



WASHOE COUNTY

"Dedicated To Excellence in Public Service"

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CM/ACM	<u>KS</u>
Budget	<u>MM</u>
DA	<u>LA</u>
Comptroller	<u>na</u>
HR	<u>na</u>
Risk	<u> </u>

STAFF REPORT

BOARD MEETING DATE: December 8, 2015

DATE: November 17, 2015

TO: Board of County Commissioners

FROM: Amber Howell, Director - Social Services

THROUGH: Kevin Schiller – Assistant County Manager

SUBJECT: Approve an agreement between Netsmart Technologies, Inc. and Washoe County for purchase of myAvatar software upgrade, new implementation and support for the Social and Senior Services Departments in the amount of \$418,928.68 effective December 8, 2015.” (All Commission Districts)

SUMMARY

This agreement will support the upgrade of the eleven year old Avatar system currently used by Adult Services for client management to the current myAvatar version. The agreement will also support a new implementation of myAvatar in Senior Services that will replace the Social Assistance Management System (SAMS) currently used by the department which is no longer supported by the developer. As the County moves toward integrating Social and Senior Services into a single Human Services Agency, the implementation of a single client management system will allow for continuity in services between adults and seniors, streamline business processes, create a single data source and increase staff productivity.

Strategic Objective supported by this item: Safe, Secure and Healthy Communities

PREVIOUS ACTION

The Board of County Commissioners approved the purchase from Netsmart, previously known as Creative Socio-Medics, in May of 2004

BACKGROUND

In May of 2004 the Board approved a contract with Creative Socio-Medics to replace an unsupported and failing system in the Adult Services Division. In addition to the failing system, new requirements were imposed upon the Division due to the implementation of Federal mandates that arose out of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The Division has used the current software since 2004 without any significant upgrades to functionality and is now in a position where an upgrade is necessary if we are to continue to use the program. The upgrade was delayed during the recession due to fiscal concerns.

The software performed well for the business of the Division prior to the implementation of the Affordable Care Act (ACA). Post implementation of the ACA the primary services of the Division have changed from payment of medical services to providing housing, homeless services and a variety of social services outreach programs. The upgraded version of Avatar is more robust and fits well with the business of the Division.

Senior Services currently uses SAMS for case management and to track and report data on the services provided to seniors. As of April 2015 SAMS is no longer supported by the developer and would require an upgrade to a newer version at a cost of approximately \$250,000. An analysis was performed by Social Services, Senior Services and Technology Services to determine the best course of action moving forward related to the SAMS system. SAMS was evaluated along with myAvatar to determine the best system to meet the needs of both Adult and Senior Services moving forward. myAvatar was the unanimous choice as it will meet the current and future needs of both departments as it provides a robust case management system that is customizable to the specific needs of Washoe County. In addition, myAvatar will provide Senior Services the ability to bill using the new ICD 10 codes, medication management for Daybreak clients, allow for the collection of necessary information to meet the reasonable use requirements of the Affordable Care Act (ACA) and enable the department to track and report data as required by various funding agencies. The case management systems implemented by Senior Services must meet the reasonable use mandate in order to comply with Medicaid reimbursement guideline. Medicaid reimbursements provide approximately 35% of the financial resources used to operate the Adult Day Health (Daybreak) program.

The mAvatar program will provide the ability for comprehensive planning to meet the changing needs of the adult and senior population because of the ability to use a single data system for system planning. The system is adaptable and will allow changes as programs are modified or new programs are implemented. One system between Adult and Senior Services promotes continuity between the two areas and will provide for a better service delivery model for the clients served.

FISCAL IMPACT

The anticipated expenditure of \$418,928.68 for purchase and implementation of software, training and support will provide an upgrade of Adult Services software and an implementation of new software in Senior Services. Sufficient adopted budget authority in master cost center 179300 exists in support of this agreement.

RECOMMENDATION

Approve an agreement between Netsmart Technologies, Inc. and Washoe County for purchase of myAvatar software upgrade, new implementation and support for the Social and Senior Services Departments in the amount of \$418,928.68 effective December 8, 2015.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be: "Move to approve an agreement between Netsmart Technologies, Inc. and Washoe County for purchase of myAvatar software upgrade, new implementation and support for the Social and Senior Services Departments in the amount of \$418,928.68 effective December 8, 2015."

