

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 9th day of April, 2019 ("Effective Date"), by and between the County of Fresno, a Political Subdivision of the State of California, ("COUNTY"), and Netsmart Technologies, Inc., a Delaware corporation, whose address is 4950 College Blvd, Overland Park, KS 66211 ("CONTRACTOR").

WITNESSETH:

WHEREAS, COUNTY previously purchased a computer-based information system from CONTRACTOR for client registration, referral, client service tracking, quality assurance, scheduling, billing, and reporting ("myAvatar"); the Clinicians Workstation software applications and Mobile Module system ("CWS"), and the Orchard Laboratory Information Management System ("LIMS");

WHEREAS, CONTRACTOR has provided maintenance and support for the System under several prior agreements with the COUNTY; and

WHEREAS, COUNTY and CONTRACTOR desire to execute this Agreement for the continued maintenance and support for the System, as defined in Section 1 below;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties hereto agree as follows:

1. DEFINITIONS:

The following terms used throughout this Agreement shall be defined as follows:

Acceptance Criteria:

The performance and operating specifications that the System must meet at a minimum, as set out or referred to in this Agreement.

Acceptance Test:

The process of testing a specific function or functions to determine if the operation or operations are as stated in this Agreement.

Application Administrator:

A designated employee or contractor of COUNTY responsible for managing the System. This role includes communicating with CONTRACTOR staff for support, troubleshooting problems,

and coordinating maintenance tasks.

Change Control Process:

Process used by the Information Technology Services Division of COUNTY's Internal Services Department (ISD) to inform staff of new or updated production use systems.

County System Hardware:

The central processing units owned or leased by COUNTY, on which COUNTY is licensed to use the System Software, any back-up equipment for such central processing units, and any peripheral hardware such as terminals, printers, and Personal Computers, as described in this Agreement.

COUNTY System Software:

The operating system and database software installed on the COUNTY System Hardware.

Final System Acceptance:

When COUNTY determines in writing that all necessary deliverables have been delivered, the data has been converted, the base myAvatar, CWS, and LIMS software have been successfully installed and tested, and the myAvatar, CWS, and LIMS systems perform all functions in accordance with their specifications.

First Production Use:

Date of first use of the System in a production environment.

License:

The meaning assigned to the term "License" as defined in Section 2(A) of this Agreement and the rights and obligations it creates under the laws of the United States of America and the State of California including without limitation, copyright and intellectual property law.

Monies:

The terms "Monies", "Charges", "Price", and "Fees" will be considered to be equivalent.

Public Records:

Public Records includes any writing containing information relating to the conduct of the public's business that is prepared, owned, used, or retained by any state or local agency, regardless of physical form or characteristics, with the exclusion of records expressly exempted from

disclosure by statute.

Supplier:

The terms "Supplier", "Vendor", and "Netsmart Technologies, Inc." all refer to CONTRACTOR and are considered to be equivalent throughout this Agreement.

System:

The System Software and System Documentation, collectively. Reference to the "System" shall include any component thereof. All modifications and enhancements to the System shall be deemed to be part of the System and shall be subject to all terms and conditions set forth in this Agreement. The System consists of myAvatar, CWS, and LIMS, which supports the Fresno County Department of Public Health, all interfaces, and third-party software required for the System to function.

System Documentation:

The documentation relating to the System Software, and all manuals, reports, brochures, sample runs, specifications and other materials comprising such documentation provided by CONTRACTOR in connection with the System Software pursuant to this Agreement.

System Operation:

The general operation of COUNTY's hardware and all software including, but not limited to, System restarts, configuration and operation of System peripherals (such as printers, modems, and terminals), installation of new software releases, and other related activities.

System Installation:

All software has been delivered, has been physically loaded on a COUNTY computer, and COUNTY has successfully executed program sessions.

System Software:

myAvatar, CWS, and LIMS, that certain computer software described in this Agreement provided by CONTRACTOR, and all interfaces, coding, tapes, disks, modules and similar materials comprising such software or on which it is stored.

User:

The terms "User", "Customer" and "Licensee" all refer to COUNTY and are considered to be

equivalent throughout this Agreement.

User Profile:

A record of User-specific data that define the User's working environment. The record can include display settings, application settings, and network connections. What the User sees on his or her computer screen, as well as what files, applications and directories they have access to.

2. OBLIGATIONS OF CONTRACTOR

A. SOFTWARE LICENSE

I. GRANT OF LICENSE

CONTRACTOR grants to COUNTY and COUNTY accepts a non-exclusive, non-transferable, perpetual license to use myAvatar, CWS, and LIMS, subject to the terms and conditions set forth in this Agreement. This grant of perpetual license expressly survives termination of this Agreement.

II. SCOPE OF LICENSE

The license granted herein shall consist solely of the non-exclusive, non-transferable right of COUNTY to operate the System Software in support of COUNTY's Department of Public Health.

III. OWNERSHIP

The parties acknowledge and agree that, as between CONTRACTOR and COUNTY, title and full ownership of all rights in and to the System Software, System Documentation, and all other materials provided to COUNTY by CONTRACTOR under the terms of this Agreement shall remain with CONTRACTOR. COUNTY will take reasonable steps to protect trade secrets of the System Software and System Documentation. CONTRACTOR retains ownership of all copies. COUNTY may not disclose or make available to third parties the System Software or System Documentation or any portion thereof. CONTRACTOR shall own all right, title and interest in and to all corrections, modifications, enhancements, programs, and work product conceived, created or developed, alone or with COUNTY or others, as a result of or related to the performance of this Agreement, including all proprietary rights therein and based thereon. Except and to the extent expressly provided herein, CONTRACTOR does not grant to COUNTY any right or license, express or implied, in or to the System Software and System Documentation or any of the foregoing. The parties acknowledge and agree that, as between

1 CONTRACTOR and COUNTY, full ownership of all rights in and to all COUNTY data, whether in
2 electronic or paper form, including without limitation printed output from the System, are the exclusive
3 property of COUNTY.

4 IV. POSSESSION, USE, AND UPDATE OF SOFTWARE

5 COUNTY agrees that COUNTY will only use the System Software for its own internal purposes.
6 CONTRACTOR may, at reasonable times, inspect COUNTY's premises and equipment to verify that all
7 of the terms and conditions of this license are being observed. CONTRACTOR may create, from time to
8 time, updated versions of the System Software and System Documentation ("System Updates") and
9 CONTRACTOR shall make such System Updates available to COUNTY. All System Updates shall be
10 licensed under the terms of this Agreement. COUNTY agrees to follow the prescribed instructions for
11 updating System Software and System Documentation provided to COUNTY by CONTRACTOR.
12 COUNTY must authorize all System Updates in writing.

