

## **AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND NETSMART TECHNOLOGIES**

This Agreement is entered into this \_\_\_ day of \_\_, 20 \_\_, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Netsmart Technologies, Inc., a Delaware corporation with offices at 4950 College Boulevard, Overland Park, KS, 66212, hereinafter called "Contractor."

\* \* \*

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

Whereas, it is necessary and desirable that Contractor be retained for the purpose of providing products and services for the Behavioral Health Information System (BHIS) and the Family Health Services Information System that will allow the County Department of Behavioral Health & Recovery Services and Family Health Services to continue maintenance and subscription services related to the myAvatar Electronic Health Record (EHR) system already in use.

**Now, therefore, it is agreed by the parties to this Agreement as follows:**

### **1. Master Agreement, Exhibits, and Attachments**

The master agreement is the instrument through which the Contractor hereby grants County a non-exclusive, royalty-free, perpetual (subject only to termination under Section 5 "Termination; Availability of Funds") non-transferable license to use the Licensed Programs in object code form only. All exhibits and attachments incorporated into the Master Agreement describe services and peripheral applications or subscriptions used in coordination with the Licenses Programs.

This Master Agreement supersedes the System Agreement between County and Netsmart dated June 28, 2016 ("Former Master Agreement"). County retains all its perpetual license(s) granted under the Former Master Agreement.

The following exhibits and attachments are attached to this Master Agreement and incorporated into this Agreement by this reference:

- Schedule A – Behavioral Health Information System (BHIS) Charges and Payment Terms
- Schedule B – Family Health Services Information System (FHSIS) Charges and Payment Terms
- Schedule C – Optional Future Extensions of this Agreement for Behavioral Health Information System (BHIS and FHSIS) Schedule D – Hardware Configuration
- Schedule E – County Resource Requirements
- Schedule F - Support Services for Licensed Solutions
- Schedule G – Specifications
- Schedule H – HIPAA Business Associate Agreement
- Schedule I – Intellectual Property
- Schedule J – Assurance of Compliance with Section 504 of the Rehabilitation act of 1973
- Schedule K - Netsmart Hosting Addendum to License

- Addendum Schedule N(a) - Overview of the “Hosted System” Components and Services
- Addendum Schedule N(b) - Contractor Professional Services, Third Party Products, and Annual Charges
- Addendum Schedule N(c) - SERVICE LEVEL AGREEMENT For Hosting Account Services
- Schedule L - Netsmart Subscription Products and Third-Party Software Addendum
  - Addendum Schedule L(a) Netsmart Subscriptions Charges and Payment Terms
  - Addendum Schedule L(b) Service Level Agreement

## **2. Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement, County shall make payment to Contractor based on the rates and in the manner specified in “Schedule A – Behavioral Health Information System (BHIS) Charges and Payment Terms” and “Schedule B – Family Health Services Information System (FHSIS) Charges and Payment Terms”. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. The total contract obligation is the sum of Committed Purchases as outlined in Schedule A, Schedule B (Five Million, Twenty-Eight Thousand, Two Hundred Twenty-Eight Dollars and Twenty-Seven Cents, \$5,028,228.27), and the sum of Contingency Funds associated with Optional Future Purchases as outlined in Schedule C (Two Million, Two Hundred Thirty-Eight, Five Hundred Seventy-Three and Twenty-Nine Cents, \$2,238,573.29). As such, in no event shall County’s total fiscal obligation under this Agreement exceed Seven Million, Two Hundred Sixty-Six Thousand, Eight Hundred One Dollars and Fifty-Six Cents \$7,266,801.56. In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration.

## **3. Term**

Master Agreement for Software. Subject to compliance with all terms and conditions, the Term of this Agreement shall be set for an initial period of five (5) years (July 1, 2021 through June 30, 2026). The County, upon receipt of requisite internal approval(s), may extend the term of this Agreement on the same terms and conditions set forth in the most recent Agreement, inclusive of addendums in one (1) year increments thereafter, for up to two (2) additional years by providing written notice to Contractor no later than sixty (60) days prior to the expiration of the then current contract period.

Hosting and Subscriptions Term: Contractor hereby grants County a non-transferable, non-exclusive right to access the Hosted System from Netsmart’s Data Center for a period of 60 months during the period between the Addendum Effective Date, July 1, 2021 and the end date of the Agreement, June 30, 2026 (“Addendum Initial Term”), Client has the option to terminate the hosting relationship with Contractor prior to the expiration of the Initial Term, on sixty (60) days’ notice to Contractor and payment of an early termination fee equal to ten percent (10%) of the contracted remaining hosting fees through the expiration of the Initial Term. If Agreement is terminated by County due to Contractor’s repeated failure to adhere to the performance criteria as defined in the SLA, the cancellation penalty shall not apply and therefore, be waived.

In the event that County discontinues using the Subscription Products and Services for any reason, County shall be entitled to the return of all data entered into all of the Subscription Products. In the event

Contractor ceases doing business, County shall also be entitled to the return of all data entered into a l l o f the Subscription Products. In the event data is returned to County, it will be provided in comma delimited file format or another format mutually agreed to by both parties.

In order to facilitate future extensions of this Agreement, a list of the specific CONTRACTOR and Third Party supplied software, services and support, and attendant one-time and annual recurring and costs and payment terms is attached hereto as Exhibit C.

#### **4. Termination: Availability of Funds**

This Agreement may be terminated by the County at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement, or any portion of the services referenced herein, inclusive of any and all Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

#### **5. Contract Materials**

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

#### **6. Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

#### **7. Hold Harmless**

##### **a. General Hold Harmless**

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

(A) injuries to or death of any person, including Contractor or its employees/officers/agents;

(B) damage to any property of any kind whatsoever and to whomsoever belonging;

(C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply as a result of Contractor's negligence or intentional acts or omissions, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or

(D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

(E) any third-party claims related to Netsmart providing access and use to the Third-Party software via Netsmart's hosting environment under the terms of this Agreement.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

**b. Intellectual Property Indemnification**

Contractor hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this Agreement. Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion be likely to

become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent. Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for County (other than modification performed by, or at the direction of, Contractor) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by County in a manner prohibited by this Agreement.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

#### **8. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

#### **9. Payment of Permits/Licenses**

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

#### **10. Insurance**

##### **a. General Requirements**

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

##### **b. Workers' Compensation and Employer's Liability Insurance**

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers'

compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

**c. Liability Insurance**

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

Comprehensive General Liability ... \$1,000,000

(Applies to all agreements)

Motor Vehicle Liability Insurance... \$1,000,000

(To be checked if motor vehicle used in performing services)

Professional Liability..... \$1,000,000

(To be checked if Contractor is a licensed professional)

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

**11. Compliance With Laws**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal and State laws, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits

discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable County ordinances and regulations pertaining to the general operation of its business, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance and Federal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

## **12. Warranty**

This Software is subject to a warranty. Licensor warrants to Licensee that the Software will perform according to the Software's documentation at the time of the implementation and that, to the best of Licensor's knowledge, Licensee's use of this Software according to the documentation is not an infringement of any third party's intellectual property rights. If the Software is subsequently upgraded, repaired or otherwise changed by Licensor, Licensor warrants to Licensee that the Software will continue to perform according to its original documentation as well as according to updated documentation to the extent new features are added. To the extent permitted by law, the above-stated warranty replaces all other warranties, express or implied, and Licensor disclaims all implied warranties including any implied warranty of title, merchantability, or of fitness for a particular purpose. No agent of Licensor is authorized to make any other warranties or to modify this warranty. Licensee is required to inform Licensor of any potential breach of this warranty within one year of identifying any performance defect in the Software that contradicts the expected performance as outlined in the original and/or updated documentation. In the event of a breach of this warranty after utilizing the Support Procedure listed above, Licensee's remedies include the following, to be selected at Licensee's sole discretion: if Licensee agrees that the Software's functionality is still partially acceptable despite the area related to the breach of warranty, Licensor shall provide a refund for the amounts paid by Licensee reasonably attributable to the portion of the software causing an uncured breach of warranty; if Licensee determines that the Software is materially in breach of warranty that cannot be cured by Licensor, Licensor shall issue a full refund for amounts already paid and in relation and in proportion to which the Software was non-functional; and/or any other remedy available at law.

## **13. Disentanglement**

Netsmart shall cooperate with County and County's other contractors to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination.

Netsmart shall cooperate with County's efforts to effectuate such transition with the goal of minimizing or eliminating any interruption of work required under the Agreement and any adverse impact on the provision of services or the County's activities; provided, however, that County shall pay Netsmart on a time and materials basis, at the then-applicable rates, for all additional services performed in connection with such cooperation. Netsmart shall deliver to County or its designee, at County's request, all documentation and data related to County, including, but not limited to, patient files, held by Netsmart, and after return of same, Netsmart shall destroy all copies thereof still in Netsmart's possession, at no charge to County. Such data delivery shall be in an electronic format to facilitate archiving or loading into a replacement application. County and Netsmart shall mutually agree the specific electronic format.

Upon any termination of the Agreement, regardless of the nature or timing of the termination, County shall have the right, for up to twelve (12) months (the "Transition Period"), at County's option and request, to continue to receive from Netsmart all maintenance and support services, at the then-applicable rates, and receive from Netsmart all services reasonably necessary to effectuate an orderly transition to such new system or software solution Transition Services. In addition to the foregoing, upon any expiration or lapse of this Agreement, County shall have the right to extend the

Transition Period beyond the twelve (12) month period at its option and request, in which case the Transition Period shall continue in effect on a month to month basis, during which time County shall continue to receive from Netsmart all Transition Services at the then-applicable rates provided, however, that the annual support and maintenance fee shall be prorated and paid in advance on a monthly basis during such time, and the amount of such support and maintenance fee shall remain subject to the limitations set forth in the Agreement regarding any increase in such fee.

#### **14. County Compliance**

Contractor shall ensure that hosted online platforms provided to the Customer will include, for an additional fee, identity authentication integration with Customer's cloud Identity Provider (idP). Okta is currently the idP for Customer, and supports authentication protocols including SAML, OAuth, and OpenID. Additionally, Customer may opt for extending idP integration to include user provisioning if offered by Contractor hosted online platforms

#### **15. Non-Discrimination and Other Requirements**

##### **a. General Non-discrimination**

No person shall be denied any services provided pursuant to this Agreement except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

##### **b. Equal Employment Opportunity**

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

##### **c. Section 504 of the Rehabilitation Act of 1973**

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

##### **d. Compliance with County's Equal Benefits Ordinance**

With respect to the provision of benefits to its employees, Contractor shall comply with Chapter 2.84 of the County Ordinance Code, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. In order to meet the requirements of Chapter 2.84, Contractor must certify which

of the following statements is/are accurate:

- Contractor complies with Chapter 2.84 by offering the same benefits to its employees with spouses and its employees with domestic partners.
- Contractor complies with Chapter 2.84 by offering, in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic partner that is equal to Contractor's cost of providing the benefit to an employee with a spouse.
- Contractor is exempt from having to comply with Chapter 2.84 because it has no employees or does not provide benefits to employees' spouses.
- Contractor does not comply with Chapter 2.84, and a waiver must be sought.

**e. Discrimination Against Individuals with Disabilities**

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

**f. History of Discrimination**

Contractor must check one of the two following options, and by executing this Agreement, Contractor certifies that the option selected is accurate:

- No finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- Finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination.

**g. Reporting: Violation of Non-discrimination Provisions**

Contractor shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or Section 12, above. Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to the following:

- i. termination of this Agreement; disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years.
- ii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

**16. Compliance with County Employee Jury Service Ordinance**

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed Section 3, above, is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

**17. Retention of Records; Right to Monitor and Audit**

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

**18. Merger Clause: Amendments**

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement

and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

**19. Controlling Law: Venue**

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

**20. Notices**

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: Director of Behavioral Health and Recovery  
Services Address: 2000 Alameda de las Pulgas San  
Mateo CA 94403  
Telephone: (650) 573-2541  
Facsimile: (650) 573-2841  
Email: BHRS-IT-

Support@smcgov.org In the case of

Contractor, to:

Name/Title: Corporate Counsel  
Address: 11100 Nall Ave, Overland Park, Kansas  
66212 Telephone: (800) 421-7503  
Facsimile: (631) 968-2123  
Email: Contract\_Notices@ntst.com

**21. Electronic Signature**

If both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo, both boxes below must be checked. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

For County:  If this box is checked by County, County consents to the use of electronic signatures in relation to this Agreement.

For Contractor:  If this box is checked by Contractor, Contractor consents to the use of electronic signatures in relation to this Agreement.

\* \* \*

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

COUNTY OF SAN MATEO

By: \_\_\_\_\_  
President, Board of Supervisors, San Mateo County

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Clerk of Said Board

NETSMART TECHNOLOGIES

  
\_\_\_\_\_  
Contractor's Signature

Date: 7/30/2021

**Schedule A – Behavioral Health Information System (BHIS) Charges and Payment Terms**

		7/1/21 Thru 6/30/22	7/1/22 Thru 6/30/23	7/1/23 Thru 6/30/24	7/1/24 Thru 6/30/25	7/1/25 Thru 6/30/26	Annual Maintenance Fee
License Software Maintenance, Support, and Subscriptions - Renewals	Qty	Period Fees	Payment Terms				
Avatar RADplus Named User License Maintenance	901	\$144,447.43	\$147,336.38	\$150,283.11	\$153,288.77	\$156,354.54	Fees will be effective and will be invoiced on the first day of the Fiscal Year (July 1st) of Each Period
MyAvatar - CalPM Maintenance	1	\$2,612.76	\$2,665.02	\$2,718.32	\$2,772.68	\$2,828.14	Fees will be effective and will be invoiced on the first day of the Fiscal Year (July 1st) of Each Period
MyAvatar - Clinicians Workstation (CWS) Maintenance	1	\$2,612.76	\$2,665.02	\$2,718.32	\$2,772.68	\$2,828.14	Fees will be effective and will be invoiced on the first day of the Fiscal Year (July 1st) of Each Period
MyAvatar - Managed Services Organization (MSO) Maintenance	1	\$2,668.31	\$2,721.68	\$2,776.11	\$2,831.63	\$2,888.26	Fees will be effective and will be invoiced on the first day of the Fiscal Year (July 1st) of Each Period
Web Services Maintenance for All Web Services	1	\$26,633.02	\$27,165.68	\$27,708.99	\$28,263.17	\$28,828.44	Fees will be effective and will be invoiced on the first day of the Fiscal Year (July 1st) of Each Period

**Schedule A – Behavioral Health Information System (BHIS) Charges and Payment Terms**

Avatar E-Signature Maintenance	1	\$2,612.76	\$2,665.02	\$2,718.32	\$2,772.68	\$2,828.14	Fees will be effective and will be invoiced on the first day of the Fiscal Year (July 1st) of Each Period
Escrow Agreement - County as Beneficiary	1	\$1,492.99	\$1,522.85	\$1,553.31	\$1,584.37	\$1,616.06	Fees will be effective and will be invoiced on the first day of the Fiscal Year (July 1st) of Each Period
Avatar -Addiction Severity Index (ASI) Maintenance	1	\$1,917.90	\$1,956.26	\$1,995.38	\$2,035.29	\$2,076.00	Fees will be effective and will be invoiced on the first day of the Fiscal Year (July 1st) of Each Period
Avatar Incident Tracking Annual Maintenance	1	\$591.23	\$603.05	\$615.12	\$627.42	\$639.97	Fees will be effective and will be invoiced on the first day of the Fiscal Year (July 1st) of Each Period
Avatar POS Scanning Maintenance	1	\$2,960.18	\$3,019.38	\$3,079.77	\$3,141.37	\$3,204.19	Fees will be effective and will be invoiced on the first day of the Fiscal Year (July 1st) of Each Period

