

CONTRACT #10
RFS # 339.01-04111400
Edison # Pending

**Department of Mental Health
and Substance Abuse Services**

VENDOR:
Netsmart Technologies, Inc.



**STATE OF TENNESSEE
DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES**

6th FLOOR, ANDREW JACKSON BUILDING
500 DEADERICK STREET
NASHVILLE, TENNESSEE 37243

BILL HASLAM
GOVERNOR

E. DOUGLAS VARNEY
COMMISSIONER

MEMORANDUM

TO: Fiscal Review Committee

FROM: E. Douglas Varney, Commissioner
Department of Mental Health and Substance Abuse Services

DATE: April 21, 2014

SUBJECT: NetSmart Technologies Contract Summary Letter

The Department of Mental Health and Substance Abuse Services 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 four 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.). This application interfaces with the Pharmacy application used by the department to keep the data synchronized between the systems.

This hospital information system 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 for ongoing support and maintenance of AVATAR, which is fully implemented at our four 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, 2014 – June 30, 2019), 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.

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. The last major software upgrade occurred in

SUBJECT: NetSmart Technologies Contract Summary Letter / Page 2

August 2012. Over the past seven 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. 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 two million dollars, and there will be additional yearly maintenance costs 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.

:rz/dy

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Sandra Braber-Grove or Richard Zhu	*Contact Phone:	(615) 532-6524 or (615) 532-8636		
*Presenter's name(s):	Gene Wood, Budget Director; Richard Zhu, IT Director; Sandra Braber-Grove, Director, Office of Contracts and Privacy / Asst. General Counsel				
Edison Contract Number: <i>(if applicable)</i>	N/A	RFS Number: <i>(if applicable)</i>	33901-04111400		
*Original or Proposed Contract Begin Date:	July 1, 2014	*Current or Proposed End Date:	June 30, 2019		
Current Request Amendment Number: <i>(if applicable)</i>	N/A				
Proposed Amendment Effective Date: <i>(if applicable)</i>	N/A				
*Department Submitting:	Mental Health and Substance Abuse Services				
*Division:	Hospital Services				
*Date Submitted:	April 25, 2014				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	Netsmart Technologies, Inc.				
*Current or Proposed Maximum Liability:	\$1,900,413.00				
*Estimated Total Spend for Commodities:	N/A				
*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY:2015	FY:2016	FY:2017	FY:2018	FY:2019	FY
\$349,667.00	\$364,304.00	\$379,368.00	\$395,326.00	\$411,748.00	\$
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:					
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:					

Supplemental Documentation Required for
Fiscal Review Committee

<p>IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:</p>			
<p>*Contract Funding Source/Amount:</p>			
State:	\$1,900,413.00	Federal:	
<i>Interdepartmental:</i>		<i>Other:</i>	
<p>If “<i>other</i>” please define:</p>			
<p>If “<i>interdepartmental</i>” please define:</p>			
<p>Dates of All Previous Amendments or Revisions: <i>(if applicable)</i></p>		<p>Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i></p>	
N/A		N/A	
<p>Method of Original Award: <i>(if applicable)</i></p>		N/A	
<p>*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?</p>			
<p>*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.</p>		<p>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. 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. The last major software upgrade occurred in August 2012. Over the past seven 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. 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 two million dollars, and there will be additional yearly maintenance costs associated with the new contract. Clearly, this is not a cost-effective option for the State.</p>	



OIR Pre-Approval Endorsement Request E-Mail Transmittal

TO : Jane Chittenden, OIR Procurement & Contract Management Director
Department of Finance & Administration
E-mail : Jane.Chittenden@tn.gov

FROM : Richard Zhu
E-mail : Richard.zhu@tn.gov

DATE : 04/10/2014

RE : Request for OIR Pre-Approval Endorsement

Applicable RFS # 33901-0411400

OIR Endorsement Signature & Date:

Mark Bengel (qr)
Chief Information Officer

4/17/14

NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.

Office for Information Resources (OIR) pre-approval endorsement appears to be required pursuant to professional service contracting regulations pertaining to procurements with information technology as a component of the scope of service. This request seeks to ensure that OIR is aware of and has an opportunity to review the procurement detailed below and in the attached documents.

Please document OIR endorsement of the described procurement (with the appropriate signature above), and return this document via e-mail at your earliest convenience.