13 V. TRANSFER OF SOFTWARE

14 COUNTY shall not rent, lease, license, distribute, sell, transfer, or assign this license, the System
15 Software, or the System Documentation, or any of the information contained therein other than
16 COUNTY data, to any other person or entity, whether on a permanent or temporary basis, and any
17 attempt to do so will constitute a breach of this Agreement. No right or license is granted under this
18 Agreement for the use or other utilization of the licensed programs, directly or indirectly, for the benefit
19 of any other person or entity, except as provided in this Agreement.

20 VI. POSSESSION AND USE OF SOURCE CODE

21 Source code and other material that results from custom programming by CONTRACTOR
22 released to COUNTY under this Agreement shall be deemed CONTRACTOR software subject to all of
23 the terms and conditions of the software license set forth in this Agreement. The scope of COUNTY's
24 permitted use of the custom source code under this Agreement shall be limited to maintenance and
25 support of the System Software. For purposes of this Section, the term "maintenance and support"
26 means correction of System Software errors and preparation of System Software modifications and
27 enhancements. If COUNTY creates computer code in the process of enhancing the System Software,
28 that specific new code shall be owned by COUNTY and may be used by COUNTY's employees,

1 officers, or agents for COUNTY's own internal business operations. However, if COUNTY's
2 enhancement results in the creation of a derivative work from the System Software, the copyright to
3 such derivative work shall be owned by CONTRACTOR and COUNTY's rights to use such derivative
4 work shall be limited to those granted with respect to the System Software in this Agreement.

5 VII. RESTRICTIONS ON USE

6 COUNTY shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise
7 commercially exploit or make available to any third -party the System Software or the System
8 Documentation in any way; (ii) modify or make derivative works based upon the System Software or the
9 System Documentation; (iii) create Internet "links" to the System Software or "frame" or "mirror" any
10 System Documentation on any other server or wireless or Internet-based device; (iv) send spam or
11 otherwise duplicative or unsolicited messages in violation of applicable law; (v) send or store infringing,
12 obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to
13 children or violative of third -party privacy rights; (vi) send or store material containing software viruses,
14 worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (vii) interfere
15 with or disrupt the integrity or performance of the System Software or the data contained therein,
16 including but not limited to COUNTY Data; (viii) attempt to gain unauthorized access to the System
17 Software or its related systems or networks; (ix) reverse engineer or access the System Software in
18 order to (a) build a competitive product or service, (b) build a product using similar ideas, features,
19 functions or graphics of the System Software, or (c) copy any ideas, features, functions or graphics of
20 the System Software.

21 VIII. INTELLECTUAL PROPERTY, TRADEMARK, AND COPYRIGHT

22 CONTRACTOR retains ownership of the System Software, any portions or copies thereof, and
23 all rights therein. CONTRACTOR reserves all rights not expressly granted to COUNTY. This Agreement
24 does not grant COUNTY any rights in connection with any trademarks or service marks of
25 CONTRACTOR, its suppliers or licensors. All right, title, interest and copyrights in and to the System
26 Software and the accompanying System Software Documentation and any copies of the System
27 Software are owned by CONTRACTOR, its suppliers or licensors. All title and intellectual property rights
28 in and to the content which may be accessed through use of the System Software are the property of

1 the respective content owner and may be protected by applicable copyright or other intellectual property
2 laws and treaties. This Agreement grants COUNTY no rights to use such content.

3 B. SERVICES TO BE PROVIDED BY CONTRACTOR TO COUNTY

4 I. USER AND ADMINISTRATOR DOCUMENTATION

5 CONTRACTOR shall provide to COUNTY System Documentation, which shall consist of
6 electronic media files. The electronic media files must be printable using PC software normally available
7 at COUNTY. CONTRACTOR shall provide new System Documentation corresponding to all new
8 Software Upgrades. COUNTY may print additional copies of all documentation. All System
9 Documentation is to be used by COUNTY only for the purposes identified within this Agreement.

10 C. SYSTEM MAINTENANCE AND SUPPORT BY CONTRACTOR

11 System maintenance and support includes System Updates as they are released by
12 CONTRACTOR, including updates as required as a result of Federal Regulatory Changes. COUNTY
13 shall identify and communicate to CONTRACTOR the first day of production use. CONTRACTOR shall
14 support day-to-day operation of the System as follows:

15 I. SUPPORT HOURS/SCOPE

16 During the term of this Agreement, CONTRACTOR shall provide unlimited technical assistance
17 by phone during normal coverage hours (8:00 a.m. to 5:00 p.m. Pacific Time, Monday through Friday,
18 except CONTRACTOR and COUNTY holidays), toll-free telephone assistance to keep the System in, or
19 restored to, normal operating condition. The object of this support will be to answer specific questions
20 related to the System Software and the application thereof. Support provided under this Agreement
21 does not include training of new personnel (after initial staff is trained), operation of hardware, or solving
22 other hardware/software problems unrelated to the System Software.

23 II. SUPPORT RESPONSE

24 During the term of this Agreement, CONTRACTOR shall (a) correct any error or malfunctions in
25 the System as supplied by CONTRACTOR that prevents it from operating in accordance with the
26 specifications set forth in this Agreement or (b) provide a commercially reasonable alternative that will
27 conform to the specifications set forth in this Agreement.

1 If analysis by CONTRACTOR indicates a reported problem is caused by a reproducible error or
2 malfunction in the then-current release of the System Software as supplied and maintained by
3 CONTRACTOR that significantly impacts effective use of the System by COUNTY, CONTRACTOR will,
4 if the System is inoperable, as reported by COUNTY, provide continuous effort to correct the error or to
5 resolve the problem by providing a circumvention.

6 In such cases, CONTRACTOR shall provide COUNTY with corrective information, such as
7 corrective documentation and/or program code. CONTRACTOR will endeavor to respond to COUNTY's
8 service request no later than four (4) business hours from the time a call has been received by
9 CONTRACTOR. In the event that a person with the necessary expertise is not available when the call is
10 received, CONTRACTOR shall endeavor to respond to the service request no later than within one (1)
11 business day from the time of the COUNTY'S service request.