**Schedule A – Behavioral Health Information System (BHIS) Charges and Payment Terms**

CareConnect Monthly Subscription 501 - 1,000 Users	1	\$14,896.34	\$15,194.27	\$15,498.15	\$15,808.12	\$16,124.28	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
CareConnect Lab Results (Inbound) 501- 1,000 Users (In-Network)	1	\$4,729.00	\$4,823.58	\$4,920.05	\$5,018.45	\$5,118.82	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
CareConnect Lab Orders (Outbound) 501-1000 Users	1	\$4,729.00	\$4,823.58	\$4,920.05	\$5,018.45	\$5,118.82	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
OrderConnect Base Fee	1	\$1,604.79	\$1,636.89	\$1,669.62	\$1,703.02	\$1,737.08	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
OrderConnect - FULL SUITE - Prescriber Subscription	56	\$70,787.15	\$72,202.89	\$73,646.95	\$75,119.89	\$76,622.29	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)

**Schedule A – Behavioral Health Information System (BHIS) Charges and Payment Terms**

OrderConnect - Non-Prescribing User Subscription	60	\$9,959.26	\$10,158.45	\$10,361.61	\$10,568.85	\$10,780.22	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
Diagnosis Content on Demand Subscription (ICD 10 / DSM V) 180 Base Subscription Users	180	\$12,416.97	\$12,665.31	\$12,918.62	\$13,176.99	\$13,440.53	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
Diagnosis Content on Demand Subscription (ICD 10 / DSM V) - Additional Users	150	\$1,836.00	\$1,872.72	\$1,910.17	\$1,948.38	\$1,987.35	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
KPI Dashboard	10	\$9,324.08	\$9,510.56	\$9,700.77	\$9,894.79	\$10,092.68	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
Avatar HL7 UniDirectional Interface Maintenance	1	\$6,426.00	\$6,554.52	\$6,685.61	\$6,819.32	\$6,955.71	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
Avatar Hosting Disaster Recovery	901	\$427,344.30	\$435,891.19	\$444,609.01	\$453,501.19	\$462,571.21	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)

Avatar ProviderConnect Subscription	1	\$25,749.90	\$26,264.90	\$26,790.20	\$27,326.00	\$27,872.52	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
Avatar Scriptlink Hosting	1	\$15,300.00	\$15,606.00	\$15,918.12	\$16,236.48	\$16,561.21	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
CareConnect HIE Subscription	1	\$15,606.00	\$15,918.12	\$16,236.48	\$16,561.21	\$16,892.44	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
CareConnect Inbox Subscription	1	\$30,600.00	\$31,212.00	\$31,836.24	\$32,472.96	\$33,122.42	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
CareConnect Carequality Subscription	1	\$3,060.00	\$3,121.20	\$3,183.62	\$3,247.30	\$3,312.24	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
Diagnosis Content on Demand Add-on Subscription (ICD10/DSM5)	-	\$206.00	\$210.12	\$214.32	\$218.61	\$222.98	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
Diagnosis Content on Demand Add-on Subscription (ICD10/DSM5)	-	\$330.84	\$337.46	\$344.21	\$351.09	\$358.11	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)

OrderConnect Full Suite Subscription	-	\$6,492.10	\$6,621.94	\$6,754.38	\$6,889.47	\$7,027.26	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
OrderConnect ePCS Subscription	-	499.39	\$509.38	\$519.57	\$529.96	\$540.56	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
OrderConnect ePCS Subscription	-	\$4,494.53	\$4,584.42	\$4,676.11	\$4,769.63	\$4,865.02	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
OrderConnect ePCS Subscription	-	\$1,077.12	\$1,098.66	\$1,120.64	\$1,143.05	\$1,165.91	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
<b>Subtotal:</b>		\$856,018.11	\$873,138.47	\$890,601.24	\$908,413.27	\$926,581.53	

**Schedule B – Family Health Services Information System (FHSIS) Charges and Payment Terms**

		7/1/21 Thru 6/30/22	7/1/22 Thru 6/30/23	7/1/23 Thru 6/30/24	7/1/24 Thru 6/30/25	7/1/25 Thru 6/30/26	Annual Maintenance Fee
License Software Maintenance and Support - Renewals	Qty	Period Fees	Payment Terms				
Avatar RADplus Named User License Maintenance	140	\$23,216.16	\$23,680.48	\$24,154.09	\$24,637.17	\$25,129.92	Fees will be effective and will be invoiced on the first day of the Fiscal Year (July 1st) of Each Period
MyAvatar - PM Maintenance	1	\$2,612.76	\$2,665.02	\$2,718.32	\$2,772.68	\$2,828.14	Fees will be effective and will be invoiced on the first day of the Fiscal Year (July 1st) of Each Period
MyAvatar - Clinicians Workstation (CWS) Maintenance	1	\$2,612.76	\$2,665.02	\$2,718.32	\$2,772.68	\$2,828.14	Fees will be effective and will be invoiced on the first day of the Fiscal Year (July 1st) of Each Period
Avatar E-Signature Maintenance	1	\$2,612.76	\$2,665.02	\$2,718.32	\$2,772.68	\$2,828.14	Fees will be effective and will be invoiced on the first day of the Fiscal Year (July 1st) of Each Period
Escrow Agreement - County as Beneficiary	1	\$1,492.99	\$1,522.85	\$1,553.31	\$1,584.37	\$1,616.06	Fees will be effective and will be invoiced on the first day of the Fiscal Year (July 1st) of Each Period

**Schedule B – Family Health Services Information System (FHSIS) Charges and Payment Terms**

Avatar POS Scanning Maintenance	1	\$2,960.18	\$3,019.38	\$3,079.77	\$3,141.37	\$3,204.19	Fees will be effective and will be invoiced on the first day of the Fiscal Year (July 1st) of Each Period
Avatar HL7 Uni-Directional Interface Maintenance	1	\$6,426.00	\$6,554.52	\$6,685.61	\$6,819.32	\$6,955.71	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
Avatar Hosting – Disaster Recovery	140	\$66,402.00	\$67,730.04	\$69,084.64	\$70,466.33	\$71,875.66	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
Diagnosis Content on Demand Subscription (ICD10/DSM5)	-	\$1,862.55	\$1,899.80	\$1,937.80	\$1,976.55	\$2,016.08	Period Fees will be invoiced in Twelve (12) monthly Installments Starting with the first day of each Fiscal Year (July 1)
Subtotal:		\$110,198.16	\$112,402.12	\$114,650.17	\$116,943.17	\$119,282.03	

**Schedule C – Optional Future Purchases**

		7/1/21 Thru 6/30/22	7/1/22 Thru 6/30/23	7/1/23 Thru 6/30/24	7/1/24 Thru 6/30/25	7/1/25 Thru 6/30/26	Annual Maintenance Fee
Future Purchases for Behavioral Health Information System (BHIS) – Support, Services and Subscriptions	Qty	Period Fees	Payment Terms				
myHealthPointe Portal 2.0 - Level V Subscription 751 - 1,000 Named Users (Behavioral Health & Recovery Services)	1	\$50,000.00	\$51,000.00	\$52,020.00	\$53,060.40	\$54,121.61	Payable upon Execution of the Future Governing Agreement. Subscription to be Pro- Rated Based Upon Execution Date
myHealthPointe Portal – Implementation Professional Services (Behavioral Health and Recovery Services)	1	\$13,000.00	-	-	-	-	Payable upon Execution of the Future Governing Agreement. Subscription to be Pro- Rated Based Upon Execution Date
myHealthPointe Portal – Level 2 Subscription 101-250 Named Users (Family Health Services)	1	\$12,000.00	\$12,240.00	\$12,484.80	\$12,734.50	\$12,989.19	Payable upon Execution of the Future Governing Agreement. Subscription to be Pro- Rated Based Upon Execution Date
myHealthPointe Portal – Implementation Professional Services (Family Health Services)	1	\$13,000.00	-	-	-	-	Payable upon Execution of the Future Governing Agreement. Subscription to be Pro- Rated Based Upon Execution Date
M*Modal – Implementation Professional Services (Behavioral Health & Recovery Services)	1	\$69,500.00	-	-	-	-	Payable upon Execution of the Future Governing Agreement. Subscription to be Pro- Rated Based Upon Execution Date

M*Modal Subscription 201 thru 500 Concurrent Users (Behavioral Health & Recovery Services)	1	\$32,500.00	\$33,150.00	\$33,813.00	\$34,489.26	\$35,179.05	Payable upon Execution of the Future Governing Agreement. Subscription to be Pro- Rated Based Upon Execution Date
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**Schedule C – Optional Future Purchases**

M*Modal Subscription (Family Health Services)	1	\$6,900.00	\$7,038.00	\$7,178.76	\$7,322.34	\$7,468.78	Payable upon Execution of the Future Governing Agreement. Subscription to be Pro- Rated Based Upon Execution Date
M*Modal – Implementation Professional Services (Family Health Services)	1	\$20,000.00	-	-	-	-	Payable upon Execution of the Future Governing Agreement. Subscription to be Pro- Rated Based Upon Execution Date
Telehealth Subscription (Behavioral Health & Recovery Services)	1	\$12,500.00	\$12,750.00	\$13,005.00	\$13,265.10	\$13,530.40	Payable upon Execution of the Future Governing Agreement. Subscription to be Pro- Rated Based Upon Execution Date
Document Capture Powered by Perceptive Annual Maintenance and Subscription (Behavioral Health & Recovery Services)	1	\$52,000.00	\$53,040.00	\$54,100.80	\$55,182.82	\$56,286.47	Payable upon Execution of the Future Governing Agreement. Subscription to be Pro- Rated Based Upon Execution Date
Document Capture Powered by Perceptive – Implementation Professional Services (Behavioral Health & Recovery Services)	1	\$41,500.00	-	-	-	-	Payable upon Execution of the Future Governing Agreement. Subscription to be Pro- Rated Based Upon Execution Date
Document Capture Powered by Perceptive – Implementation Professional Services (Family Health Services)	1	\$41,500.00	-	-	-	-	Payable upon Execution of the Future Governing Agreement. Subscription to be Pro-Rated Based Upon Execution Date

Document Capture Powered by Perceptive Annual Maintenance and Subscription (Family Health Services)	1	\$11,671.80	\$11,905.24	\$12,143.34	\$12,386.21	\$12,633.93	Payable upon Execution of the Future Governing Agreement. Subscription to be Pro-Rated Based Upon Execution Date
Telehealth Subscription (Family Health Services)	1	\$12,500.00	\$12,750.00	\$13,005.00	\$13,265.10	\$13,530.40	Payable upon Execution of the Future Governing Agreement. Subscription to be Pro-Rated Based Upon Execution Date
Additional Named User Licenses (Behavioral Health & Recover Services)	50	\$73,000.00	\$73,000.00	\$73,000.00	\$73,000.00	\$73,000.00	Payable upon Execution of the Future Governing Agreement. Subscription to be Pro-Rated Based Upon Execution Date
Multi Factor Authentication (NIAM) Subscription – (Behavioral Health & Recovery Services)	1	\$22,800.00	\$23,256.00	\$23,721.12	\$24,195.54	\$24,679.45	Payable upon Execution of the Future Governing Agreement. Subscription to be Pro-Rated Based Upon Execution Date
Multi Factor Authentication (NIAM) Professional Services Implementation - (Behavioral Health & Recovery Services)	1	\$4,850.00	-	-	-	-	Payable upon Execution of the Future Governing Agreement. Subscription to be Pro-Rated Based Upon Execution Date
Multi Factor Authentication (NIAM) Subscription – (Family Health Services)	1	\$2,000.00	\$2,040.00	\$2,080.80	\$2,122.42	\$2,164.86	Payable upon Execution of the Future Governing Agreement. Subscription to be Pro-Rated Based Upon Execution Date
Multi Factor Authentication (NIAM) Professional Services Implementation - – (Family Health Services)	1	\$2,400.00	-	-	-	-	Payable upon Execution of the Future Governing Agreement. Subscription to be Pro-Rated Based Upon Execution Date

myAvatar Enterprise Training Program (up to 1000 max users between Behavioral and Family Health)	1-1000	\$15,300.00	\$15,606.00	\$15,918.12	\$16,236.48	\$16,561.21	Payable upon Execution of the Future Governing Agreement. Subscription to be Pro-Rated Based Upon Execution Date
Professional Services (Behavioral Health & Recovery Services)	1	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	Billed as Incurred
myAvatar NX Upgrade Assistance Package Professional Services (Family Health Services)	1	\$70,000.00	-	-	-	-	Billed as incurred
Professional Services (Family Health Services)	1	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00	\$30,000.00	Billed as Incurred
<b>Subtotal:</b>		\$658,921.80	\$387,775.24	\$392,470.74	\$397,260.16	\$402,145.36	

Professional Services will be billed at \$185.00 per hour.



## Schedule D – Hardware Configuration

Technical Requirements may change over the course of the Agreement and as such, Contractor shall notify County of any change in which County is expected to reasonably adopt to meet then-current technical requirements.

### User's Computer (Minimum)

Processor	1 gigahertz (GHz) or faster 32-bit (x86)
Operating System	Windows 10*
RAM	1 GB or greater (this is in addition to base OS and other application requirements)
Hard Disk Space	1 GB or greater (this is in addition to base OS and other application requirements)
Monitor	VGA or higher (1024 x 768 pixels)
Mouse	Microsoft Mouse, or compatible pointing device
Browser	IE 11(10) (IE 32 bit only in compatibility mode) Chrome (16-69+) Firefox 53-62+ MS Edge (89+)

Java Requirement	<p><b><u>Recommended to use the latest released and supported version due to incremental security fixes available in each release</u></b></p> <p>JRE 1.8 u281 is supported. Requires MW Build 2017.00.00 Build 1881 or higher</p> <p><b><u>Prior Supported Version History (32-bit only)</u></b></p> <p>*Middleware Build 3135 or higher requires 1.8 u25 or higher</p> <p>JRE 1.6. u22 to u49 (Known security faults, not recommended) (Windows 8+ requires JRE 1.6 u38 or later versions)</p> <p>JRE 1.7.0_45</p> <p>JRE 1.7.0 u51 (RADplus 2011 or higher + MW Build 2014.01.00.1276 or higher)</p> <p>JRE 1.7 u55 to u80 (RADplus 2011 or higher + MW Build 2014.01.00.1276 or higher)</p> <p>JRE 1.8 u5 to u71,73* (RADplus 2011 or higher + MW Build 2014.01.00.1276 or higher)</p> <p>JRE 1.8 u77 - u131), Requires MW Build 2016.01.00 build 1735 or higher</p> <p>JRE 1.8u141 is not supported.</p> <p>JRE 1.8u144-241 is supported. Requires MW Build 2017.00.00 Build 1881 or higher</p> <p>JRE 1.8u241 is supported. Requires MW Build 2017.00.00 Build 1881 or higher</p> <p>JRE 1.8 u261 is supported. Requires MW Build 2017.00.00 Build 1881 or higher</p> <p>JRE 1.8 u271 is supported. Requires MW Build 2017.00.00 Build 1881 or higher</p> <p>JRE 9 is not supported.</p> <p>*JAWS 15 only supported on JRE 1.7.0_55</p> <p>*JAWS 18 supported on JRE 1.8.151 with MW Build 1956</p>
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## User's Computer (Recommended)

Processor	2 gigahertz (GHz) or faster 32-bit (x86) or 64-bit
Operating System	Windows 10
RAM	2 GB or greater (this is in addition to base OS and other application requirements)
Hard Disk Space	2 GB or greater (this is in addition to base OS and other application requirements)
Monitor	VGA or higher (1024 x 768 pixels) Monitors with resolution known as 1080p or FHD (1920x1080) and K / Ultra HD (3840 x 2160), 2K / QHD (2560 x 1440) is not supported. This includes all high resolution and retina displays such as (Microsoft Surface and HP Spectre) Avatar will show very small. Support is under review.
Mouse	Microsoft Mouse, or compatible pointing device
Browser	IE 11 (10)  (IE 32 bit only in compatibility mode)  Chrome (Latest Official Release (currently 69))  Firefox (Latest Official Release (currently 62))  MS Edge (89+)
Java Requirement	<b><u>Recommended Latest Version (32-bit only)</u></b>  JRE 1.8.281 is supported. Requires MW Build 2017.00.00 Build 1881 or higher  *JAWS 18 supported on JRE 1.8.151 with MW Build 1956



## Schedule E – County Resource Requirements

County will provide the resources described below for the implementation of the Contractor Programs. Failure to provide these resources could compromise the project and may result in the need for additional Contractor Implementation Services

Project Manager
Systems Analyst
Information Services Department

## Schedule F – Support Services for Licensed Solutions

The Support Services described in this Schedule G, will be performed by Contractor subject to the terms and conditions of this License and Service Agreement.