Contracting Agency	Mental Health and Substance Abuse Services
Agency Contact (name, phone, e-mail)	Richard Zhu
Subject Procurement Document (mark one)	
<input type="checkbox"/> RFP	<input type="checkbox"/> Contract
<input type="checkbox"/> Competitive Negotiation Request	<input type="checkbox"/> Contract Amendment
<input type="checkbox"/> Alternative Procurement Method Request	<input type="checkbox"/> Grant
<input checked="" type="checkbox"/> Non-Competitive Contract Request	<input type="checkbox"/> Grant Amendment
<input type="checkbox"/> Non-Competitive Amendment Request	
Information Systems Plan (ISP) Project Applicability	
<input type="checkbox"/> Not Applicable to this Request	
<input checked="" type="checkbox"/> Applicable- ISP Project# CI97K300	
Response Confirmed by IT Director/Staff (name):	Richard Zhu

Applicable RFS #
Required Attachments (as applicable – copies without signatures acceptable) <ul style="list-style-type: none"><input type="checkbox"/> RFP, Competitive Negotiation Request, Alternative Procurement Method Request, Non-Competitive Contract Request, Non-Competitive Amendment Request<input type="checkbox"/> Original Contract/Grant or Amendment<input checked="" type="checkbox"/> Proposed Contract/Grant or Amendment
Subject Information Technology Service Description <p>The contract is an extension of a current contract we have in place with the vendor, and will provide for the ongoing maintenance of an existing system used to manage service recipient administrative records and revenue collection at the four Regional Mental Health Institutes. The system is hosted at OIR's data center. The vendor has been performing the ongoing support/maintenance for the system since 2007, and that this request is to enter into a contract to continue the same ongoing support/services with the vendor. The ISP# for the original contract is C197K300.</p>

Special Contract Request

This form should be utilized to facilitate contract and procurement requests that require the Chief Procurement Officer's prior approval and that of the Comptroller of the Treasury, as applicable.

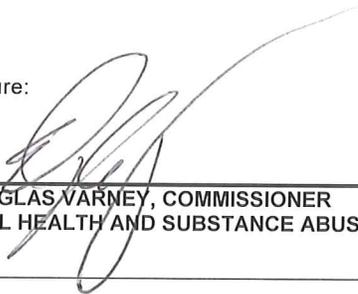
NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

Route a completed request, as one file in PDF format, via e-mail attachment sent to: agsprs.agsprs@tn.gov.

APPROVED		APPROVED	
CHIEF PROCUREMENT OFFICER	DATE	COMPTROLLER OF THE TREASURY	DATE

Request Tracking #	33901-04111400
1. Contracting Agency	Department of Mental Health and Substance Abuse Services
2. Type of Contract or Procurement Method	<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input type="checkbox"/> Sole Source <input checked="" type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
3. Requestor Contact Information	Sandra Braber-Grove; (615) 532-6520 or sandra.braber-grove@tn.gov
4. Brief Goods or Services Caption	Maintenance and Support of the AVATAR Solution
5. Description of the Goods or Services to be Acquired	The Contract will provide for the continued maintenance and support of the AVATAR system used to manage service recipient administrative records and revenue collection at the State's four (4) Regional Mental Health Institutes.
6. Proposed Contractor	Netsmart Technologies, Inc.
7. Name and Address of the Contractor's principal owner(s) – NOT required for a TN state education institution	James L. Conway, Chairman and Chief Executive Officer 3500 Sunrise Highway, Suite D-122 Great River, NY 11739

Request Tracking #	33901-04111400
8. Proposed Contract Period – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	60 months
9. Office for Information Resources Pre-Approval Endorsement Request – information technology (N/A to THDA)	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached
10. eHealth Pre-Approval Endorsement Request – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. Human Resources Pre-Approval Endorsement Request – state employee training	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
13. Maximum Contract Cost – with ALL options to extend exercised	\$ 1,900,413.00
14. Was there an initial government estimate? If so, what amount?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, \$
15. Cost Determination Used- How did agency arrive at the estimate of expected costs?	Negotiations with Contractor
16. Explanation of Fair and Reasonable Price- Explain how agency determined that price is fair and reasonable	The costs are in line with previous years and comparable to maintenance and support costs for similar systems.
17. Documentation of Discussions with Contractor- How did agency document discussions with Contractor? Attach documentation to this request as applicable.	Discussions with Contractor were via electronic mail (e-mail), phone calls, and face-to-face meetings.
18. Explanation of Need for or requirement placed on the State to acquire the goods or services	The current version of the AVATAR system was implemented in the last half of 2007. Netsmart provides on-going maintenance and support for the AVATAR system and is the only vendor who has the rights to the AVATAR software.
19. Proposed contract impact on current State operations	The AVATAR system is already in place, so there will be no change in impact on current State operations with this contract.
20. Justification – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	The department would like to protect the huge investment it has made in training hundreds of staff, customized data collection screens, specialized logic to manage claims and reimbursements for service recipient services and several hundred customized reports.
For No Cost and Revenue Contracts Only	
21. What costs will the State incur as a result of this contract? If any, please explain.	

