



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

C18

For the meeting of: June 26, 2018

Date: June 11, 2018

To: Board of Supervisors

From: Connie Beck, Director  
Department of Health and Human Services – Mental Health

*Handwritten signature and note: "for C.B. 6/12/18"*

Subject: Third Amendment to the Agreement with Netsmart Technologies, Inc. for Avatar Software and Services

RECOMMENDATION(S):

That the Board of Supervisors:

1. Approve the third amendment to the agreement with Netsmart Technologies, Inc. for Avatar software and services (Attachment 1);
2. Authorizes the Chair to sign three (3) originals of the third amendment to the agreement with Netsmart Technologies, Inc.; and
3. Directs the Clerk of the Board to return two (2) signed originals of the third amendment to the agreement to the DHHS-Contract Unit for forwarding to DHHS-Mental Health Administration.

SOURCE OF FUNDING:

Mental Health Fund

Prepared by Brendan Hartsell, Administrative Analyst

CAO Approval

*Handwritten signature of CAO*

REVIEW:

Auditor CO

County Counsel Sm

Human Resources KKG

Other \_\_\_\_\_

TYPE OF ITEM:

- Consent
- Departmental
- Public Hearing
- Other \_\_\_\_\_

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor Bass Seconded by Supervisor Fennell

Ayes Bass, Fennell, sunclberg, Bohn

Nays \_\_\_\_\_

Abstain \_\_\_\_\_

Absent Wilson

PREVIOUS ACTION/REFERRAL:

Board Order No. G-2, C-17, C-10, C-8, C-14, C-9

Meeting of: 12/13/2006, 6/7/2007, 4/11/2011, 5/12/2015, 6/28/2016, 7/18/2017

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: 6/20/18

By: \_\_\_\_\_

Kathy Hayes, Clerk of the Board

### DISCUSSION:

On November 2, 2004 California voters passed Proposition 63, the Mental Health Services Act (MHSA) that provided the first opportunity in many years for the California Department of Mental Health (now known as the California Department of Health Care Services) to provide increased funding, personnel and other resources to support county mental health programs and monitor progress toward statewide goals for children, transitional age youth, adults, older adults and families. This included the implementation of the Technical Needs project that provided DHHS the opportunity to replace its outdated and insufficient computer system with a secure electronic health records (eHR) system.

As of January 2014, federal health reform mandates that all medical providers (physicians, group practices, hospitals, and health systems, etc.) and organizations (laboratories, governmental agencies, and pharmacies, etc.) use electronic medical records (as a supplier, recipient or both). DHHS went live with electronic health records (eHR) on April 1, 2014 by using Netsmart Technologies, Inc. ("Netsmart") Avatar software.

Netsmart Avatar's integrated clinical and administrative information system:

- Provides secure, reliable, real-time access to client health record information where and when it is needed to support care.
- Functions as a centralized and integrated information resource for service providers during the provision of client care.
- Assists with the work of planning and delivering evidence-based care to individuals and groups of clients.
- Captures data used for continuous quality improvement, utilization review, risk management, resource planning, and performance measurement.
- Supports clinical applications such as computerized entry and decision support tools.
- Summarizes via electronic prescribing, prescribed medications from all providers for quality management, and coordination of care, and
- Provides compatibility with scheduling, billing and reporting applications as well as personal health record technologies.

On July 18, 2017 (item C-9), the Board approved the Second amendment to the Netsmart Avatar software license and services agreement for the period of August 1, 2017 through June 30, 2018; this third amendment to the agreement with Netsmart, extends the term of the agreement through June 30, 2019, modifies the agreement's number of purchased licenses, allows for the continuation of annual maintenance and support for DHHS licensed programs, and adjusts the budget.

A modern integrated clinical and administrative information system is necessary to support increased quality of care and operational efficiencies, satisfy federal Health Insurance Portability and Accountability Act (HIPAA) requirements for a compliant electronic health record, further system transformation, and improve outcomes for clients. Therefore, DHHS recommends the Board approves the third amendment to the agreement with Netsmart Technologies, Inc. for Avatar software and services.

### FINANCIAL IMPACT:

This third amendment to agreement with Netsmart Technologies, Inc. includes the following payment terms for FY 2018-19 (pro-rated to align payments with fiscal year): annual recurring charges and subscriptions, \$90,766.41 which includes the add-on services which are invoiced annually; and Netsmart professional services not to exceed \$65,000.00. Expenditures related to this third amendment to agreement have been included in DHHS-Mental Health Administration proposed budget for Fiscal Year (FY) 2018-19, budget unit 1170-424.