- a) Contractor will maintain the then current version of the Licensed Programs in substantial conformance with its Specifications as amended from time to time by Contractor, and with applicable Federal regulatory requirements and laws. Contractor will use commercially reasonable efforts to either:
  - (i) Correct any reproducible Problems or Defects in the then current or immediately prior release of Licensed Programs by Contractor which prevent it from operating in substantial conformance with the Specifications and applicable Federal regulatory requirements; or
  - (ii) Provide a commercially reasonable alternative that will substantially conform with the Specifications and applicable Federal regulatory requirements and laws.
- b) County will make requests for Support Services by giving Contractor written notice specifying a Problem or Defect in the Licensed Programs. In making a verbal request for Support Services, County will provide Contractor within twenty-four (24) hours after such verbal notice with such written information and documentation as may be reasonably prescribed by Contractor.
- c) County will provide and maintain, at its expense, hardware and/or software to allow Contractor to access County's system remotely. County will provide Contractor with appropriate access credentials.
- d) On a timely basis Contractor will also provide County with:
  - (i) such updates as are distributed without charge to other similar County's which reflect modifications and incremental improvements made to the Licensed Programs by Contractor;
  - (ii) an opportunity to obtain enhancements to the Licensed Programs for which charges are imposed on the same terms as such enhancements are generally made available to other County's.
- e) Contractor will make technical support personnel available from 8:30 a.m. to 6:00 p.m. (PST), Monday through Friday, exclusive of Contractor holidays.
- f) If reasonable analysis by Contractor indicates that a reported Problem or Defect is caused by a problem related to Hardware used by County, the hardware's system software, or applicable software other than Licensed Programs, or County's misuse or modification of the Licensed Programs, Contractor's responsibility will be limited to the correction of the portion, if any, of the problem caused by a Problem or Defect in the Licensed Programs. County will, at Contractor's option, pay Contractor for the cost of analyzing the reported problem at Contractor's then prevailing time-and-materials rate.
- g) The term for provision of Support Services for Licensed Programs will begin on July 1, 2021 – and end on June 30, 2026.
- h) Contractor agrees that it will not revise the Charges for Support Services during the initial term. In accordance with Section 6 of the Agreement, Contractor will give County not less than ninety (90) days written notice prior to the expiration of the initial term of the Agreement to commence negotiations on Support Service Charges as part of the parties' negotiations on any option to extend the Agreement. Charges will not be increased for any extension term 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 4%, whichever is higher.
- i) Contractor agrees not to change the support structure or the agreed upon service level agreement without an amendment to the contract.

## Schedule F – Support Services for Licensed Solutions

- j) Absent a bona fide dispute, if County fails to pay for Support Services when due, Contractor may refuse to provide Support Services until County makes payment of all Charges due. If County has missed any mandatory upgrades Contractor will also charge, and County will pay, for software and services necessary to bring the Licensed Programs up to Contractor's then-current level before Contractor will certify that County is again eligible for maintenance hereunder.
- k) Guardian is included at no charge provided County is current on maintenance. Guardian is a diagnostic tool that monitors the health of County's licensed Contractor solutions and provides the ability to review technical configuration and metric data not limited to; configuration changes, support case activities, system usage, application events, licensing, user activity, and installed updates in a dashboard view.
  - l) Contractor will offer as a courtesy a monthly status calls with the County to review priority open and pending tickets. Status calls will be held with Netsmart's Manager of CALPM Support or management-level designee who is familiar with San Mateo and capable of making support commitments on behalf of Netsmart. The County will have the IT Manager available for such calls. An agreed upon date and time may be scheduled in advance to secure the monthly calls. Prior to each call client may review a full listing of all open and pending tickets on the client Support portal.
- m) If analysis by Contractor indicates that a reported problem is caused by a reproducible Problem or Defect, Contractor will use commercially reasonable efforts to provide Support Services in accordance with the following prioritization of reported problems:

Priority	Definition
<b>1 - Critical</b>	<p><b><u>Priority 1:</u></b> will be assigned when the Contractor Program or a material Contractor Program Function component is non-operational as a result of a defect [in Production environment only] such as the Production system cannot be accessed or utilized in any capacity, a direct patient safety issue is present, or a HIPAA compliance violation as a result of a server incident or Contractor application defect. Acknowledge Time of the incident will be within 30 minutes of vendor notification to the vendor support desk. Resolution time for such incident will be within eight (8) hours. If resolution does not meet the eight (8) hours-time limits, vendor will provide a plan for such correction, within one (1) business day.</p> <p><u>County's Commitment:</u></p> <ul style="list-style-type: none"> <li>• This case Priority must be called in directly to the Netsmart Operations Center (NOC).</li> <li>• County provides specific, detailed information required for troubleshooting/investigation.</li> <li>• County provides appropriate staff and resources to sustain continuous communication and work effort as required.</li> <li>• Without appropriate County resources, the case will be downgraded to Priority 2 after three (3) business days.</li> </ul>
<b>2 – High</b>	<p><b><u>Priority 2:</u></b> will be assigned to Production defects that result in functions that have a significant negative impact on daily operations but do not constitute as a "System Down".</p>

## Schedule F – Support Services for Licensed Solutions

	<p>such correction, within three (3) business days.</p> <p><u>County's Commitment:</u></p> <ul style="list-style-type: none"> <li>• County provides specific, detailed information required for troubleshooting/investigation.</li> <li>• County provides appropriate staff and resources to sustain continuous communication and work effort as required.</li> <li>• Without appropriate County resources, the case will be downgraded to Priority 3 after six (6) business days.</li> </ul>
<p><b>3-Medium</b></p>	<p><b><u>Priority 3:</u></b> will be assigned for system defects that result in functions that have no major impact on daily operations. An issue that allows the continuation of function, including issues in which a reasonable workaround is available. Resolution time for such incident will be within ten (10) business days. If resolution does not meet this time limit, vendor will provide a plan for such correction, within ten (10) business days.</p> <p><u>County's Commitment:</u></p> <ul style="list-style-type: none"> <li>• County provides specific, detailed information required for troubleshooting/investigation.</li> <li>• County provides appropriate staff and resources to sustain continuous communication and work effort as required.</li> <li>• Without appropriate County resources, the case will be downgraded to Priority 4 after eleven (11) business days.</li> </ul>

<b>4 – Low</b>	<p><b>Priority 4:</b> will be assigned to cosmetic defects that do not affect system usability or non-defect related requests including, but not limited to, system set up/configuration, training, functionality questions, documentation, portal access and upgrade requests. Resolution time for such incident will be within fifteen (15) business days. If resolution does not meet this time limit, vendor will provide a plan for such correction, within fifteen (15) business days.</p> <p><u>County's Commitment:</u></p> <ul style="list-style-type: none"><li>• County provides specific, detailed information required for troubleshooting/investigation.</li><li>• County provides appropriate staff and resources to sustain continuous communication and work effort as required.</li><li>• Without appropriate County resources, the case will be closed following our Case Closure Notification policy.</li></ul>
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## Schedule G – Specifications

### Document Provisions by Contractor

As set forth in the following checked documentation list, Contractor will make available to County online documentation (Netsmart Wiki) of all line items checked as part of the system implementation and support. All County authorized subscribers that access the electronic medical records system will be able to access the online documentation.

<input checked="" type="checkbox"/>	Avatar PM User Guide
<input checked="" type="checkbox"/>	Avatar PM Welcome Guide
<input checked="" type="checkbox"/>	Avatar PM Kickoff Manual
<input checked="" type="checkbox"/>	Avatar CWS User Guide
<input checked="" type="checkbox"/>	Avatar CWS Welcome Guide
<input checked="" type="checkbox"/>	Avatar CWS Kickoff Manual
<input checked="" type="checkbox"/>	Avatar MSO User Guide
<input checked="" type="checkbox"/>	Avatar MSO Welcome Guide
<input checked="" type="checkbox"/>	Avatar MSO Kickoff Manual
<input checked="" type="checkbox"/>	Avatar GLI User Guide
<input type="checkbox"/>	RADplus User Guide
<input checked="" type="checkbox"/>	Setup and Utilization of Third-Party Reporting Software
<input checked="" type="checkbox"/>	System Administration Procedures for Netsmart Systems Utilizing Cache'
<input type="checkbox"/>	

## Schedule H – Health Insurance Portability and Accountability Act (HIPAA) Business Associate Requirements

### **DEFINITIONS**

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations (CFR) sections 160.103, 164.304, and 164.501. All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.

- a. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the parties to this agreement shall mean Contractor.
- b. **Covered Entity.** "Covered entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement shall mean County.
- c. **HIPAA Rules.** "HIPAA rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR part 160 and part 164, as amended and supplemented by Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009.
- d. **Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- e. **Electronic Protected Health Information.** "Electronic Protected Health Information" (E PHI) means individually identifiable health information that is transmitted or maintained in electronic media; it is limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- f. **Individual.** "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- g. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- h. **Protected Health Information.** "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in Section 160.103 and is limited to the information created or received by Business Associate from or on behalf of County.
- i. **Required By Law.** "Required by law" shall have the same meaning as the term "required by law" in Section 164.301.
- j. **Secretary.** "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- k. **Breach.** The acquisition, access, use, or disclosure of PHI in violation of the Privacy Rule that compromises the security or privacy of the PHI and subject to the exclusions set forth in Section 164.402. Unless an exception applies, an impermissible use or disclosure of PHI *is presumed* to be a breach, unless it can be demonstrated there is a low probability that the PHI has been compromised based upon, at minimum, a four-part risk assessment:
  1. Nature and extent of PHI included, identifiers and likelihood of re-identification;
  2. Identity of the unauthorized person or to whom impermissible disclosure was made;
  3. Whether PHI was actually viewed or only the opportunity to do so existed;
  4. The extent to which the risk has been mitigated.
- l. **Security Rule.** "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.
- m. **Unsecured PHI.** "Unsecured PHI" is protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in relevant HHS guidance.

- n. **Security Incident.** "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. "Security Incident" includes all incidents that constitute breaches of unsecured protected health information. For purposes of this

## **Schedule H – Health Insurance Portability and Accountability Act (HIPAA) Business Associate Requirements.**

Agreement “Security Incident” does not include trivial incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful attempts to penetrate computer networks or servers maintained by Business Associate.

- o. **Web Services.** myAvatar web services is a set of web services that allow for myAvatar to integrate with external third-party and in-house applications. They offer a secure, auditable real-time transfer of information that is common within the integrated systems. Automating the data transfer ensures that the shared information is always synchronized and current. Samples of myAvatar web services include, but are not limited to:
  - a. Appointment Scheduling
  - b. Client Admission
  - c. Client Charge Input
  - d. Client Demographics
  - e. Client Diagnosis
  - f. Client Discharge

### **OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE**

- a. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to comply with Subpart C of 45 CFR part 164 with respect to EPHI and PHI, and to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to make uses and disclosures requests for Protected Health Information consistent with minimum necessary policy and procedures.
- d. Business Associate may not use or disclose protected health information in a manner that would violate subpart E of 45 CFR part 164.504 if used or disclosed by Covered Entity.
- e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- f. Business Associate agrees to report to County any use or disclosure of Protected Health Information not authorized by this Agreement.
- g. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of County, agrees to adhere to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- h. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.
- i. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- j. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from or created or received by Business Associate on behalf of County, available to the County at the request of County or the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to

## **Schedule H – Health Insurance Portability and Accountability Act (HIPAA) Business Associate Requirements.**

a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

- k. Business Associate agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (k) of this Schedule, in order to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- l. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of County.
- m. Business Associate shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- n. Business Associate shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- o. Business Associate shall report to County any Security Incident within three (3) business days of becoming aware of such incident. Business Associate shall also facilitate breach notification(s) to the appropriate governing body (i.e., HHS, OCR, etc.) as required by law. As appropriate and after consulting with County, Business Associate shall also notify affected individuals and the media of a qualifying breach.
- p. Business Associate understands that it is directly liable under the HIPAA rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of Protected Health Information that are not authorized by this Attachment, the underlying contract as or required by law.

### **PERMITTED USES AND DISCLOSURES BY CONTRACTOR AS BUSINESS ASSOCIATE**

Except as otherwise limited in this Schedule, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

### **OBLIGATIONS OF COUNTY**

- a. County shall provide Business Associate with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- b. County shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- c. County shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

### **PERMISSIBLE REQUESTS BY COUNTY**

County shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if so, requested by County, unless the

## **Schedule H – Health Insurance Portability and Accountability Act (HIPAA) Business Associate Requirements.**

Business Associate will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Business Associate.

### **DUTIES UPON TERMINATION OF AGREEMENT**

- a. Upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from County, or created, maintained, or received by Business Associate on behalf of County, that Business Associate still maintains in any form. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- b. In the event that Business Associate determines that returning or destroying Protected Health Information is infeasible, Business Associate shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

### **MISCELLANEOUS**

- a. **Regulatory References.** A reference in this Schedule to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. **Amendment.** The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. **Survival.** The respective rights and obligations of Business Associate under this Schedule shall survive the termination of the Agreement.
- d. **Interpretation.** Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. **Reservation of Right to Monitor Activities.** County reserves the right to monitor the security policies and procedures of Business Associate.

## Schedule I-Intellectual Property

1. The County of San Mateo ("County"), shall and does own all titles, rights and interests in all Work Products created by Contractor and its subcontractors (collectively "Vendors") for the County under this Agreement. Contractor may not sell, transfer, or permit the use of any Work Products without the express written consent of the County.
2. "Work Products" are defined as all non-proprietary materials, tangible or not, created in whatever medium pursuant to this Agreement, including without limitation publications, promotional or educational materials, reports, manuals, specifications, drawings and sketches, computer programs, software and databases, schematics, marks, logos, graphic designs, notes, matters and combinations thereof, and all forms of intellectual property..
3. Contractor shall not dispute or contest, directly or indirectly, the County's exclusive right and title to the Work Products nor the validity of the intellectual property embodied therein. Contractor hereby assigns, and if later required by the County, shall assign to the County all titles, rights and interests in all Work Products. Contractor shall cooperate and cause subcontractors to cooperate in perfecting County's titles, rights or interests in any Work Product, including prompt execution of documents as presented by the County.
4. To the extent any of the Work Products may be protected by U.S. Copyright laws, Parties agree that the County commissions Vendors to create the copyrightable Work Products, which are intended to be work-made-for-hire for the sole benefit of the County and the copyright of which is vested in the County.
5. In the event that the title, rights, and/or interests in any Work Products are deemed not to be "work-made-for-hire" or not owned by the County, Contractor hereby assigns and shall require all persons performing work pursuant to this Agreement, including its subcontractors, to assign to the County all titles, rights, interests, and/or copyrights in such Work Product. Should such assignment and/or transfer become necessary or if at any time the County requests cooperation of Contractor to perfect the County's titles, rights or interests in any Work Product, Contractor agrees to promptly execute and to obtain execution of any documents (including assignments) required to perfect the titles, rights, and interests of the County in the Work Products with no additional charges to the County beyond that identified in this Agreement or subsequent change orders. The County, however, shall pay all filing fees required for the assignment, transfer, recording, and/or application.
6. If mutually agreed, Contractor agrees that before commencement of any subcontract work it will incorporate this Attachment IP to contractually bind or otherwise oblige its subcontractors and personnel performing work under this Agreement such that the County's titles, rights, and interests in Work Products are preserved and protected as intended herein.
7. Notwithstanding anything to the contrary in this Agreement, the Software and Software documentation that is listed in Schedules A and B are owned by Contractor, or in the case of Third-Party Software, owned by the licensor to Contractor. Contractor and the Third-Party Software licensors will own all right, title, and interest to the Software and Software documentation, and any Software derivative works that are created for license to the County.

