

CONTRACT #4
RFS # 339.01-11610
FA # Pending

Mental Health & Developmental
Disabilities
Office of Information
Technology

VENDOR:
NetSmart Technologies, Inc.



STATE OF TENNESSEE
DEPARTMENT OF MENTAL HEALTH & DEVELOPMENTAL DISABILITIES
OFFICE OF INFORMATION TECHNOLOGY
ANDREW JOHNSON TOWER, TWELFTH FLOOR
710 JAMES ROBERTSON PKWY
NASHVILLE, TN 37243

RECEIVED

APR 23 2009

FISCAL REVIEW

MEMORANDUM

TO: Fiscal Review Committee

FROM: Heather Gundersen, Director
Office of Information Technology
Department of Mental Health and Developmental Disabilities

DATE: April 20, 2009

SUBJECT: NetSmart Technologies Contract Summary Letter

The Department of Mental Health and Developmental Disabilities respectfully requests that it be permitted to enter into a contract with NetSmart Technologies, Incorporated on a non-competitive basis.

NetSmart Technologies is a well-established company with over 18,000 customers, including 35 state systems. The Department has maintained an ongoing contract with NetSmart since 1998 and desires to continue utilizing their software application, known as "AVATAR". AVATAR enables the Department to manage the inpatient census (admissions, patient movement, discharges and referrals) and patient administrative records management at the five Regional Mental Health Institutes (RMHIs). Additionally, it tracks financial eligibility, claims, payments and other patient accounting activities and is critical to our ongoing effort to collect revenue for patient services from responsible parties (Medicare, TennCare, private insurance, etc.).

AVATAR and its support were originally procured through an RFP process in 1998. Of the twenty companies who were sent the RFP, four submitted proposals, and NetSmart Technologies (then called "Creative Socio-Medics Corp") was the best choice for each of nine evaluators.

The new contract is primarily a maintenance contract. Eighty-nine percent (89%) of the total contract amount is designated for ongoing support and maintenance for AVATAR, which is fully implemented at our five psychiatric hospitals. Support and maintenance for the software can only be provided by NetSmart Technologies because of their expertise in the software and because of the licensing agreement. No other vendor has the rights to the AVATAR software.

In the proposed contract, the Department has negotiated a set of maintenance rates for each of the next five years (July 1, 2009 – June 30, 2014), and the contract will lock in these rates. A five-year contract to cover support and maintenance is therefore in the best of interest of the State, because there would be no need to negotiate rates yearly and risk large increases that could cost the State more in the long run.

Eleven percent (11%) of the total contract amount is designated to license two new modules (Incident Tracking and HL-7 Interfaces to a pharmacy system) and to support those applications for the remainder of the contract. These new modules are fully integrated with the existing product and will help the Department in achieving increased integration of its patient records applications.

Over the past eleven years, the Department has had a significant investment in the software application. Administrative staff, including admissions, medical records, financial services, and unit staff rely on this application to perform their day-to-day duties. The current implementation of AVATAR, which was completed in 2007, took over two years, and the staff has spent countless hours in testing, training and custom development. If we were to go through the RFP process to find another vendor that could provide comparable software and services, it would take at least two years and over \$1.6 million dollars, and there will be additional yearly maintenance cost associated with the new contract. Clearly, this is not a cost-effective option for the State.

After taking all of this information into account, our Department determined that NetSmart Technologies is the optimal choice for maintaining and supporting our existing hospital information system AVATAR.

Thank you for your consideration of this request.

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #	33901-11610	
2) State Agency Name	Department of Mental Health and Developmental Disabilities	
3) Service Caption	AVATAR Project	
4) Proposed Contractor	Netsmart Technologies, Inc.	
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	July 1, 2009	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	June 30, 2014	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$1,203,468.00	
8) Approval Criteria : (select one)	<input checked="" type="checkbox"/>	use of Non-Competitive Negotiation is in the best interest of the state
	<input type="checkbox"/>	only one uniquely qualified service provider able to provide the service
9) Description of Service to be Acquired :	89% of the total contract amount is on-going Maintenance and Support of the software application known as Avatar. Additionally, 11% of the total will be devoted to licensing and supporting two new modules of AVATAR, Incident Tracking and HL-7 Interfaces to the Pharmacy/ CPOE/ eMAR application.	
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :	The DMHDD has been using Netsmart's software products since 1999 to manage service recipient administrative records. Two (2) versions of this software have been in continuous use by the five (5) Regional Mental Health Institutes (RMHIs) since the initial implementation. The upgrade to the product ("AVATAR") was implemented in the last half of 2007. Netsmart provides on-going maintenance for this software application and is the only such provider. The department utilizes this application as its core patient records tracking system, and it is mission critical to the daily routine and business of the five (5) RMHIs.	
11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method it Used :	The DMHDD issued an RFP in 1998 to twenty (20) prospective vendors which were given the opportunity to bid on the proposal. The department received and evaluated four (4) proposals. By a wide scoring margin, the bid was awarded to Netsmart Technologies (called "Creative Socio-Medics, Corporation" at the time) for an initial term of the maximum permitted five (5) years. The DMHDD requested and received approval to enter into another five-year contract at the end of the initial five-year period. We are now nearing the end of the second contract term.	
12) Name & Address of the Proposed Contractor's Principal Owner(s) :		

(not required if proposed contractor is a state education institution)

Netsmart Technologies, Incorporated

James L. Conway, Chairman and Chief Executive Officer

3500 Sunrise Highway, Suite D-122

Great River, NY 11739

13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :

Netsmart has become the leading provider of Behavioral Health/Mental Health Care software to State and County agencies. Creative Socio-Medics, Corporation (now Netsmart Technologies) began in 1968 offering software applications to mental health care agencies. Since then, its primary customer base has been State and County Healthcare Agencies and its primary focus is behavioral health care. The vendor has over thirty (30) years of experience and has contracts with thirty-five (35) State agencies, including Arizona, Arkansas, Colorado, Connecticut, Georgia, Hawaii, Idaho, Indiana, Minnesota, Nevada, New Hampshire, New Mexico, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Wyoming.

14) Documentation of Office for Information Resources Endorsement :

(required only if the subject service involves information technology; N/A to THDA requests)

select one:

Documentation Not Applicable to this Request

Documentation Attached to this Request

15) Documentation of Department of Personnel Endorsement :

(required only if the subject service involves training for state employees)

select one:

Documentation Not Applicable to this Request

Documentation Attached to this Request

16) Documentation of State Architect Endorsement :

(required only if the subject service involves construction or real property related services)

select one:

Documentation Not Applicable to this Request

Documentation Attached to this Request

17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

The TDMHDD used the competitive procurement process to initially purchase services from this vendor. Over the course of the Netsmart contract, departmental staff has continued to follow the behavioral healthcare software market via periodicals and direct contact from vendors to identify other potential vendors. Most all, however, are oriented toward general medical care rather than inpatient psychiatric care and do not meet the unique needs of the DMHDD. We believe it would not be beneficial to entertain other procurement alternatives for the required services.

18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :

(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

The department would like to protect the huge investment it has made (a) in training hundreds of staff, (b) in customized data collection screens, (c) in specialized logic to manage claims/reimbursement for patient services and (d) several hundred customized reports. Moreover, the costs to conduct an RFP process, install new computer servers, convert data, and retrain hundreds of staff to a new product would far exceed the costs for maintaining the existing product.

REQUESTING AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)


Agency Head Signature

4/21/09
Date

Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Heather Gundersen	*Contact Phone:	615 532-6603		
*Contract Number:		*RFS Number:	33901-11610		
*Original Contract Begin Date:	July 1, 2006	*Current End Date:	June 30, 2009		
Current Request Amendment Number: <i>(if applicable)</i>					
Proposed Amendment Effective Date: <i>(if applicable)</i>					
*Department Submitting:		Mental Health & Developmental Disabilities			
*Division:		Information Technology			
*Date Submitted:		3/31/2009			
*Submitted Within Sixty (60) days:		Yes			
<i>If not, explain:</i>					
*Contract Vendor Name:		NetSmart Technologies, Incorporated.			
*Current Maximum Liability:		\$2,908,876			
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2006	FY: 2007	FY: 2008	FY: 2009	FY:	FY
\$ 1,252,683	\$ 757,654	\$ 428,682	\$ 469,857		\$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY: 2006	FY: 2007	FY: 2008	FY: 2009	FY:	FY
\$ 326,562	279,016	441,232			\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			Pharmacy & order entry applications through Netsmart were funded, but never implemented.		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			Under Section 36, Item 1 of the Appropriations Act, the surplus funds were carried forward for the procurement of a Pharmacy System. However, surplus funds were used to close FY08 and are no longer available.		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			An Accrual of \$39,449 from FY 2007 was carried forward into FY 2008.		
*Contract Funding Source/Amount:	State:	\$2,908,876	Federal:		
Interdepartmental:			Other:		

Supplemental Documentation Required for
Fiscal Review Committee

If "other" please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>			

Costs and Funding Breakdowns by Fiscal Year
April 16, 2009

A detailed breakdown of the actual expenditures anticipated in each year of the contract, including specific line items, the source of funds (federal, state, or other--if other, please specify source), and the disposition of any excess funds.