12 III. REMOTE VIRTUAL PRIVATE NETWORK (VPN) DIAGNOSTICS

13 Remote VPN Diagnostics Support includes:

- 14 a. Diagnostic or corrective actions necessary to restore proper System operation;
- 15 b. Diagnostic actions which attempt to identify the cause of system problem;
- 16 c. Correction of data file problem; and
- 17 d. System modifications

18 CONTRACTOR product specialists will provide diagnostics via VPN on the System. COUNTY will
19 provide any required hardware and equipment necessary at COUNTY for CONTRACTOR VPN support.

20 IV. ERROR CORRECTION PROCESS

21 If during the term of this Agreement COUNTY determines that software error(s) exist, COUNTY
22 will first follow the error procedures specified in the System Documentation. If following the error
23 procedures does not correct the software error, COUNTY shall immediately notify CONTRACTOR,
24 setting forth the defects noted with specificity. Upon notification of a reported software error,
25 CONTRACTOR shall have five (5) days to determine if any actual software error exist and, if so, to
26 correct such software errors. At CONTRACTOR's request, additional time to solve difficult problems will
27 not be unreasonably withheld. Within fifteen (15) days of correction, COUNTY shall retest the System
28 Software and report any other software error(s).

1 V. TECHNICAL INFORMATION

2 CONTRACTOR shall provide technical information to COUNTY from time to time. Such
3 information may cover areas such as the System usage, third-party software, and other matters
4 considered relevant to COUNTY by CONTRACTOR. Technical information shall be provided at the
5 discretion of CONTRACTOR, but will not be unreasonably withheld.

6 D. ADDITIONAL SYSTEM MAINTENANCE SERVICES BY CONTRACTOR

7 CONTRACTOR may provide additional maintenance services ("Additional Maintenance and
8 Support Services" or "Additional Maintenance Services") at an additional charge. Charges will be as
9 identified in Section 6(E); or, if not included in this Agreement and/or Exhibit B, the charges will be at
10 CONTRACTOR's then-standard prices in effect at the time the goods or services are provided. Any
11 Additional Maintenance and Support Services requested by COUNTY and determined by
12 CONTRACTOR to be billable by CONTRACTOR must be identified as a chargeable service prior to the
13 service being performed and must be approved in writing in advance by COUNTY's Contract
14 Administrator. Additional Maintenance Services include, but are not limited to, the following:

15 I. ADDITIONAL TRAINING

16 Additional training at a COUNTY facility is available upon request by COUNTY at an additional
17 charge under the terms of this Agreement. Requests for additional training will be reviewed by
18 CONTRACTOR and must be requested in writing in advance by the COUNTY's Contract Administrator.
19 Charges and terms for additional training will be at rates identified in this Agreement.

20 II. DATA AND SYSTEM CORRECTIONS

21 Data and System Corrections include any corrective actions accomplished by CONTRACTOR
22 on-site or via VPN that are necessary due to COUNTY errors or unauthorized source code or data
23 access by COUNTY. Unauthorized access to the data is defined as any COUNTY editing of data
24 through other than normal system usage, as defined in System Documentation. Unauthorized access to
25 source code is defined as any COUNTY access whatsoever to System source code. Services provided
26 by CONTRACTOR are not billable to COUNTY when they result from errors caused by the System or
27 instruction provided by CONTRACTOR.

28 III. CUSTOMER SITE VISITS

1 Site visits to COUNTY sites, as may be requested in writing by COUNTY and that are within the
2 scope of the project services, are available for reasons such as, but not limited to, (1) additional System
3 training on hardware or software usage; (2) resolution of System difficulties not resulting from actions
4 by, or otherwise the responsibility of CONTRACTOR (as determined by mutual agreement between
5 CONTRACTOR and COUNTY); (3) installation of Software Releases; and (4) assistance in equipment
6 maintenance, movement or diagnosis. Site visits outside of the scope of project services will be
7 reviewed by CONTRACTOR and must be requested in writing in advance by the COUNTY's Contract
8 Administrator. Charges will be at rates identified in this Agreement.

9 IV. CUSTOM PROGRAMMING

10 Requests for supplemental programming or customization of system features not covered under
11 this Agreement are available to COUNTY. Such requests will be reviewed by CONTRACTOR and must
12 be requested in writing in advance by the COUNTY's Contract Administrator. Charges will be at rates
13 identified in this Agreement.

14 E. CONTRACTOR PROJECT COORDINATOR

15 Upon execution of this Agreement, CONTRACTOR shall appoint a Project Coordinator who will
16 act as the primary contact person to interface with COUNTY for implementation, maintenance and
17 support of the System.

18 F. SYSTEM UPDATES AND NEW PRODUCTS

19 I. SYSTEM UPDATES

20 From time to time CONTRACTOR will develop and provide System Updates to COUNTY for the
21 COUNTY'S licensed CONTRACTOR software. System Updates shall be subject to the terms and
22 conditions of this Agreement, and shall be deemed licensed System Software hereunder and will be
23 made available to COUNTY at no additional charge to COUNTY. System Updates will be made
24 available to COUNTY at the discretion of CONTRACTOR but will not be unreasonably withheld.

25 II. NEW PRODUCTS

26 CONTRACTOR may from time to time release new software with capabilities substantially
27 different from or greater than the System Software ("New Products") and which therefore do not
28

1 constitute System Updates. These New Products will be made available to COUNTY at a cost not to
2 exceed CONTRACTOR's then standard rates for similarly situated customers.

3 G. OPERATING SYSTEM UPDATES

4 The System must run on a client operating system ("O/S") that is consistently and currently
5 supported by the operating system vendor. Systems under maintenance are expected to always be
6 current in regards to the required client O/S. No outdated or unsupported client O/S will be implemented
7 on the production network. COUNTY will apply patches to both the client O/S and security subsystems
8 on COUNTY PCs as releases are available from O/S vendors.

9 In order to support a secure environment, the System must run on the latest supported security
10 release of any required third-party software, such as JAVA, Flash, etc. COUNTY will notify
11 CONTRACTOR when a critical security patch is released for such products. CONTRACTOR will have
12 thirty (30) days to ensure the System can perform in the updated environment.

13 COUNTY will actively run anti-virus management on all PCs. The System is expected to perform
14 adequately while anti-virus management is active.

15 COUNTY will notify CONTRACTOR when a critical security patch is released. CONTRACTOR
16 shall have thirty (30) days to ensure application can perform in the updated environment. The
17 application is expected to perform in this environment. CONTRACTOR is expected to keep their
18 software current in order to operate in this environment. These patches include critical O/S updates and
19 security patches.