**CONTRACT TO Washoe County Department of Social Services
Pricing Provided Expires: December 9, 2015**

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Terms and Conditions

THESE TERMS AND CONDITIONS (this "**Agreement**") are entered into as of December 8, 2015 (the "**Effective Date**") by and between NETSMART TECHNOLOGIES, INC. ("**Netsmart**") and WASHOE COUNTY ("**Customer**") shall be a supplement to the License and Service Agreement between the parties dated June 30, 2004 ("Master License Agreement"). (Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the License Agreement.)

WHEREAS, Customer desires to purchase from Netsmart, and Netsmart desires to sell and license to Customer, certain software products and services (the "**Product**" or "**Products**") as defined in the parties' statement of work and pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the Recital above, which is incorporated herein by this reference, and the mutual covenants contained herein and other good and valuable consideration, the parties agree as follows:

1. Product Sale, License and Delivery

1.1 Sale and License. Pursuant to the Computer Software License Agreement (the "**License Agreement**"), attached hereto as part of Exhibit "D" and incorporated herein by this reference, to be executed contemporaneously with this Agreement, Netsmart shall license to Customer, and Customer agrees to purchase licenses from Netsmart (the "Products"). The license shall commence upon execution by both parties of this Agreement and Exhibit D.

1.2 Delivery & Support. Products, including software or access to software, documentation required for installation thereof and license keys, shall be delivered and implemented by Netsmart to Customer according to the terms and conditions set forth herein and in the parties' Statement of Work, attached hereto as Exhibit "C" and incorporated herein by this reference upon the execution of this Agreement; *provided, however,* Project Start Meeting will commence once the Contract Signing Payment is received by Netsmart from Customer. Netsmart shall also provide to Customer that support as described in and pursuant to the terms and conditions in the parties' Support Agreement attached hereto as part of Exhibit "E" and incorporated herein by this reference.

2. Prices & Payment

2.1 Prices. Customer agrees to purchase licenses to the Products at the prices set forth in the Pricing Exhibit attached hereto as Exhibit "A" and incorporated herein by this reference. All prices exclude taxes, customs and duties. These prices will remain valid during the Term of this Agreement (as defined below). Netsmart may adjust prices thereafter as described in this Agreement.

2.2 Payment. Netsmart shall invoice Customer and Customer shall make payments according to the Payment Exhibit attached hereto as Exhibit "A" and incorporated herein by this reference, provided Customer has formally signed-off on each milestone and/or deliverable as set forth in Exhibits C.

2.3 Manner and Place of Payment. All payments hereunder shall be payable in U.S. dollars. All payments owed under this Agreement shall be made by check or wire transfer in immediately available funds to a bank and account designated in writing by Netsmart, unless otherwise approved by Netsmart.

2.4 Taxes and Fees. All taxes and/or fees levied on account of the payments accruing to Netsmart under this Agreement shall be paid by Customer for its own account. It will be the Customer's sole responsibility to ensure that taxes are paid to the proper taxing authority. It will be the Customer's sole responsibility to ensure that fees are paid to the proper authority. Taxes and fees may be deducted from payments made to Netsmart only if Customer tax and fee obligation is identified in "Exhibit A: Pricing Proposal" of this agreement.

3. Limited Warranty and Limited Remedies

Netsmart warrants that the Products sold under this Agreement will conform in all material respects with the Product Documentation and will be conforming and free from defects in material and workmanship. Notwithstanding anything contained in this Agreement to the contrary, the warranty of Netsmart as provided herein shall be void if any alterations, modifications or work have been performed on such Product, or to the extent that any alleged defect is the result of abuse, misuse, improper maintenance or storage, accident, action or inaction on the part of any party other than Netsmart. Nor shall Netsmart be responsible (a) for the quality or condition of any materials supplied by or through Customer, or (b) for any defect to the extent due to uses that do not conform to the applicable instructions. Subject to the foregoing, if a Product is not as warranted and Customer notifies Netsmart in writing, Netsmart will, at its option, promptly repair or replace the defective Product in accordance with Exhibit E. CUSTOMER'S EXCLUSIVE REMEDY IN THE EVENT OF A BREACH OF THIS SECTION AND NETSMART'S SOLE OBLIGATION IS TO MODIFY THE SOFTWARE TO ELIMINATE THE PROBLEM OR DEFECT. THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR USE.