Summary by Fiscal Year:

FY	2010	2011	2012	2013	2014	All Years
Funding Source	100% State					
Amount	226,628	272,900	224,660	234,480	244,800	\$1,203,468

Disposition of Excess Funding	In an effort to keep costs as low as possible, the Department has written a new contract with minimal services requested. The maintenance services for the most part begin the first date of the contract and continue through the last date, and consequently, a high level of predictability of costs exists. We do not expect that excess funding will occur.
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Fiscal Year 2010 (Year 1):

Professional Fees

Training Fees for Incident Tracking	4,500	
Proj Mgt Fees for Incident Tracking	3,600	
Rad Dev and Crystal Report Writing for Incident Tracking	3,000	
Systems Admin Training	<u>3,600</u>	14,700

Licensing Fees

Licensing Fees associated with Incident Tracking	<u>12,500</u>	12,500
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	Maintenance Fee	QTRLY	YRLY	
Service Rate # 1a	Quarterly Maintenance Fee for Avatar PM, CWS, Client Banking, Scheduling, DA/SQL, RADPlus Modeling Tool, and MPI	\$31,353	\$125,412	
Service Rate # 2a	Quarterly Maintenance Fee for DSS/SQL	\$3,715	\$14,860	
Service Rate # 3a	Quarterly Maintenance Fee for Cache (Avatar – 199 concurrent users, Platform Specific, Multi-Server)	\$7,260	\$29,040	
Service Rate # 6a	Quarterly Maintenance Fee for Avatar Incident Tracking (3 quarters)	\$656	\$1,968	
Service Rate # 7	Escrow Services	\$1,148	\$1,148	
Change Order	Change Orders \$225/hour X 120 hours	6,750	27,000	199,428

Fiscal Year 2011 (Year 2):

Professional Fees

Training Fees for HL-7 - ADT	1,500	
Training Fees for HL-7 - Billing	1,500	
Proj Mgt Fees for HL7 - ADT	12,300	
Proj Mgt Fees for HL7 - Billing	12,300	
		27,600

Licensing Fees

Licensing Fees associated with HL-7 ADT Interface	15000	
Licensing Fees associated with HL-7 Billing Interface	15000	
		30,000

	Maintenance Fee	QTRLY	YRLY	
Service Rate # 1b	Quarterly Maintenance Fee for Avatar PM, CWS, Client Banking, Scheduling, DA/SQL, RADPlus Modeling Tool, and MPI	\$32,921	\$131,684	
Service Rate # 2b	Quarterly Maintenance Fee for DSS/SQL	\$3,901	\$15,604	
Service Rate # 3b	Quarterly Maintenance Fee for Cache (Avatar – 199 concurrent users, Platform Specific, Multi-Server)	\$7,623	\$30,492	
Service Rate # 5b	Quarterly Maintenance Fee for Avatar HL-7 Interfaces	\$1,654	\$6,616	
Service Rate # 6b	Quarterly Maintenance Fee for Avatar Incident Tracking	\$689	\$2,756	
Service Rate # 7	Escrow Services	\$1,148	\$1,148	
Change Order	Change Orders \$225/hour X 120 hours	\$6,750	\$27,000	(215,300
TOTAL EXPENDITURES FOR YEAR 2			272,900	

Fiscal Year 2012 (Year 3):

	Maintenance Fee	QTRLY	YRLY
Service Rate # 1c	Quarterly Maintenance Fee for Avatar PM, CWS, Client Banking, Scheduling, DA/SQL, RADPlus Modeling Tool, and MPI	\$34,567	\$138,268
Service Rate # 2c	Quarterly Maintenance Fee for DSS/SQL	\$4,096	\$16,384
Service Rate # 3c	Quarterly Maintenance Fee for Cache (Avatar – 199 concurrent users, Platform Specific, Multi-Server)	\$8,004	\$32,016
Service Rate # 5c	Quarterly Maintenance Fee for Avatar HL-7 Interfaces	\$1,738	\$6,952
Service Rate # 6c	Quarterly Maintenance Fee for Avatar Incident Tracking	\$723	\$2,892
Service Rate # 7	Escrow Services	\$1,148	\$1,148

Change Order	Change Orders \$225/hour X 120 hours	\$6,750	\$27,000
TOTAL EXPENDITURES FOR YEAR 3			224,660

Fiscal Year 2013 (Year 4):

Maintenance Fee		QTRLY	YRLY	
Service Rate # 1d	Quarterly Maintenance Fee for Avatar PM, CWS, Client Banking, Scheduling, DA/SQL, RADPlus Modeling Tool, and MPI	\$36,295	\$145,180	
Service Rate # 2d	Quarterly Maintenance Fee for DSS/SQL	\$4,301	\$17,204	
Service Rate # 3d	Quarterly Maintenance Fee for Cache (Avatar – 199 concurrent users, Platform Specific, Multi-Server)	\$8,404	\$33,616	
Service Rate # 5d	Quarterly Maintenance Fee for Avatar HL-7 Interfaces	\$1,824	\$7,296	
Service Rate # 6d	Quarterly Maintenance Fee for Avatar Incident Tracking	\$759	\$3,036	
Service Rate # 7	Escrow Services	\$1,148	\$1,148	
Change Order	Change Orders \$225/hour X 120 hours	\$6,750	\$27,000	234,480
TOTAL EXPENDITURES FOR YEAR 4				234,480

Fiscal Year 2014 (Year 5):

Maintenance Fee		QTRLY	YRLY	
Service Rate # 1e	Quarterly Maintenance Fee for Avatar PM, CWS, Client Banking, Scheduling, DA/SQL, RADPlus Modeling Tool, and MPI	\$38,110	\$152,440	
Service Rate # 2e	Quarterly Maintenance Fee for DSS/SQL	\$4,516	\$18,064	
Service Rate # 3e	Quarterly Maintenance Fee for Cache (Avatar – 199 concurrent users, Platform Specific, Multi-Server)	\$8,824	\$35,296	
Service Rate # 5e	Quarterly Maintenance Fee for Avatar HL-7 Interfaces	\$1,916	\$7,664	
Service Rate # 6e	Quarterly Maintenance Fee for Avatar Incident Tracking	\$797	\$3,188	
Service Rate # 7	Escrow Services	\$1,148	\$1,148	
Change Order	Change Orders \$225/hour X 120 hours	\$6,750	\$27,000	244,800
TOTAL EXPENDITURES FOR YEAR 5				244,800

TOTAL EXPENDITURES FOR ALL YEARS	1,203,468
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FAX/EMAIL TRANSMITTAL

to Request OIR Procurement Endorsement

TO : Jane Chittenden, Director
 OIR Procurement & Contract Management **FAX # 741-6164**

FROM : Heather Gundersen **FAX # 253-5717**

DATE : March 23, 2009

RFS # 33901-11610

RE : Procurement Endorsement — *NetSmart Technologies*
~~SUBJECT PROCUREMENT~~

INFORMATION SYSTEMS PLAN PROJECT: N/A

NUMBER OF FAX PAGES (including cover): N/A

The nature and scope of service detailed in the attached service procurement document(s) appears to require Office for Information Resources (OIR) review and support, because the procurement involves information technology or information systems services.

This communication seeks to ensure that OIR is aware of the procurement and has an opportunity to review the matter. Please determine whether OIR is supportive of the procurement. If you have any questions or concerns about this matter, please call Heather Gundersen at 615-532-6603 or 615-430-5868.

Please indicate below your response to this proposed procurement, and return this communication at your earliest convenience (note the return FAX number above).

Thank you for your help.

Attachment(s)

Must include the entire contract or amendment document and where applicable, the non-competitive contract or amendment request form. The original contract and any prior amendments that were applied to the same section of the contract must be provided with an amendment. Electronic copies of the contract, amendments, and request form without signature are acceptable.

RFP documents must be provided in electronic form.

OIR Endorsement :

Mark Bengel
 OIR Chief Information Officer

4/1/09
 Date

Jennifer.A Radcliffe - Recommendation for Use of Certain Clauses in the Netsmart Technologies Contract

From: Sandra Braber-Grove
To: Radcliffe, Jennifer.A
Date: 3/25/2009 7:44 AM
Subject: Recommendation for Use of Certain Clauses in the Netsmart Technologies Contract

Pursuant to the instructions in the Model Format for a fee-for-service contract, this email shall serve as written recommendation of the procuring agency's legal counsel for use of certain clauses in the contract between the procuring agency and Netsmart Technologies, Inc.

Given the complexity of this contract, and the nature of the services being purchased, the Department of Mental Health and Developmental Disabilities, Office of Legal Counsel hereby recommends use of the following clauses:

1. A slightly modified State Ownership of Work Products that includes the use of acquired skills and knowledge;
2. The Copyrights and Patents clause;
3. The Hold Harmless clause;
4. The Breach clause without the Liquidated Damages subsection; and
5. The Partial Takeover clause.

Sandra (Sandy) Braber-Grove, Esq.
Legal Counsel
Privacy Compliance Officer
Office of Legal Counsel
Tennessee Department of Mental Health
and Developmental Disabilities
3d Floor, Cordell Hull Building
425 Fifth Avenue North
Nashville, TN 37243
Ph.: (615) 532-6520
Fax: (615) 741-9633
New Email: Sandra.Braber-Grove@tn.gov

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CONTRACT COVER

(fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

RFS Tracking #		Edison Contract ID #			
33901-11610					
Service Caption		Delegated Authority Requisition ID # (ONLY if applicable)			
AVATAR Project					
Contractor		Contractor FEIN or SSN			
Netsmart Technologies, Inc.		<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 11-3215536-01			
Begin Date	End Date	Subrecipient or Vendor		CFDA #(s)	
7/1/2009	6/30/2014	<input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor			
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2010	\$226,628.00				\$226,628.00
2011	\$272,900.00				\$272,900.00
2012	\$224,660.00				\$224,660.00
2013	\$234,480.00				\$234,480.00
2014	\$244,800.00				\$244,800.00
TOTAL	\$1,203,468.00				\$1,203,468.00
— OCR Use —		Procuring Agency Contact & Telephone #			
		Gene Wood 615-532-6676			
		Procuring Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.)			
		Speed Code	Account Code		
Contractor Ownership/Control					
<input type="checkbox"/> African American <input type="checkbox"/> Person w/ Disability <input type="checkbox"/> Hispanic <input type="checkbox"/> Small Business <input type="checkbox"/> Government <input type="checkbox"/> Asian <input type="checkbox"/> Female <input type="checkbox"/> Native American <input checked="" type="checkbox"/> NOT Minority/Disadvantaged <input type="checkbox"/> Other					
Contractor Selection Method					
<input type="checkbox"/> RFP <input type="checkbox"/> Competitive Negotiation * <input type="checkbox"/> Alternative Competitive Method * <input checked="" type="checkbox"/> Non-Competitive Negotiation * <input type="checkbox"/> Other *					
*Procurement Process Summary					
See Attached					

**CONTRACT
 BETWEEN THE STATE OF TENNESSEE,
 DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES
 AND
 NETSMART TECHNOLOGIES, INCORPORATED**

This Contract, by and between the State of Tennessee, Department of Mental Health and Developmental Disabilities, hereinafter referred to as the "State" and Netsmart Technologies, Incorporated, hereinafter referred to as the "Contractor," is for the provision of maintenance and support of AVATAR, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit corporation.
 Contractor Federal Employer Identification or Social Security Number: V11-3215536-01
 Contractor Place of Incorporation or Organization: Delaware

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.