20 H. ANTI-VIRUS MANAGEMENT

21 COUNTY shall actively run anti-virus management, where appropriate, on all application servers
22 and PCs. The System is expected to perform adequately while anti-virus management is active.

23 I. ADHERE TO CHANGE CONTROL PROCESS

24 CONTRACTOR must adhere to COUNTY's Change Control Process, which COUNTY shall be
25 provided to CONTRACTOR in writing. COUNTY employs a procedure to implement updates, upgrades,
26 and version releases to a system that is in production use. This forum allows ISD to inform staff (Help
27 Desk, Network, Server, Database, Security, and Analysts) of upcoming changes to a production system.

1 CONTRACTOR must inform ISD a minimum of two (2) weeks prior to any planned, non-emergency
2 changes so that the Change Control Process may be followed.

3 J. OTHER

4 Unless otherwise specified, for third-party software, CONTRACTOR shall provide standard
5 documentation in electronic form (via the Internet or File Transfer Protocol (FTP). The System being
6 provided by CONTRACTOR runs in a Local Area Network and Web environment. As such, the
7 performance of the System is directly related to, among other things: available network bandwidth, and
8 the performance of other applications. For this reason, CONTRACTOR makes no guarantees as to
9 system response time.

10 3. OBLIGATIONS OF COUNTY

11 A. COUNTY CONTRACT ADMINISTRATOR

12 COUNTY appoints its Director of Internal Services/Chief Information Officer (ISD Director/CIO)
13 or his or her designee, as COUNTY's Contract Administrator ("Contract Administrator"), with full
14 authority to deal with CONTRACTOR in all matters concerning this Agreement.

15 B. CONTRACTOR RESPONSE COMMITMENT

16 COUNTY shall designate one or more Application Administrator(s), each of whom shall be an
17 employee or contractor of COUNTY. Only a designated Application Administrator may request support.
18 It is the responsibility of COUNTY to instruct Users to route support requests through the Application
19 Administrator. No support shall be provided with respect to any request made by a person who is not an
20 Application Administrator.

21 C. SAFEGUARDING SYSTEM SOFTWARE

22 COUNTY shall follow its present practices to safeguard System Software delivered to COUNTY
23 by CONTRACTOR. COUNTY shall provide a copy of COUNTY'S "Information Technology (IT)
24 Standards and Preferences" to CONTRACTOR, upon request.

25 D. BACKUP AND RECOVERY MANAGEMENT

- 26 I. COUNTY utilizes a backup and recovery system written and maintained by Commvault
27 Systems. This application requires a backup agent to run on the server.

1 II. In order for the backup and recovery system to run on COUNTY supported servers, the
2 System must not require the Users to have administrative rights on the servers.

3 III. COUNTY, at all times, during and after the performance of the installation of the System
4 Software, is responsible for maintaining adequate data backups to protect against loss of
5 data.

6 E. ACCEPTANCE TESTING

7 COUNTY shall approve final system acceptance when the System has been successfully tested
8 and satisfactorily performs all functions necessary pursuant to this Agreement, and COUNTY has
9 received all deliverables identified in this Agreement as required for acceptance.

10 F. ACCEPTING TESTING PROCESS

11 Following delivery and installation, CONTRACTOR shall test the System, along with COUNTY
12 personnel.

13 G. FACILITIES AND PREPARATION

14 COUNTY shall, at its own expense, provide all necessary labor and materials for site
15 preparation, electrical services, and cabling required for System Installation. COUNTY shall receive the
16 System Software and will follow instructions provided by CONTRACTOR to load it on COUNTY's
17 System Hardware to prepare the System for processing.

18 H. SYSTEM HARDWARE AND SYSTEM SOFTWARE

19 COUNTY shall, at its own expense, provide, properly maintain, and update on an ongoing basis,
20 all necessary COUNTY System Software and County System Hardware required to operate the System.
21 COUNTY System Software and County System Hardware shall meet or exceed CONTRACTOR's
22 recommendations.

23 As part of COUNTY's responsibility for computer infrastructure, COUNTY is responsible for
24 ensuring that data is secure and protected at all times. CONTRACTOR is not responsible for and cannot
25 be held liable for inadvertent data disclosure or theft from COUNTY facilities.

26 I. COUNTY PROJECT MANAGER

27 Upon execution of this Agreement, COUNTY's Contract Administrator shall designate one
28 individual from ISD who will function as Project Manager with responsibility for day-to-day management

1 of the project for implementation of the System. The Project Manager and COUNTY personnel shall
2 have the necessary and appropriate training and experience to implement the terms of this Agreement.
3 COUNTY acknowledges CONTRACTOR'S reliance on same.

4 J. OTHER COUNTY OBLIGATIONS

5 COUNTY's ISD staff shall provide technical assistance during the performance of the installation
6 of the System Software. In particular, COUNTY will provide:

- 7 a. Network connectivity and troubleshooting assistance.
- 8 b. Ability to monitor network traffic and isolate bottlenecks.
- 9 c. Technical assistance concerning the integration with existing COUNTY systems
10 (if applicable).
- 11 d. Expertise to handle issues with PCs, printers, and cabling before, during, and
12 after rollout.

13 4. TERM

14 The term of this Agreement shall be for a period of three (3) years, commencing on March 25, 2019
15 through and including March 25, 2022. This Agreement may be extended for two (2) additional consecutive
16 twelve (12) month periods upon written approval of both parties no later than thirty (30) days prior to the first
17 day of the next twelve (12) month extension period. The Director of Internal Services/Chief Information
18 Officer or his or her designee is authorized to execute such written approval on behalf of COUNTY based
19 on CONTRACTOR'S satisfactory performance.

20 5. TERMINATION

21 A. Non-Allocation of Funds.- The terms of this Agreement, and the services to be
22 provided hereunder, are contingent on the approval of funds by the appropriating government agency.
23 Should sufficient funds not be allocated, the services provided may be modified, or this Agreement
24 terminated, at any time by giving the CONTRACTOR thirty (30) days advance written notice.

25 B. Breach of Contract.- The COUNTY may immediately suspend or terminate this
26 Agreement in whole or in part, where in the determination of the COUNTY there is:

- 27 1) An illegal or improper use of funds;
- 28 2) A failure to comply with any term of this Agreement;

- 3) A substantially incorrect or incomplete report submitted to the COUNTY;
- 4) Improperly performed service.