## Schedule J-Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973

The undersigned (hereinafter called the "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

a. Employs fewer than 15 persons.

b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

\_\_\_\_\_  
Name of 504 Person - Type or Print

\_\_\_\_\_  
Name of Contractor(s) - Type or Print

Street Address or P.O. Box

\_\_\_\_\_  
City, State, Zip Code

I certify that the above information is complete and correct to the best of my knowledge.

Signature

Title of Authorized Official

---

Date

\*Exception: DHHS regulations state that:

"If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."

## Schedule K – Netsmart Hosting Addendum to License

This Addendum is effective on the effective date of the Agreement, July 1, 2021 (“Addendum Effective Date”).

1. **PURPOSE OF ADDENDUM** This Addendum states the terms and conditions under which Contractor will provide software hosting services and permit County to load Data on the Hosted System via a virtual private network (“VPN”) or Secure Socket Layer (“SSL”).
2. **DEFINITIONS** Capitalized terms in this Addendum that are not defined below will have the same meaning as the terms that are given in the Agreement. All references to Schedules mean the Schedules attached to this Contractor Hosting Addendum to License unless otherwise indicated.
  - a) “Migration” refers to all services, activities, and infrastructure associated with the migration of the County’s Avatar system and all associated components from the County Network to Contractor’s Plexus Cloud.
  - b) “Data” has the meaning provided in Section 6
  - c) “Hosted System” means the hardware and software in Contractor’s data center, including the Licensed Programs as defined in the Agreement that are used to provide Software Services to County. A brief overview of the components and services of the “Hosted System” is set forth in Addendum Schedule K (a)
  - d) “Month 1” means the first day of the first month after mutual contract execution.
  - e) “Netsmart Provided Hardware” means any equipment provided to the County by Netsmart
  - f) “Service Charges” means the amount to be paid by County for
    - i) Netsmart’s data center usage;
    - ii) Any Netsmart Provided Hardware;
    - iii) Any Professional Services
    - iv) The payment terms for Service Charges is set forth in “Schedule A – Behavioral Health Information System (BHIS) Charges and Payment Terms” and “Schedule B – Family Health Services Information System (FHSIS) Charges and Payment Terms” of the Agreement and referenced again in Schedule N(b) of this addendum.
  - g) “SLA” is an abbreviation for Service Level Agreement. The Service Level Agreement, or SLA, describes the functions, features and performance capabilities of the Hosted System as available at County’s site and is set forth in Addendum Schedule K(c).
  - h) “Scope of Use” is defined as the utilization of the Hosting Services provided by Netsmart Technologies as defined in “Schedule K (a)– Addendum to Netsmart Hosting to License – Overview of the “Hosted System” Components and Services” and the contractually defined “Named User” count provided in Scheduled A and B under this agreement. Expectations of services not defined in “Schedule K (a)” or utilization by Named Users beyond the contractually defined user count shall be considered beyond the limits of the “Scope of Use”
  - i) “Major System Change” is defined as an event wherein the infrastructure or applications were updated to such an extent that said upgrade required down-time where the application was made unavailable to the User Community. While all efforts are made to prepare and mitigate risk, such events are difficult to fully test against production environments and thus require a 72-hour monitoring and stabilization period after the event.

## Schedule K – Netsmart Hosting Addendum to License

- j) “Back-Up” refers to the act of creating a copy of the system and data for uses such as emergency restore procedures. The components included in a Back-Up effort vary based upon the frequency. Full back-ups of the myAvatar application and the client data stored within are performed nightly and include the entirety of following data types from the point that the system was first put into productive use, to the moment the back-up was initiated; security, compliance, audit, client data, and system configurations. Weekly Back-ups are performed and include all the afore-mentioned application and data components as well as the system Operating System (OS). All back-up tapes are encrypted without exception and stored in a secure vault.

### 3. **SCOPE OF HOSTING SOFTWARE SERVICES**

- a) The Hosted Software Services may be used by County only:
  - i) for County’s internal business purposes and not to process the data of any other entity; and
  - ii) for access by the maximum number of named users permitted under the Agreement; and
  - iii) so long as the County is not otherwise in default under the Agreement or this Addendum.

Subsections (i), (ii), and (iii) above shall be understood to permit non-employees of County, such as agents or contractors who have a need for access to the Licensed Programs to support the internal operations of County, to be added as named users for the Licensed Programs.

- b) This Addendum does not convey to Client any title or ownership interest in the Hosted Systems or the Licensed Programs. Client has additional rights in the Licensed Programs, however, under the Master Agreement.
- c) The Hosting Services covered by this Addendum are provided solely to Client. Client is prohibited from engaging in any activity that makes these Hosting Services available to third parties.

### 4. **CHARGES AND PAYMENT TERMS**

- a) Client agrees to pay Netsmart the Service Charges in the amounts and at the times set forth in Addendum Schedules. With the exception of the initial invoice which is due upon contract signing, invoices are payable net thirty (30) days after invoice date. Thereafter, any outstanding balance shall bear simple interest at the lower of 18% per annum or the highest interest rate permitted by law. Failure to make timely payment is considered a material default of the Master Agreement.

- b) Netsmart agrees that it will not revise the Charges for Hosting Services during this contract period.

### 5. **TAXES**

The Charges set forth in this Agreement do not include any taxes. Where applicable, there shall be added to such Service Charges and County shall pay amounts equal to any taxes (however designated, levied, or based) on such Service Charges including, but not limited to, state and local sales, privilege, property, use or excise taxes, but not including taxes based on the net income of Netsmart.

### 6. **PROTECTION OF COUNTY DATA**

As used in this paragraph 6, the word "Data" means all information acquired from County that will reside on a Netsmart secure server and be maintained for County during the performance of this Agreement All facilities used to store and process County data will employ commercial best

## Schedule L – Netsmart Hosting Addendum to License

practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure Netsmart's own data of a similar type. Without limiting the foregoing, Netsmart warrants that all County Data will be encrypted in transmission (including via web interface) and storage at no less than 128-bit level encryption.

7. **GENERAL TERMS**

Except as expressly set forth in this Addendum, the relationship between Netsmart and County will be governed by the provisions of the Master Agreement.

8. **SURVIVAL OF TERMS**

In the event this Addendum terminates pursuant to its terms, the Master Agreement will continue in full force and effect

9. **CROSS DEFAULT**

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

10. **USE OF NETSMART WEBSERVICES**

Netsmart supports the use of Netsmart provided web services in both the SaaS and hosted environmental platforms. The only medium for transmission of web services data into Netsmart environment will be through VPN tunneling across the Internet. Netsmart offers two VPN offerings, depending upon the needs of the County, which include VPN Client software installed on each machine submitting web services data or VPN appliances which establish a permanent VPN tunnel between the County environment and Netsmart's data center or other technical options that are agreed upon by both the County and Netsmart

## **Addendum Schedule K(a)**

### **Overview of the “Hosted System” Components and Services**

#### **HOSTING COMPONENTS**

##### **A. Avatar Environment**

Netsmart will provide redundant middleware and Exchange Control Panel (hereafter, “ECP”) servers to San Mateo running through Secure Socket Layer (SSL), load balanced with enterprise F5 load balancers, tied to a backend Cache database. This environment will be replicated to our Kansas City data center with failover capabilities spelled out in the Disaster Recovery portion of this document. The environment will be provisioned based up concurrent number of users and estimated growth patterns. Netsmart implements and utilizes real-time monitoring on its entire Avatar hosted system, providing feedback on all security, stability, and performance attributes of each system.

The Netsmart Avatar environment is governed under an ISO 27000 series framework, consisting of an extensive set of policies, procedures, and work instructions governing the planning, implementation, management, and support of the environment. Netsmart’s complete set of policies and procedures will be provided under a separate cover.

Netsmart Plexus Support includes application and database patching. Netsmart encourages San Mateo to stay current with applications patches. Patches will be applied to San Mateo’s TEST and UAT environments for testing by Netsmart and San Mateo. Upon successful testing and validation by San Mateo, Netsmart will schedule and apply patches to the San Mateo’s LIVE environment at a mutually agreeable time. Patches affecting core system security and stability, will be escalated and applied to the San Mateo environment, as soon as reasonably possible, to ensure optimal security and stability within the hosted Avatar solution.

Avatar application support will continue under the following Netsmart Application support model. System support, consisting of network connectivity, Cache database, security, and infrastructure system support is provided by Netsmart’s Plexus Cloud Systems Engineering team, Infrastructure Team, and Security Teams. County will be provided with all applicable support phone numbers, which include the general hosting phone numbers, 24/7 customer support phone numbers, and escalation phone numbers.

Netsmart Plexus hosting support will continue to utilize the same priority ranking system representing the severity of issue currently being encountered. Reference Service Level Agreement for Hosting Service, Addendum Schedule L (c) of this agreement.

Netsmart shall make best efforts to address and remedy County service requests in accordance with Schedule I. In the event that a service request cannot be remedied within that time period, Netsmart shall notify County via e-mail [kpjima@smcgov.org](mailto:kpjima@smcgov.org) or telephone 628-239-0692 with a proposed schedule for resolution of the pending service request. In the event that County is dissatisfied with Netsmart support, County may contact the Vice President of Support Services for escalation.

##### **B. Disaster Recovery**

Netsmart provides redundant, dedicated virtualization throughout the entire Avatar environment, including middleware, ECP, and database servers. The middleware and ECP systems employ load balancing behind master F5 load balancers, monitoring performance and health of each device. System failures are identified and routed around, by the load balancers. The database environment utilizes high availability server components, to fail over between servers, in the event of a failure. Replicated copies of the middleware and ECP environments are maintained offline, at our secondary data center, and updated on a weekly basis or after any changes are made. The database server

environments are replicated in real-time to the secondary data center. The target Recovery Time Objective (RTO) for Avatar failover to the secondary data center is 4 hours, though generally can be completed in a matter of minutes. The target Recovery Point Objective (RPO) for data loss is 30 minutes, though all tests generally show times in the sub-2-minute timeframe. As part of the disaster recovery process, Netsmart will redirect URLs.

Nightly backups of the Avatar environment occur to local tier III storage and to encrypted backup tapes, which are taken offsite daily by Iron Mountain. Monthly restoration tests of random San Mateo environments occur and are fully documented from all three sources of information.

**HOSTING SCOPE OF SERVICES**

- A. **Netsmart Data Center Environments.** The Netsmart Plexus Data Centers ("NPDC") consist of a 2X primary data center environment and an N+1 secondary datacenter environment, both consisting of dual-fed, redundant data operation facility intended to provide uninterrupted power and service for Netsmart clients. The NPDC are designed to significantly reduce client downtime and operates under supervision twenty-four (24) hours per day, seven (7) days per week ("24 x 7"), every day of the year. The NPDC houses all data center equipment, including hosted computing equipment, network equipment, and security equipment. Data center monitoring systems include fire protection (detectors, sprinklers, and dry agent), mechanical systems, camera recording systems, entry alarms, electrical systems, generator operations, water detection systems, and card access control/biometrics access controls. Netsmart engineers observe systems 24 x 7 and report alarms as needed. The following table sets forth the responsibilities of Netsmart and Client regarding the physical facilities:

No.	Table 1: Facility Responsibility Description	Netsmart NPDC	Client
<b>1.1</b>	<b>Environment</b>		
1.1.1	Provide the NPDC facility required to host the computing and network environment	X	
1.1.2	Provide the NPDC equipment and third party software	X	
1.1.3	Manage, monitor and control the NPDC	X	
1.1.4	Provide any applicable UPS/temperature-controlled environment for Netsmart provided equipment needed at Client site (e.g. network equipment, etc.)		X
1.1.5	Provide appropriate rack space for Netsmart provided equipment at the Client site, if applicable		X
<b>1.2</b>	<b>NPDC Facility Management and Monitoring</b>		
1.2.1	NPDC power monitoring for generators - *	X	
1.2.2	Monitoring of chiller system for pressure, temp, alarm and standby- *	X	
1.2.3	Monitoring of electrical room for moisture, UPS availability- *	X	
1.2.4	Monitoring of NPDC data center air-conditioning units, including air conditioning, power, moisture, humidity and temperature- *	X	
1.2.5	Monitoring of NPDC Auto Transfer Switches. Monitors and activates UPS/generator system as incoming power dictates- *	X	
1.2.6	Monitoring and control of the NPDC environment- *	X	
1.2.7	Facility operation and maintenance- *	X	
<b>1.3</b>	<b>NPDC Physical Security</b>		
1.3.1	Camera monitoring is provided throughout the Data Center and exterior entries. Multiple cameras provide views of the Data Center and all access points, which are visible at all times to the on-site operators. All cameras continuously record to tape for future viewing and investigation- *	X	
1.3.2	All primary doors are controlled by card access with biometric readers in high-security areas. Multiple access points must be crossed to access the Data Center floor- *	X	
1.3.3	All secured doors are electronic fail-secure strikes. All door hardware and Monitoring are backed by emergency power- *	X	

1.3.4	Access to host facility is site-restricted via ACL's which are controlled by Netsmart's security personnel	X	
1.3.5	Entry/exit points of service center are monitored via closed-circuit television- *	X	

B. Network Operations. As part of the NPDC Services, Netsmart will provide and manage many aspects of the communications between the NPDC and the Client networks. Each section below describes a unique aspect of the network infrastructure. There are three separate networks that must work together in unison to provide seamless application delivery. In addition, each party agrees to perform their respective network operations responsibilities, as set forth in Table 2 below.

1. NPDC Network Operation. The NPDC Network Operations are the network equipment, software, and console systems that support the servers and databases for Client within a facility or facilities that Netsmart manages. Netsmart will provide and operate at the NPDC all network equipment, third party software and console systems to host the Licensed Software, equipment, and certain third party software (collectively, the "Netsmart Environment"). Netsmart will provide a high-availability network designed to remain fully operational in the event of any single equipment failure. Possible points of equipment failure may include routers, switches, load balancers, and firewalls. Netsmart will support, manage, and maintain this equipment and third party software in a manner consistent with vendor specifications and Netsmart best practices. Netsmart will provide network management of all Netsmart-provided network components in the NPDC to maintain the service levels set forth in this Netsmart System Schedule.
  
2. Netsmart/Client provided Internet Communications. The Internet Communications Network Operations are the communications infrastructures that include primary and secondary communications circuits between the NPDC and the Internet, and from the client LAN/WAN to the Internet. The Netsmart circuits will be provisioned in a manner that maximizes existing physical circuit diversity from a variety of Internet backbone providers, at both data center environments. This process does not guarantee physical diversity, but rather provides the best practice for obtaining physical diversity. The Netsmart Internet circuits will be sized in accordance with Netsmart best practices for appropriate bandwidth, quality of service and responsiveness. Some metrics that may be used for sizing include active concurrent users, number and volume of interface traffic, number and volume of print activities, etc. All Netsmart-side circuit provisioning and management will be the responsibility of Netsmart in conjunction with Netsmart's third party communications carriers. All communications equipment necessary to terminate these WAN circuits will be provided and managed by Netsmart. The equipment may include routers, switches, firewalls, out-of-band-management consoles and power reboot switches as well as CSU/DSU circuit termination equipment. All client-side circuit provisioning and management will be the responsibility of the client. All communications equipment necessary to terminate these Internet circuits will be provided and managed by the client. The equipment may include routers, switches, firewalls, out-of-band-management consoles and power reboot switches as well as CSU/DSU circuit termination equipment. Netsmart will assist Client in troubleshooting Internet issues that may involve Client's network or client's Internet provider; however, Netsmart reserves the right to charge for the time, materials and travel and related expenses involved in resolution of problems that are determined to originate within Client's network.
  