A.2. The Contractor shall deliver the application and systems software for the AVATAR Software in accordance with the following requirements:

a. On-going Services for Current Applications. The Contractor shall continue to provide application and systems maintenance and support for the following:

- (1) AVATAR Practice Management (PM) 2006;
- (2) AVATAR Master Patient Index (MPI);
- (3) AVATAR Client Funds Management System (CFMS), also known as "Client Banking";
- (4) AVATAR Clinician Workstation (CWS);
- (5) Decision Support System (DSS);
- (6) Direct Access/Structured Query Language (DA/SQL);
- (7) Rapid Application Development Plus (RADplus) 2006 Modeling Tool; and
- (8) Caché version 5.0.10, single server licenses as follows:

System:	Production	Test	TOTAL
No. of Concurrent User Licenses:	199	16	215

b. New AVATAR System Software. The Contractor shall provide all necessary licenses as defined below, deliver, implement, and provide on-going application and systems maintenance and support for the AVATAR System software and its components itemized in (1) through (2) below, which shall meet the requirements specified in "AVATAR Business and Data Requirements" (Attachment B):

- (1) AVATAR Incident Tracking. The Incident Tracking module shall meet the requirements defined in "Incident Tracking Requirements" (Attachment A); and
- (2) Health Level-7 (HL-7) Interfaces:

- i. An Admission/Discharge/Transfer (ADT) Interface from AVATAR PM to a future Pharmacy/ Computerized Physician Order Entry (CPOE) / Electronic Medication Administration Record (eMAR) application software to be selected by the State (Attachment B, item 6); and
 - ii. An Interface from the State's Pharmacy/ CPOE/ eMAR application to AVATAR.
 - (3) The State reserves the right to elect, at its own discretion, not to implement the HL-7 interfaces. Such decision by the State shall not constitute a breach of this Contract.
 - (4) Once implementation has been completed, the Contractor shall provide on-going maintenance and support for the Incident Tracking module and for the HL-7 Interfaces.
- c. Support. The Contractor shall provide application and systems software support. Details of this support are defined in sections A.8. and A.9. of this Contract.
- d. Security. The Contractor shall deliver and support AVATAR Software that meets the requirements specified in "Security Requirements" (Attachment C).
- e. Project Management and Deliverables. The Contractor shall assign a Contractor staff member to be the Project Manager, who shall be experienced in the project management of Incident Tracking and the HL-7 Interfaces to and from a future Pharmacy/ CPOE/ eMAR application. All Project Management tasks for Incident Reporting, the HL-7 Interface to Pharmacy/ CPOE/ eMAR and the HL-7 Interface from Pharmacy/ CPOE/ eMAR shall not require on-site presence by the Contractor. The Contractor's project management tasks shall include, but are not limited to, the delivery of the following:
 - (1) A Project Plan.
 - i. The written Project Plan shall include:
 - (a) The major phases of the project, including phases for all tasks, deliverables and milestones;
 - (b) A timetable for each task, deliverable, and milestone. The Contractor shall work with the State to meet a project schedule to be defined by the State; and
 - (c) Critical path with parallel and dependent project tasks.
 - ii. The Project Plan must be approved, in writing, by the State. Subsequent alterations to the Project Plan are acceptable only if approved, in writing, by the State.
 - (2) User Specifications and Delivery of Software (HL-7 Interfaces only).
 - i. The Project Management activities associated with the Implementation of the HL-7 Interfaces to and from the Pharmacy/ CPOE/ eMAR shall include:
 - (a) The User Requirements meeting(s) necessary to gather and define the State's unique requirements. This Specification Discovery meeting(s) shall be conducted via a series of conference calls.
 - (b) The Contractor shall document all necessary Specifications for these HL-7 Interface requirements and obtain approval and sign-off from the State.
 - (c) The Contractor shall design, configure, test, and run quality checks in order to develop fully functional HL-7 Interfaces.

- (d) The software shall provide the software for installation on the State computer servers.
- ii. The State reserves the right to elect, at its own discretion, not to implement the HL-7 interfaces. Such decision by the State shall not constitute a breach of this Contract.

(3) Technical Documentation.

The Contractor must provide Technical Documentation on the new products (Incident Tracking and HL-7 Interfaces), which features clear organization of content, easy to understand language, useful graphic presentations, and an index and glossary.

- i. Technical documentation must be provided to State technical staff to document: (a) all batch jobs and scripts that run on the servers, (b) the impact when the jobs or scripts do not run properly, and (c) the required actions of staff to manually run jobs or scripts;
- ii. The Contractor must provide State Technical staff documentation to monitor and maintain the system, such as for database integrity checks and monitoring space allocation for the application; and
- iii. All technical documentation shall be revised by the Contractor with any changes resulting from the State's Acceptance Testing and initial user training sessions.

(4) User Manual.

The Contractor must provide User Manuals, which features clear organization of content, easy to understand language, useful graphic presentations, and a thorough index and glossary.

(5) Implementation Wrap-Up Document.

The Contractor shall document the Implementation Wrap-Up at the end of the implementation of Incident Tracking, at the end of the implementation of the HL-7 interface from AVATAR to Pharmacy/ CPOE/ eMAR and at the end of the implementation of the HL-7 interface from Pharmacy/ CPOE/ eMAR to AVATAR , and it shall provide:

- i. Documentation that all the requirements for the module have been met;
- ii. Documentation that all deliverables itemized in section A.2. e. have been provided to and approved by the State;
- iii. Status and assessment of the Implementation at each site;
- iv. Outstanding Issues that the Contractor has not resolved and the process and schedule for their resolution;
- v. Recommendations to the State that improve the performance of the application; and
- vi. Signature of Authorized Contractor Staff.

- f. Staff Roles and Responsibilities. The Contractor and the State shall adhere to the "Roles and Responsibilities" (Attachment D).
- g. Technical Configuration. The Contractor shall adhere to the system configuration defined in the "Technical System Environment" (Attachment E) during application setup, installation, and maintenance. Changes to this configuration cannot be made unless agreed upon by the State.

- h. General Implementation Guidelines. The Contractor shall install, with assistance from the State, all new application software procured from the Contractor on the State's server computers.

Based upon the State's requirements, policies, standards, workflow, and staffing, the Contractor, in collaboration with the State, shall develop a plan and strategy to maximize the efficiency and effectiveness of each application's dictionary definitions, data entry, transactions, queries, and other product features.

- i. New Software Implementation.

- (1) The State shall work with the Contractor to schedule these implementations. However, the implementation schedule must be approved, in writing, by the State.
- (2) The Contractor shall assist the State in "File Building" to ensure that all dictionaries and tables are set up as required for operational use with the new software modules.
- (3) For implementing new AVATAR system software, the Contractor shall work closely with the State in initiating, executing, and completing a pilot environment. The pilot facility shall be chosen by the State and shall not begin until the State determines, in writing, that the software modules are ready to begin the pilot phase.
- (4) The Pilot site shall be implemented, and the State shall approve that the pilot site was successfully implemented in a written acceptance document.
- (5) Once the Contractor receives written acceptance of the pilot site from the State, the Contractor shall work closely with the State in implementing the new software applications at the remaining sites.
- (6) The implementation of new software shall be considered completed at a given site with the User Acceptance of the new software modules at that site and the facility "goes live."
- (7) At the end of implementation at all facilities, the Contractor shall provide a written Wrap-Up document (section A.2. e. (5)) to assess the quality and performance of the implemented system and the supporting documentation.

- j. RAD Development and Custom Report Conversion.

- (1) The Contractor and State shall mutually define the State's unique requirements for Rapid Application Development (RAD) and Crystal Report Writing, and these requirements shall be documented for the State's approval.
- (2) The Contractor shall provide a total of sixteen (16) hours of RADplus development and Crystal Report writing time based upon the State's unique Incident Tracking requirements. Such time shall include providing technical assistance to State staff in creating and generating reports for the AVATAR Incident Tracking module and providing oversight and technical assistance until all reports function properly. The Contractor's liability for this task, however, shall not exceed sixteen (16) hours.
- (3) All RAD development and custom report conversions shall not require on-site presence by the Contractor.

A.3. Software Licensure.

- a. The Contractor shall provide a license (or "licenses") to the State. This license, or these licenses, is referred to herein as the "base license". The base license shall also include system support and maintenance, as described in Section A.8. At the State's option,

Software Licensure/ System Support for the base license shall be renewed annually, with renewal fees paid in quarterly installments, throughout the term of the Contract. The Contractor affirms its right to license to the State all software referenced in Contract Sections A.2.a. and A.2.b.

- b. The State shall not incur any additional fees, other than what is specified in this Contract, for upgrading AVATAR, Caché, the RADplus Modeling Tool or any other software from the version currently installed at the State except in instances that require Contractor staff time to perform the upgrade. In these cases, these fees will be calculated using the Change Order Rate in section C.3.

A.4. Contractor Licensing Provisions.

- a. The State recognizes that the Contractor may require the State to agree to certain Contractor licensing provisions for the proposed software. If this is the case, any and all Contractor licensing agreements are included (in original or modified form) as follows in this Section. The State's signature on this Contract shall constitute the State's written agreement to the provisions so included. The State shall not sign separate Contractor licensing agreements.
- b. The Contractor hereby grants the State a non-exclusive, perpetual (except as otherwise specified herein) non-transferable license to use the Licensed Programs in object code form only:
 - (1) For the State's internal business purposes and not to process the data of any other entity; and
 - (2) While the State is not otherwise in default under this Agreement.
- c. The Third Party Programs shall be licensed subject to the same restrictions as are set forth in A.4. b. above.
- d. Nothing in this Agreement shall be deemed to convey any title or ownership interest in the Licensed Programs to the State. The State acknowledges the Contractor's rights, and the rights of the owner of the Third Party Programs, to the Licensed Programs and agrees that the Licensed Programs are trade secrets and unpublished works on which the Contractor and such third party(s) hold and shall hold the sole and exclusive copyright. The State shall not dispute the rights of the Contractor and the third party(s) in the Licensed Programs. The State shall take reasonable efforts to protect the confidentiality of the Licensed Programs.
- e. No copies of the Licensed Programs may be made by the State without the prior written consent of the Contractor except for backup purposes in accordance with normal data processing practices. The State agrees to reproduce any copyright notices and/or other proprietary legends, regardless of form, contained in, affixed to, or appearing on the Licensed Programs.
- f. The State shall not disassemble or reverse engineer any of the Licensed Programs nor attempt to access or modify the source code version of the Licensed Programs and shall not make any derivations, adaptations, or translations of the Licensed Programs in whole or in part or use the Licensed Programs to develop functionally similar computer software or to otherwise compete with Licensor.

