



Contract Number

17-188 A-2

SAP Number

4400002848

Department of Behavioral Health

Department Contract Representative	<u>Ellayna Hoatson</u>
Telephone Number	<u>(909) 388-0858</u>
Contractor	<u>Netsmart Technologies, Inc.</u>
Contractor Representative	<u>Paul Anderson</u>
Telephone Number	<u>(631) 969-7322</u>
Contract Term	<u>April 4, 2017 through June 30, 2024</u>
Original Contract Amount	<u>\$12,286,128</u>
Amendment Amount	<u>\$ 5,814,925</u>
Total Contract Amount	<u>\$18,101,053</u>
Cost Center	<u>9204062200 & 9204072200</u>

THIS CONTRACT is entered into in the State of California by and between San Bernardino County, hereinafter called the County, and Netsmart Technologies, Inc. referenced above, hereinafter called CONTRACTOR.

IT IS HEREBY AGREED AS FOLLOWS:

WITNESSETH:

IN THAT CERTAIN **Contract No. 17-188** by and between San Bernardino County, a political subdivision of the State of California, and Contractor for Behavioral Health Management Information System, which Contract first became effective April 4, 2017, the following changes are hereby made and agreed to, effective June 28, 2022:

- I. ARTICLE 2.1 TERM, is hereby amended to read as follows:
The Term of this Contract shall begin on Effective Date and shall continue for a period of seven (7) years through June 30, 2024. The Contract may be terminated early as provided herein.
- II. ARTICLE 3.3 MAXIMUM AMOUNT, is hereby amended to read as follows:

The Maximum amount payable under the terms of this contract shall be \$18,101,053, payable as set forth in Exhibit E and Exhibit E-1. This amount includes all compensation to CONTRACTOR, including but not limited to, travel and any expenses.

- III. This Amendment hereby adds Exhibit E-1, SUMMARY OF TOTAL PROFESSIONAL SERVICES PLUS MAINTENANCE/SUBSCRIPTION.
- IV. This Amendment hereby adds Exhibit L-1, INTELLIGENT MEDICAL OBJECTS, INC. third party pass through terms.
- V. This Amendment hereby adds Exhibit Q, SERVICE LEVEL AGREEMENT FOR HOSTING ACCOUNT SERVICES.
- VI. All other terms, conditions and covenants in the basic agreement remain in full force and effect.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

SAN BERNARDINO COUNTY

Netsmart Technologies, Inc.

(Print or type name of corporation, company, contractor, etc.)

▶

 Curt Hagman, Chairman, Board of Supervisors

By _____
(Authorized signature - sign in blue ink)

Dated: _____
 SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Name _____
(Print or type name of person signing contract)

Lynna Monell
 Clerk of the Board of Supervisors
 of San Bernardino County

Title Executive Vice President
(Print or Type)

By _____
 Deputy

Dated: _____

Address _____

FOR COUNTY USE ONLY

Approved as to Legal Form
 ▶

 Bonnie Uphold, Deputy County Counsel
 Date _____

Reviewed for Contract Compliance
 ▶

 Natalie Kessee, Contracts Manager
 Date _____

Reviewed/Approved by Department
 ▶

 Georgina Yoshioka, Interim Director
 Date _____

Exhibit E-1 - Summary of Total Professional Services plus Maintenance/Subscription

Item	Fiscal Year 21/22	Fiscal Year 22/23	Fiscal Year 23/24	Total Contract Amendment Spend
One Time Fees	\$500,194.00	\$0.00	\$0.00	\$500,194.00
Recurring Subscription / Maintenance Fees	\$244,244.83	\$2,473,407.64	\$2,597,078.04	\$5,314,730.51
Total	\$744,438.83	\$2,473,407.64	\$2,597,078.04	\$5,814,924.51

Notes:	
1	One Time Fees are total by Fiscal Year of fees identified in Professional Services Fee
2	Recurring Fees are total by Fiscal Year of fees identified in Proposed Exhibit E Tab
3	Proposed Professional Services Fee Payments are the total fees without hold back. The hold back fees may be paid in a later Fiscal Year.