3. Client-provided LAN/WAN. Client LAN and Client WAN will consist of any communications circuits, WAN termination equipment and LAN equipment not provided by Netsmart. These circuits and equipment will be managed and maintained by Client. Netsmart will assist Client in troubleshooting issues that may involve Client's network; however, Netsmart reserves the right to charge for the time, materials and travel and related expenses involved in resolution of problems that are determined to originate within Client's network.
  
4. Netsmart Provided MPLS Connectivity Client location will be provided (2) routers for connection to Netsmart Technologies' MPLS network from client's internal network. An MPLS circuit will be installed at the client location from (2) diverse carriers. Both circuits will be identical in capacity and not less than 20Mbps. Circuits will be provisioned to have connectivity to both Netsmart data centers,

Columbus and Kansas City, through their respective MPLS cloud. Once installed, both circuits and routers will be active allowing traffic to utilize each connection

No.	Table 2: Network Operations Responsibility Description	Netsmart NPDC	Client
<b>2.1</b>	<b>NPDC Network Operations</b>		
2.1.1	All required network equipment within the NPDC, such as routers, switches, load balancers and consoles	X	
2.1.2	Network management of equipment and third party software, including routers, switches, load balancers and firewalls	X	
2.1.3	Redundant power circuits and power distribution	X	
2.1.4	24 x 7 x 365 network support with level 2 and 3 backup available by pager	X	
2.1.5	Monitoring Netsmart-provided applications response time, including round trip latency from Netsmart's Internet providers	X	
2.1.6	Network management, support, installation, and configuration of Netsmart-provided WAN circuits and WAN equipment	X	
<b>2.2</b>	<b>Netsmart/Client provided Internet Communications Network Operations</b>		
2.2.1	Communications circuit(s) from the NPDC to Internet Backbone	X	
2.2.2	Network management including Monitoring systems, device management and polling systems	X	
2.2.3	Monitoring of Netsmart-provided network routers, including utilization, memory, exception reporting, syslog, configuration management and ACL hits/denies	X	
2.2.4	Monitoring of Netsmart-provided WAN links ups/downs, error thresholds, bandwidth, and CIR packet flow/loss	X	
2.2.5	Communications circuit(s) from the CLIENT to Internet Backbone		X
2.2.6	Network management including Monitoring systems, device management and polling systems		X
2.2.7	Monitoring of client-provided network routers, including utilization, memory, exception reporting, syslog, configuration management and ACL hits/denies		X
2.2.8	Monitoring of Client Gateway ups/downs, router, switch, power		X
<b>2.3</b>	<b>Client LAN/WAN Operations</b>		
2.3.1	Network management, support, installation, and configuration of Client provided WAN circuits and WAN Equipment		X
2.3.2	Network management, support, installation, and configuration of Client LAN infrastructure		X
2.3.3	Management of network printers, terminal servers, PCs, terminals or other Client-side equipment		X

- C. **Systems Management.** As part of the NPDC Services, Netsmart will provide systems management services for the management, security and performance of the computing systems required to operate the Licensed Software. The "back-end system" includes third party software, certain Sublicensed Software, and host nodes running the Licensed Software database as well as the Avaguard monitoring system, and interface engine. This aspect of the back-end system also includes the storage technology and media. The back-end systems

also include the required operating systems ("OS") and layered products necessary for the System to operate. The computing system includes the back-end system and the front-end application server resources necessary to provide access to the System and executes the Licensed Software and server requirements to facilitate printing (excluding Client print servers required for and on Client LAN). The computing system includes management and Monitoring systems and software to monitor and report on system health, security, capacity and availability.

The front-end system includes the required OS and layered-product licenses (necessary for the System to operate). The system management services include the responsibility for the equipment and third party software maintenance of the computing system and associated infrastructure in accordance with manufacturer-recommended and supported practices. In addition, such services include processes and resources to monitor the computing systems and to report and alert on compromised system health, security, capacity, and availability. Furthermore, Netsmart will:

- ♦ Meet or exceed contracted performance, capacity, and System Availability (as defined below) levels using the appropriate management methodologies, resources, and tools for the Netsmart Environments
- ♦ Provide System performance Monitoring and tuning
- ♦ Provide System capacity analysis and planning
- ♦ Provide storage management for all the in-scope environments
- ♦ Use and adhere to documented change management processes and procedures
- ♦ Use and adhere to documented problem management processes, procedures and escalation guidelines
- ♦ Provide and monitor mutually agreed-upon security functions in conjunction with Client's security officer and in accordance with documented security policies

In addition, each party agrees to perform their respective systems management responsibilities, as set forth in Table 3 below.

No.	Table 3: Systems Management Responsibility Description	Netsmart NPDC	Client
<b>3.1</b>	<b>Equipment and Third Party Software Acquisition and Provisioning</b>		
3.1.1	Provide back-end computing systems consisting of CPU, memory and data storage required to operate the in-scope environment(s)  Back-end computing systems will be provided in accordance with obligations set forth in this Netsmart System Schedule and certified by Netsmart Engineering	<b>X</b>	
3.1.2	Provide OS and layered-product software licenses for back-end systems required to operate the in-scope environment(s)	<b>X</b>	
3.1.3	Purchase of database Sublicensed Software and ongoing Sublicensed Software Maintenance fees	<b>X</b>	
3.1.4	Provide front-end computing systems necessary to facilitate Client access to their specific in-scope environment(s)  Front-end computing systems will be provided in accordance with obligations set forth in this Netsmart System Schedule and certified by Netsmart Engineering	<b>X</b>	
3.1.5	Provide OS and layered-product software licenses for front-end systems required to operate the in-scope environment(s)	<b>X</b>	
3.1.6	Provide systems and third party software necessary for Netsmart to manage and monitor back-end and front-end systems	<b>X</b>	
3.1.7	Provide front-end servers required to facilitate printing from the in-scope environment(s), excluding Client-specific print servers required for local printing on Client site	<b>X</b>	

3.1.8	Provide systems required for Client local printing from Avatar and non-Avatar applications		X
3.1.9	Provide systems required for Client access to Client's LAN (e.g. local authentication, primary/backup domain controllers) and other non-Avatar functionality		X
3.1.10	Provide front-end computing systems necessary to facilitate local Client Licensed Software installation. Computing systems must meet Netsmart minimum system requirements		X
<b>3.2</b>	<b>Management and Monitoring</b>		
3.2.1	Apply OS and layered-product service packs to front-end and back-end systems as required to maintain system health, security, availability and capacity	X	
3.2.2	Monitor the computing systems (24 x 7) to report and alert on compromised system health, security, availability and capacity	X	
3.2.3	Reboot back-end and front-end computing systems on a recurring schedule to optimize performance of the computing environment	X	
3.2.4	Monitor charting application services (charting and Remote Report Distribution) for successful completion		X
3.2.5	Resubmit and/or reroute any failed print jobs		X
3.2.6	Provide OS and layered-product software licenses for front end systems required for a local Avatar application installation (Windows, Crystal)		X
<b>3.3</b>	<b>Security Administration</b>		
3.3.1	Provide system third party software and equipment security controls	X	
3.3.2	Monitor System security errors, exceptions and attempted violations as dictated by standard procedures	X	
3.3.3	Host facility physical security measures and controls	X	
3.3.4	Secure backup media with check-in and check-out procedures	X	
3.3.5	Store Client's backup media in a manner that will protect the confidentiality of the data stored on them and ensure that such data remain Client's property	X	
3.3.6	Run and monitor continuous intrusion detection software on both host and network-based systems	X	
3.3.7	Provide secure environment for on-site and off-site storage for backups	X	
3.3.8	Virus detection and correction as required	X	
3.3.9	Provide corporate IT Security Manager to monitor and enforce security procedures and resolve exception report issues	X	
3.3.10	Provide logical security using lockdown procedures post production	X	
3.3.11	Assign and manage accounts for Client users to access systems		X
3.3.12	Designate assigned security representative to ensure personnel have appropriate access and be responsible for review of access controls, etc.		X
<b>3.4</b>	<b>Other Third-Party Software</b>		

3.4.1	Provide adequate licenses for third party products used to augment Avatar functionality  Third-party products will be implemented in accordance with obligations set forth in the contract and certified by Netsmart Engineering		X
<b>3.5</b>	<b>Miscellaneous Technologies Selection, Deployment and Management</b>		
3.5.1	Provide, configure, host and manage other non-Avatar resources deployed to augment Avatar functionality (excluding those which have not been identified as Netsmart Avatar technology partners)  Resources excluded may consist of, but are not limited to, biometric authentication application and database servers, and medical encoding application and database servers	X	
3.5.2	Select peripheral technologies certified by Netsmart and consult with Netsmart Technical Project Manager prior to final selection  Peripheral technologies consist of PCs, thin client devices, hand-held devices, printers, document scanners, and barcode scanners  Netsmart is responsible for providing Client with a list of validated devices, and Client is responsible for making their selection and verifying with the TPM that it is valid according to the list provided	X	X
3.5.3	Procurement and deployment of peripheral technologies in accordance with Netsmart- certified configurations		X
3.5.4	Peripheral devices configuration, management and maintenance (Web browser configuration, connectivity, rebooting, paper, toner, paper jam, device offline, etc.)		X
3.5.5	Client site peripheral management (adds, moves and changes--some changes may require NPDC assistance to implement)		X
3.5.6	Provide virtual access to peripherals and interfaces as needed to support Client		X

D. Database Administration. Netsmart will provide the ability to implement and maintain database access, performance and availability in a consistent and efficient manner across all System environments. Client will maintain the content and integrity of the database. Netsmart will:

- ♦ Install and maintain Database Management System ("DBMS") software as defined in Table 4 below
- ♦ Provide appropriate database management methodologies, resources and tools to manage, troubleshoot, back up and recover the database environments.
- ♦ Monitor and report on database performance and capacity
- ♦ Provide DBMS storage management
- ♦ Monitor and manage database security
- ♦ Maintain offsite backup of the System and Client data (the offsite media backup will operate and perform in a manner comparable to NPDC with respect to both System and Client data)

In addition, each party agrees to perform their respective database administration responsibilities, as set forth in Table 4 below.

No.	Table 4: Database Administration Responsibility Description	Netsmart NPDC	Client
<b>4.1</b>	<b>Software Installation and Upgrade</b>		
4.1.1	Installation, management, and upgrading of third party database software necessary to support the Licensed Software.	X	
4.1.2	Certification of application environment after database or other upgrade		X
<b>4.2</b>	<b>Performance Management and Monitoring</b>		
4.2.1	Monitor database alert logs	X	
4.2.2	Monitor database number of extents remaining	X	
4.2.3	Monitor database freespace	X	
4.2.4	Monitor database freespace deficits	X	
4.2.5	Monitor database instance status	X	
4.2.6	Monitor database lock conflicts	X	
4.2.7	Monitor space available in tablespace	X	
4.2.8	Monitor status of database listeners	X	
4.2.9	Reorg/defragment database objects/tablespace	X	
4.2.10	Analysis and tuning of any custom scripts developed by Client or third-party		X
4.2.11	Monitor basic database performance characteristics such as I/O	X	
4.2.12	Monitor and manage file and tablespace	X	
<b>4.3</b>	<b>Backup, Restore and Recovery</b>		
4.3.1	Perform system backups as specified in standard backup procedure	X	
4.3.2	Media rotation	X	
4.3.3	Verify backup logs	X	
4.3.4	Maintain and document backup requirements	X	
4.3.5	Coordinate offsite storage functions, including logging, tracking, labeling, ordering, receiving and sending storage media	X	
4.3.6	Restore System data as required	X	
4.3.7	Define System-wide recovery and backup requirements	X	
4.3.8	Schedule and test routine recovery procedures	X	

4.3.9	Perform the required frequency of replacement for all media in storage	X	
4.3.10	Backup of Client-based PCs and servers		X
4.3.11	Verification of restored environment		X

E. Applications Management. Applications Management services are the services required to manage the Licensed Software application level of the System. As part of the NPDC Services, Netsmart's primary function with respect to Applications Management is in the areas of service package management, application server management, and monitoring and reporting on application processes. Each party agrees to perform their respective Applications Management responsibilities, as set forth in Table 5 below. Netsmart will upgrade the System as required to keep Client on a supportable release, but not more frequently than limit set forth in the scope of use table above. Specific service packages will be made available as required to address a medical need, financial need or regulatory requirement. Client will, at its own expense, support, manage and provide training for all Licensed Software, including without limitation all maintenance and build activities related to production financial and clinical applications and Licensed Software upgrades. Client agrees to use "superusers" to provide Licensed Software management support.

No.	Table 5: Applications Management Responsibility Description	Netsmart NPDC	Client
<b>5.1</b>	<b>Service Package Management</b>		
5.1.1	Load patches and Service Packages as required to meet contractual agreements	X	
5.1.2	Installation of New Releases on a periodic basis, subject to notice and approval by Client. (Frequency as set forth in the scope of use limit section above)	X	
5.1.3	Perform back-end special instructions for service package loads	X	
5.1.4	Perform front-end special instructions for service package loads	X	
5.1.5	Support applications testing by providing a certification domain to Client as required to support contractual commitments	X	
5.1.6	Monitor Licensed Software notifications for issues related to patient care, financial burden, or performance		X
5.1.7	Request patches & service packages as needed to keep the System at a supportable level (as defined above)		X
5.1.8	Perform application special instructions for service package loads as needed		X
5.1.9	Perform service package certification guidelines as needed		X
5.1.10	Test service packages /application enhancements, fixes and upgrades and assure the integrity of the resulting data. Client is responsible for final signoff		X
5.1.11	Perform and manage the process for local installations of the Licensed Software application on Client PCs		X
<b>5.2</b>	<b>Monitoring tasks</b>		
5.2.1	Monitor Application Servers for appropriate number/ups/downs	X	
5.2.2	Monitor orphaned journal transactions	X	
5.2.3	Monitor Avatar System Access logs and perform maintenance		X

5.2.4	Verify client record status		X
<b>5.3</b>	<b>Audit reports and logs</b>		
5.3.1	Review/monitor audit reports and logs		X
5.3.2	Perform Client audits/reports/tools		X
<b>5.4</b>	<b>User accounts</b>		
5.4.1	Establish ongoing setup and maintenance of user accounts for Licensed Software products		X
<b>5.5</b>	<b>Maintenance Activities</b>		
5.5.1	Cycle Application Servers as needed	X	
5.5.2	Perform event code/event set changes as required		X
5.5.3	Provide and maintain application-specific security such as task access, positions, and role setup		X
5.5.4	Train end users on application		X
5.5.5	Maintain change management of all local installations of the Licensed Software applications on Client PCs		X
<b>5.6</b>	<b>Avatar Software Operations</b>		
5.6.1	Perform Daylight Savings Time management activities	X	
5.6.2	Notify Client help desk of issues found that affect service	X	
5.6.3	Set up and review purges and operations jobs		X
5.6.4	Run/review Licensed Software operations		X
5.6.5	Add/remove operations jobs		X
5.6.6	Monitor operations for successful completion		X
5.6.7	Restart production jobs as required		X

F. Interface Management. Interfaces include both medical device interfaces ("MDI") and foreign system interfaces ("FSI") that reside on the System. Each party agrees to perform their respective Interface Management responsibilities, as set forth in Table 6 below.