Funding for this third amendment to agreement is available from Mental Health Services Act, Medi-Cal Federal Financial Participation, and State Realignment. There is no impact to General Fund.

Approval of this third amendment to agreement will support your Board's strategic framework by providing for and maintaining infrastructure. In addition, the DHHS – Mental Health integrated clinical and administrative information system will create opportunities for improved safety and health.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose not to approve the third amendment to agreement; however, this alternative is not recommended. Failure to comply with federal and state eHR mandates would result in reduced claiming/billing on all claimable county Medicaid and Medicare services. For non-compliant counties and other health care providers, these claiming penalties will increase each year for a period of several years reducing county revenue. DHHS-Mental Health would also fall out of compliance with regulations, again reducing the ability to acquire and maintain funding, increase the risk of legal action, impact the ability to maintain site and provider certifications and be at risk of federal and state fines and penalties.

ATTACHMENTS:

Attachment 1: Third Amendment to the Agreement with Netsmart Technologies, Inc. for software and services (3 originals)

Attachment 2: Agreement with Netsmart Technologies, Inc. for fiscal years 2014-15 and 2015-16

Attachment 3: First Amendment to the Agreement with Netsmart Technologies, Inc. for fiscal years 2016-2017

Attachment 4: Second Amendment to Agreement with Netsmart Technologies, Inc. for Fiscal years 2017-2018

**THIRD AMENDMENT  
LICENSE AND SERVICE AGREEMENT  
BY AND BETWEEN  
COUNTY OF HUMBOLDT  
AND  
NETSMART TECHNOLOGIES, INC.  
FOR FISCAL YEARS 2014-2015 THROUGH 2018-2019**

This Third Amendment to the Netsmart Customer License and Service Agreement dated May 12, 2015, as amended on June 28, 2016 and July 18, 2017, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "LICENSEE," and Netsmart Technologies, Inc., a Delaware corporation authorized to do business in the State of California, hereinafter referred to as "NETSMART," is entered into this 26 day of June, 2018.

WHEREAS, LICENSEE, by and through its Department of Health and Human Services – Mental Health, desired to use and operate the Avatar electronic health record software system and receive related training, support and project management services; and

WHEREAS, on May 12, 2015, LICENSEE and NETSMART entered into a Netsmart Customer License and Service Agreement ("License and Service Agreement") regarding the use and operation of the Avatar system and the provision of related training, support and project management services; and

WHEREAS, on June 28, 2016, LICENSEE and NETSMART agreed to amend the License and Service Agreement to extend the term thereof, expand the scope services provided thereunder and adjust the rates of compensation set forth therein; and

WHEREAS, on July 18, 2017, LICENSEE and NETSMART agreed to amend the License and Service Agreement to further extend the term thereof, expand the scope of services provided thereunder and adjust the rates of compensation set forth therein; and

WHEREAS, the parties now desire to amend certain provisions of the License and Service Agreement in order to once again extend the term thereof, expand the scope of services provided thereunder and adjust the rates of compensation set forth therein.

NOW THEREFORE, the parties mutually agree as follows:

1. Section 5 – Term of the License and Service Agreement is hereby amended to read as follows:

5. TERM:

The term of this Agreement shall begin on July 1, 2014 and shall remain in full force and effect until June 30, 2019, unless sooner terminated as provided herein. For avoidance of doubt, the license granted to LICENSEE is perpetual.

2. The License and Service Agreement is hereby amended to delete Exhibit 1 – Schedule A – Deliverables, Pricing and Payment Terms ("Schedule A"), and replace it in its entirety with the modified version of Schedule A that is attached hereto and incorporated herein by reference. The modified version of Schedule A attached hereto shall supersede any and all prior versions thereof as of the effective date of this Third Amendment.

3. Except as modified herein, the License and Service Agreement dated May 12, 2015, as amended on June 28, 2016 and July 18, 2017, shall remain in full force and effect. In the event of a conflict


between the provisions of this Third Amendment and the original License and Service Agreement, or any prior amendments thereto, the provisions of this Third Amendment shall govern.


IN WITNESS WHEREOF, the parties have entered into this Third Amendment as of the first date written above.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
- (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER.

