

NETSMART HOSTING ADDENDUM TO LICENSE

This Addendum, effective when fully executed by all parties (the "Addendum Effective Date"), is a supplement to the terms of the License and Services Agreement dated as of July 1, 2020, ("Master Agreement") by and between Netsmart Technologies, Inc. ("Netsmart") and County of Mendocino ("Client").

1. **PURPOSE OF ADDENDUM** This Addendum states the terms and conditions under which Netsmart will provide software hosting services and permit Client 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 Master Agreement. All references to Schedules mean the Schedules attached to this Netsmart Hosting Addendum to License unless otherwise indicated.

- a) "Client Hardware" means the computer hardware and communications equipment required by Client to log on to the System and use the Software Services and is the responsibility of Client to obtain.
- b) "Data" has the meaning provided in Section 6
- c) "Hosted System" means the hardware and software in Netsmart's data center that are used to provide access to the Licensed Programs as defined in the Master Agreement.
- 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 Client by Netsmart
- f) "Service Charges" means the amount to be paid by Client 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 Addendum Schedule 2(b) for professional services, Addendum Schedule 2(c) for third party products and Addendum Schedule 2(d) for recurring charges.
- 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 Client's site and is set forth in Addendum Schedule 2(e).
- i) "Year 1" means the period from the Addendum Effective Date through its one year anniversary.

3. **TERM**

) Netsmart hereby grants Client a non-transferable, non-exclusive right to access the Hosted System from Netsmart's Data Center for a period commencing on the Addendum Effective Date through June 30, 2022 (the "Initial Term").

a) Client has the option to terminate the hosting relationship with Netsmart prior to the expiration of the Initial Term, on sixty (60) days' notice to Netsmart 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.

b) At the expiration of the Initial Term this Agreement will be automatically renewed on an annual basis on the anniversary of the Addendum Effective Date for additional one year terms ("Option Terms"). Either party may terminate this agreement as of the last day of the Initial Term or any Option Term, by giving the other party not less than one-hundred and eighty (180) days, in the case of a termination by Netsmart, or sixty (60) days, in the case of termination by Client, written notice of termination prior to the last day of the Initial Term, or the last day of any Option Term as the case may be.

c) The Hosted Software Services may be used by Client only:

-) for Client's internal business purposes and not to process the data of any other entity; and
- i) for access by the maximum number of named users permitted under the Master Agreement; and
- ii) so long as the Client is not otherwise in default under the Master Agreement or this Addendum.

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

d) 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.

e) 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**

) 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 Agreement. Delinquent accounts will be subject to Netsmart's Delinquent Account Escalation Policy set forth at <http://www.ntst.com/ARpolicy>.

a) Netsmart agrees that it will not revise the Charges for Hosting Services during the first year of this Addendum. Thereafter, Charges will not be increased by more than 5% annually.

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 Client 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 CLIENT DATA**

As used in this paragraph 6, the word "Data" means all information acquired from Client that will reside on a Netsmart secure server and be maintained for Client during the performance of this Agreement. Netsmart will maintain the Data in accordance with generally accepted security standards applicable to protected health information and as required by law. Under no circumstance shall Netsmart attempt to

access or permit access to Data that is not required for the performance of Netsmart's obligations under this Addendum. Upon termination of this Addendum for any reason Netsmart will make a machine readable copy of the Data available to Client.

7. **GENERAL TERMS**

Except as expressly set forth in this Addendum, the relationship between Netsmart and Client 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 Client 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**

If separately purchased, Netsmart supports the use of Netsmart-provided web services in both the SaaS and hosted environmental platforms. A secure medium for transmission of web services data is required in order to connect to the Netsmart environment.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date first above written.

Netsmart Technologies Inc.

BY: 

Joseph McGovern
 Executive Vice President
 Netsmart Technologies, Inc.

TITLE: _____

DATE: 12/31/2020

County of Mendocino

BY: 

JENINE MILLER, PSY.D.

(PRINTED NAME)

TITLE: HHSA ASSISTANT DIRECTOR/
 BEHAVIORAL HEALTH DIRECTOR

DATE: 12/2/20

**Addendum Schedule 2(a)
Client Hardware**

Client is not purchasing hardware from Netsmart. If Client is acquiring their own hardware, Netsmart will require a detailed description of the intended server configuration for Netsmart's approval prior to purchase to ensure the hardware meets the below requirements. Technical requirements may change over the course of the Master Agreement and as such, Netsmart shall notify Client of any change in which Client is expected to reasonably adopt to meet then-current technical requirements.

Access to Netsmart's required hardware configurations is located on the following link by solution:

URL: <https://wikihelp.ntst.com/special:Userlogin>

Username: Netsmart_Prospect

Password: Netsmart1

**Addendum Schedule 2(b)
Netsmart Professional Services**

Item	Price	Payment Terms
Set-up Services: <ul style="list-style-type: none"> • Building the live and test databases, the reporting systems, and the web server system in the Netsmart Data Center • Installation of all Licensed Programs together with any patches for optimal performance • Configuration & testing of software programs • Establishing security infrastructure • Establishing backup/disaster recovery environments • Setting up VPN client, VPN appliance, or SSL connectivity One copy of client installable Checkpoint VPN Software (if applicable)	\$14,000	Due upon contract execution
Data Migration from Client's Server to Netsmart Data Center	\$6,400	Due upon contract execution
Total Charges - Professional Services	\$20,400	