4. Default

4.1 Event of Default. The occurrence of any one or more of the following shall constitute an **“Event of Default”** under this Agreement:

- a) Customer fails to pay to Netsmart any charge, costs, or other payment accruing hereunder within sixty (60) calendar days of the invoice date if such delinquency has not been corrected within ten (10) calendar days after Netsmart has given Customer written notice of such delinquency;
- b) Customer fails to perform any obligation set forth in this Agreement, repudiates any obligation set forth in this Agreement, or wrongfully rejects conforming and non-defective Products by Customer if such failure has not been corrected within sixty (60) calendar days after Netsmart has given Customer written notice of such failure;
- c) Netsmart’s failure to perform any obligation set forth in this Agreement if such failure has not been corrected within sixty (60) calendar days after Customer has given Netsmart written notice of such failure; or
- d) Customer’s failure to start Project Start Meeting on a date mutually agreed-upon by Customer and Netsmart.

4.2 Effect of Default. Upon the occurrence of any Event of Default, the party adversely affected may halt all pending and/or planned activities on Project Start Meeting; and/or terminate this Agreement effective immediately following an unsuccessful cure period. If Customer is the defaulting party and remains liable for any monetary obligation for any product or service delivered pursuant to this Agreement, Netsmart may accelerate and declare all such outstanding obligations immediately due and payable. If Netsmart is the defaulting party, Customer shall be entitled to seek all available remedies at law and in equity. The adversely affected party may proceed against the other in any lawful manner for any legal relief, including satisfaction of amounts owed. Netsmart may proceed against Customer in any lawful manner to repossess Products remaining in Customer’s possession to satisfy, in whole or in part, Customer’s obligations under this Agreement.

5. Indemnification

5.1 Indemnification by Netsmart. Netsmart hereby agrees to save, defend and hold Customer and its directors, officers, employees and agents (each, a **“Customer Indemnatee”**) harmless from and against any and all claims, suits, actions, demands, liabilities, expenses and/or loss, including reasonable legal expense and attorneys’ fees (collectively, **“Losses”**) to which any Customer Indemnatee may

become subject as a result of (a) any claim, demand, action or other proceeding by any person or entity other than Netsmart or Customer ("**Third Party**") to the extent such Losses arise directly or indirectly out of the breach by Netsmart of any warranty, representation, covenant or agreement made by Netsmart in this Agreement; and/or (b) any claim alleging that any Product directly infringes a copyright, a U.S. patent pending or patent issued as of the Effective Date, or a trademark of a Third Party.

5.2 Indemnification by Customer. Customer hereby agrees to save, defend and hold Netsmart and its respective directors, officers, employees and agents (each, a "**Netsmart Indemnitee**") harmless from and against any and all Losses to which any Netsmart Indemnitee may become subject as a result of any claim, demand, action or other proceeding by any Third Party to the extent such Losses arise directly or indirectly out of: (a) the use, handling, storage, sale or other disposition of Product by Customer, including the combination of Product with any of Customer's products, hosting service, hardware, or business processes, unless Netsmart caused or contributed thereto; (b) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a Third Party; or (c) the breach by Customer of any warranty, representation, covenant or agreement made by Customer in this Agreement.

5.3 Control of Defense. Any entity entitled to indemnification under this Section 5 shall give written notice to the indemnifying party of any Losses that may be subject to indemnification promptly after learning of such Losses, tender control over the defense and settlement of such Losses to the indemnifying party (provided that indemnifying party may not enter into a settlement affecting indemnified party's interests without indemnified party's consent), and provide reasonable cooperation in the defense of the Losses at indemnifying party's expense. Indemnified party may participate in the defense with counsel of its choice at its own expense.

6. Limitation of Liability

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR RELIANCE DAMAGES OF ANY KIND ARISING FROM OR RELATING TO THIS AGREEMENT, EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. In addition, Netsmart shall not be liable to Customer for any damages arising from or relating to this Agreement exceeding the total of payments made by Customer to Netsmart under this Agreement, up to five hundred thousand dollars (\$500,000), even if Netsmart knew or should have known of the possibility of such damages. In addition, Customer will not waive and intends to assert available defenses and limitations contained in Chapter 41 of the Nevada Revised Statutes. Contract liability of both parties shall not be subject to punitive damages. Actual

damages for Customer's breach of this Agreement shall never exceed the amount of funds that have been appropriated for payment under this Agreement for the fiscal year budget in existence at the time of the breach.