**NETSMART TECHNOLOGIES, INC.:**

By:  \_\_\_\_\_ Date: 6/11/18  
Name: Joseph McGovern  
Executive Vice President  
Netsmart Technologies, Inc.  
Title: \_\_\_\_\_

By:  \_\_\_\_\_ Date: 6/11/18  
Name: Timothy Donovan  
Title: Vice President + General Counsel

**COUNTY OF HUMBOLDT:**

By:  \_\_\_\_\_ Date: 6/26/18  
Ryan Sundberg  
Chair, Humboldt County Board of Supervisors

**INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:**

By:  \_\_\_\_\_ Date: 6/12/18  
Risk Management

**LIST OF EXHIBITS:**

Exhibit 1 – Schedule A – Deliverables, Pricing and Payment Terms



**EXHIBIT 1 – SCHEDULE A  
DELIVERABLES, PRICING, AND PAYMENT TERMS  
NETSMART TECHNOLOGIES, INC.  
FOR FISCAL YEARS 2014-2015 THROUGH 2018-2019**

<b>Netsmart Programs</b>	<b>Qty</b>	<b>Amount</b>	<b>Due – Invoices payable net 30 days</b>
<b><u>Netsmart Programs Already licensed under Prior Agreement</u></b>			
RADplus – Named Users: Includes Avatar System access and security management, modeling, table and dictionary maintenance and ad-hoc report integration	367	\$0	Already licensed under Prior Agreement (ongoing maintenance fees apply and are listed below)
Avatar Practice Management – Includes system management, client tracking, scheduling and reporting functions	1	\$0	Already licensed under Prior Agreement
Clinician Workstation – includes system management, assessment, progress notes, treatment planning and reporting functions	1	\$0	Already licensed under Prior Agreement
Avatar Order Entry License	1	\$0	Already licensed under Prior Agreement
Avatar eMAR License	1	\$0	Already licensed under Prior Agreement
Avatar Electronic Signature License	1	\$0	Already licensed under Prior Agreement
<b><u>Third Party Products and Services</u></b>			
Avatar Perceptive POS Scanning License	1	\$0	Already licensed under Prior Agreement
Avatar Perceptive Batch Scanning License	1	\$0	Already licensed under Prior Agreement
Avatar Cache Elite, Multi Server Platform Specific License – Concurrent	54	\$0	Already licensed under Prior Agreement (ongoing maintenance fees apply and are listed below)
Avatar Cache Enterprise License, Platform Specific, Single Server	63	\$0	Already licensed under Prior Agreement (ongoing maintenance fees apply and are listed below)
Avatar Cache Enterprise License, Platform Specific, Single Server	5	\$0	Already licensed under Prior Agreement (ongoing maintenance fees apply and are listed below)
AVATAR WEB SERVICES		\$0	Already licensed under Prior Agreement
<b><u>Annual Recurring Charges and Subscriptions</u></b>			
<b>Annual Maintenance and Support (existing RADplus and Cache Maintenance)</b>			
Avatar RADplus (Mnt)	367	\$45,005.18	Invoiced annually – prorated to align with fiscal year ending 6/30/2019
Avatar Order Entry (OE) (Mnt)	1	\$8,215.50	Invoiced annually – to be prorated at the start of the project for the remainder of the annual term.
AVATAR WEB SERVICES MAINTENANCE		\$2,184.00	Invoiced annually – prorated to align with fiscal year ending 6/30/2019