A.5. Software Documentation.

The Contractor shall provide the State an Incident Tracking User Manual, an HL-7 ADT Interface File Layout, and an HL-7 Interface from Pharmacy/ CPOE/ eMAR File Layout. The Incident

Tracking User Manual shall provide complete information and instructions in the day-to-day, non-technical business use for the new software.

Additionally, updates to the following manuals shall be provided with no additional fees as updates are released by the Contractor:

- a. AVATAR PM User Guide;
- b. AVATAR PM Appointment Management Guide;
- c. AVATAR CFMS User Guide;
- d. AVATAR CWS User Guide;
- e. RADplus (version 6.2 or subsequent versions) User Guide; and
- f. System Administration Procedures for Netsmart Systems Utilizing Caché version 5.0.

A.6. Training.

The Contractor shall provide training materials and skilled presenters knowledgeable in the system features. The Contractor shall permit all training materials provided by the Contractor to be reproduced and used as needed by the State.

The State requires the Contractor to provide the following training:

- a. Twenty-four (24) hours of training for the AVATAR Incident Tracking application shall be provided via an application sharing and conferencing service, such as WebEx. Any alternative training medium must be approved, in writing, ahead of time by the State. The training time shall be broken up into multiple sessions as determined by the State. Training shall occur as follows:
 - (1) State Central Office staff shall receive initial training to cover (a) administration and management of Incident Tracking (b) the building of dictionaries and tables, and (c) planning and recommendations for the implementation at the five Regional Mental Health Institutes (RMHIs).
 - (2) Subsequent training shall be provided to users in the remaining sites in one or more additional sessions, as determined by the State.
- b. Though a formal training class for HL-7 Interfaces to and from the Pharmacy/ CPOE/ eMAR system is not offered, the Contractor shall provide technical guidance and assistance to the State's system administrators so that these administrators are prepared to:
 - (1) Monitor the functionality of the HL-7 Interfaces and ensure correct operation; and
 - (2) Identify situations when the HL-7 interfaces fail and take appropriate measures to bring the interfaced applications back into synchronization.
- c. AVATAR Systems Administrative Training.
 - (1) The State is requiring additional Systems Administrative training beyond what training has been previously provided to the State during the initial implementation of AVATAR.
 - (2) The Contractor shall provide one (1) day of AVATAR Systems Administrative Training.
 - (3) The State shall determine the agenda of topics to be covered in this one day training session and provide this agenda to the Contractor at least four (4) weeks ahead of time.

- (4) The training shall be provided on-site in Nashville, Tennessee at a State-selected location.

d. On-going Training and Online Support.

- (1) The Contractor shall revise all training materials and online help features for the correction of deficiencies and errors.
- (2) The Contractor shall update all training materials, interactive online help, and tutorials to reflect systems updates, changes and/or upgrades as supported by the Contractor.

A.7. System Warranty.

Warranty Period. The Contractor expressly warrants the AVATAR software provided to be defect-free, properly functioning, and compliant with the terms of the Contract. The Warranty Period shall extend through the end of the Contract period. Throughout the Warranty Period, the Contractor shall provide corrections for any errors, defects, and/or design deficiencies in the AVATAR Software reported by the State, and to provide such corrections in a timeframe mutually determined by the State and Contractor.

A.8. Software Maintenance and Support - Contractor Responsibilities.

The Contractor shall:

- a. Make all necessary adjustments and repairs, at no additional cost to the State, to keep the software operating without abnormal interruptions and to correct latent deficiencies with respect to the software specifications.

The Contractor shall maintain the current version of the licensed programs in substantial conformance with its specifications as amended from time to time by the Contractor, and with applicable Federal regulatory requirements and laws. The Contractor shall assign priority support resources to either:

- (1) Correct any reproducible errors or malfunctions in the licensed programs by the Contractor which prevent it from operating in substantial conformance with said specifications and applicable Federal regulatory requirements. The Contractor shall assign support resources to address errors and malfunctions; or
- (2) Provide a commercially reasonable alternative that shall substantially conform to the specifications and applicable Federal regulatory requirements and laws.

- b. Provide technical support to the State via online interface or toll-free telephone number. Contractor support staff shall respond during Standard Business hours. Standard Business hours are defined to be Monday through Friday, excluding State holidays, between the hours of 9:00 AM and 6:00 PM Eastern Standard Time (EST).

The Contractor personnel responding to these requests and providing this support shall be trained to enable them, in most cases, to address questions and solve problems themselves, without having to refer the questions elsewhere. The extent of this technical software support shall include both application software (e.g., AVATAR PM,) and systems software (e.g., Caché or RADplus).

Additionally, the Contractor shall provide telephone and email support to answer the State's general questions about the licensed programs and their use.

- c. On a timely basis, the Contractor shall also provide the State with:

- (1) such updates as are distributed without charge to other licensees which reflect modifications and incremental improvements made to the licensed programs by the Contractor; and
 - (2) an opportunity to obtain enhancements to the licensed programs for which charges are imposed on the same terms as such enhancements are generally made available to other Licensees.
- d. Provide new versions of the software to keep the State abreast of the Contractor's current software product. Complete documentation of all system enhancements or revisions shall be provided with new releases of software. Documentation must describe, in a manner understandable to the average user, what the user needs to know to understand each level on which the software operates.
- e. If new version of the Contractor's software should become available, and the State is not able to upgrade due to costs, compatibility with the technical environment, or any other reason, then the Contractor shall continue to support the version that the State has implemented.

New versions of the software shall be provided if needed to support critical systems software upgrades by the systems software providers (e.g., Microsoft Windows Operating System (OS), Sun Unix OS, Intersystems Caché) to ensure that security of the State's information is maintained.

- f. If reasonable analysis by the Contractor indicates that a reported error or malfunction is caused by either:
- (1) a problem related to hardware used by the State;
 - (2) system software or applicable software other than the licensed programs; or
 - (3) the State's misuse or modification of the licensed programs,
- then the Contractor's responsibility shall be limited to the correction of the portion, if any, of the problem caused by the licensed programs.
- g. The Contractor shall provide at the State's request, modifications and enhancements, using the process described below, at a cost based upon the Change Order Rate defined in section C.3, and a schedule proposed by the vendor and agreed upon by the State. These modifications and enhancements:
- (1) Shall be developed consistent with and shall operate with the existing System at no loss of function to the existing software;
 - (2) Must operate without abnormal program interruptions;
 - (3) Must substantially provide the functions as required by the specifications and as described by documentation supplied by the Contractor; and
 - (4) The Contractor shall verify that no undesirable effects to the application shall be introduced as the result of changes prior to delivery to the State.

A.9. Software Maintenance and Support - State's Responsibilities.

The State shall:

- a. Make requests for support services by giving the Contractor a written notice specifying a problem caused by a defect in the licensed programs. In making a verbal request for support services, the State shall provide the Contractor within twenty-four (24) hours after such verbal notice with such written information and documentation as may be reasonably prescribed by the Contractor.

- b. Request modifications and enhancements to the software using a six step process used to define, specify, develop, test, and implement changes to the software. These six steps are:
 - (1) State prepares specifications for a modification or enhancement;
 - (2) Contractor prepares an estimate of hours required and the delivery date and cost of the change order, for the development/change of the software;
 - (3) State accepts the estimate and authorizes the work or rejects the estimate and disapproves the work;
 - (4) Contractor delivers the software product or change as defined below;
 - (5) State Accepts, as defined below, the software product or change; and
 - (6) State shall pay Contractor's invoice for the work authorized, up to the amount of the estimate.
- c. Accept software modifications, adjustments, repairs, new versions, and enhancements by this process: (1) On notice from Contractor that software is delivered, the State shall review, validate the delivery of the software, and test the software, (2) within 30 business days, notify Contractor of acceptance or the specific shortcomings with respect to specifications of the software, documentation, efficiency or performance. If the State does not respond within 30 business days, the software shall be considered accepted for the purpose of payment of an invoice, but the State has the option to notify Contractor of latent shortcomings for subsequent correction.
- d. Have the option to choose to purchase additional software modules within the general scope of the Contract. If the State so chooses, maintenance for the additional software modules shall be included in the acquisition cost in the Contract fiscal year in which it was purchased; in subsequent years the costs shall be added to Software Licensure/System Support fees. This action shall be accomplished through an amendment to the current Contract.
- e. In order for the Contractor to provide software maintenance and support, the State shall provide the Contractor with a Secure Remote Access (SRA) Virtual Private Network (VPN) account(s) that shall provide access to the State's computers remotely. The Contractor shall sign and adhere to the State's Acceptable Use Policy when accessing State resources. The Contractor must utilize the State-provided Cisco VPN client to obtain access to the State's resources.

A.10. Source Code in Escrow.

The Contractor shall maintain copies of the AVATAR Software source code in escrow with an independent escrow company pre-approved by the State. The scope of this AVATAR Software source code includes all software itemized or referenced in sections A.2.a and A.2.b. All costs for establishing and maintaining the source code in escrow shall be borne by the State and paid to the Contractor under Section C.3. of this Contract. The Contractor shall notify the State of each update to the software held in escrow.

- a. Within fifteen (15) business days after the State has provided to the Contractor the written approval of a recommended escrow company, the Contractor shall place the source code in escrow with the approved escrow company. The Contractor shall provide the State with a signed letter from the escrow company in question stating that the code has been placed in escrow and confirming the State's right to obtain the source code directly from the escrow company in the event of Contractor default as described below.
- b. Throughout the term of the Contract, the Contractor shall ensure that the source code in escrow is kept current with the State's production environment, matching the State's production version level, including any upgrades, enhancements, or new releases that are applied to the State's system. The Contractor shall ensure that either the Contractor or

the escrow company notifies the State in a written letter at least quarterly that this code has been updated and is current.