7. Confidentiality

The term "Confidential Information" means all Netsmart Confidential Information and all Customer Confidential Information as defined herein and in any attachment hereto. The term "Netsmart Confidential Information" means the Software and Documentation, including any subsequent revisions thereto, and any trade secrets related thereto, this Agreement and all Schedules and Attachments thereto, and any proposals, price quotations, estimates, statements of work or other proprietary information provided by Netsmart to Customer which Netsmart labeled "Confidential" or "Proprietary" at the time of disclosure or, if the disclosure is oral, is reduced to writing and marked "Confidential" or "Proprietary" within ten (10) days of the time of the first oral disclosure. The term "Customer Confidential Information" means Customer's other software and computer systems, personal data and information concerning Customer's law enforcement activities and systems and other proprietary information disclosed by Customer to Netsmart which Customer labeled "Confidential" or "Proprietary" at the time of disclosure or, if the disclosure is oral, is reduced to writing and marked "Confidential" or "Proprietary" within ten (10) days of the time of the first oral disclosure.

Non-Disclosure of Confidential Information. Neither Customer nor Netsmart shall disclose or use the other's Confidential Information for any purpose not expressly permitted by this Agreement unless such disclosure is expressly authorized in writing by the owner of said information or required under law.

Exclusions. Neither Netsmart nor Customer shall have any obligation to limit disclosure of the following information:

- i. Information in the public domain at the time it is communicated. Information shall not be deemed in the public domain if only a minor portion of such information is in the public domain, or if substantially all the information is found only by combining information from multiple public domain sources;
- ii. Information that enters the public domain through no fault of the non-disclosing party;

- iii. Information that enters the public domain through a breach of this Agreement by the non-disclosing party;
- iv. Information which the non-disclosing party can establish by its written or electronic records to have been in its possession prior to and independent of the disclosing party's communication of that information to it; and
- v. Information required to be disclosed by Customer as a local government pursuant to Nevada law.

8. Term & Termination

a) 8.1 Termination. Either party shall have the right to terminate this Agreement for any reason or for no cause upon ninety (90) calendar days' written notice to the other party.**8.2 Effect of Termination.** Termination of this Agreement shall not relieve either party of any obligation accruing prior to such expiration or termination, including Customer's obligation to make payment for all delivered products and service, where Customer provided sign-off, at the time of the effective date of termination, provided that termination of this Agreement due to Netsmart's default may result as set forth in paragraph 4.2 above. The obligations and the rights of the parties under Sections 5, 6 and 7 herein shall survive expiration or termination of this Agreement.

9. Dispute Resolution

9.1 Initial Resolution by Meeting. PARTIES SHALL ATTEMPT TO RESOLVE AMICABLY ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY ALLEGED BREACH OR FRAUD IN THE INDUCEMENT HEREOF, BY MEETING WITH EACH OTHER WITHIN TEN (10) CALENDAR DAYS AFTER WRITTEN NOTICE OF A DISPUTE IS DELIVERED FROM ONE PARTY TO THE OTHER PARTY. SUBSEQUENT MEETINGS MAY BE HELD UPON MUTUAL AGREEMENT OF THE PARTIES.

9.2 Mediation of the Dispute. IF THE DISPUTE IS NOT RESOLVED WITHIN TEN (10) CALENDAR DAYS OF COMMENCEMENT OF SUCH MEETINGS, THE PARTIES SHALL SUBMIT THEIR DISPUTE, IN GOOD FAITH, TO MEDIATION CONDUCTED BY A MUTUALLY SELECTED MEDIATOR. THE MEDIATION SHALL BE CONDUCTED WITHIN TWENTY (20) CALENDAR DAYS OF THE FAILURE OF INITIAL RESOLUTION EFFORTS AND SHALL BE HELD IN RENO, NEVADA, OR SUCH OTHER LOCATION AND/OR DATE AS MUTUALLY AGREED BY THE PARTIES. IN THE EVENT MEDIATION IS UNSUCCESSFUL, THE PARTIES RESERVE THEIR LEGAL RIGHTS TO PURSUE RELIEF IN THAT COURT DESCRIBED IN PARAGRAPH 10.3 BELOW. THE MEDIATOR'S COSTS SHALL BE SPLIT EQUALLY BY THE PARTIES.