Caché Enterprise Multi-Server Platform Spec (Mnt)	63	\$7,529.91	Invoiced annually – prorated to align with fiscal year ending 6/30/2019
Caché Elite Multi-Server, Platform Spec (Mtn)	59	\$5,820.04	Invoiced annually – prorated to align with fiscal year ending 6/30/2019
Document Capture Maintenance (includes what was previously Avatar Perceptive POS Scanning Maintenance and Avatar Perceptive Batch Scanning Maintenance)	1	\$1081.60	Invoiced annually – prorated to align with fiscal year ending 6/30/2019
Annual Iron Mountain Escrow		\$1,968.51	Invoiced annually – prorated to align with fiscal year ending 6/30/2019
<b><u>Netsmart Services</u></b>			
Order Entry and eMar Implementation		\$0	n/a – Services not yet performed as requested by the County.
Perceptive Document/Data Conversion		\$0	Already licensed under Prior Agreement
PROFESSIONAL SERVICES HOURS (325 AT \$200/HOUR)		\$65,000.00	Invoiced monthly for hours used.
Diagnosis Content on Demand Add-On (Sub) (batch 1)	1	\$111.62	Invoiced annually – prorated to align with fiscal year ending 6/30/2019
Diagnosis Content on Demand Add-On (Sub) (batch 2)	1	\$81.55	Invoiced annually – prorated to align with fiscal year ending 6/30/2019
Diagnosis Content on Demand Subscription	1	\$3,564.00	Invoiced Annually
Diagnosis Content on Demand Subscription – DSM	1	\$1,392.00	Invoiced Annually
ORDERCONNECT NON-PRESCRIBER		\$468.00	Invoiced annually – prorated to align with fiscal year ending 6/30/2019
ORDERCONNECT NON-PRESCRIBER (SUB) (REPLACING INFOSCRIBER NON-PRESCRIBING USER)		\$57.00	Invoiced annually – prorated to align with fiscal year ending 6/30/2019
ORDERCONNECT NON-PRESCRIBER (REPLACING INFOSCRIBER PRESCRIBER AGENT)	30	\$2,565.00	Invoiced annually – prorated to align with fiscal year ending 6/30/2019
ORDERCONNECT NON-PRESCRIBER (SUB) (REPLACING INFOSCRIBER PRESCRIBER)	10	\$5,130.00	Invoiced annually – prorated to align with fiscal year ending 6/30/2019
ORDERCONNECT BASE FEE (SUB) (REPLACING INFOSCRIBER INTEGRATION FEE)		\$712.50	Invoiced annually – prorated to align with fiscal year ending 6/30/2019
ORDERCONNECT ELECTRONIC PRESCRIBING OF CONTROLLED SUBSTANCES (EPCS) (\$8/MONTH/PRESCRIBER - INVOICED ANNUALLY)	UP TO 30	UP TO \$2,880	
ORDERCONNECT EPCS TOKENS		UP TO \$2000	
	<b>Total</b>	<b>\$155,766.41</b>	
<p><b>TRAVEL AND LIVING AND TRAVEL TIME EXPENSES</b>  Travel time will be billed at a rate of \$150 per hour.  Billed monthly as incurred at the most economical rates</p> <p>Travel and Living Expenses are as follows:</p> <p>Meals: Netsmart’s current daily per diem rate is \$65.00  Airline: Coach Class on Major Airlines including any additional fees applied by the airline  Vehicle: Vehicle usage will be reimbursed at the current IRS Allowance  Rental Car: Mid-Size vehicle at local rates plus fuel, tolls, parking  Hotel: At local rates</p>			





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/11/2018

11/9/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies 444 W. 47th Street, Suite 900 Kansas City MO 64112-1906 (816) 960-9000	CONTACT NAME:	
	PHONE (A/C, No. Ext):	FAX (A/C, No):
E-MAIL ADDRESS:		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : Continental Casualty Company		20443
INSURER B : The Continental Insurance Company		35289
INSURER C : Indian Harbor Insurance Company		36940
INSURER D : National Fire Insurance Co of Hartford		20478
INSURER E :		
INSURER F :		

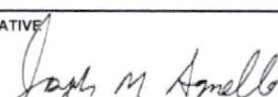
**COVERAGES** NSHOL01      **CERTIFICATE NUMBER:** 13445785      **REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
D	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> ADD. INDS-VENDORS  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	Y	N	5090734712	11/11/2017	11/11/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY	N	N	5090734743	11/11/2017	11/11/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DED <input type="checkbox"/> RETENTION \$	N	N	5088164810	11/11/2017	11/11/2018	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$ XXXXXXXX
B	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	5090734709(AOS) 5090734726(CA)	11/11/2017 11/11/2017	11/11/2018 11/11/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Technology Errors and Omissions Cyber Security	N	N	MTP0039166	11/11/2017	11/11/2018	\$3,000,000 AGGREGATE; ADD'L TERMS AND CONDITIONS APPLY

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
THE COUNTY OF HUMBOLDT, ITS OFFICERS, OFFICIALS, EMPLOYEES AND VOLUNTEERS ARE INCLUDED AS ADDITIONAL INSURED WITH RESPECT TO THE GENERAL LIABILITY COVERAGE, WHICH IS PRIMARY COVERAGE TO THE ADDITIONAL INSURED AND OTHER AVAILABLE INSURANCE WILL BE NON-CONTRIBUTORY AS REQUIRED BY CONTRACT, SUBJECT TO THE TERMS AND CONDITIONS OF THE POLICY. 30 DAYS NOTICE OF CANCELLATION AS REQUIRED BY CONTRACT, SUBJECT TO THE TERMS AND CONDITIONS OF THE POLICY. SUBROGATION IS WAIVED AS REQUIRED BY CONTRACT AND WHERE ALLOWED BY LAW, SUBJECT TO THE TERMS AND CONDITIONS OF THE POLICY. UMBRELLA COVERAGE IS FOLLOW FORM OF THE UNDERLYING POLICIES.

**CERTIFICATE HOLDER****CANCELLATION**

<b>13445785</b> COUNTY OF HUMBOLDT ATT: RISK MANAGEMENT 825 5TH STREET, ROOM 131 EUREKA CA 95501	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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