- c. If for any reason during the term of the Contract the Contractor becomes unable to fulfill its obligations as described herein, the Contractor agrees to deliver the source code held in escrow to the State. In the event that the Contractor fails to deliver the source code in a timely manner, as determined by the State, the State may obtain the source code directly from the escrow company.
- d. In the event of the release of source code from the escrow company, the State shall have the right to use the source code for the sole purpose of continuing the benefits afforded to it by the License Agreement. The State shall be obligated to maintain the confidentiality of the source code.

B. CONTRACT TERM:

This Contract shall be effective for the period commencing on July 1, 2009 and ending on June 30, 2014. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Million Two Hundred Three Thousand Four Hundred Sixty-Eight Dollars (\$1,203,468.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Project Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. For the implementation of the components of these systems and their maintenance, the Contractor's compensation shall be contingent upon the satisfactory completion, and the State's written acceptance, of units of service or project milestones defined in Section A, "Scope of Services." The Contractor shall be compensated based upon the following Milestone Payment Schedule and Service Rates table:

MILESTONE PAYMENT SCHEDULE AND SERVICE RATES			
Task No.	Scope of Service Cross-Reference	Professional Services Payment Milestone	Amount

		C.3.A. This subsection documents the schedule for paying for Training Fees (\$4,500) for Incident Tracking [reference A.2. b. (1)], in Tasks # A1 and A2.	
Task # A1	A.6. a. (1)	Completion of Training for Central Office Staff for Incident Tracking payable once training has been completed and approved by the State in writing.	\$ 2,250
Task # A2	A.6. a. (2)	Training for remaining staff in Incident Tracking. Payable once training has been completed by Contractor staff and approved by the State in writing.	\$ 2,250
		C.3.B. This subsection documents the schedule for paying for Project Management Fees (\$3,600) for the Implementation of Incident Tracking [reference A.2. b. (1)] in Tasks # B1, B2, and B3.	
Task # B1	A.2. e. (1)	Delivery of a Project Plan/Work Plan for the Incident Tracking project and approved by the State in writing.	\$ 1,200
Task # B2	A.2. i. (4)	Implementation of Incident Tracking at the Pilot site, once Implementation has been completed and approved by the State in writing.	\$ 1,200
Task # B3	A.2. i. (6) & (7) and A.2. e. (5)	Implementation of Incident Tracking at the remaining sites, payable once this implementation has been completed at all sites, the State has approved the implementation in writing, and the State has received the Implementation Wrap-up document.	\$ 1,200
		C.3.C This subsection documents the schedule for paying for RAD Development and Crystal Report writing fees (\$3,000) associated with Incident Tracking [reference A.2. b. (1)] in Tasks # C1 and C2.	
Task # C1	A.2. j. (1)	Completion of a deliverable which documents the State's unique requirements for RAD Development and Crystal Report Writing and approved by the State in writing.	\$ 500
Task # C2	A.2. j. (2)	Delivery of RAD Development and Crystal Report Writing and approved by the State in writing.	\$ 2,500
		Subtotal for Professional Services associated with Incident Tracking	\$ 11,100
		C.3.D. This subsection documents the schedule for paying for Systems Administrative Training Fees for AVATAR in Task # D1.	
Task # D1	A.6. c.	Completion of Systems Administration Training and approved by the State in writing.	\$ 3,600
		Subtotal for Professional Services associated with Systems Administration Training	\$ 3,600
		C.3.E. This subsection documents the schedule for paying for Project Management Fees for the Implementation of the HL-7 Interfaces [reference A.2 b. (2)] in Tasks # E1 through E10.	
Task # E1	A.2.e. (1)	Delivery of a Project Plan/Work Plan for the HL-7 ADT Interfaces to Pharmacy/ CPOE/ eMAR System and approved by the State in writing.	\$ 1,300
Task # E2	A.2. e. (2) i. (a) and (b)	Completion of the Specification Discovery Meeting for HL-7 ADT Interface to Pharmacy/ CPOE/ eMAR System, payable once the Specification document has been completed and approved by the State in writing.	\$ 1,500
Task # E3	A.2. e. (2) i., (c) and (d).	Delivery and Installation of HL-7 ADT Interface to Pharmacy/ CPOE/ eMAR as customized for the State.	\$ 3,000
Task # E4	A.2. b. (2) i. and	Implementation of HL-7 ADT Interfaces to Pharmacy/ CPOE/ eMAR System at the Pilot site, once Implementation has	\$ 4,000

	A.2. i. (4)	been completed and approved by the State in writing.	
Task # E5	A.2. b. (2) i. and A.2. i. (6) & (7) and A.2. e. (5)	Implementation of HL-7 ADT Interface to Pharmacy/ CPOE/ eMAR System at the remaining sites, payable once this implementation has been completed at all sites, the State has approved the implementation in writing, and the State has received the Implementation Wrap-up document.	\$ 4,000
Task # E6	A.2. e. (1)	Delivery of a Project Plan/Work Plan for the HL-7 Interfaces from Pharmacy/ CPOE/ eMAR System to AVATAR and approved by the State in writing.	\$ 1,300
Task # E7	A.2.e. (2) i. (a) and (b)	Completion of the Specification Discovery Meeting for HL-7 Interface from Pharmacy/ CPOE/ eMAR to AVATAR, payable once the Specification document has been completed and approved by the State in writing.	\$ 1,500
Task # E8	A.2. e. (2) i., (c) and (d).	Delivery and Installation of HL-7 Interface from Pharmacy/ CPOE/ eMAR as customized for the State.	\$3,000
Task # E9	A.2. b. (2) ii. and A.2. i. 4	Implementation of HL-7 Interfaces from Pharmacy/ CPOE/ eMAR System at the Pilot site, once Implementation has been completed and approved by the State in writing.	\$ 4,000
Task # E10	A.2. b. (2) ii. and A.2. i. (6) & (7) and A.2. e. (5)	Implementation of HL-7 Interface from Pharmacy/ CPOE/ eMAR System at the remaining sites, payable once this implementation has been completed at all sites, the State has approved the implementation in writing, and the State has received the Implementation Wrap-up document.	\$ 4,000
		Subtotal for Professional Services associated with HL-7 Interfaces to/from Pharmacy/ CPOE/ eMAR System	\$27,600
		TOTAL OF ALL PROFESSIONAL SERVICE FEES	\$ 42,300
Task No.	Scope of Service Cross-Reference	LICENSING FEES PAYMENT MILESTONES FOR NEW MODULES	Amount
		C.3.F. This subsection documents the schedule for paying for the Licensing Fees for the Incident Tracking Module [reference A.2. b. (1)] in Tasks # F1 and F2.	
Task # F1	A.2. i. (4)	Implementation of Incident Tracking at the Pilot site, once Implementation has been completed and approved by the State in writing	\$ 6,250
Task # F2	A.2. i. (7) and A.2. e. (5)	Implementation of Incident Tracking at the remaining four sites, payable once this implementation has been completed at all sites, the State has approved the implementation in writing, and the State has received the Implementation Wrap-up document.	\$ 6,250
		Subtotal for Licensing Fees associated with Incident Tracking	\$ 12,500
Task No.	Scope of Service Cross-Reference	C.3.G. This subsection documents the schedule for paying for Licensing Fees (\$30,000) for the HL-7 Interfaces to and from the Pharmacy/ CPOE/ eMAR System [Reference A.2 b (2)] in Tasks G1, G2, G3, and G4.	
Task # G1	A.2. b. (2) i. and A.2. i. (4)	Implementation of HL-7 Interface for ADT to Pharmacy/ CPOE/ eMAR System at the Pilot site, once Implementation has been completed and approved by the State in writing.	\$ 7,500
	A.2. b. (2) i.	Implementation of HL-7 Interface for ADT to Pharmacy/	

Task # G2	and A.2. i. (6) & (7) and A.2. e. (5)	CPOE/ eMAR System at the remaining sites, payable once this implementation has been completed at all sites, the State has approved the implementation in writing, and the State has received the Implementation Wrap-up document.	\$ 7,500
Task # G3	A.2. b. (2) ii. and A.2. i. (4)	Implementation of HL-7 Interface from Pharmacy/ CPOE/ eMAR System to AVATAR Billing at the Pilot site, once Implementation has been completed and approved by the State in writing.	\$ 7,500
Task # G4	A.2. b. (2) ii. and A.2. i. (6) & (7) and A.2. e. (5)	Implementation of HL-7 Interface from Pharmacy/ CPOE/ eMAR System to AVATAR Billing at the remaining sites, payable once this implementation has been completed at all sites, the State has approved the implementation in writing, and the State has received the Implementation Wrap-up document.	\$ 7,500
		Subtotal for Licensing Fees associated with HL-7 Interfaces to Pharmacy/ CPOE/ eMAR System	\$ 30,000
		TOTAL OF ALL NEW LICENSING FEES	\$ 42,500
ON GOING SERVICE RATES			
C.3.H. This subsection defines Maintenance Fees for On-going Services: AVATAR, DA/SQL, Incident Tracking, Caché, HL-7 Interfaces, as well as Change Order Rates.			
Service Rate	[1] AVATAR		Date Range Quarterly Amount
Service Rate # 1a	Quarterly Maintenance Fee for AVATAR PM, CWS, Client Banking, Scheduling, RADplus Modeling Tool, and MPI		7/01/2009 thru 6/30/2010 \$ 31,353
Service Rate # 1b	Quarterly Maintenance Fee for AVATAR PM, CWS, Client Banking, Scheduling, RADplus Modeling Tool, and MPI		7/01/2010 thru 6/30/2011 \$ 32,921
Service Rate # 1c	Quarterly Maintenance Fee for AVATAR PM, CWS, Client Banking, Scheduling, RADplus Modeling Tool, and MPI		7/01/2011 thru 6/30/2012 \$ 34,567
Service Rate # 1d	Quarterly Maintenance Fee for AVATAR PM, CWS, Client Banking, Scheduling, RADplus Modeling Tool, and MPI		7/01/2012 thru 6/30/2013 \$ 36,295
Service Rate # 1e	Quarterly Maintenance Fee for AVATAR PM, CWS, Client Banking, Scheduling, RADplus Modeling Tool, and MPI		7/01/2013 thru 6/30/2014 \$ 38,110
Service Rate	[2] DA/SQL		Date Range Quarterly Amount
Service Rate # 2a	Quarterly Maintenance Fee for DA/SQL		7/01/2009 through 6/30/2010 \$ 3,715
Service Rate # 2b	Quarterly Maintenance Fee for DA/SQL		7/01/2010 through 6/30/2011 \$ 3,901
Service Rate # 2c	Quarterly Maintenance Fee for DA/SQL		7/01/2011 through 6/30/2012 \$ 4,096
Service	Quarterly Maintenance Fee for DA/SQL		7/01/2012

