— RESUBMISSION —

Agreement # 447-S1711 / #844, AMD I

CONTRACT AMENDMENT ROUTING SHEET

Date Prepared: 03/21/19   **Need Date:** ASAP

PROCESSING DEPARTMENT:
Department: Health & Human Svcs
Dept. Contact: Ashley Wells _AW_
Phone: X6906
Department
Head Signature: _Dall C_
Donald Semon, Director

☐ Auditor/Controller Notified ~ NO

CONTRACTOR:
Name: Netsmart Technologies, Inc.
Address: 4950 College Blvd.
Overland Park, KS 66211
Phone: 800-842-1973

Org Code: 5310

CONTRACTING DEPARTMENT: HHSA – Behavioral Health
Service Requested: NDA related to request for access to Avatar software hosting files.
Contract Term: One (1) Year   Contract Value: $0.00

COUNTY COUNSEL: (Must approve all contracts and MOU's)
Approved: X   Disapproved: _____   Date: 3/21/19   By: _PB7_
Approved: _____   Disapproved: _____   Date: _____   By: _____

*Do not recommend hause choice of law being Kansas.
UPDATED TO CA. AW.

HR APPROVAL:
Compliance with Human Resources requirements?   Yes ✔   No: _____
Compliance verified by: _____ 3/25/19

RISK MANAGEMENT: (all contracts & MOU's except boilerplate grant funding contracts)
Approved: X   Disapproved: _____   Date: 3/21/19   By: _____
Approved: _____   Disapproved: _____   Date: _____   By: _____

I would echo County Counsel's comments re: Kansas
UPDATED TO CA. AW.

OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract)
Approved: _____   Disapproved: _____   Date: _____   By: _____
Approved: _____   Disapproved: _____   Date: _____   By: _____

EL DORADO COUNTY COUNSEL
2019 MAR 21 [AM] 7 17

PLEASE EMAIL HHSA_CONTRACTS@EDCGOV.US FOR PICK-UP...THANKS!

ORIGINAL

AGREEMENT FOR SERVICES #447-S1711 (#844)
AMENDMENT I

This Amendment I to that Agreement for Services #447-S1711, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Netsmart Technologies, Inc., a Delaware Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 4950 College Boulevard, Overland Park, KS 66211; (hereinafter referred to as "Contractor");

RECITALS

WHEREAS, Contractor has been engaged by County to provide SAAS licensed software and support, in accordance with Agreement for Services #447-S1711, dated April 18, 2017, incorporated herein and made by reference a part hereof; and

WHEREAS, the parties hereto have mutually agreed to allow access to Avatar hosting files subject to a fully executed Mutual Non-Disclosure Agreement (NDA); and

WHEREAS, the parties hereto have mutually agreed update the Netsmart Master Agreement for SAAS Licensed Software and Services Table of Contents to include the aforementioned NDA; and

NOW THEREFORE, the parties do hereby agree that Agreement for Services #447-S1711 shall be amended a First time as follows:

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#447-S1711 / #844 AMD I

1) The Netsmart Master Agreement for SAAS Licensed Software and Services Table of Contents is hereby amended in its entirety to read as follows:

Table of Contents	
Title	**Description**
Master Agreement Expenditures	Charges and payment terms
Master Agreement Terms and Conditions	Governing terms and conditions of the Agreement
Schedule A	Support Services for Licensed Software
Schedule A-1	Hosting Service Level Agreement (SLA)
Schedule B	Hardware Configuration
Netsmart Subscription Addendum	Supplemental terms for Subscription Products
BAA	Business Associate Agreement
NDA	Mutual Non-Disclosure Agreement

Except as herein amended, all other parts and sections of that Agreement #447-S1711 shall remain unchanged and in full force and effect.

Requesting Contract Administrator Concurrence:
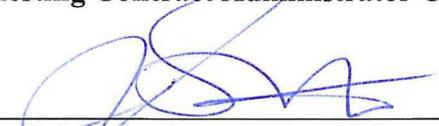
By: _____   Dated: 4/5/19
    Jaime Samboceti, MA, MFT
    Deputy Director
    Health and Human Services Agency

Requesting Department Head Concurrence:
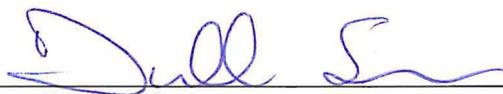
By: _____   Dated: 4-8-19
    Donald Semon
    Director
    Health and Human Services Agency

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IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to that Agreement for Services #447-S1711 on the dates indicated below.