No.	Table 6: Interface Management Responsibility Description	Netsmart NPDC	Client
<b>6.1</b>	<b>Monitoring</b>		
6.1.1	Monitor Netsmart outbound interface queue counts and over-threshold alarms	X	
6.1.2	Monitor and cycle inbound interfaces as required to establish connections or start transactions sending		X
6.1.3	Monitor Netsmart inbound cycle times over-threshold alarms	X	
<b>6.2</b>	<b>Management</b>		
6.2.1	Notify Client help desk of issues found that affect service	X	
6.2.2	Notify Netsmart Hosting Support when cycling interface/VPN's or of known ups/downs		X
6.2.3	Review system access logs		X

6.2.5	Review error logs		X
6.2.6	Notify Netsmart's Hosting Support of issues found that affect service		X

G. Administration. Each party agrees to perform their respective administrations responsibilities, as set forth in Table 7 below.

1. Change Management. Netsmart and Client will follow a formal process for changes that could affect the hosted System. Netsmart will provide a copy of the change management procedure to Client. This process (i) ensures that changes occur in a controlled environment so that all parties understand the potential impact of an impending change, and (ii) identifies potentially affected systems and processes prior to implementation of the change(s). Client must authorize all changes that affect production domains as specified in the standard change management procedure. Client agrees to cooperate with Netsmart in connection with providing reasonable and appropriate maintenance windows and participating in the testing as reasonably required.
2. Problem Management. Problem management is the identification, assessment of impact, reporting, tracking, escalation, notification, and resolution of problems that occur in the NPDC. Client is responsible for maintaining a staffed help desk that will provide the first line of support for users and data coordination calls. This line of support must be able to distinguish application issues versus connectivity or infrastructure issues. In addition, the use of "superusers" at Client site should be maintained to address application-specific issues.
3. Audit. Upon written notice from Client to Netsmart's VP of Hosting/Systems Engineering, Netsmart will permit access to the NPDC and processing environment for Client's auditors and/or an independent third party retained by Client. Client will provide Netsmart's VP of Hosting/Systems Engineering an audit agenda two (2) weeks prior to audit date. Any such audit conducted by Client auditors and/or an independent third party auditor retained by Client shall be limited to one (1) audit per calendar year. Netsmart shall provide reasonable support and assistance during any such audit(s) to include preparation, pre-audit events and 1 business day of physical NPDC access. Netsmart will conduct a periodic independent audit (internal or third party) of the NPDC operating environment in accordance with applicable standards. Questions regarding NPDC audits should be directed to Netsmart's VP of Hosting/Systems Engineering.

No.	Table 7: Administration Responsibility Description	Netsmart NPDC	Client
<b>7.1</b>	<b>Change Management</b>		
7.1.1	Provide and maintain an automated change management system for the centralized reporting and tracking of changes made by Netsmart personnel	X	
7.1.2	Provide a weekly Avatar patching maintenance window		X
7.1.3	Allow for a monthly global maintenance window		X
7.1.4	Notify Netsmart of planned outages on Client side		X
7.1.5	Designate at least two individuals responsible for signing change forms		X
7.1.6	Notify Netsmart of changes to Client environment		X
7.1.7	Certify ALL changes prior to moving them to production		X
7.1.8	Test application enhancements, fixes, and upgrades and assure the integrity of the resulting data		X
7.1.9	Provide sufficient advance notice (6 months) to Netsmart of material changes to Client growth (e.g., order volumes, users)		X
<b>7.2</b>	<b>Problem Management</b>		

7.2.1	Provide and maintain a method for proper escalation of problems within Netsmart hosting management	X	
7.2.2	Log all incidents and problems in accordance with documented processes.	X	
7.2.3	Maintain ownership of all problems related to Netsmart services through closure or until agreement that the problem is not within Netsmart's scope of responsibility	X	
7.2.4	Provide appropriate contact numbers or other information necessary to communicate with key NPDC support staff	X	
7.2.5	Perform post-mortem reviews on problems that affect service level standards, including root cause analysis if possible	X	
7.2.6	Notify Netsmart's hosting support desk of issues found that affect service	X	
7.2.7	Staff operations 24 x 7	X	
7.2.8	Provide on-call technical staff 24 x 7	X	
7.2.9	Ensure proper notification and escalation in accordance with standard operating procedures	X	
7.2.10	Maintain Client help desk to provide first line of support for Users		X
7.2.11	Identify applications issues versus connectivity issues		X
7.2.12	Provide and maintain a method for proper escalation of problems within Client's management		X
7.2.13	Assign IT Coordinator for primary contact by Netsmart technology group as per Netsmart standard escalation procedures		X
<b>7.3</b>	<b>Service Management</b>		
7.3.1	Provide system availability reporting	X	
7.3.2	Create incident reports for outages	X	
7.3.3	Maintain inventory of installed products	X	
7.3.4	Provide statistics and management reports to Client on a regular basis as detailed in the procedures manual	X	
7.3.5	Provide Client with detailed reporting and statistics on reported problems	X	

**Addendum Schedule K(b)**

**Plexus Cloud Hosting -Contractor Professional Services, Third Party Products, and Annual Charges**

**All charges and Payment Terms are governed under “Schedule A – Behavioral Health Information System (BHIS) Charges and Payment Terms” and “Schedule B – Family Health Services Information System (FHSIS) Charges and Payment Terms” of the Agreement of the Agreement.**

**Addendum Schedule K(c)**  
**SERVICE LEVEL AGREEMENT**

**For**  
**Hosting Account Services**

1. Coverage Definitions

This Hosting Availability Service Level Agreement (SLA) applies given the contract for any of the following web-based services from Netsmart: myAvatar, Cache hosting, web services, or web hosting.

This Section sets forth the System Availability commitments for Hosting Services. If monthly System Availability (as defined below) falls below 99.9%, Netsmart will provide a credit against the Client's next monthly Hosting Fees to account for the downtime. The appropriate credit percentage (%) will be determined based on the following table.

<u>System Uptime %</u>	<u>Credit %</u>
>= 99.9% to 100 %	0
>= 98.0% and < 99.8%	5%
97.0 to 97.9%	10%
95.0 to 96.9%	15%
< 94.9 or below	25%

2. System Availability Calculation

- a) Netsmart shall calculate System Availability as set forth below for each month during the Term of this Netsmart Contract Addendum.
- b) System Availability will be calculated as follows (and will be rounded to up to the next one tenth of a percentage point):

$$\text{System Availability} = [(\text{Base Time} - \text{Unscheduled Downtime}) / (\text{Base Time})] \times 100$$

"Base Time" equals the product of the number of days in the applicable month multiplied by 24 hours multiplied again by 60 minutes. (i.e., NDays x 24 X 60 = Base Time)

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

"Scheduled Downtime" is equal to the aggregate total of all minutes of planned and scheduled maintenance performed during the month to perform any necessary hardware, operating system, network, database, application software maintenance, repair, upgrades, and updates. Netsmart will work with Client to determine and use commercially reasonable efforts to

Schedule Downtime after regular business hours, during times that minimize the disruption to operations. The amount of scheduled downtime may vary from month to month depending on the level of change to the system such as the project implementation phase, adding new products, upgrading products, etc. Client will be informed of Scheduled Downtime at least 30 days before the downtime occurs. If the Client and Contractor agree that a downtime is required to address an urgent or emergent issue that is not caused by a P1 ticket, the downtime will be considered Scheduled Downtime if Client has at least twenty-four hours' notice of the outage. If the notice is less than twenty-four hours, the downtime will be considered Unscheduled Downtime. Notice may be delivered via an email or telephone during Client Business Hours.

- c) Client is permitted to audit the Unscheduled Downtime based on the methodology established below. Netsmart agrees to cooperate with Client in connection with any audit of the Unscheduled Downtime. This audit must take place within 30 days of the month end and the results will be e-mailed to the County IT Manager or designee.
- d) Priority 1 (P1) issues represent a down system event or significant event severely hampering core system functionality or availability, which have Contractor's support teams immediate engage with the County on addressing the issue. Priority 2 (P2) issues represent a significant event occurring within the Avatar and or third-party solution, while the core system remains functional and accessible or critical system patches that need added to the environment. Contractor will assign and initially engage with the County within 12 hours, to begin work on a resolution. Priority 3 (P3) issues represent low priority issues, representing non-critical issues, non-critical patches, or questions. Contractor will engage with the County within 48 hours and begin work on a resolution
- e) Netsmart recommends that Client implement, on a timely basis, the Service Packages that will be provided to Client by Netsmart on a periodic basis. Netsmart will advise Client on Service Packages that may enhance performance and availability and will advise Client of the advantages of implementing the Service Packages as well as the implication of electing not to implement the Service Packages. Netsmart will perform the technical requirements needed for Client to use the Service Packages that Client elects to implement, at no additional charge and as part of the Hosting Fees. Client and Netsmart will work together to establish a mutually agreeable implementation schedule for the Service Packages, unless Client has tested the recommended Service Package and reported deficiencies. Upon notice to Client that the System's performance and availability will be adversely affected if Client elects not to implement a Service Package, Client will waive any credits set forth above, until such time as Client performs its obligations as necessary to implement the required Service Packages. If Client has reported in-writing non-cosmetic deficiencies in a Service Package, Client may elect in writing not to implement that Service Package until the non-cosmetic deficiencies are fixed and will not waive any credits set forth above. Once Client has determined that the reported deficiencies are fixed, Client will implement the required Service Package.
- f) Client must allow Netsmart to implement the latest Netsmart supported layered software version (i.e. OS, DBMS, etc.) and patches within six (6) months of the general support announcement from Netsmart as long as all non-cosmetic deficiencies are fixed. Netsmart will advise Client

regarding the layered software enhancements as well as the implications of electing not to implement the layered software enhancements. Netsmart will perform the technical requirements needed for Client to use the layered software enhancements that Client elects to implement as part of the Hosting Service fees. Client and Netsmart will work together to establish an implementation schedule for the layered software enhancements. If Netsmart provides notice to Client that the System's performance and availability will be adversely affected if Client elects not to implement the layered software enhancements, Client waives its right to any credits set forth above until Client implements the required layered software enhancements.

- g) If Client is operating beyond the Scope of Use limits, Client waives its right to any credits set forth above until Client is in compliance with Scope of Use.
- h) The System will be considered in a System Stabilization Period during the seventy-two (72) hour window following the First Productive Use and following a Major System Change. During a System Stabilization Period, changes to the System may be required to achieve optimal performance and Unscheduled Downtime or Scheduled Downtime minutes do not apply.

### 3. Exceptions

Client shall not receive any credits under this SLA in connection with any failure or deficiency of Hosting Availability caused or associated with:

- a) Circumstances beyond Netsmart's reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, virus attacks or hackers, failure of third party software (including, without limitation, web server software, FTP Servers, or statistics) or inability to obtain supplies, or power used in or equipment needed for provision of services;
- b) Failure of access circuits to the Netsmart Network, unless such failure is caused solely by Netsmart;
- c) Scheduled maintenance, scheduled backups, scheduled restores and emergency maintenance and upgrades;
- d) Issues with FTP, POP, or SMTP Client access;
- e) Client's acts or omissions (or acts or omissions of others engaged or authorized by Client), including, without limitation, custom scripting or coding (e.g., CGI, Perl, Java, HTML, ASP, etc), any negligence, willful misconduct, or misuse of the Services;
- f) E-mail or webmail delivery and transmission;
- g) Outages elsewhere on the Internet that hinder access to your account. Netsmart is not responsible for browser or DNS caching that may make your site appear inaccessible when others can still access it. Netsmart will guarantee only those areas considered under the control of Netsmart: Netsmart server links to the Internet, Netsmart's routers, and Netsmart's servers.

- h) Use of a VPN or similar connection which is not exclusively within Netsmart's control at both ends of such connection, and where the problem occurs in the part of the VPN which is not under Netsmart's control.

4. Scheduled Maintenance

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

5. Credit Request and Payment Procedures

In order to receive a credit, Client must submit a request for credit to Netsmart Technologies, Inc. Accounting at [AR@ntst.com](mailto:AR@ntst.com), within ten (10) business days after the incident supporting the request or within ten (10) business days after the end of any month with more than one incident. If multiple incidents occur during a month and the sum of the downtime of all incidents in that month exceed the SLA standard, Client will report multiple incidents as the basis for the credit. Each request must include Client's account number (per Netsmart's invoice) and the dates and times of the unavailability of the services. If the unavailability is confirmed by Netsmart as an incident eligible for credit, credits will be applied within two billing cycles after Netsmart's receipt of Client's request. Credits are not refundable and can be used only towards future billing charges. If unavailability is not confirmed by Netsmart as an incident eligible for credit, Netsmart shall provide via email within 3 business days of the decision, a reason for outage report for the incident(s) and the reason Netsmart disallowed the credit. If Netsmart does not provide a reason for outage report for the incidents, the incident will be treated as eligible for credit and credits will be applied within two billing cycles, if Client disagrees with Netsmart's evaluation of the incident, Client will send Netsmart their analysis of the reason for outage report and why Client reasonably believes the incident(s) qualifies for a credit. If Netsmart and Client are unable to agree at this point, the resolution of the disagreement will follow procedures found in Section 13 of the Agreement.

Notwithstanding anything to the contrary herein, the total amount credited to Client in a particular month under this SLA cannot exceed the total hosting fee paid by Client for the month in which Services were impacted. Credits are exclusive of any applicable taxes charged to Client or collected by Netsmart and are Client's sole and exclusive remedy with respect to any failure or deficiency in level of services described in this SLA if Client applied for and received a credit. Nothing in this SLA precludes Client from pursuing an alternate contract remedy for any future incident that may occur.

6. Hosting Fee Reduction Due To Non-Appropriation of Funds

If the State of California falls to appropriate funds for a Family Health Services or Behavioral Health and Recovery Services program area served by this Netsmart Hosting Agreement, the Client may reduce the number of licensed users for which monthly Hosting fees are calculated by the number of licensed users within the affected program area provided:

- a) Client has given Netsmart at least ninety (90) days prior written notice of the scheduled date of non-appropriation of funds, and

- b) The total number of licensed users for which Hosting fees will continue to be paid does not fall below 75 for Family Health Services and below 500 for Behavioral Health and Recovery Services.

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

7. Data Retention and Disposal

Backup and Recovery of data – describe backup and recovery services: The Netsmart backup policy is to ensure the completion of nightly backups. Any backups above and beyond the nightly may be deleted, removed or expired for a variety of reasons providing leadership approval through Netsmart's official change control process and notification to, and approval from client.

- A. Netsmart will retain the following types of data based upon the following timeline:

**Client Data Records**

Active Client Data ----Indefinitely

Inactive Client Data --- 1 year

**Security Logs**

3 Years (Active)

5 Years (Archived)

**Access Logs**

3 Years (Active)

5 Years (Archived)

- B. Using appropriate and reliable storage media, Netsmart will regularly back up Client Data and retain such backup copies based upon the following schedule:

**Data Retention for Production systems.**

Daily – Incremental – (Retain for 30 days)

Weekly – Full – (Retain for 4 weeks)

Monthly – Full – (Retain for 3 Months)

Quarterly – Full – (Retain for 1 year)

Yearly – Full – (Yearly Backups are to be retained for the life of the client or 1 year post termination of services unless requested to delete by the covered entity)

**Data Retention for Non-Production systems.**

Daily – Incremental – (Retain for 30 days)

Weekly – Full – (Retain for 4 weeks)

Monthly – None

Quarterly – None

Yearly – None

At the end of that time period and at the Client's election, the Contractor will either securely destroy or transmit to the Client repository the backup copies. Upon the Client's request, the

Contractor will supply the Client with a certificate indicating the nature of the storage media destroyed, the date destroyed, and the method of destruction used.