Exhibit E-1 - Subscription/Maintenance Costs			Columns for Verification Purposes	
Payment date	Task Name	Payment**	Hosting	Self Hosted
Contract Execution	Maintenance - FY21-22 Q4	\$ 244,244.83	\$ 244,244.83	\$ -
07/01/22	Maintenance - FY22-23 Q1	\$ 618,351.91	\$ 384,685.60	\$ 233,666.31
10/01/22	Maintenance - FY22-23 Q2	\$ 618,351.91	\$ 384,685.60	\$ 233,666.31
01/01/23	Maintenance - FY22-23 Q3	\$ 618,351.91	\$ 384,685.60	\$ 233,666.31
04/01/23	Maintenance - FY22-23 Q4	\$ 618,351.91	\$ 384,685.60	\$ 233,666.31
07/01/23	Maintenance - FY23-24 Q1	\$ 649,269.51	\$ 403,919.88	\$ 245,349.62
10/01/23	Maintenance - FY23-24 Q2	\$ 649,269.51	\$ 403,919.88	\$ 245,349.62
01/01/24	Maintenance - FY23-24 Q3	\$ 649,269.51	\$ 403,919.88	\$ 245,349.62
04/01/24	Maintenance - FY23-24 Q4	\$ 649,269.51	\$ 403,919.88	\$ 245,349.62
Total Subscription/Maintenance Costs		\$5,314,730.51	\$ 3,398,666.76	\$ 1,916,063.73

*Includes recurring items for new hosting purchases + recurring fees for existing items. Does not include "future purchase" items. Also assumes full amount being invoiced.

**Payments will reduce by per quarter for CACHE maintenance once the County is Live on the Netsmart Hosting Solution.

Exhibit E-1 - Hosting Related Recurring Fees			
Item Description	FY 21/22 Annual Amount	FY 22/23 Annual Amount*	FY 23/24 Annual Amount*
Diagnosis Content on Demand Add-On (Sub)	\$ 2,499.84	\$ 2,624.83	\$ 2,756.07
Plexus Cloud Hosting -- Avatar - 467 Concurrent Users	\$ 672,480.00	\$ 706,104.00	\$ 741,409.20
Plexus Cloud Hosting - Avatar Data Warehouse - High Availability (LIVE)	\$ 26,520.00	\$ 27,846.00	\$ 29,238.30
Plexus Cloud Hosting - Avatar Data Warehouse - High Availability (TRAIN)	\$ 26,520.00	\$ 27,846.00	\$ 29,238.30
Plexus Cloud Hosting - Additional Environment (TRAIN)	\$ 15,600.00	\$ 16,380.00	\$ 17,199.00
Plexus Cloud Hosting - Avatar Identity and Access Management (NIAM) 1697 Named Users	\$ 40,728.00	\$ 42,764.40	\$ 44,902.62
Plexus Cloud Hosting - Avatar Scriptlink	\$ 8,400.00	\$ 8,820.00	\$ 9,261.00
Plexus Cloud Hosting - Perceptive - Disaster recovery (Concurrent User) - 467 Concurrent Users	\$ 80,025.12	\$ 84,026.38	\$ 88,227.69
Plexus Cloud Technical Account Manager	\$ 250,000.00	\$ 262,500.00	\$ 275,625.00
Avatar RADplus Named User Maintenance (1326 thru 1697)	\$ 62,496.00	\$ 65,620.80	\$ 68,901.84
Platform Hosting as a Service - PaaS (Citrix) - 467 Concurrent user access to Avatar	\$ 280,200.00	\$ 294,210.00	\$ 308,920.50
Total Annual Recurring Fees	\$ 1,465,468.96	\$ 1,538,742.41	\$ 1,615,679.53
Quarterly Payment	\$ 366,367.24	\$ 384,685.60	\$ 403,919.88
Payment per month	\$ 122,122.41	\$ 128,228.53	\$ 134,639.96

Intelligent Medical Objects, Inc. third party pass through terms:

This product(s) contains the IMO Problem IT terminology products ("Service") from Intelligent Medical Objects, Inc. ("IMO"). The Service and the Netsmart Software Application are separate products provided by separate entities.

Every effort has been made to ensure that the information provided in the Service is accurate, up-to-date, and complete, but no guarantee is made to that effect. In addition, the information contained herein may be time-sensitive.