In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any breach of this Agreement or any default which may then exist on the part of the CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to the COUNTY with respect to the breach or default. The COUNTY shall have the right to demand of the CONTRACTOR the repayment to the COUNTY of any funds disbursed to the CONTRACTOR under this Agreement, which in the judgment of the COUNTY were not expended in accordance with the terms of this Agreement. The CONTRACTOR shall promptly refund any such funds upon demand.

C. Without Cause - Under circumstances other than those set forth above, this Agreement may be terminated by COUNTY upon the giving of thirty (30) days advance written notice of an intention to terminate to CONTRACTOR.

6. **COMPENSATION/INVOICING:** COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to receive compensation for the total possible five-year term of the Agreement in an amount not to exceed \$597,281.49. CONTRACTOR shall submit monthly invoices referencing the contract number, either electronically or via mail in triplicate to the County of Fresno, Internal Services Department, ATTN: Business Office, 333 W. Pontiac Way, Clovis, CA 93612 (isdbusinessoffice@fresnocountyca.gov).

The one-time fees listed below in Section 6 (A), as well as the payment schedule for one-time fees as listed below in Section 6 (B) and annual maintenance and/or subscription fees for Orchard Harvest, Orchard Copia, and Order Connect, as listed in Exhibit B, shall only be billed if COUNTY moves forward with implementation for the above systems.

A. **CONTINGENCY FUNDS: ONE-TIME FEES FOR ORCHARD LICENSE, INTERFACES, INSTALLATION, TRAINING, AND PROJECT MANAGEMENT**

DESCRIPTION	COST
1. Orchard Harvest Application License	\$20,400.00
2. Orchard Harvest License (8)	\$53,720.00
3. Orchard Microbiology Module	\$7,600.00

1	4. Orchard Copia Application Licensing	\$55,600.00
2	5. Orchard Copia User Licenses (30 Concurrent)	\$14,175.00
3	6. Integrated ZetaFax software (2 lines)	\$4,500.00
4	7. ADT HL7 Interface	\$6,500.00
5	8. Billing HL7 Interface	\$9,500.00
6	9. myAvatar HL7 ADT Interface to Harvest LIS	\$15,000.00
7	10. Orchard Harvest System Administrator Training	
8	(five (5) days for up to two (2) staff at \$3,900.00 per	\$7,800.00
9	staff)	
10	11. Orchard Copia System Administrator Training	
11	(five (5) days for up to two (2) staff at \$3,900.00 per	\$7,800.00
12	staff)	
13	12. Orchard Microbiology Module Training	
14	(five (5) days for up to two (2) staff at \$3,900.00 per	\$7,800.00
15	staff)	
16	13. Professional Services Time for Training,	
17	Installation, and Project Management	\$118,500.00
18	(fifteen (15) weeks)	
19	14. Avatar HL7 Out-Bound Interface	\$12,800.00
20	15. Avatar HL7 In-Bound Interface	\$16,000.00
21	SUBTOTAL ORCHARD ONE-TIME FEES	\$357,695.00
22	County's Previous Payment to Contractor (30% of	
23	"Subtotal Orchard One-Time Fees")	\$107,308.50
24	REMAINING SUBTOTAL FOR ORCHARD ONE-	
25	TIME FEES	\$250,386.50

COUNTY and CONTRACTOR agree that COUNTY has previously paid to CONTRACTOR 30%, or \$107,308.50, of the total Orchard one-time fees listed in the table above, pursuant to Section VII (C) of

Agreement 14-111-1, dated March 20, 2018, which required 30% payment upon all parties signing Agreement 14-111-1 as part of its payment schedule for one-time fees. The remaining 70% of the one-time fees listed in Section 6(A) above shall be paid to CONTRACTOR only if any such services set forth herein are performed by CONTRACTOR, upon COUNTY's written approval.

It is understood and agreed that the dollar figures listed herein for Orchard one-time fees include applicable taxes, which may be subject to change during the period for scheduled payments. In no event shall one-time Orchard fees paid for services performed under this Agreement exceed \$250,386.50.

B. PAYMENT SCHEDULE FOR ONE-TIME FEES

I. Orchard Harvest:

- 1) 10% upon System Installation of Licenses
- 2) 10% upon completion of Training
- 3) 15% upon COUNTY's First Production Use or one hundred eighty (180) days after completion of Training, whichever comes first.

II. Orchard Copia:

- 1) 10% upon System Installation of Licenses
- 2) 10% upon completion of Training
- 3) 15% upon COUNTY's First Production Use or one hundred eighty (180) days after completion of Training, whichever comes first.

COUNTY and CONTRACTOR agree that COUNTY has paid 30% of one-time fees, when all parties signed the prior Agreement No. 14-111-1, dated March 20, 2018.

C. ANNUAL MAINTENANCE AND SUPPORT FEES

ANNUAL MAINTENANCE AND/OR SUPPORT FEE	YEAR ONE (1) COSTS	CONSUMER PRICE INDEX (CPI)
1. Avatar Clinical Workstation Maintenance	\$5,908.92	3%
2. Avatar HL7 Uni-Directional Interface Maintenance	\$4,828.95	2%

3. Diagnosis Content on Demand Subscription	\$7,270.03	2%
4. Support Avatar – Annual MPI and myAvatar 100 Concurrent User Licenses	\$90,103.73	3%
5. POS Scanning Powered by Perceptive Maintenance	\$2,202.62	3%
6. OrderConnect Base Fee (Subscription)	\$1,533.00	2%

Year One costs for the "Avatar HL7 Uni-Directional Interface Maintenance" (Number "2" in the table above under Section 6(C)) were \$6,438.60. COUNTY and CONTRACTOR agree that COUNTY has already paid for item 6(C)(2) through June 2019; therefore, COUNTY's remaining balance for Year One costs for 6(C)(2) is \$4,828.95.

Year One costs for the "Diagnosis Content on Demand Subscription" (Number "3" in the table above under Section 6(C)) were \$8,724.03. COUNTY and CONTRACTOR agree that COUNTY has already paid for item 6(C)(3) through May 2019; therefore, COUNTY's remaining balance for Year One costs for 6(C)(3) is \$7,270.03.

Pursuant to the preceding two paragraphs, COUNTY has already paid \$3063.65 in Annual Maintenance and Support Fees to CONTRACTOR. Total Year One costs for the Annual Maintenance and Support Fees listed in Section 6(C) shall not exceed \$111,847.25. COUNTY and CONTRACTOR agree that the Annual Maintenance and Support Fees shall increase annually by the corresponding consumer price index (CPI) listed in Section 6(C) above.