#### Validation

The Contractor agrees that all data backup, retention and disposal requirements detailed in Addendum Schedule K(c), Service Level Agreement for Hosting Account Services, are material obligations under the Agreement. Contractor further agrees that any failure to meet these obligations is a material breach of the Agreement. In the event of an uncured material breach of these obligations the County may immediately terminate the Agreement without penalty or any early termination fees and seek all available remedies at law or in equity.

- C. The Contractor will immediately place a “hold” on the destruction under its usual storage media retention policies of storage media that include Client Data, in response to an oral or written request from authorized Client personnel indicating that those records may be relevant to litigation that the Client reasonably anticipates. Oral requests by the Client for a hold on storage media destruction will be reproduced in writing and supplied to the Contractor for its records as soon as reasonably practicable under the circumstances. The Client will promptly coordinate with the Contractor regarding the preservation and disposition of storage media. The Contractor shall continue to preserve the storage media until further notice by the Client. The Contractor will provide documentation supporting the methods of disposal of storage media, are appropriate to and fulfill all of the Client’s needs. By way of example but not of limitation, all hard drives and tapes used to store Client data must, upon destruction be properly disposed of. These and other media, if used, must be appropriately transferred from one environment to another properly scheduled and prepared for reuse in any event, acceptable methodologies must be employed for tracking and auditing to insure data security.

#### 8. Disaster Recovery –

Netsmart will maintain a disaster recovery plan (the “Disaster Recovery Plan”) with respect to the services provided to the Client. For purposes of this Agreement, a “Disaster” shall mean any unplanned interruption of the operation of or inaccessibility to the Contractor’s service in which Netsmart, using reasonable judgment, requires relocation of processing to a recovery location. Netsmart shall notify the Client within two (2) hours after Netsmart deems a service outage to be a Disaster. The Contractor shall move the processing of the Client’s services to a recovery location within one (1) hour after the client notification and shall coordinate the cut-over.

Copies of Netsmart’s current Disaster Recovery Plan are available on Netsmart’s support Wiki.

#### 9. Location of Client Data

All Client data hosted by the contractor will be stored in facilities located in the United States of America. At no time is it acceptable for any Client data, when at rest, to be located in facilities outside the United States of America. This restriction also applies to disaster recovery; any disaster recovery plan must provide for data storage entirely within the United States of America.

## 10. Service Level Agreement Reporting

Monthly reports of compliance with this SLA can be produced by the County on demand utilizing Netsmart's Guardian UX KPI Score Card identified below in Section 11.

## 11. Hosted System Performance

Avatar system components that are purchased within this agreement shall have the following system performance expectations. If Netsmart cannot maintain the performance expectations listed below, the County reserves the right to include these inefficiencies as "Downtime".

Application Performance Netsmart's Guardian™ UX KPI ScoreCard will be used to measure solution performance against key system transactions performed by the end users. Guardian tracks the specific time the solution takes to complete critical transactions to the thousandth of a second. The COUNTY will have 24x7 access to this data through the Guardian portal and can view performance data for any hour time period within the past fourteen days and in real-time. The result of this data view will provide the average and total number of measured key end-user transactions in the evaluated time period. On demand a detailed view is available with each measured transaction including the time, end-user ID, screen identifier, and if appropriate field identifier. As no PHI is included in this detail, this data is also available for download to be further evaluated with Excel or equivalent tools. The key measurements included in the Guardian UX KPI ScoreCard are the times to complete any of the following:

- Time from submitting/saving any form
- Time from selecting a screen to display of available episodes
- Time from selecting a screen to display of previously filed entries available for edit or delete, or addition of a new entry (if no episode selection present)
- Time from selecting an episode within a screen access workflow to a display of previously filed entries available for edit or delete, or addition of a new entry
- Time from selecting a screen to the screen for data access (if no previous entries nor episode display present)
- (Time from selecting any form to load or refresh)
- Field to Field movement within the same sub-section or section measured from leaving access of one field and gaining access to the next via a 'tab button' entry.
- Field to Field movement within the same sub-section or section measured from leaving access of one field and gaining access to the next via a 'enter button' entry.
- Field to Field movement within the same sub-section or section measured from leaving access of one field and gaining access to the next via a specific mouse click.
- Field to Field movement across different sections or sub-sections measured from leaving access of one field and gaining access to the next via a 'tab button' entry.
- Field to Field movement across different sections or sub-sections measured from leaving access of one field and gaining access to the next via a 'enter button' entry.
- Field to Field movement across different sections or sub-sections measured from leaving access of one field and gaining access to the next via a specific mouse click.

The average targeted time to complete these tasks over any selected hour time period will be less than 2 seconds. Consistent and continued failure to meet this target may be categorized by COUNTY as a Priority One service level. CONTRACTOR expects that the majority of the Field-to-Field movement as described above, excluding COUNTY network latency, which is agreed to be beyond CONTRACTOR's control, will perform within one second or less response time. The benchmark measurement will be set behind the CONTRACTOR firewall and if the parties determine there are substantial differences from that response time the parties will work in good faith to troubleshoot COUNTY network latency issues as it relates to the CONTRACTOR solution.

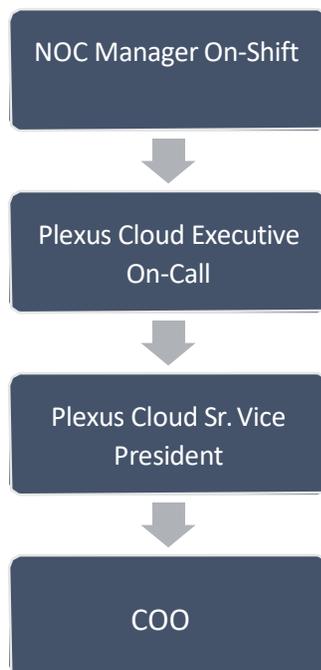
## Hosted System Performance Escalation

For Plexus Cloud Hosted clients, the primary support contact is the **Netsmart Operations Center (NOC)**. For service outages or critical support issues, please select the system down option noted below when engaging Netsmart Support.

**1-888-782-2615, Option 8**

The system down option should only be used in the cases of outages or critical support issues, all other requests should be triaged through the Netsmart primary support number options.

The NOC team will assist you with your issues, and automatically engage additional resources required to resolve the issue in a timely manner. In the event an escalation is required outside of the existing NOC team engagement, you can request to speak with the NOC Manager On-Shift, who will follow the escalation path detailed below.



For escalations outside of system down or critical support, your **Service Delivery Manager (SDM)** is also a resource available to engage by email or phone in the event you are not getting the level of service you expect.

## **Schedule L - Netsmart Subscription Products and Third Party Software Addendum**

1. **Introduction.** This Addendum is a supplement to the terms of the License and Services Agreement dated July 1, 2021 (“Effective Date”) by and between Netsmart Technologies, Inc. (“Contractor”), and the County of San Mateo, a political subdivision of the State of California, hereinafter referred to as (“County”), which will be referred to in this Addendum as the “Agreement”. The terms and conditions of this Addendum will apply to Subscription Products

and Services identified in Section 2 by check mark. All references to Schedules in this Addendum refer to the Schedules of this Addendum.

2. **Subscription Products and Services Descriptions.** Subscription Products and Services will include all generic versions, corrections, enhancements and improvements developed by Contractor during the Term of this Addendum:

**OrderConnect**  **Not Included**

The OrderConnect suite is an e-Prescribing and medication management product. The full version of this product has the ability to exchange web-based pharmaceutical information, prescriptions, medication orders, disease specific information, laboratory orders, and radiology/imaging and results with defined allied healthcare partners.

**CareConnect**  **Not Included**

A software service that enables clinical data to be shared between providers and other entities such as RHIOs Regional Health Information Organizations (“RHIOs”), Health Information Exchanges (“HIEs”), State agencies for public health organizations for immunizations, reportable labs and syndromic surveillance data in support of national standards related to continuity of care, and Contractor County to County referrals to support transitions of care with direct messaging capabilities.

**Care Guidance/Clinical Quality Metrics**  **Not Included**

Contractor Clinical Decision Support and Quality Measures ensure County’s utilizing a Netsmart CareRecord have the means necessary to meet all Meaningful Use stage 2 requirements for metric reporting and care guidance functionality. The Care Guidance rules are based upon national quality forums clinical quality measures, thus assuring clinician awareness and organizational improvement towards meeting quality outcomes measures. As data is aggregated on the Clinical Quality Metrics (“CQM”) Contractor will benchmark your organization’s performance on all required CQM.

3. **Supplemental Definitions**

Any capitalized term not defined below but used in this Addendum will have the meaning given to that term in the Agreement.

“Agent” means any person who is authorized under applicable law and regulations to transmit or relay prescription authorization information between a Prescriber and a pharmacy. An Agent is typically a nurse who is authorized by a physician to communicate with a pharmacy or laboratory on behalf of a Prescriber.

“Anniversary Date” means the annual calendar anniversary of the Effective Date.

“Care Provider” means an organization that provides medical or health services and any other person or organization that furnishes, bills, or is paid for health care in the normal course of

business including a hospital, critical access hospital, skilled nursing facility, or comprehensive outpatient rehabilitation facility.

“Charges” means the amounts to be paid by County for the right to use the Subscription Products and Services and for hardware or other Third Party Products acquired by County under the terms of this Addendum. The Charges and payment schedule are set forth in “Schedule A – Charges and Payment Terms” of the Agreement and referenced again in Schedule 3(a) of this addendum.

“Consumer” means an individual who is receiving services from a Care Provider, and who has the right to access specific portions of their electronic health record and the ability to exchange messages with their Care Provider through a Subscription Services Product.

“Drug Information Data” or “DID” means context-relevant drug database products licensed from one of the following publishers: Cerner Multum, Inc. (“VantageRx”), First DataBank Evaluations of Drug Interactions (“EDI”) or Thompson Reuters, Inc. (“UltiMedex”) that provides drug and allergy interaction and dosage information (collectively, “DID Publishers”).

“Non-Prescribing User” means any person who is granted limited access to OrderConnect for the purpose of editing information that is not required to be entered or modified by a Prescriber or Agent under applicable law and regulations. A Non-Prescribing User typically generates reports without modification of the information in the reports, and can update basic demographic information,

“Patient Data” or “Consumer Data” means names, addresses, social security numbers, medical records and any other information concerning or relating to Consumers which is deemed to be protected health information under the rules and regulations of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). Deidentified Data (as such term is defined by HIPAA) shall not be considered to be Patient Data.

“Prescriber” means any person who possesses a DEA number and who is authorized by law to write prescriptions.

“Service Level Agreement” means the minimum performance criteria that Contractor will meet while delivering the Subscription Service and the remedial action if performance falls below the target criteria as provided in Schedule 3(b).

“User” means an individual or entity, other than a Consumer, that has been granted access with a user ID and password to a Subscription Product or Service by the County.

#### **4. License Terms and Conditions**

- A. The Subscription Products and Services are specifically included within the grant of license and term of license as “Licensed Programs” under the Agreement.
- B. County grants to Contractor a non-exclusive, non-transferable license (the “Usage License”) to use all Patient Data for the sole purpose of operating the Subscription Products and Services for the benefit of County and its clients and for maintaining the Subscription Products and Services (for example, creating backups of the Patient Data or moving it between servers) so long as Contractor has a bona fide need to do so subject to and for the sole purpose required by this

Addendum and the Agreement. The Usage License does not confer on Contractor any right to share Patient Data with third parties other than Contractor employees or consultants who are bound by agreements that contain confidentiality provisions equivalent to those contained in the Agreement. The foregoing restriction on Contractor's use of Patient Data does not prohibit Contractor from making use of Deidentified Data as described and permitted under HIPAA, but any use of Deidentified Data requires County's prior written approval.

## **5. Charges and Payment Terms**

County shall pay Contractor for the Subscription Products and Services as provided in "Schedule A – Behavioral Health Information System (BHIS) Charges and Payment Terms" and "Schedule B – Family Health Services Information System (FHSIS) Charges and Payment Terms" of the Agreement. Failure to make timely payment is considered a material default of the Agreement.

## **6. County Obligations**

In addition to the obligations under the Agreement County agrees:

- A. That it has no ownership rights in data or information in the DID services or content.
- B. To restrict use of Drug Information Data to licensed healthcare professional directly connected with the County, either as an employee or an authorized affiliate. Such use shall be made only under the supervision of, and reliance upon, the clinical discretion and judgment of a licensed physician. As between the County and the publisher of the Drug Information Data, County assumes full responsibility for ensuring the appropriateness of using and relying upon the information supplied by the Drug Information Data publisher, in view of all attendant circumstances, indications and contraindications. Except as provided above, it will not otherwise make the DID content available to any person, or entity including the government, whether affiliated or not, except as required by subpoena or other legal process and after notice to the owner of the content.
- C. To maintain accurate and up to date Patient Data in all systems covered by the Agreement.
- D. To provide support to its Users and Consumers related to their use of the Subscription Products and Services.
- E. To notify Contractor in the event County becomes aware of or suspects misuse, unauthorized access, data corruption or any other threat to the security of the Subscription Products system and related data or if County receives a subpoena or other legal process requiring disclosure of Contractor confidential information or DID content.

## **7. Contractor Obligations**

In addition to the obligations of the Agreement, Contractor will be responsible for:

- A. Establishing SSL connectivity between the Consumer's computing device and the Care Provider's firewall;
- B. Meeting the service levels as stated in Addendum Schedule K(b);
- C. Keeping Patient Data confidential in accordance with the terms of the Agreement.

**8. Limitation on Cumulative Liability**

THE CUMULATIVE LIABILITY OF CONTRACTOR TO COUNTY FOR ANY ACTUAL OR ALLEGED DAMAGES ARISING OUT OF, BASED ON OR RELATING TO THE SUBSCRIPTION PRODUCTS AND SERVICES COVERED BY THIS ADDENDUM, WHETHER BASED UPON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR ANY OTHER LEGAL THEORY, WILL NOT EXCEED THE AMOUNT OF THE CHARGES PAID TO CONTRACTOR UNDER SCHEDULE A FOR THE PRIOR TWELVE (12) MONTHS.

**9. Versions**

Unless otherwise mutually agreed to in writing, Contractor shall, during the Netsmart-hosted term of the contract, maintain any and all Third-Party Software products at their most current version or no more than one version back from the most current version at no additional charge, provided that such Third-Party Software version upgrades can be installed and maintained with the Staff proposed in the Response for the Maintenance Services. However, Contractor shall not maintain any Third-Party Software versions, including one version back, if any such version would prevent County from using any functions, in whole or in part, or would cause Deficiencies in the System. If implementation of an upgrade to a Third-Party Software product requires personnel in addition to the Staff proposed in the Response for the Maintenance Services, County and Contractor shall discuss whether to implement such an upgrade and, if mutually agreed upon in writing, the additional Charges, if any, to be paid by County for such upgrade. Any additional costs that are charged by a Third-Party Software manufacturer for an upgrade to a Third-Party Software product that is being provided by Netsmart under the Netsmart-hosted environment that is not covered by such product's maintenance agreement shall be charged to and paid for by Contractor. Implementation of a new Version shall not result in any material loss of functionality from the prior version. Any Custom Software shall be supported in future Versions.

**10. List of Schedules**

- Addendum Schedule L (a)      Netsmart Subscriptions Charges and Payment Terms
- Addendum Schedule L (b)      Service Level Agreement

**Addendum Schedule L(a)**

**Netsmart Subscription Products - Contractor Professional Services, Third Party Products, and Annual Charges**

**All charges and Payment Terms are governed under “Schedule A – Behavioral Health Information System (BHIS) Charges and Payment Terms” and “Schedule B – Family Health Services Information System (FHSIS) Charges and Payment Terms” of the Agreement of the Agreement.**

Notwithstanding anything to the contrary, the terms of this Master Agreement will govern the relationship and mutual obligations between Contractor and County with respect to the Third-Party Products and in no manner will such terms diminish Contractor's obligations to County.