The Service does not endorse drugs, diagnose patients, or recommend therapy. The Service is an informational resource designed to assist licensed healthcare practitioners in caring for their patients. Health practitioners should use their professional judgment in using the information provided. The Service is not a substitute for the care provided by licensed healthcare practitioners. IMO does not assume any responsibility for any aspect of healthcare administered with the aid of information the Service provides.

License Grant

The license granted herein is a non-exclusive, non-transferrable license to use the Service worldwide during the term of the agreement subject to the terms of this EULA. This license includes the rights to: (i) use the Service solely in conjunction with the Netsmart Software Application, and (ii) use of the Service for internal purposes in a non-production/non-clinical setting for back-up, archival, support, testing, training, and demonstrations purposes.

Restrictions

End User shall not cause or permit others to copy, duplicate, redistribute, loan, rent, retransmit, publish, license or sublicense or otherwise transfer or commercially exploit, the Service in whole or part. End User shall not prepare derivative works or incorporate the Service, in whole or part, in any other system or work or reverse engineer decompile, disassemble, decrypt, translate, alter, or modify the Service, in whole or part.

Disclaimer of Warranties

THE CUSTOMER ACKNOWLEDGES THAT THE SERVICE IS PROVIDED ON AN "AS-IS" BASIS. EXCEPT FOR WARRANTIES WHICH MAY NOT BE DISCLAIMED AS A MATTER OF LAW, IMO MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO REPRESENTATIONS OR WARRANTIES REGARDING THE ACCURACY OR NATURE OF THE CONTENT OF THE SERVICE, WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

THE SERVICE HAS BEEN DESIGNED FOR USE IN THE UNITED STATES ONLY AND COVERS ONLY DRUG PRODUCTS USED IN PRACTICE IN THE UNITED STATES. IMO PROVIDES NO CLINICAL INFORMATION OR CHECKS FOR DRUGS NOT AVAILABLE FOR SALE IN THE UNITED STATES. CLINICAL PRACTICE PATTERNS OUTSIDE THE UNITED STATES MAY DIFFER SUBSTANTIALLY FROM INFORMATION SUPPLIED BY THE SERVICE. IMO DOES NOT WARRANT THAT USES OUTSIDE THE UNITED STATES ARE APPROPRIATE.

The End User acknowledges that Updates to the Service are at the sole discretion of IMO. IMO makes no representations or warranties whatsoever, express or implied, with respect to the compatibility of the Service, or future releases thereof, with any computer hardware or software, nor does IMO represent or warrant the continuity of the features or the facilities provided by or through the Service as between various releases thereof.



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Any warranties expressly provided herein do not apply if: (i) the End User alters, mishandles or improperly uses, stores or installs all, or any part, of the Service, (ii) the End User uses, stores, or installs the Service on a computer system which fails to meet the specifications provided by IMO, or (iii) the breach of warranty arises out of or in connection with acts or omissions of persons or entities other than IMO.

Assumption of Risk, Disclaimer of Liability, Indemnity

THE END USER ASSUMES ALL RISK FOR SELECTION AND USE OF THE SERVICE AND CONTENT PROVIDED THEREIN. IMO SHALL NOT BE RESPONSIBLE FOR ANY ERRORS, MISSTATEMENTS, INACCURACIES OR OMISSIONS REGARDING CONTENT DELIVERED THROUGH THE SERVICE OR ANY DELAYS IN OR INTERRUPTIONS OF SUCH DELIVERY.

THE END USER ACKNOWLEDGES THAT IMO: (A) HAS NO CONTROL OF OR RESPONSIBILITY FOR THE END USER'S USE OF THE SERVICE OR CONTENT PROVIDED THEREIN, (B) HAS NO KNOWLEDGE OF THE SPECIFIC OR UNIQUE CIRCUMSTANCES UNDER WHICH THE SERVICE OR CONTENT PROVIDED THEREIN MAY BE USED BY THE END USER, (C) UNDERTAKES NO OBLIGATION TO SUPPLEMENT OR UPDATE CONTENT OF THE SERVICE, AND (D) HAS NO LIABILITY TO ANY PERSON FOR ANY DATA OR INFORMATION INPUT INTO THE SERVICE BY THE END USER.