D. FEE CHANGES

CONTRACTOR may increase Annual Maintenance and Support fees for years Two (2) through Five (5) of this Agreement, upon thirty (30) days' advance written notice to COUNTY, provided CONTRACTOR shall not increase such fees more than once in any one-year period, and provided further that each increase will not exceed the previous fees by the lesser of three percent (3%) per year or the cumulative

percentage increase in the Consumer Price Index, All Urban Consumers for the U.S., during the previous year.

E. RATES FOR ADDITIONAL MAINTENANCE AND SUPPORT SERVICES

Optional, additional services may include, but are not limited to:

ADDITIONAL SERVICE	FEE
1. On-site System training/day	\$1,400
2. Billable services/hour	\$175
3. Additional myAvatar User License	\$3,200
4. Additional myAvatar Annual Maintenance/License	\$550
5. Additional myAvatar Mobile License	\$500
6. Additional myAvatar Mobile Annual Maintenance	\$900
7. myAvatar Electronic Signature (eSIG) Module	\$10,000
8. myAvatar eSIG Project Management Fee	\$500
9. myAvatar General Ledger Interface (GLI)	\$10,000
10. myAvatar GLI Project Management Fee	\$2,400
11. myAvatar Management of Services Organization (MSO)	\$10,000
12. myAvatar MSO Project Management Fee	\$14,400
13. Perceptive Suite 12 Concurrent User License	\$10,000
14. Perceptive Suite Project Management Fee	\$7,500
15. OrderConnect – 8 ePrescribing – Prescriber Subscription	\$7,200
16. OrderConnect – 31 ePrescribing – Non-Prescriber Subscription	\$4,836
17. OrderConnect Project Management Fee	\$1,600
18. OrderConnect Implementation and Training	\$3,400

29. Additional 1 Concurrent RADPlus User License	\$3,200
20. Additional Annual 1 RADPlus User License	\$672
21. Nurse Family Partnership (ETO) Interface	TBD
22. Additional interfaces to be determined	TBD

Additional services, as described in the table above, shall only be performed, and additional service fees shall only be paid to CONTRACTOR upon COUNTY's written request. Interfaces shall be negotiated at the time they are needed, and shall be agreed upon by both parties in writing. In no event shall payment for Additional Service Fees exceed \$80,000 per year for each one (1) year period of this Agreement. In no event shall the total compensation paid by COUNTY to CONTRACTOR for Additional Services for the possible five (5) year term of this Agreement exceed \$400,000.

In no event shall services performed under this Agreement exceed \$1,628,230.00 during the term of this Agreement. All expenses incidental to CONTRACTOR'S performance of services under this Agreement shall be borne by CONTRACTOR. COUNTY shall pay CONTRACTOR within forty-five (45) days of receipt of an approved invoice.

7. **INDEPENDENT CONTRACTOR:** In the performance of the work, duties and obligations assumed by CONTRACTOR under this Agreement, it is mutually understood and agreed that CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and employees will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the COUNTY. Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method by which CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right to employment rights and benefits available to COUNTY employees. CONTRACTOR shall be solely liable

1 and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In
2 addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating
3 to payment of CONTRACTOR'S employees, including compliance with Social Security withholding and all
4 other regulations governing such matters. It is acknowledged that during the term of this Agreement,
5 CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

6 8. **MODIFICATION:** Any matters of this Agreement may be modified from time to time by the
7 written consent of all the parties without, in any way, affecting the remainder.

8 9. **NON-ASSIGNMENT:** Neither party shall assign, transfer or sub-contract this Agreement
9 nor their rights or duties under this Agreement without the prior written consent of the other party.

10 10. **HOLD HARMLESS:** CONTRACTOR agrees to indemnify, save, hold harmless, and at
11 COUNTY'S request, defend the COUNTY, its officers, agents, and employees from any and all costs and
12 expenses (including attorney's fees and costs), damages, liabilities, claims, and losses occurring or
13 resulting to COUNTY in connection with the performance, or failure to perform, by CONTRACTOR, its
14 officers, agents, or employees under this Agreement, and from any and all costs and expenses (including
15 attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to any person, firm,
16 or corporation who may be injured or damaged by the performance, or failure to perform, of
17 CONTRACTOR, its officers, agents, or employees under this Agreement. Notwithstanding the foregoing, in
18 no event will either party be liable to the other for any indirect, special, incidental, consequential, punitive, or
19 exemplary damages. The cumulative liability of CONTRACTOR to COUNTY for any actual or alleged
20 damages arising out of, based on or relating to this Agreement, whether based upon breach of contract, tort
21 (including negligence), warranty or any other legal theory, shall not exceed two times the total Agreement
22 maximum not to exceed amount, as set forth in the last paragraph of Section 6, herein.

23 For avoidance of doubt, any limitation set forth in this Section will not apply to and
24 CONTRACTOR will fully indemnify COUNTY for:

- 25 i. COUNTY's actual out of pocket costs of notice, mitigation or remediation of any privacy breach
26 caused by any act or omission of CONTRACTOR.

- 1 ii. Fines or penalties that are assessed against COUNTY by a state or federal regulatory agency for
2 an act or omission of CONTRACTOR or by its employees, directors, officers, subcontractors, or
3 agents on a theory of agency or vicarious liability.
- 4 iii. Damages resulting from any grossly negligent or willful acts or omissions in connection with this
5 Agreement, by CONTRACTOR or by its employees, directors, officers, subcontractors, or
6 agents.

7

8 The provisions of this Section 10 shall survive the termination of this Agreement.

9 11. **INSURANCE**

10 Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any third
11 parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following insurance
12 policies or a program of self-insurance throughout the term of the Agreement:

13 A. Commercial General Liability

14 Commercial General Liability Insurance with limits of not less than Two Million Dollars
15 (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This
16 policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including
17 completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal
18 liability or any other liability insurance deemed necessary because of the nature of this contract.

19 B. Automobile Liability

20 Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars
21 (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include any auto
22 used in connection with this Agreement.

23 C. Technology Professional Liability (Errors and Omissions)

24 Technology Professional Liability (Errors and Omissions) Insurance appropriate to
25 CONTRACTOR's profession, with limits not less than Two Million Dollars (\$2,000,000) per occurrence or
26 claim, Two Million Dollars (\$2,000,000) aggregate. Coverage shall be sufficiently broad to respond to the
27 duties and obligations as is undertaken by CONTRACTOR in this Agreement and may include, but not
28 be limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information

1 theft, damage to or destruction of electronic information, release of private information, alteration of
2 electronic information, extortion and network security. The policy may provide coverage for breach
3 response costs as well as regulatory fines and penalties as well as credit monitoring expenses with
4 limits sufficient to respond to these obligations.