Rate # 2d		through 6/30/2013	\$ 4,301
Service Rate # 2e	Quarterly Maintenance Fee for DA/SQL	7/01/2013 through 6/30/2014	\$ 4,516
Service Rate	[3] Caché, Single-Server Licenses	Date Range	Quar- terly Amount
Service Rate # 3a	Quarterly Maintenance Fee for Cache' (AVATAR – Production: 199 concurrent users, Test: 16 concurrent users; Platform Specific, Single-Server)	7/01/2009 through 6/30/2010	\$ 7,260
Service Rate # 3b	Quarterly Maintenance Fee for Cache' (AVATAR – Production: 199 concurrent users, Test: 16 concurrent users; Platform Specific Single-Server)	7/01/2010 through 6/30/2011	\$ 7,623
Service Rate # 3c	Quarterly Maintenance Fee for Cache' (AVATAR – Production: 199 concurrent users, Test: 16 concurrent users; Platform Specific, Single-Server)	7/01/2011 through 6/30/2012	\$ 8,004
Service Rate # 3d	Quarterly Maintenance Fee for Cache' (AVATAR – Production: 199 concurrent users, Test: 16 concurrent users; Platform Specific, Single-Server)	7/01/2012 through 6/30/2013	\$ 8,404
Service Rate # 3e	Quarterly Maintenance Fee for Cache' (AVATAR – Production: 199 concurrent users, Test: 16 concurrent users; Platform Specific, Single-Server)	7/01/2013 through 6/30/2014	\$ 8,824
Service Rate	[4] HL-7 ADT Interfaces from AVATAR to Pharmacy/ CPOE/ eMAR This fee includes maintenance fees for the ADT interfaces Payment for the maintenance fee shall not become effective until such time as the HL-7 ADT Interface has been at the remaining four sites, the State has approved the implementation in writing, and the State has received the Implementation Wrap-up document. At that point in time, the liability to the State for this service shall begin. Reference Scope of Services, Section A.2. b.	Date Range	Quar- terly Amount
Service Rate # 4a	Quarterly Maintenance Fee for AVATAR HL-7 ADT Interface.	7/01/2009 through 6/30/2010	\$ 788
Service Rate # 4b	Quarterly Maintenance Fee for AVATAR HL-7 ADT Interface.	7/01/2010 through 6/30/2011	\$ 827
Service Rate # 4c	Quarterly Maintenance Fee for AVATAR HL-7 ADT Interface.	7/01/2011 through 6/30/2012	\$ 869
Service Rate # 4d	Quarterly Maintenance Fee for AVATAR HL-7 ADT Interface.	7/01/2012 through 6/30/2013	\$ 912
Service Rate # 4e	Quarterly Maintenance Fee for AVATAR HL-7 ADT Interface.	7/01/2013 through 6/30/2014	\$ 958
Service Rate	[5] HL-7 Interface from Pharmacy/ CPOE/ eMAR to AVATAR This fee includes maintenance fees for the HL-7 interface from Pharmacy/ CPOE/ eMAR. Payment for the maintenance fee shall not become effective until such time as the HL-7 Interface has been implemented at all sites, the State has approved the implementation in	Date Range	Quar- terly Amount

	writing, and the State has received the Implementation Wrap-up document. At that point in time, the liability to the State for this service shall begin. Reference Scope of Services, Section A.2. b.		
Service Rate # 5a	Quarterly Maintenance Fee for AVATAR HL-7 Interface from Pharmacy/ CPOE/ eMAR.	7/01/2009 through 6/30/2010	\$ 788
Service Rate # 5b	Quarterly Maintenance Fee for AVATAR HL-7 Interface Interface from Pharmacy/ CPOE/ eMAR.	7/01/2010 through 6/30/2011	\$ 827
Service Rate # 5c	Quarterly Maintenance Fee for AVATAR HL-7 Interface Interface from Pharmacy/ CPOE/ eMAR.	7/01/2011 through 6/30/2012	\$ 869
Service Rate # 5d	Quarterly Maintenance Fee for AVATAR HL-7 Interface Interface from Pharmacy/ CPOE/ eMAR.	7/01/2012 through 6/30/2013	\$ 912
Service Rate # 5e	Quarterly Maintenance Fee for AVATAR HL-7 Interface Interface from Pharmacy/ CPOE/ eMAR.	7/01/2013 through 6/30/2014	\$ 958
Service Rate	[6] Incident Tracking Payment for the maintenance fee shall not become effective until such time as the Incident Tracking module has been implemented at all sites, the State has approved the implementation in writing, and the State has received the Implementation Wrap-up document. At that point in time, the liability to the State for this service shall begin. Reference Scope of Services, Section A.2. b.	Date Range	Quarterly Amount
Service Rate # 6a	Quarterly Maintenance Fee for AVATAR Incident Tracking	7/01/2009 through 6/30/2010	\$ 656
Service Rate # 6b	Quarterly Maintenance Fee for AVATAR Incident Tracking	7/01/2010 through 6/30/2011	\$ 689
Service Rate # 6c	Quarterly Maintenance Fee for AVATAR Incident Tracking	7/01/2011 through 6/30/2012	\$ 723
Service Rate # 6d	Quarterly Maintenance Fee for AVATAR Incident Tracking	7/01/2012 through 6/30/2013	\$ 759
Service Rate # 6e	Quarterly Maintenance Fee for AVATAR Incident Tracking	7/01/2013 through 6/30/2014	\$ 797
Service Rate	[7] Escrow Account Services Payment for these services shall be made quarterly by the State once it has received a written letter from the Contractor or escrow company that the updated and current source code has been placed in escrow with the escrow company.	Date Range	Quarterly Amount
Service Rate # 7	Fee for Escrow Services. Reference section A.10. of this Contract.	7/01/2009 through 6/30/2014	\$ 287
Service Rate	[8] Change Order Rate	Date Range	Hourly Amount

Service Rate # 8	Rate for All Change Orders During the 5 Year Term of the Contract. This rate applies to any type of Contractor staff & service (Project Manager, Analyst, Programmers, Quality Managers, etc.) that is required to complete the requirements of the Change Order.	7/01/2009 through 6/30/2014	\$ 225 / hour
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- a. No Quarterly Maintenance Fees in this Contract (Service Rates # 1a through # 6e) shall be effective prior to July 1, 2009.
- b. This Contract shall maintain the following work quarters for each contracted calendar year: Jan-March, April-June, July-September and October-December. The Contractor shall prorate the first Software License/System Support invoice to accommodate the partial quarters. If software license system support services begin after the first day of the quarter, the Contractor agrees to prorate the remaining days to accommodate the partial quarter. For example, if in a 91 day quarter, the State approves implementation of a module on the 43rd day with 49 days remaining, then a quarterly fee of \$3,784.00 shall be prorated as follows: $49/91 \times 3,784 = \$2,037.54$ (rounded).
- c. The Contractor shall submit a single quarterly invoice for all completed work, in form and substance acceptable to the State, with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted at the end of the quarter for all services provided during that quarter, or, if applicable, for a partial quarter. Such invoices shall, at a minimum, include the Payment Rate for each service provided including listed Task numbers and continuing maintenance and support, the total compensation requested, and the total amount due the Contractor for the period invoiced. If the service is a result of a Change Order, the Contractor shall also list on the invoice the number of hours worked during the period, the Payment Rate, the total compensation requested, and the total amount due the Contractor for the period invoiced.
- d. In the event that any quarter of support is shortened, as in the case of the first period described above, or as a result of early Contract termination, then the Contractor shall prorate the quarterly amount to adjust for the shorter quarter, and the State shall pay only this prorated amount. For example, if in a 90 day quarter the Contract is terminated on the 28th day, then a quarterly fee of \$3,784.00 shall be prorated as follows: $28/90 \times 3,784 = \$1,177.24$ (rounded).
- e. In the event Licensee fails to pay for Support Services within sixty (60) days from date of receipt of each accurate invoice, except for amounts disputed by Licensee in good faith, NetSmart may refuse to provide Support Services until Licensee makes payment of the Charges for the period when Support Services were discontinued, as well as the Charges for the then current period, and any Charges for bringing the Licensed Programs up to NetSmart's then-current level and certifying that it is again eligible for maintenance hereunder, and a reinstatement charge if charges have been unpaid for a period of more than one hundred twenty (120) days.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Department of Mental Health and Developmental Disabilities
Fiscal Services

10th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, Tennessee 37243

- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.
- (1) Invoice/Reference Number (assigned by the Contractor);
 - (2) Invoice Date;
 - (3) Invoice Period (period to which all invoiced charges are applicable);
 - (4) Contract Number (assigned by the State to this Contract);
 - (5) Account Name: Department of Mental Health and Developmental Disabilities, Office of Information Technology;
 - (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
 - (7) Contractor Name;
 - (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
 - (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
 - (10) Contractor Remittance Address;
 - (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service Invoiced;
 - iv. Amount Due by Service; and
 - v. Total Amount Due for the invoice period.
- c. The Contractor understands and agrees that an invoice to the State under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) not include any future work but will only be submitted for completed service; and
 - (3) not include sales tax or shipping charges.
- d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.
- e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.
- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of

audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.

D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request,

show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment One, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- E. SPECIAL TERMS AND CONDITIONS:**
- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Heather Gunderson, Director of Information Technology
Department of Mental Health and Developmental Disabilities
Andrew Johnson Tower, 12th Floor
710 James Robertson Parkway
Nashville, TN 37243
Heather.Gunderson@tn.gov
Phone: (615) 532-6603
Fax: (615) 253-5717

The Contractor:

James H. Gargiulo
Senior Vice President
Netsmart Technologies, Inc.
3500 Sunrise Highway, Suite D-122
Great River, NY 11739
jgargiulo@ntst.com
1-800-421-7503, ext. 2039
Fax-631-968-2059

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

E.5. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.

- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
- b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
- a. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

E.6. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

- a. Contractor Breach— The State shall notify Contractor in writing of a Breach.
 - (1) In event of a Breach by Contractor, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity.
 - (2) Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding

determination of said amount.

The State may assess Liquidated Damages against the Contractor for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is effective. Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

(3) **Contract Termination**— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

b. **State Breach**— In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

E.7. **Partial Takeover.** The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.8. **Confidentiality of Records.** Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and

regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.9. HIPAA Compliance. The State and the Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. The Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract.
 - b. The Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and the Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this grant is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.10. Rule 2 Compliance. The State and the Contractor shall comply with obligations under Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations as codified at 42 CFR § 2.1 et seq.
- a. The Contractor warrants to the State that it is familiar with the requirements of Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations, and will comply with all applicable requirements in the course of this Contract.
 - b. The Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its regulations, in the course of performance of the Contract so that both parties will be in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and that are reasonably necessary to keep the State and the Contractor in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by Rule 2 of the

Confidentiality of Alcohol and Drug Abuse Patient Records, or if Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records permits the State to receive such information without entering into a business associate agreement or signing another such document

E.11. Ownership of Materials and Rights to Knowledge Obtained.

- a. State Ownership of Work Products. The State shall have all ownership right, title, and interest, including ownership of copyright, in all work products created, designed, or developed for the State, but not including code in existence prior to F&A contract FA-06-16404-01 with an effective date of July 1, 2005. The State shall have royalty-free, exclusive, and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all said work products. The Contractor shall furnish such information and data upon request of the State, in accordance with the Contract and applicable State law.
- b. Contractor Proprietary Products. The Contractor shall retain ownership right, title, and interest in the portions of the AVATAR Software system that were not developed using State moneys or resources, and that were complete and the property of the Contractor as of the effective date of the Contract (known as "Contractor Proprietary Products"). The following provisions apply:
 - (1) Contingent upon the State's payment of Software Licensure/System Support fees, the Contractor hereby grants the State a perpetual, royalty-free, irrevocable, unlimited, and non-exclusive right to use the Contractor Proprietary Products for the State's business purposes. The Contractor affirms that Contractor is duly authorized to grant this right.
 - (2) The State shall take all reasonable steps to preserve the confidential and proprietary nature of the Contractor Proprietary Products. The State shall make reasonable efforts not to disclose or disseminate Contractor's proprietary information to any third party that is not an agent of the State.
- c. Acquired Knowledge and Skills. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
- d. Development of Similar Materials. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

E.12. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.

E.13. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

E.14. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood

and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.

E.15. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

E.16. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

E.17. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such

action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.

- E.18. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

- E.19. Additional Subcontracting Requirements. If subcontracts are approved by the State, they shall contain, in addition to those sections identified in D.5., sections on "Confidentiality of Records", "HIPAA Compliance", and "Rule 2 Compliance" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

**IN WITNESS WHEREOF,
NETSMART TECHNOLOGIES, INCORPORATED:**

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES:

**VIRGINIA TROTTER BETTS, MSN, JD, RN, FAAN,
COMMISSIONER**

DATE

APPROVED:

COMMISSIONER OF FINANCE & ADMINISTRATION

DATE

COMMISSIONER HUMAN RESOURCES

DATE

COMPTROLLER OF THE TREASURY

DATE

ATTACHMENT ONE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

Attachment A

INCIDENT TRACKING REQUIREMENTS

1. Incident Tracking shall enable on-line, real-time entry, update, reporting and inquiry of incidents and sentinel events to patients, staff, and/or visitors.
2. An incident shall be categorized by severity and defined as any situation or occurrence that adversely affects the safety or well-being of patients, staff, visitors or the operation of a facility. Furthermore, the Incident tracking shall document those incidents that are classified as "sentinel," as defined by The Joint Commission (TJC)
3. Incident Tracking shall comply with TJC standards.
4. Incident Tracking shall create consistency and standards in Incident Tracking, throughout the department, with the electronic capturing and tracking of data.
5. Access to Incident Tracking screens shall be managed with the existing Security Roles Definition and User Definition options.
6. Incident Tracking shall consist of two core options: Open Incident and Close Incident.
 - A. Open Incident.

The Open Incident option shall be used when an incident has occurred and when it requires documentation. This option allows a facility to document where and when an incident occurred, and the severity level of each incident. Each incident is automatically assigned an ID when entered into AVATAR PM. A unique number is assigned for each incident. An incident represents a new entity relationship under RADplus. User defined dictionaries allow a facility to define incidents based on internal needs, as well as requirements by TJC in the case of a Sentinel Event.
 - B. Close Incident.

The Close Incident option shall allow the tracking of Incident Status, the date an incident was closed and any corrective actions taken during the Incident Tracking process.
7. All data from Incident Tracking shall be readily available for easy reporting in Caché Direct Access / Structured Query Language (SQL) as well as the DSS (Decision Support System) reporting database. The reporting of all incidents shall be available via Crystal Reports. Reporting options shall include the details of an incident, which include, but are not limited to:
 - A. A unique identifier to identify a given event;
 - B. Staff member completing the form;
 - C. Date and time an incident occurs;
 - D. Person Entering the Incident into AVATAR;
 - E. Treatment setting/location where the incident occurred;
 - F. Level of severity of the incident;

- G. Status of the incident;
- H. Client involvement;
- I. Staff involvement and Staff on Duty;
- J. Other involvement, as defined by the facility and People Present at Scene;
- K. Body Area of Injury and Type of Injury; and
- L. Alleged Abuse.

- 8.** The State shall have the ability to add its own Incident Tracking data elements to the input screen that are not included in the core Incident Tracking product screens using the RADplus Modeling tool. Data elements added in such a fashion shall be fully available for Caché Direct Access reporting/SQL or DSS reporting using a tool such as Crystal Reports.

Attachment B

AVATAR BUSINESS AND DATA REQUIREMENTS

1. Any new data requirements resulting from changes in Federal and related regulatory requirements (e.g., by the Centers for Medicare and Medicaid Services [CMS], TennCare, TJC, and ORYX) shall be added to the corresponding AVATAR screens and added as required for accurate patient data tracking and reporting. No change order fees shall be incurred if additions are based upon new Federal and related regulatory agency requirements.
2. The software application shall include the Client Funds Management System (CFMS) module, also known as the "Client Banking" module.
3. The software application shall include the Clinician Workstation (CWS) module.
4. The software application shall include the Appointment Scheduling module.
5. The software application shall include the RADplus (Rapid Application Development) 2006 modeling tool.
6. The software application shall include the Incident Reporting module.
7. Integration of AVATAR PM and future third-party Pharmacy /CPOE/ eMAR Application via two HL-7 (Health Level 7) interfaces.
 - A. AVATAR PM shall pass Client identifiers, Client Name, and basic demographics to the Pharmacy/ CPOE/ eMAR application in real-time mode, based on the HL-7 ADT Interfaces acquired under this contract and in accordance with jointly developed specifications.
 - B. The Pharmacy/ CPOE/ eMAR application shall pass back billing and other information to AVATAR, based on the HL-7 Billing Interfaces acquired under this contract and in accordance with jointly developed specifications.

8. Billing requirements of AVATAR PM

The Contractor shall deliver software in accordance with (a) its specifications, (b) the specifications defined by the Federal Government [e.g., CMS, Health Insurance Portability and Accountability Act (HIPAA)], and (c) the specifications defined by the intermediaries and carriers (Riverbend Government Benefits Administration, CIGNA, and Cahaba Government Benefits Administration) who process claims for the federal programs (i.e., Medicare). The requirements may require further review and specification if not met by the licensed programs via a structured migration plan. However, the State shall incur no additional change order fees for meeting federal standards, including HIPAA 837i and 837p.

The Contractor:

- A. Must be able to generate a UB-04 bill in hard copy format, according to specifications provided to the Contractor for inpatient Medicare claims, inpatient TennCare claims, and commercial insurance claims. The bill must include all applicable UB-04 Form Locators correctly.
- B. Must be able to generate a bill in HIPAA 837i electronic format, according to specifications issued to the Contractor for inpatient Medicare, inpatient TennCare and

commercial insurance originally for the BHIS product, and later for AVATAR PM. The specifications shall meet requirements defined in the 4010A1 837i Institutional Claim Guide. For any 837i created, the user must be able to print a hardcopy UB-04 (with fully completed form locators) for documentation purposes.

- C. Must be able to generate a CMS-1500 bill in hard copy format, configured in accordance with specifications provided to the Contractor for inpatient Medicare professional services.
- D. Must be able to generate an electronic professional services bill in HIPAA 837p electronic format, according to specifications issued to the Contractor for inpatient Medicare professional services, billed electronically. The specifications shall meet requirements defined in the 4010A1 837p Professional Claim Guide. A report, created by the State using Crystal Reports, shall be generated for each claim that lists all CMS-1500 blocks to document what is being billed electronically.
- E. Must provide a set of user-controlled tables that allows the user to manage applicable UB-04 requirements both demographic and service-based, in the event of new Medicare or TennCare change in requirement or of an atypical billing situation. This functionality must provide the override capability in hard copy, as well as a HIPAA 837i electronic equivalent. An audit trail table that documents all fields overridden in the configuration tables shall be generated/maintained and accessible via Crystal Reports.
- F. Must provide a set of user-controlled tables that allows the user to manage applicable CMS-1500 requirements, according to guidelines provided by the Contractor in the AVATAR product, in the event of new Medicare professional billing requirement changes. This functionality must provide a hard copy, as well as a HIPAA 837p electronic equivalent. An audit trail table that documents all fields overridden in the configuration tables shall be generated and accessible via Crystal Reports.
- G. The Contractor shall deliver updates to the software to support the transition from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) diagnosis coding to International Classification of Diseases, Tenth Revision, Clinical Modification. (ICD-10-CM). The transition to this new code set is federally mandated during the course of this Contract (October 1, 2013.)
- H. The Contractor shall deliver updates to the software to support the transition from HIPAA X12 Version 4010a1 to the HIPAA X12 Version 5010 standard. The transition to this new code set is federally mandated during the course of this Contract (January 1, 2012) and shall encompass both Institutional and Professional billing.