IMO SHALL NOT BE LIABLE TO ANY PERSON (INCLUDING BUT NOT LIMITED TO THE END USER AND PERSONS TREATED BY OR ON BEHALF OF THE END USER) FOR, AND THE END USER AGREES TO INDEMNIFY AND HOLD HARMLESS FROM ANY CLAIMS, LAWSUITS, PROCEEDINGS, COSTS, ATTORNEY'S FEES, DAMAGES OR OTHER LOSSES (COLLECTIVELY "LOSSES") ARISING OUT OF OR RELATING TO (A) THE END USER'S USE OF THE SERVICE OR CONTENT PROVIDED THEREON OR ANY EQUIPMENT FURNISHED IN CONNECTION THEREWITH AND (B) ANY DATA OR INFORMATION INPUT INTO THE SERVICE BY END USER, IN ALL CASES INCLUDING BUT NOT LIMITED TO LOSSES FOR TORT, PERSONAL INJURY, MEDICAL MALPRACTICE OR PRODUCT LIABILITY. FURTHER WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL IMO BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, LOSS OF BUSINESS OR DOWN TIME, EVEN IF IMO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE INFORMATION CONTAINED WITHIN THE SERVICE IS INTENDED FOR USE ONLY BY PHYSICIANS AND OTHER HEALTHCARE PROFESSIONALS WHO SHOULD RELY ON THEIR CLINICAL DISCRETION AND JUDGEMENT IN DIAGNOSIS AND TREATMENT. AS BETWEEN THE END USER AND IMO, THE END USER HEREBY ASSUMES FULL RESPONSIBILITY FOR INSURING THE APPROPRIATENESS OF USING AND RELYING UPON THE INFORMATION IN VIEW OF ALL ATTENDANT CIRCUMSTANCES, INDICATIONS, AND CONTRADICTIONS.

Liability of IMO to the End User

Under no circumstance shall IMO be liable to the End User or any other person for any direct, indirect, or exemplary, special, or consequential damages arising out of or relating to the End User's use of or inability to use the Service or the content of the Service provided therein or any equipment furnished in connection therewith. IMO's total liabilities in connection with this Agreement are limited to the fees received by IMO under this agreement specifically relating to the End User's service or product which is the subject of the claim.

End User Documentation

End User is responsible for generating any user documentation related to the Services



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Security

End User shall establish the appropriate firewalls and security systems, such that the Service is accessed only by the defined End Users and is not used in an unauthorized manner.

Copyright Notices

End User shall identify IMO as the source and copyright holder for the Service. Further, End User agrees not to obscure the IMO copyright notice in any instance.

DSM-IV-TR License Required

Customer and End User acknowledge that use of the IMO Problem IT products by End Users requires a DSM-IV-TR license for each End user from the American Psychiatric Association.

The Customer and End User represent and warrant that they have, and will maintain for the term of the agreement, APA DSM-IV-TR and DSM-5 codes licenses directly from the APA or an authorized reseller for Customer's End Users.

SOLELY FOR CUSTOMERS ACCESSING THE SERVICE VIA HOMECARE:**Third Party Content**

- (a) ***CPT® Content.*** END-USER acknowledges that use of IMO® Procedure IT terminology requires CPT Editorial Content licenses that are separate from the license granted herein. End User acknowledges and agrees to the CPT Editorial Content terms and conditions set forth at www.e-imo.com/CPT, which may be updated from time to time.
- (b) ***SNOMED CT® Content.*** The Service includes SNOMED Clinical Terms (SNOMED CT®) which is used by permission of the International Health Terminology Standards Development Organisation (IHTSDO). All rights reserved. SNOMED CT®, was originally created by The College of American Pathologists. "SNOMED" and "SNOMED CT" are registered trademarks of the IHTSDO.
- (c) ***Other Content.*** END-USER acknowledges that the Service includes additional third-party content. END-USER agrees to the terms and conditions set forth at www.e-imo.com/LOINC, which may be updated from time to time.

Updated: August 16, 2016

**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 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 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. An event of Force Majeure;
- 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 cloud computing environment. The monthly window is generally scheduled on the 3rd Sunday of the month, from 2:00AM – 6:00AM 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.