5 D. Cyber Liability

6 CONTRACTOR shall obtain cyber liability insurance with limits of Two Million Dollars
7 (\$2,000,000) per occurrence. Coverage shall include, but not be limited to, claims involving Cyber Risks.
8 The cyber liability policy shall be endorsed to cover eligible claims, up to the aforementioned limitation,
9 for the full replacement value of damage to, alteration of, loss of, or destruction of intangible property
10 (including but not limited to information or data) that is in the care, custody, or control of the
11 CONTRACTOR.

12 For purposes of the technology professional liability insurance and the cyber liability insurance
13 required under this Agreement, Cyber Risks include, but are not limited to, (i) security breaches, which
14 include disclosure of, whether intentional or unintentional, information provided by COUNTY, information
15 provided by or obtained from any inmate, or personal-identifying information relating to any inmate, to an
16 unauthorized third party; (ii) breach of any of CONTRACTOR's obligations under this Agreement relating
17 to data security, protection, preservation, usage, storage, transmission, and the like; (iii) infringement of
18 intellectual property including, but not limited to, infringement of copyright, trademark, and trade dress;
19 (iv) invasion of privacy, including any release of private information; (v) information theft by any person
20 or entity, whatsoever; (vi) damage to or destruction or alteration of electronic information; (vii) extortion
21 related to CONTRACTOR's obligations under this Agreement regarding electronic information, including
22 information provided by COUNTY, information provided by or obtained from any inmate, or personal-
23 identifying information relating to any inmate; (viii) network security; (ix) data breach response costs,
24 including security breach response costs; (x) regulatory fines and penalties related to CONTRACTOR's
25 obligations under this Agreement regarding electronic information, including information provided by
26 COUNTY, information provided by or obtained from an inmate, or personal-identifying information
27 relating to any inmate; and (xi) credit monitoring expenses.

1 E. Professional Liability

2 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in
3 providing services, Professional Liability Insurance with limits of One Million Dollars (\$1,000,000.00) per
4 occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

5 F. Worker's Compensation

6 A policy of Worker's Compensation insurance as may be required by the California Labor
7 Code.

8 Additional Requirements Relating to Insurance

9 CONTRACTOR shall obtain endorsements to the Commercial General Liability insurance naming
10 the County of Fresno, its officers, agents, and employees, individually and collectively, as additional
11 insured, but only insofar as the operations under this Agreement are concerned. Such coverage for
12 additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained
13 by COUNTY, its officers, agents and employees shall be excess only and not contributing with insurance
14 provided under CONTRACTOR's policies herein. This insurance shall not be cancelled or changed without
15 a minimum of thirty (30) days advance written notice given to COUNTY.

16 CONTRACTOR hereby waives its right to recover from COUNTY, its officers, agents, and
17 employees any amounts paid by the policy of worker's compensation insurance required by this
18 Agreement. CONTRACTOR is solely responsible to obtain any endorsement to such policy that may be
19 necessary to accomplish such waiver of subrogation, but CONTRACTOR's waiver of subrogation under
20 this paragraph is effective whether or not CONTRACTOR obtains such an endorsement.

21 Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement,
22 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the
23 foregoing policies, as required herein, to the County of Fresno, Internal Services Department, stating that
24 such insurance coverage have been obtained and are in full force; that the County of Fresno, its officers,
25 agents and employees will not be responsible for any premiums on the policies; that for such worker's
26 compensation insurance the CONTRACTOR has waived its right to recover from the COUNTY, its officers,
27 agents, and employees any amounts paid under the insurance policy and that waiver does not invalidate
28 the insurance policy; that such Commercial General Liability insurance names the County of Fresno, its

1 officers, agents and employees, individually and collectively, as additional insured, but only insofar as the
2 operations under this Agreement are concerned; that such coverage for additional insured shall apply as
3 primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents
4 and employees, shall be excess only and not contributing with insurance provided under CONTRACTOR's
5 policies herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30)
6 days advance, written notice given to COUNTY.

7 In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein
8 provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this
9 Agreement upon the occurrence of such event.

10 All policies shall be issued by admitted insurers licensed to do business in the State of California,
11 and such insurance shall be purchased from companies possessing a current A.M. Best, Inc. rating of A
12 FSC VII or better.

13 12. **AUDITS AND INSPECTIONS:** The CONTRACTOR shall at any time during business
14 hours, and as often as the COUNTY may deem necessary, make available to the COUNTY for examination
15 all of its records and data with respect to the matters covered by this Agreement. The CONTRACTOR
16 shall, upon request by the COUNTY, permit the COUNTY to audit and inspect all of such records and data
17 necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement.

18 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to
19 the examination and audit of the California State Auditor for a period of three (3) years after final payment
20 under contract (Government Code Section 8546.7).

21 13. **NOTICES:** The persons and their addresses having authority to give and receive notices
22 under this Agreement include the following:

23 COUNTY
24 COUNTY OF FRESNO
25 Director of Internal Services/Chief
26 Information Officer
27 333 W. Pontiac Way
28 Clovis, CA 93612

CONTRACTOR
Netsmart Technologies, Inc.
Corporate Counsel
4950 College Blvd
Overland Park, Kansas 66212
Contracts_Notice@ntst.com
Telephone No.: (800) 421-7503

All notices between the COUNTY and CONTRACTOR provided for or permitted under this Agreement must be in writing and delivered either by personal service, by first-class United States mail, by an overnight commercial courier service, or by telephonic facsimile transmission. A notice delivered by personal service is effective upon service to the recipient. A notice delivered by first-class United States mail is effective three COUNTY business days after deposit in the United States mail, postage prepaid, addressed to the recipient. A notice delivered by an overnight commercial courier service is effective one COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is completed outside of COUNTY business hours, then such delivery shall be deemed to be effective at the next beginning of a COUNTY business day), provided that the sender maintains a machine record of the completed transmission. For all claims arising out of or related to this Agreement, nothing in this section establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

14. **GOVERNING LAW:** Venue for any action arising out of or related to this Agreement shall only be in Fresno County, California.

The rights and obligations of the parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.