-- COUNTY OF EL DORADO --

By: _Michele Werma_____   Dated: _4/16/19_____
      Purchasing Agent
      Chief Administrative Office
      "County"

-- CONTRACTOR --

NETSMART TECHNOLOGIES, INC.
(A DELAWARE CORPORATION)

By: _____   Dated: _4/5/19_____
      Joseph McGovern
      Executive Vice President
      "Contractor"
      ~~Corporate Secretary~~

(AMW)

#447-S1711 / #844 AMD I

MUTUAL NON-DISCLOSURE AGREEMENT

Agreement made this **8ᵗʰ** day of **March**, 2019 ("Effective Date") between Netsmart Technologies, Inc., a Delaware corporation with offices at 4950 College Boulevard, Overland Park, Kansas 66212 ("Netsmart") and County of El Dorado, 3057 Briw Road, Suite B, Placerville, CA 95667.
("Company").

[handwritten: 16th April]

Description of Confidential Information. Company and Netsmart wish to exchange information of a proprietary and confidential nature for the purpose of evaluating potential business relationship or business transaction between them. A more specific description may be included below (the "Purpose").
Disclosure of proprietary and confidential materials related to the Netsmart Plexus Cloud hosting environment.

Proprietary and confidential information includes, without limitation, all non-public data, materials, product specifications and information, business plans and strategies, marketing plans, financial information and projections, as well as confidential information of a party's clients, affiliates and stakeholders, and other non-public information disclosed or submitted by one party to the other ("Confidential Information").

Each party will disclose to the other party, only such Confidential Information as is necessary for purposes of facilitating the activities being conducted under this Agreement. A recipient of Confidential Information under this Agreement ("Recipient") will have a duty to protect only Confidential Information disclosed by the other party ("Discloser") that is identified herein or as confidential at the time of disclosure.

Each party is willing to disclose Confidential Information upon conditions which assure that the Confidential Information will be protected from improper use or public disclosure. To assure such protection and to clarify each party's obligations during and after disclosure of the Confidential Information the parties agree as follows:

Term. This Agreement controls only Confidential Information that is disclosed within one (1) year after the Effective Date of this Agreement.

Protection of Confidential Information. For a period of three (3) years from the Effective Date of this Agreement, Recipient will hold Discloser's Confidential Information in confidence and restrict its distribution solely to those employees or agents who have a need to use or evaluate the Confidential Information for the Purpose. Recipient agrees, unless required by law or with prior written consent from the Discloser, not to make Discloser's Confidential Information available in any form to any third party for any reason other than the Purpose and to obtain confirmations from a third party that it will comply with the terms of this Agreement. Recipient will take all steps reasonably necessary to protect and prevent unauthorized disclosure of Confidential Information but in no event exercise less than reasonable care.

Exclusions. The commitments set forth above will not extend to Confidential Information received by a party which: (a) was known to the party prior to the date of such disclosure, without an obligation of confidence, as evidenced by its written records; (b) was known to the public prior to the date that Confidential Information was received; (c) becomes known to the public subsequent to the date it was received through no act or failure to act on the part of the Recipient; (d) corresponds in substance to Confidential Information disclosed to the Recipient at any time by a third party having a bona fide right to disclose or make the same available to the Recipient; (e) is developed by employees of the Recipient independently of and without reference to the Confidential Information; or (f) is required to be disclosed by the Recipient pursuant to judicial or other government order, provided the Recipient will give the other party reasonable notice prior to such disclosure and comply with any applicable protective order.

Proprietary Rights. Neither party to this Agreement acquires any intellectual property rights in any Confidential Information disclosed under this Agreement. Confidential Information is provided without warranty of any kind.

Limitation of Liability. It is agreed and understood that monetary damages would not be a sufficient remedy for a breach of this Agreement, and that in addition to all other remedies available at law or in equity, the parties may seek equitable relief, including injunction and specific performance, without proof of actual damages.

Independent Action. Neither party has any obligation under this Agreement to purchase or otherwise acquire any service or item from the other party. The parties do not intend to form a partnership or joint venture by executing this Agreement.

Governing Law. This Agreement will be interpreted in accordance with the laws of the State of California. If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, it will be deemed stricken from this Agreement and the balance of the Agreement will remain in full force and effect.

Notices. All notices provided hereunder by a party will be sent Certified Mail Return receipt Requested to the other party at the address set forth above or at such other address as a party may provide in writing pursuant to this notice clause.

IN WITNESS WHEREOF, Company has hereto executed this Agreement as of the Effective Date first above written.

COMPANY: **County of El Dorado**

BY: *Michele Weimer* (signature)

Michele Weimer
(PRINTED NAME)

TITLE: Purchasing Agent

DATE: 4/16/19

NETSMART TECHNOLOGIES INC.:

BY: *(signature)*

Joseph Mc Govern
(PRINTED NAME)

TITLE: Executive Vice President

DATE: 3/27/19