9. DSS and DA/SQL

The Contractor shall deliver the AVATAR data model as specified by its documentation. While the Contractor shall provide technical assistance to State staff, modification of reports is under the control of the State using Crystal Reports or any other Open Data Base Connectivity (ODBC) report writer of its choosing. The Contractor shall provide oversight and technical assistance until all reports function properly.

- A. All data captured in AVATAR PM, CFMS, CWS, and any future models shall be available for reporting in DSS in accordance with the published AVATAR data model; and
- B. Data Formats of DSS and DA/SQL shall be consistent.

10. Performance Criteria: All on-line transactions shall have a four (4) second or less response time. This performance criterion shall be met ninety-five percent (95%) of the time. Response time is to be defined as the period of time between the initiation of a transaction via depression of the

"enter" key, a mouse click, or a function key, and the completion of the transaction, the return of the desired screen, or another indication of readiness for additional input. Reports and complex queries are excluded from this requirement. When transaction activity fails to meet this performance standard, the Contractor's technical staff shall consult with the State's technical staff to isolate the cause and to provide guidance toward meeting the standard.

11. System and User Manuals, and subsequent updates to those manuals, shall be provided for each AVATAR module in electronic format.
12. The Contractor shall provide updates to documentation and software utilities (recovery and restart procedures) for complete Disaster Recovery from the most recent backup files. No transactions entered into the applications prior to the last backup file shall require re-entry.
13. The workstation running the AVATAR client software must be compatible with any Windows operating system that is supported by the State. If a potential compatibility problem appears to exist between the client software and the Windows operating system, the Contractor shall work with the State in researching and resolving the problem. If the problem is determined to be client software based, the Contractor shall provide a patch or solution at the earliest feasible time.
14. All Contractor-provided software must be compatible with computers running the State's anti-virus software.

Attachment C

SECURITY REQUIREMENTS

1. Security Requirements include requirements listed in the base contract "HIPAA Compliance" and "Rule 2 Compliance" [Sections E.9. and E.10.].
 - A. The System must have the capability of identifying product features, e.g., displays, reports, etc., that could potentially contain Protected Health Information (PHI) and therefore must be protected as a Health Insurance Portability and Accountability Act (HIPAA) requirement; and
 - B. The System must maintain an audit trail of the creation, changes, and access to PHI stored by the System. Appropriate administrative procedures must exist for the management of the audit trail, including reporting, archiving, and selective destruction of audit trail records no longer necessary.
2. The use of unscrambled production data for testing is not permitted, except in exceptional circumstances approved by the State. Scrambling data is defined to be changing the data elements that may be used to uniquely identify live patients, such as Patient Names, Addresses, Social Security Numbers (SSNs), and the Master Patient Index (MPI), so that users of test data can no longer identify actual patients.
3. Any use of production data in a training environment must be approved in advance. Production data must not be used in any handouts, training aids, work sheets, etc., unless such materials shall be collected and completely destroyed by shredding or incinerating (not just simple disposal) at the conclusion of the training.
4. All user identifications (IDs) shall be compliant with the current State Security Standard, and user passwords must be encrypted both in transmission and in storage. Hard coded universal passwords shall not be allowed.

The applications shall maintain three-tiered (Application/System, ID, Password) Security for each application. It shall permit System Security personnel (a) to assign user access to transaction and query groups, and (b) to protect against unauthorized access of both computer resources and data in order to reduce erroneous, unethical, or fraudulent activities.
5. Role-based Security.
 - A. The system must support role-based security, which means that the individual's security level is determined by the functions inherent in his/her role, as well as the need to view particular information in a particular job class, discipline, or profession.
 - B. The role-based authorization must not be accomplished with different versions of the application, but instead must utilize database table entries that allow a highly scalable implementation of this type of security. Roles must define which components of the application that users can access. Users with read-only access shall not be authorized for stored procedure calls that allow transactional updating, deleting, or inserting of data presented by the client view.
 - C. The system must provide the ability to add roles with the capability of allowing hierarchical viewing of a lower level person's role and security permissions by a higher level user in the chain of authority.
 - D. Role-based security means that the individual's security level is determined by the functions inherent in their role as well as the need to view particular information in a particular job class, discipline, or profession.

Attachment D

ROLES AND RESPONSIBILITIES

The table in this Attachment (Attachment D) shows which entity [the Tennessee Department of Finance and Administration's Office of Information Resources (TDF&A/OIR), the Tennessee Department of Mental Health and Developmental Disabilities' Information Technology Group in the Central Office (TDMHDD-IT Central Office), or Netsmart (Contractor)] is responsible for which infrastructure functional area of responsibility. An asterisk indicates that the entity serves only a consulting role for that particular infrastructure functional area of responsibility.

Infrastructure Functional Area of Responsibility	TDF&A/OIR	TDMHDD-IT Central Office	Netsmart (Contractor)
Infrastructure			
Network Monitoring	X		
Data Storage	X	X*	
Capacity	X	X*	
Operating hardware	X		
Backup and Restore	X		
Software distribution to client workstations		X	
Software distribution to Servers		X	X
Environments Data Center	X		
Power, Uninterrupted Power Supply (UPS), HVAC	X		
Monitoring by NOSC (All Sites)	X		
Software			
Applications Licensing -SQL		X	X*
Applications Licensing - Caché		X	X
Application Software Support			X
Application upgrades		X	X
Operating System Licensing and Support	X	X	
Patches and Upgrades		X	X
Tools Licensing		X	X
Data Center System Support Tools	X		
Server Hardware			
Sun - Maintenance / support	X	X	X*
Monitor servers	X	X	X*
Respond to alerts/alarms	X	X	X*

Infrastructure Functional Area of Responsibility	TDF&A/OIR	TDMHDD-IT Central Office	Netsmart (Contractor)
Production & Test Systems		X	X
Fraud & Abuse	X	X	
Internet / Intranet	X		
Security and User Profiles			
Infrastructure Logon management	X	X	
Security Profiles	X	X	X*
Identify users and access requirements	X	X	X*
Internet access	X	X	
Intranet access	X	X	
Trading Partner Agreements		X	X
Administrative security	X	X	
Internet and Intranet			
Web Servers	X	X	X*
Intranet Hardware & OS	X	X	
Internet Hardware & OS	X	X	
Application Servers		X	X*
Site Reporting tools	X	X	X*
Testing			
Testing estimates		X	X
Testing strategy		X	X
Testing Tools and environments		X	X
Training			
Training Tools			X
Trainers and training support			X

Infrastructure/Functional Area of Responsibility	TDF&A OIR	TDMHDD-IT Central Office	NetSmart (Contractor)
Technical Functions			
DBMS management and support (Database Administration or DBA) - Caché			X
DBMS management and support (DBA) - SQL	X		X*
Day to Day technical support	X	X	X*
New database creation - Caché			X
New database creation - SQL	X		X*
DB patches and upgrades - Caché			X
DB patches and upgrades - SQL	X		X*
Unix management (SA)	X	X	X*
Server administration	X	X	X*
Operating System support	X	X*	X*
File System support	X	X	X*
Change management		X	X
Applications		X	X
Hardware	X	X*	X*
Capacity Performance	X	X	X*
Moving Code from Test to Production		X	X

* Responsibilities designated with an asterisk indicate that the relevant party is serving only in a consulting role.

Attachment E

TECHNICAL SYSTEM ENVIRONMENT

The following eight (8) servers are configured for running the AVATAR software. These servers are located at the Tennessee Department of Finance and Administrations' Office of Information Resources Data Center in Nashville:

1. **VM PRODUCTION WEB SERVER**
ci0119006ww005
2. **VM PRODUCTION STRUCTURE QUERY LANGUAGE (SQL) SERVER**
ci0119006wb003
3. **AVATAR PRODUCTION APPLICATION SERVER**
SERVER: SUN SUNFIRE V440
APPLICATION: WEB/AVATAR
APPLICATION PORTS: 3389, 8080
OPERATING SYSTEM: SOLARIS 10.0
PROTOCOLS: FTP, SSH, RDP
ECS SERVICES:
ci0119006ua001
4. **AVATAR TEST APPLICATION SERVER**
SERVER: SUN SUNFIRE V440
APPLICATION: WEB/AVATAR
APPLICATION PORTS: 3389, 8080
OPERATING SYSTEM: SOLARIS 10.0
PROTOCOLS: FTP, SSH, RDP
ECS SERVICES: 100 GB ENTERPRISE SAN, ENTERPRISE BACKUP
ci0119006ua002
5. **AVATAR PRODUCTION DB SERVER**
SERVER: SUN SUNFIRE V440
APPLICATION: DB / MPI SERVER
APPLICATION PORTS: 1972
OPERATING SYSTEM: SOLARIS 10.0 (Caché 5.X)
PROTOCOLS: FTP, SSH
ECS SERVICES: 110 GB ENTERPRISE SAN, ENTERPRISE BACKUP
ci19006ub001
6. **AVATAR TEST DB SERVER**
SERVER: SUN SUNFIRE V440
APPLICATION: DB / MPI SERVER
APPLICATION PORTS: 1972
OPERATING SYSTEM: SOLARIS 10.0 (Caché 5.X)
PROTOCOLS: FTP, SSH
ECS SERVICES:
ci19006ub002

7. **AVATAR PRODUCTION SQL SERVER**
SERVER: HP PROLIANT DL380
APPLICATION: DSS DB
APPLICATION PORTS: 1433, 3389, 445
RACK LOCATION: T18
OPERATING SYSTEM: WINDOWS 2003 (SQL 2000)
PROTOCOLS: RDP
ECS SERVICES: ENTERPRISE BACKUP
ci19006wb001

8. **AVATAR TEST SQL SERVER**
SERVER: HP PROLIANT DL380
APPLICATION: TEST DSS DB
APPLICATION PORTS: 1433, 3389, 445
RACK LOCATION: T18
OPERATING SYSTEM: WINDOWS 2003 (SQL 2000)
PROTOCOLS: RDP
ECS SERVICES: ENTERPRISE BACKUP
ci19006wb002