15. **DISCLOSURE OF SELF-DEALING TRANSACTIONS**

This provision is only applicable if the CONTRACTOR is operating as a corporation (a for-profit or non-profit corporation) or if during the term of the agreement, the CONTRACTOR changes its status to operate as a corporation.

Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing transactions that they are a party to while CONTRACTOR is providing goods or performing services under this agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR is a party and in which one or more of its directors has a material financial interest. Members of the Board of

1 Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a
2 Self-Dealing Transaction Disclosure Form, attached hereto as Exhibit A and incorporated herein by
3 reference, and submitting it to the COUNTY prior to commencing with the self-dealing transaction or
4 immediately thereafter.

5 16. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the
6 CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all previous
7 Agreement negotiations, proposals, commitments, writings, advertisements, publications, and
8 understanding of any nature whatsoever unless expressly included in this Agreement.

9 ///

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2 ///

3
4 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year
5 first hereinabove written.

6
7 **CONTRACTOR**

8
9 (Authorized Signature)

10 Joseph McGovern, EVP

11 Print Name & Title

12 4950 College Boulevard

13 Overland Park, KS 66211

14 Mailing Address

15
16 **COUNTY OF FRESNO**

17
18 Nathan Magsig, Chairman of the Board of
Supervisors of the County of Fresno

19 **ATTEST:**

20 Bernice E. Seidel

21 Clerk of the Board of Supervisors

22 County of Fresno, State of California

23 By: Susan Bishop
24 Deputy

25 **FOR ACCOUNTING USE ONLY:**

26 Fund: 0001

27 Subclass: 10000

28 ORG: 56201500

Account: 7309

1 **EXHIBIT A**

2 **SELF-DEALING TRANSACTION DISCLOSURE FORM**

3 In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a
4 contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-
5 dealing transactions that they are a party to while providing goods, performing services, or both for the
6 County. A self-dealing transaction is defined below:

7
8 *"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more*
9 *of its directors has a material financial interest"*

10
11 The definition above will be utilized for purposes of completing this disclosure form.

12
13 **INSTRUCTIONS**

- 14 (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- 15 (2) Enter the board member's company/agency name and address.
- 16 (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At
17 a minimum, include a description of the following:
- 18 a. The name of the agency/company with which the corporation has the transaction; and
 - 19 b. The nature of the material financial interest in the Corporation's transaction that the
20 board member has.
- 21 (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of
22 the Corporations Code.
- 23 (5) Form must be signed by the board member that is involved in the self-dealing transaction described
24 in Sections (3) and (4).
- 25
26
27
28

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):			
(5) Authorized Signature			
Signature:		Date:	

Exhibit B - Pricing

DESCRIPTION	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	NOTES/PAYMENT TERMS
*Avatar CWS Maintenance	\$5,908.92	\$6,086.19	\$6,268.77	\$6,456.84	\$6,650.54	3% consumer price index (CPI)
*Avatar HL7 Uni-Directional Interface (Maintenance)	\$4,828.95	\$6,567.37	\$6,698.72	\$6,832.69	\$6,969.35	2% CPI
*Diagnosis Content on Demand Subscription	\$7,270.03	\$8,898.51	\$9,076.48	\$9,258.01	\$9,443.17	2% CPI
*Support Avatar-Annual MPI and myAvatar 100 Concurrent User Licenses	\$90,103.73	\$92,806.84	\$95,591.05	\$98,458.78	\$101,412.54	3% CPI
*POS Scanning Powered by Perceptive Maintenance	\$2,202.62	\$2,268.70	\$2,336.76	\$2,406.86	\$2,479.07	3% CPI
Additional Service Fees	\$80,000.00	\$80,000.00	\$80,000.00	\$80,000.00	\$80,000.00	Additional Service Fees shall only be paid to Contractor if any such services set forth in Section 6(C) of the agreement are performed by Contractor upon County's written request.
**Orchard Harvest (Maintenance)	\$11,271.42	\$11,496.85	\$11,726.79	\$11,961.32	\$12,200.55	2% CPI. NOTE: Orchard Harvest Maintenance is on hold. Payments for this maintenance shall only be paid to Contractor upon County's written request to go live with Orchard Harvest.
**Orchard Copia (Maintenance)	\$26,299.98	\$26,825.98	\$27,362.50	\$27,909.75	\$28,467.94	2% CPI. NOTE: Orchard Copia Maintenance is on hold. Payments for this maintenance shall only be paid to Contractor upon County's written request to go live with Orchard Copia.
**OrderConnect Non-Prescriber (Subscription)	\$3,029.21	\$3,089.79	\$3,151.59	\$3,214.62	\$3,278.91	2% CPI. OrderConnect Non-Prescriber (Subscription) is on hold. Payments for this subscription shall only be paid to Contractor upon County's written request to reinstate this subscription.
*OrderConnect Base Fee (Subscription)	\$1,533.00	\$1,563.66	\$1,594.93	\$1,626.83	\$1,659.37	2% CPI.
**OrderConnect Full Suite (Subscription)	\$2,550.91	\$2,601.93	\$2,653.97	\$2,707.05	\$2,761.19	2% CPI. OrderConnect Full Suite (Subscription) is on hold. Payments for this subscription shall only be paid to Contractor upon County's written request to reinstate this subscription.
Orchard Harvest Remaining One-Time Fees (\$250,386.50)	\$250,386.50					NOTE: Remaining one-time fees for Orchard Harvest shall only be paid to Contractor if any such services as outlined below and in Section 6(A) of the agreement are performed by Contractor. Payments for these one-time fees may be due in Year 1, 2, 3, 4, or 5, depending on when the County determines to move forward with implementation of Orchard Harvest. <u>PAYMENT SCHEDULE FOR ONE-TIME FEES</u> <u>Harvest:</u> 10% upon System Installation of Licenses. 10% upon completion of Training 15% upon County's First Production Use or 180 days after completion of Training, whichever comes first. <u>Copia:</u> 10% upon System Installation of Licenses. 10% upon completion of Training 15% upon County's First Production Use or 180 days after completion of Training, whichever comes first.
TOTAL	\$234,998.77	\$242,205.82	\$246,461.55	\$250,832.75	\$255,322.63	\$1,480,208.02
*NOTE: payment terms are invoiced annually.						
**NOTE: payment terms are invoiced annually after go-live.						

Total :	\$1,480,209.00
Buffer (approximately 10%):	\$148,021.00
GRAND TOTAL (rounded):	\$1,628,230.00