**Addendum Schedule 2(c)
Third Party Products**

Item	Price	Payment Terms
<p>VPN Appliance – DUE ON CONTRACT EXECUTION Provides a secure VPN tunnel for all local network users, freeing your network personal from having to install individual VPN client software on each computer that will use the Netsmart Programs.</p> <p>Traffic passing through the VPN tunnel to the Netsmart Plexus Cloud Environment, must use Network Address Translation (NAT) to a Netsmart specified IP address range</p> <p>Client must agree to make any firewall modifications to accommodate upgrades or changes to the Netsmart Plexus Cloud Firewall infrastructure.</p>	\$400.00	Due on Contract Execution
VPN Appliance Annual Maintenance	\$110.40	First year due on contract execution. Due annually thereafter.
Total Charges - Third Party Products	\$510.40	

**Addendum Schedule 2(d)
Recurring Charges**

Description	Payment Due Annually
Hosting of Licensed Programs licensed by Client as described in Schedule A of the Master Agreement. <ul style="list-style-type: none"> Licensed Programs will be at the Netsmart Data Center. Annual price is based upon a rate of \$120 per concurrent user per month per year and a minimum purchase of 24 concurrent users per month per year. Annual fee will commence upon Addendum execution. Payments beyond Year 1 are due on each anniversary of the Effective Date during the Initial Term. Additional named users can be added at a rate not less than \$120 per concurrent user per month for a period of one year from the date of this Agreement. 	\$34,560
Checkpoint VPN Client Software (if applicable). Client installable on individual devices	Included
Perceptive Monthly Hosting based on fee of \$14.28 per concurrent user per month per year and a minimum purchase of 24 concurrent users per month per year.	\$4,112.64
Total Recurring Charges	\$38,672.64

*If Client has licensed Avatar and is moving to a Netsmart-hosted environment, the previous licenses for Cache from Intersystems are terminated and Client is no longer obligated to pay for Cache licenses as of the go-live date of the hosting environment.

Addendum Schedule 2(e)
SERVICE LEVEL AGREEMENT
For
Hosting Account Services

1. Coverage

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.

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

2. System Availability Calculation

- a) Netsmart will 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 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 times 24 hours times 60 minutes.

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

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

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

- e) Client must allow Netsmart to implement the latest Netsmart supported layered software version (i.e. OS, DBMS, etc.) and patches within six (6) months of the general support announcement from Netsmart. Netsmart will advise Client regarding the layered software enhancements as well as the implications of electing not to implement the layered software enhancements. Netsmart will perform the technical requirements needed for Client to use the layered software enhancements that Client elects to implement as part of the 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.
- f) If Client is operating beyond the Scope of Use limits, Client waives its right to any credits set forth above until Client is in compliance with Scope of Use.
- g) 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.
- h) Definitions.
 - i. *First Productive Use* means the date that data is being accessed or entered in the Hosted System for processing or review in Client's commercial environment
 - ii. *Major System Change* means a material change to the system, including a backend upgrade, operating system upgrade, new release upgrade, SAN upgrade, database upgrade
 - iii. *Scope of Use (for hosting)* means a metric used to define the limits of the hosting services as provided for in the Master Agreement (i.e. number of named/concurrent users)
 - iv. *Service Package* means software designed to fix identified Problems or Defects in the Licensed Program(s), including documentation and release notes made available with such patch or service pack.
 - v. *System Stabilization Period* is the period during the seventy-two (72) hour window following the First Productive Use and following a Major System Change

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, 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 3rd Sunday of the month, from 2:00AM – 5:30AM EST.

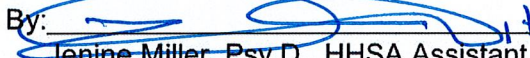
5. Credit Request and Payment Procedures

In order to receive a credit, Client must submit a request for credit to Netsmart Technologies, Inc. Accounting at AR@ntst.com, within ten (10) business days after the incident supporting the request. Each request must include Client's account number (per Netsmart's invoice) and the dates and times of the unavailability of the services. If the unavailability is confirmed by Netsmart as an incident eligible for credit, credits will be applied 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.

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.

IN WITNESS WHEREOF

DEPARTMENT FISCAL REVIEW:

By: 
Jenine Miller, Psy.D., HHSA Assistant
Director/ Behavioral Health Director

Date: 12/2/20

Budgeted: ☒ Yes ☐ No

Budget Unit: 4050/4012

Line Item: 86-2189

Org/Object Code: MHAD75/DD0035

Grant: ☐ Yes ☒ No

COUNTY OF MENDOCINO

By: _____
DAN GJERDE, Chair
BOARD OF SUPERVISORS

Date: _____

ATTEST:

CARMEL J. ANGELO, Clerk of said Board


By: _____
Deputy

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

CARMEL J. ANGELO, Clerk of said Board

By: _____
Deputy

INSURANCE REVIEW:

By: 
Risk Management

Date: 11/30/2020

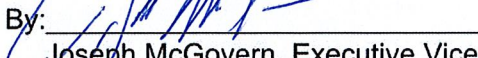
Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors

Exception to Bid Process Required/Completed ☒ EB 21-53

Mendocino County Business License: Valid ☐

Exempt Pursuant to MCC Section: Out of County Contractor

CONTRACTOR/COMPANY NAME

By: 
Joseph McGovern, Executive Vice
President

Date: 12/31/2020

NAME AND ADDRESS OF CONTRACTOR:


Netsmart Technologies, Inc.
11100 Nall Ave.
Overland Park, KS 66211

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

COUNTY COUNSEL REVIEW:

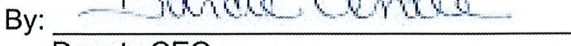
APPROVED AS TO FORM:

CHRISTIAN M. CURTIS,
County Counsel

By: 
Deputy

Date: 11/30/2020

EXECUTIVE OFFICE/FISCAL REVIEW:

By: 
Deputy CEO

Date: 11/30/2020