10. Miscellaneous

10.1 Assignment. Neither this Agreement nor any rights or obligations hereunder may be assigned or otherwise transferred by either party without the prior written consent of the other party (which consent shall not be unreasonably withheld); *provided, however*, that Netsmart may assign this Agreement and its rights and obligations hereunder without Customer's consent in connection with the transfer or sale of all or substantially all of Netsmart's business to which this Agreement relates to a Third Party, whether by merger, sale of stock, sale of assets or otherwise. The rights and obligations of the parties under this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties. Any assignment not in accordance with this Agreement shall be void.

10.2 Force Majeure. Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement (other than with respect to the payment of money owed) when such failure or delay is caused by or results from causes beyond the reasonable control of the affected party, including, without limitation, fire, floods, earthquakes, natural disasters, embargoes, war, acts of war (whether war be declared or not), insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any governmental authority or the other party.

10.3 Governing Law & Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Nevada wherein this Agreement is performed, without regard to its choice of law provisions. Venue for any forum to address any issue under this Agreement shall be located in Washoe County, NV, and the court shall be the Second Judicial District Court of the State of Nevada.

10.4 Waiver. Except as specifically provided for herein, the waiver from time to time by either party of any right or failure to exercise any remedy shall not operate or be construed as a continuing waiver of the same right or remedy or of any other of such party's rights or remedies provided under this Agreement.

10.5 Severability. In case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

10.6 Independent Contractors. It is expressly agreed that Customer and Netsmart shall be independent contractors and that the relationship between the two parties shall not constitute a partnership, joint venture or agency of any kind. Neither party shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on the other party, without the prior written consent of the other party.

NTST Avatar Plexus License Agreement

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unlocked

10.7 Notices. Any consent, notice or report required or permitted to be given or made under this Agreement by one party to the other shall be in writing, addressed to such other party at its address indicated below, or to such other address as the addressee shall have last furnished in writing to the addressor, and shall be effective: (a) if sent by registered or certified mail return receipt requested, upon receipt; (b) if sent by internationally recognized express air courier (such as DHL or Federal Express), two (2) business days after mailing; (c) if sent by facsimile transmission, with a copy mailed on the same day in the manner provided in clauses (a) or (b) , when transmitted and receipt is confirmed by telephone; and (d) if otherwise actually personally delivered, when delivered:

If to Netsmart: Netsmart Technologies, Inc.
3500 Sunrise Highway, Suite D122
Great River, New York 11739
Email: Contracts_Notice@ntst.com

Attention: Joe McGovern
Facsimile:

If to Customer: Washoe County Department of Social Services
1001 E. Ninth Street, Building C, Room 135-C
Reno, NV 89520

10.8 Amendment. Except as expressly set forth in this Agreement, no subsequent amendment, modification or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by the respective authorized officers of the parties.

10.9 Construction. This Agreement shall be construed without regard to any presumption or other rule requiring construction hereof against the party causing this Agreement to be drafted.

10.10 No Third Party Beneficiaries. The representations, warranties, covenants, and undertakings contained in this Agreement are for the sole benefit of the parties and the parties' permitted successors and assigns and shall not be construed as creating any Third Party beneficiaries of this Agreement or as conferring any rights whatsoever on any Third Party.

11. Conflicts Between Documents: Order of Precedence. In the event of a conflict between these terms and conditions and the License Agreement (2004), the terms and conditions of this Agreement herein shall prevail. In the event that there is a

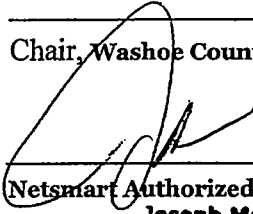
conflict between the documents comprising the Agreement, the order of precedence shall be as follows:

- (1) This master Agreement,
- (2) Exhibit A – Products, Pricing and Payment Terms Exhibit
- (3) Exhibit B – RESERVED
- (4) Exhibit C – Statement of Work
- (5) Exhibit D – Hosting and Subscriptions Addendums
- (6) Exhibit E – Support Agreement

Contract Signing

Chair, Washoe County Commission, Date

Netsmart Authorized Signature, Title and Date


Joseph McGovern
Executive Vice President
Netsmart Technologies, Inc.

11/24/15