.***

M. **Reimbursement.** BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.

N. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

O. **Assignment.** Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.

P. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contracts or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

Q. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

EXECUTED to be effective _____, by the **City of San Antonio,** signing by and through its program manager.

COVERED ENTITY
By City of San Antonio

BUSINESS ASSOCIATE:

By: _____

By: _____

Print Name: Vincent R. Nathan, PHD, MPH
Print Title: Interim Health Director

Print Name: Joseph McGovern
Print Title: Executive Vice President

APPROVED AS TO FORM:

_____
City Attorney

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

		OFFICE USE ONLY **CERTIFICATION OF FILING**
1	Name of business entity filing form, and the city, state and country of the business entity's place of business. Netsmart Technologies, Inc. Great River, NY United States	**Certificate Number:** 2017-186130
2	Name of governmental entity or state agency that is a party to the contract for which the form is being filed. City of San Antonio	**Date Filed:** 03/31/2017 **Date Acknowledged:**

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

Offer No. 09-128-WF
Tuberculosis Case Management System

4		Nature of interest (check applicable)	
Name of Interested Party	**City, State, Country (place of business)**	**Controlling**	**Intermediary**

5 Check only if there is NO Interested Party. [X]

6 **AFFIDAVIT**

JAMIE GIORDANO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01GI6303169
Qualified in Suffolk County
My Commission Expires May 12, 2018

AFFIX NOTARY STAMP / SEAL ABOVE

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

_____
Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said ___Executive Vice President___, this the ___3rd___ day of ___April___, 20_17___, to certify which, witness my hand and seal of office.

Jamie Giordano	Jamie Giordano	Director of Contracts + Legal Ops
Signature of officer administering oath	Printed name of officer administering oath	Title of officer administering oath