**OrderConnect is subject to Contractor's third party pass through provisions:**

\*Each facility is allowed to fax 100 fax pages directly from the application per month for each prescriber license purchased. Faxed pages in excess of that allowance in any calendar month will be billed at \$0.20 per page for the balance of that month.

\*\* No on-site travel is included for this product implementation.

MANDATORY DISCLAIMER ON DID PUBLICATIONS AND SERVICES: Information provided by the DID publishers is believed to be accurate, up-to-date, and complete, but no guarantee is made by any of the DID publishers to that effect. In addition, the drug information contained therein may be time sensitive. The DID publishers do not endorse drugs, diagnose patients or recommend therapy. The DID services are informational resources designed to assist licensed healthcare practitioners in caring for their patients and/or to serve end-users viewing this service as a supplement to, and not a substitute for, the expertise, skill, knowledge and judgment of healthcare practitioners. Healthcare practitioners should use their professional judgment in using the information provided. DID information is not a substitute for the care provided by licensed healthcare practitioners. The absence of a warning for a given drug or drug combination in no way should be construed to indicate that the drug or drug combination is safe, effective, or appropriate for any given patient. In connection with the use of RED BOOK information in Drug Information Data, County acknowledges and agrees that THE PRICES CONTAINED IN RED BOOK ARE BASED ON DATA REPORTED BY MANUFACTURERS. THE DID PUBLISHERS HAVE NOT PREFORMED ANY INDEPENDENT ANALYSIS OF THE ACTUAL PRICES PAID BY WHOLESALERS AND PROVIDERS IN THE MARKETPLACE. THUS, ACTUAL PRICES PAID BY WHOLESALERS AND PROVIDERS MAY WELL VARY FROM THE PRICES CONTAINED IN THE DATABASE AND ALL PRICES ARE SUBJECT TO CHANGE WITHOUT NOTICE.

**\*\*\* Direct Messaging is subject to Contractor's third party pass through provisions:**

I. SUBLICENSE. Inpriva, Inc. (Inpriva) hereby grants a limited nonexclusive and nontransferable sublicense for certain Direct Messaging Services and other Health Information Network Services (together, the "HIN Services"), including the right to store and use all information/data provided or obtained through use of the HIN Services (the "Inpriva Information"), through Netsmart (the "Sublicensor") to the end-user Sublicensee (the "End-User" or "Customer") for use within the territorial boundaries of the United States and the United States territories of Puerto Rico, Guam and the Virgin Islands (the "Permitted Territory") subject to a written agreement between Sublicensor and County. County (Netsmart County) acknowledges that Inpriva owns the HIN Services subject to the sublicense. County may not access or use the HIN Services or store Inpriva Information from, or send the Inpriva Information to, any location outside of the Permitted Territory without first obtaining Inpriva's prior written approval and entering into such written agreements as Inpriva may require.

II. PROTECTIONS AND NONDISCLOSURE. County agrees that it shall protect all Intellectual properties in the HIN Services, including without limitation, patents, copyrights, and trade secrets. Further, County shall not reverse engineer intellectual property associated with HIN Services. County may not allow a third party service provider (hereafter "Service Provider") to access or use the HIN Services or store or otherwise use Inpriva Information on its behalf without first obtaining Inpriva's written permission.

III. WARRANTIES AND INFRINGEMENT

(a) HIN Services. Contractor and Inpriva represent that HIN Services will substantially conform in all material respects with the requirements of this Agreement and their Specifications. If a Problem or Defect occurs while County is receiving Support Services, Contractor and/or Inpriva will correct the Problem or Defect in accordance with the Support Services provisions set forth in Schedule I.

(b) Infringement. Contractor and Inpriva further represent and warrant that it has the right to grant the licenses granted to County hereunder and in connection with HIN Services and that to the best of Contractor's knowledge the Portal does 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) Viruses and Disabling Mechanisms. Netsmart and Inpriva shall use commercially reasonable measures to screen HIN Services to avoid introducing any virus or other destructive programming that are designed (1) to permit unauthorized access or use by third parties to the software installed on County's systems, or (ii) to disable or damage County's systems. Contractor and Inpriva shall not insert into HIN Services any code or other device that would have the effect of disabling or otherwise shutting down all or any portion of HIN Services. Contractor and Inpriva shall not invoke such code or other device at any time, including upon expiration or termination of this Agreement for any reason.

(d) WARRANTY DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT TO WHICH THIS SCHEDULE IS ATTACHED AND, IN THIS SECTION, ANY USE BY SUBCOUNTY OF THE HIN SERVICES IS AT SUBCOUNTY'S OWN RISK. THE HIN SERVICES ARE PROVIDED FOR USE "AS IS" WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, INPRIVA AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS, STATUTORY OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

IV. LIMITATION OF LIABILITY. NO LIABILITY FOR DAMAGES. EXCEPT FOR BREACH OF SECTION 16 (COUNTY CONFIDENTIALITY), SCHEDULE K (CONFIDENTIALITY OF PATIENT INFORMATION), AND SCHEDULE K (BUSINESS ASSOCIATE AGREEMENT), INSURED CLAIMS, AND THE PARTIES' RESPECTIVE EXPRESS INDEMNITY OBLIGATIONS IN THIS AGREEMENT (INCLUDING IN SECTION 9 (INDEMNIFICATION)), IN NO EVENT SHALL INPRIVA OR ITS SUPPLIERS HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES IN ANY WAY ARISING OUT OF THE USE OR INABILITY TO USE ANY PRODUCT AND HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR LOSS OF DATA, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL INPRIVA'S CUMULATIVE LIABILITY ARISING OUT OF THIS SUBLICENSURE EXCEED THE AMOUNTS ACTUALLY PAID BY SUBCOUNTY TO SUBLICENSOR OR INPRIVA FOR THE HIN SERVICES PURSUANT TO THIS SUBLICENSURE.

V. RESPONSIBILITIES OF END-USER. 1. This Section applies to any means through which an End-User orders or accesses the HIN Services including, without limitation, system-to-system, personal computer or the Internet. 2. For the purposes of this Section, the term "Authorized User" means a Customer employee that

Customer has authorized to order or access the HIN Services and who is trained on Customer's obligations under this End-User License Agreement with respect to the ordering and use of the HIN Services and Inpriva Information. 3. Each Direct Address has a healthcare or healthcare-associated organization, person or device bound to it as reflected in an associated Direct Digital Certificate. This License, which grants access to the HIN Services is expressly conditioned upon compliance by the End-User with the terms and conditions of the Direct Digital Certificates, including those related to management of the HIN Services. 4. Customer shall ensure that only Authorized Users can order or have access to the HIN Services. 5. Customer shall take all necessary measures to prevent unauthorized ordering of or access to the HIN Services by any person other than an Authorized User for permissible purposes, including, without limitation, limiting the knowledge of the Customer security codes, member numbers, User IDs, and any passwords Customer may use (collectively, "Security Information"), to those individuals with a need to know. 6. Customer shall monitor compliance with the obligations of this Section, and immediately notify Inpriva if Customer suspects or knows of any unauthorized access or attempt to access the HIN Services. 7. If, subject to Section II, Customer uses a Service Provider to establish access to the HIN Services, Customer shall be responsible for the Service Provider's use of Security Information and ensure the Service Provider safeguards such Security Information through the use of security requirements that are no less stringent than those applicable to Customer under this Section. 8. Customer shall use commercially reasonable efforts to assure data security when disposing of any individually identified personal information obtained from Inpriva. Such efforts must include the use of those procedures issued by the federal regulatory agency charged with oversight of Customer's activities (e.g. the Office of Civil Rights) applicable to the handling of such information or records. 9. Customer shall use commercially reasonable efforts to secure Inpriva Information when stored on servers. 10. Customer is responsible for ensuring that Users are properly qualified to use the HIN Services and use them for appropriate purposes. It is the Customer's responsibility to review the access auditing reports for individual Users if that is deemed by Customer to be important for their HIPAA compliance. 11. Customer is responsible for establishing a trust policy to be used by the HIN Services to determine which recipients Users can send messages to and which senders the User can receive messages from. Customer is responsible for the completion of registration forms and agreements required for enrollment to use the HIN Services, including those establishing the identity of the Customer and the Customer's Representative. 12. Customer agrees to accurately complete its registration information in the as part of the registration process and maintain the accuracy of the information in an "Identity Registry" provided by Inpriva. Customer agrees to have this registration information checked for consistency with other information sources by the Inpriva and understand that inconsistencies may result in termination of HIN Services unless and until corrected by the Customer. Customer agrees to require that its Users maintain the accuracy of the information contained in the Identity Registry. 13. Customer acknowledges that information provided by the Customer and its Users may be included in Provider/Direct directories accessible to other organizations or persons having Direct addresses, unless the Customer notifies Inpriva otherwise. 14. Customer agrees to comply fully with all requirements (including but not limited to requirements regarding individuals receiving access to the HIN Services, and requirements regarding identity proofing of those individuals) that are set forth on these web pages relating to registration, enrollment and management of the HIN Services and for the HIN Services generally. The Participant further understands that such requirements may be updated by Inpriva from time to time in its sole discretion, and that it is the responsibility of the Customer to review the requirements on an ongoing basis and to ensure the Customer's continued compliance with those requirements. 15. If Inpriva reasonably believes that Customer has violated this Section, Inpriva may, in addition to any other remedy authorized by this End-User Agreement, with reasonable advance written notice to Customer and at Inpriva's sole expense, conduct, or have a third party conduct on its behalf, an audit of Customer's network security systems, facilities, practices and procedures to the extent Inpriva reasonably deems necessary, including an on-site inspection, to evaluate Customer's compliance with the data security requirements of this Section.

## **Addendum Schedule L(b)**

### **Service Level Agreement**

#### **1. Coverage and Definitions**

This Service Level Agreement (SLA) applies based upon the County's subscriptions of OrderConnect, CareConnect, and Care Guidance/Clinical Quality Metrics.

This Section sets forth the System Availability commitments for this Addendum. If monthly System Availability (as defined below) falls below 99.9%, Contractor will provide a credit against the County's next monthly Fees (under this Addendum) to account for the downtime. The appropriate credit percentage (%) will be determined based on the following table.

System Uptime %	Credit %
>= 99.9% to 100 %	0 %
>= 98.0% and < 99.8%	5%
97.0 to 97.9%	10%
95.0 to 96.9%	15%
< 94.9 or below	25%

#### **2. System Availability Calculation**

- a) Contractor will calculate System Availability as set forth below for each month during the Term of this Contractor Agreement.
- b) System Availability will be calculated as follows (and will be rounded to up to the next one tenth of a percentage point):

$$\text{System Availability} = [ (\text{Base Time} - \text{Unscheduled Downtime}) / (\text{Base Time}) ] \times 100$$

"Base Time" equals the product of the number of days in the applicable month multiplied by 24 hours multiplied again by 60 minutes. (i.e., NDays x 24 X 60 = Base Time)

"Unscheduled Downtime" equals the time (in minutes) during which the Production System is not operational (excluding "Scheduled Downtime") from Contractor's Hosting facility internet connection based on the measuring methodology documented below.

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

- c) County is permitted to audit the Unscheduled Downtime based on the methodology established below. Contractor agrees to cooperate with County in connection with any audit of the Unscheduled Downtime. This audit must take place within 30 days of the month end.
- d) Contractor recommends that County implement, on a timely basis, the Service Packages that will be provided to County by Contractor on a periodic basis. Contractor will advise County on Service Packages that may enhance performance and availability and will advise County of the advantages of implementing the Service Packages as well as the implication of electing not to implement the Service Packages. Contractor will perform the technical requirements needed for County to use the Service Packages that County elects to implement, at no additional charge and as part of the fees under this Addendum. County and Contractor will work together to establish a mutually agreeable implementation schedule for the Service Packages. Upon notice to County that the System's performance and availability will be adversely affected if County elects not to implement a Service Package, County will waive any credits set forth above, until such time as County performs its obligations as necessary to implement the required Service Packages.
- e) County must allow Contractor to implement the latest Contractor supported layered software version (i.e., OS, DBMS, etc.) and patches within six (6) months of the general support announcement from Contractor. Contractor will advise County regarding the layered software enhancements as well as the implications of electing not to implement the layered software enhancements. Contractor will perform the technical requirements needed for County to use the layered software enhancements that County elects to implement as part of the fees under this Addendum. County and Contractor will work together to establish an implementation schedule for the layered software enhancements. If Contractor provides notice to County that the System's performance and availability will be adversely affected if County elects not to implement the layered software enhancements, County waives its right to any credits set forth above until County implements the required layered software enhancements.
- f) If County is operating beyond the Scope of Use limits, County waives its right to any credits set forth above until County is in compliance with Scope of Use.
- g) The System will be considered in a System Stabilization Period during the seventy-two (72) hour window following the First Productive Use and following a Major System Change. During a System Stabilization Period, changes to the System may be required to achieve optimal performance and Unscheduled Downtime or Scheduled Downtime minutes do not apply.

### **3. Exceptions**

County shall not receive any credits under this SLA in connection with any failure or deficiency of

Hosting Availability caused or associated with:

- a) Circumstances beyond Contractor's reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, virus attacks or hackers, failure of third party software (including, without limitation, web server software, FTP Servers, or statistics) or inability to obtain supplies, or power used in or equipment needed for provision of services;
- b) Failure of access circuits to the Contractor Network, unless such failure is caused solely by Contractor;
- c) Scheduled maintenance, scheduled backups, scheduled restores and emergency maintenance and upgrades;
- d) Issues with FTP, POP, or SMTP County access;

- e) County's acts or omissions (or acts or omissions of others engaged or authorized by County), including, without limitation, custom scripting or coding (e.g., CGI, Perl, Java, HTML, ASP, etc.), any negligence, willful misconduct, or misuse of the Services;
- f) E-mail or webmail delivery and transmission;
- g) Outages elsewhere on the Internet that hinder access to your account. Contractor is not responsible for browser or DNS caching that may make your site appear inaccessible when others can still access it. Contractor will guarantee only those areas considered under the control of Contractor: Contractor server links to the Internet, Contractor's routers, and Contractor's servers.
- h) Use of a VPN or similar connection which is not exclusively within Contractor's control at both ends of such connection, and where the problem occurs in the part of the VPN which is not under Contractor's control.

#### **4. Scheduled Maintenance**

Contractor reserves the right to establish a monthly maintenance window for the purpose of upgrading, patching, modifying, and repairing portions or the entire ASP/Hosting environment. The monthly window is generally scheduled on the 3<sup>rd</sup> Sunday of the month, from 2:00AM – 5:00AM EST . If maintenance is outside of this window, Netsmart will give the County a minimum of ten (10) business days' notice prior to the maintenance.

#### **5. Credit Request and Payment Procedures**

In order to receive a credit, County must submit a request for credit to Contractor Accounting at: [AR@ntst.com](mailto:AR@ntst.com), within ten (10) business days after the incident supporting the request. Each request must include County's account number (per Contractor's invoice) and the dates and times of the unavailability of the services. If the unavailability is confirmed by Contractor as an incident eligible for credit, credits will be applied within two billing cycles after Contractor's receipt of County's request. Credits are not refundable and can be used only towards future billing charges.

Notwithstanding anything to the contrary herein, the total amount credited to County in a particular month under this SLA cannot exceed the total hosting fee paid by County for the month in which Services were impacted. Credits are exclusive of any applicable taxes charged to County or collected by Contractor and are County's sole and exclusive remedy with respect to any failure or deficiency in level of services described in this SLA if County applied for and received a credit. Nothing in this SLA precludes County from pursuing an alternate contract remedy for any future incident that may occur.