

Netsmart Pass Through Provisions

Netsmart myAvatar, Netsmart myEvolv, Netsmart CareManager, Netsmart CareConnect, and Netsmart Homecare EULA Terms:

I. LICENSED PROGRAMS

- a) Netsmart hereby grants Licensee:
 - i) a non-exclusive, perpetual (subject only to termination under Section 11) non-transferable license to use the Licensed Programs in object code form only for Licensee's internal business purposes and not to process the data of any other entity;
 - ii) to support the number of Licensee Databases and the number of named users of the Netsmart Programs set forth in the Agreement;
 - iii) on the number of servers, operating system and for access by the maximum number of simultaneous users or other such restrictions of the Third Party Products as set forth in the Agreement;

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- b) Except as expressly stated in this Agreement, no other rights, express, implied or otherwise are granted to Licensee.
- c) Nothing in this Agreement will be deemed to convey any title or ownership interest in the Licensed Programs to Licensee. Licensee will not sell, disclose, lease, sublease, lend or otherwise make the Licensed Programs available to anyone who does not need access to the Licensed Programs in order for Licensee use the Licensed Programs to accomplish their intended purpose.
- d) Licensee agrees to reproduce any copyright notices and/or other proprietary legends, regardless of form, contained in, affixed to, or appearing on the Licensed Programs.
- e) Licensee will not disassemble or reverse engineer any of the Licensed Programs nor attempt to access or modify the source code version of the Licensed Programs and will not make any derivations, adaptations, or translations of the Licensed Programs in whole or in part, nor use the Licensed Programs to develop functionally similar computer software or to otherwise compete with Netsmart.
- f) During the support term, Licensee and Licensee Personnel will contact Netsmart directly for any support issues. Licensee agrees to follow Netsmart's reasonable guidance for implementations, training, and support (as stated in Netsmart's then-current support manual for the applicable Licensed Programs (the "**Support Manual**")), and obtain Netsmart's approval before implementing updates received directly from a Netsmart vendor.

2. WARRANTIES

- a) Netsmart warrants that the Licensed Programs will substantially conform in all material respects with their Specifications. Netsmart will correct any Problems or Defects in accordance with its Support Services program as then in effect.
- b) Netsmart further represents and warrants that it has the right to grant the licenses granted to Licensee hereunder and that to the best of Netsmart's knowledge the Licensed Programs do not infringe upon or violate the United States patent rights of any third party and do not infringe upon or violate the copyright, or trade secret right of any third party.
- c) If any modifications, additions or alterations of any kind or nature are made to the Licensed Programs without authorization by Netsmart or anyone acting with the consent of or under the direction of Netsmart, all warranties will immediately terminate and Netsmart will have no further warranty obligation to Licensee.

3. LIMITATION OF WARRANTY.

THE FOREGOING WARRANTIES ARE EXCLUSIVE OF ANY OTHER WARRANTIES AND CONDITIONS EXPRESS OR IMPLIED, WHETHER IN RELATION TO THE LICENSED PROGRAMS, HARDWARE OR THE PROVISION OF ANY SERVICES INCLUDING, BUT NOT LIMITED TO, THOSE CONCERNING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ARISING BY TRADE USAGE OR COURSE OF DEALING. LICENSEE'S EXCLUSIVE REMEDY IN THE EVENT OF A BREACH OF THE SECTION 2(a) WARRANTY AND NETSMART'S SOLE OBLIGATION IS TO MODIFY THE SOFTWARE TO ELIMINATE THE PROBLEM OR DEFECT. LICENSEE'S EXCLUSIVE REMEDY IN THE EVENT OF A BREACH OF THE SECTION 2(b) WARRANTY IS SET FORTH IN SECTION 5.

4. LIMITATION OF LIABILITY

- a) LIMITATION ON SPECIFIED DAMAGES IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, DAMAGES RELATED TO DELAYS, LOSS OF DATA, INTERRUPTION OF SERVICE OR LOSS OF BUSINESS OR PROFITS OR REVENUE), EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. EXCEPT AS SET FORTH IN SECTION 5, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY THIRD PARTY CLAIM.
- b) LIMITATION ON CUMULATIVE LIABILITY. EXCEPT AS SET FORTH IN SECTION 5, THE CUMULATIVE LIABILITY OF NETSMART TO LICENSEE FOR ANY ACTUAL OR ALLEGED DAMAGES ARISING OUT OF, BASED ON OR RELATING TO THIS AGREEMENT, WHETHER BASED UPON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR ANY OTHER LEGAL THEORY, WILL NOT EXCEED THE AMOUNT OF LICENSE FEES PAID TO NETSMART UNDER THIS AGREEMENT.

5. INDEMNIFICATION

- a) In the event of any claim by a third party against Licensee (the "Claim"), alleging that the use of the Licensed Programs infringes upon any intellectual property rights of such third party, Licensee will promptly notify Netsmart and Netsmart will defend such Claim, in Licensee's name but at Netsmart's expense, and will indemnify Licensee against any liability paid by Licensee, including but not limited to attorneys' fees and disbursements, arising out of such Claim. In the event such an infringement is found and Netsmart cannot either procure the right to continued use of the Licensed Programs, or replace or modify the Licensed Programs with a non-infringing program, then Netsmart may terminate the license of the Licensed Programs, and will refund to Licensee the amount of the license fee paid by Licensee, reduced by one sixtieth for each full month from the date of first use of the Licensed Programs, until the date of termination.
- b) Netsmart will not have any liability under Section 5(a), to the extent that the Claim is based upon (i) the use of the Licensed Programs in combination with other products or services not made or furnished by Netsmart, provided that the Licensed Programs alone are not the cause of such Claim; or (ii) the modification of the Licensed Programs or any portion thereof by anyone other than Netsmart, or an authorized agent of Netsmart provided that the Licensed Programs in unmodified form are not the cause of such Claim.

6. CONFIDENTIALITY

- a) Each party agrees that by reason of their engagement hereunder, they will acquire confidential information and trade secrets concerning the operations of the other party and their business

methods and operations.

- b) Each party (including its employees and agents) will use the same standard of care, but in no event less than reasonable care, that it uses to protect its own confidential information to protect any confidential information of the other party that is disclosed during negotiation or performance of this Agreement including any aspect of the business or affairs of the other party and their information and the parties' performance under this Agreement.
- c) Netsmart recognizes and acknowledges the sensitive and confidential nature of information it may obtain with regard to Subscriber's clients and their treatment, and agrees that information with respect to Subscriber's clients and their treatment will be kept in strict confidence in perpetuity by Netsmart. Netsmart agrees to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d ("HIPAA") and any current and future regulations promulgated there under including without limitation the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Part 142 (the "Federal Security Regulations"), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162, all collectively referred to herein as "HIPAA Requirements". Netsmart agrees not to use or further disclose any Protected Health Information (as defined in 45 C.F.R. Section 164.501) or Individually Identifiable Health Information (as defined in 42 U.S.C. Section 1320d), other than as permitted by HIPAA Requirements and the terms of this Agreement. Netsmart will make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary of Health and Human Services to the extent required for determining compliance with the Federal Privacy Regulations.
- d) Subscriber will take adequate steps and security precautions to prevent unauthorized disclosure of information which is proprietary to Netsmart and/or the owner of the Third Party Programs. Including but not limited to: (i) instructing its employees having access to such information not to copy or duplicate the same or any part thereof and to withhold disclosure or access or reference thereto from unauthorized third parties; (ii) effecting sufficient security measures including, at the request of Netsmart, requiring non-disclosure agreements with its employees, to safeguard such information from theft or from access by unauthorized parties; (iii) Maintaining proper control of passwords and security procedures to prevent unauthorized access to the Subscriber Database .

7. NON-SOLICITATION

During the term of this Agreement and for a period of one (1) year following its termination, neither party will directly or indirectly solicit for employment or as a consultant, an employee or consultant of the other party, or any person who was an employee or consultant of the other party at any time during the six (6) month period immediately prior to the date such employee or consultant is solicited, hired or retained.

8. 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.