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22. What is the total estimated revenue that the State would receive as a result of this contract?	
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	<input type="checkbox"/> NO <input type="checkbox"/> YES
24. Summary of State responsibilities under proposed contract	
For Sole Source and Proprietary Procurements Only	
25. Explanation of Need for or requirement placed on the State to acquire the goods or services	See response to Question 18.
26. Evidence of Contractor's experience and length of experience providing the goods or services to be procured.	Netsmart has become the leading provider of Behavioral Health/Mental Health Care software to state and county entities/agencies. Netsmart has over thirty (30) years of experience and currently contracts for these services with thirty-five (35) state agencies.
27. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the Contractor.	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, Method: RFP Name/Address: Netsmart Technologies, Inc.; 3500 Sunrise Highway, Suite D-122; Great River, NY 11739
28. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	The Contractor was initially selected through the Request for Proposals (RFP) competitive procurement process.
Signature Required for all Special Contract Requests	
Agency Head Signature and Date – <i>MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented circumstances</i>	
Signature:	Date:
	4/25/14
E. DOUGLAS VARNEY, COMMISSIONER MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES	

**CONTRACT**

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

Begin Date July 1, 2014	End Date June 30, 2019	Agency Tracking # 33901-04111400	Edison Record ID		
Contractor Legal Entity Name Netsmart Technologies, Inc.			Edison Vendor ID 6819		
Service Caption (one line only) Maintenance and Support of the AVATAR Solution					
Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor		CFDA # N/A			
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2015	\$349,667.00				\$349,667.00
2016	\$364,304.00				\$364,304.00
2017	\$379,368.00				\$379,368.00
2018	\$395,326.00				\$395,326.00
2019	\$411,748.00				\$411,748.00
TOTAL:	\$1,900,413.00				\$1,900,413.00
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
Ownership/Control					
<input type="checkbox"/> African American <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Female <input type="checkbox"/> Person w/Disability <input type="checkbox"/> Small Business <input type="checkbox"/> Government <input checked="" type="checkbox"/> NOT Minority/Disadvantaged <input type="checkbox"/> Other:					
Selection Method & Process Summary (mark the correct response to confirm the associated summary)					
<input type="checkbox"/> RFP		The procurement process was completed in accordance with the approved RFP document and associated regulations.			
<input type="checkbox"/> Competitive Negotiation		The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.			
<input type="checkbox"/> Alternative Competitive Method		The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.			
<input checked="" type="checkbox"/> Non-Competitive Negotiation		The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms and price.			
<input type="checkbox"/> Other		The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."			
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.			<i>OCR USE - FA</i>		
Speed Chart (optional)		Account Code (optional)			

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
AND
NETSMART TECHNOLOGIES, INC.**

This Contract, by and between the State of Tennessee, Department of Mental Health and Substance Abuse Services, hereinafter referred to as the "State" and Netsmart Technologies, Inc., hereinafter referred to as the "Contractor," is for the provision of Maintenance and Support of the AVATAR solution, as further defined in the "SCOPE OF SERVICES."

The Contractor is a For-Profit Corporation
Contractor Place of Incorporation or Organization: Delaware
Contractor Edison Registration ID (Edison Vendor ID) # 6819

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Contractor shall deliver the application and systems software for the AVATAR Software (also referred to as "MyAvatar") 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 applications. The State may, at its convenience and without cause, terminate the maintenance of a licensed program, by giving a written notice to the Contractor at least thirty (30) days prior to the actual termination.
- (1) AVATAR Practice Management (PM);
 - (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) Modeling Tool;
 - (8) Caché;
 - (9) AVATAR Incident Tracking;
 - (10) AVATAR HL-7 ADT Interfaces to the State's pharmacy application, implemented at one (1) test site and four (4) production sites; and
 - (11) International Classification of Diseases, Tenth Edition (ICD-10) and Diagnostic and Statistical Manual of Mental Health Disorders, Fifth Edition (DSM-5) Diagnoses Content Subscription.
- b. Change Orders. Both parties agree that the State may request modifications and enhancements to the software using a six (6)-step Change Order process used to define, specify, develop, test, and implement changes to the software. The purchase of

additional AVATAR System Software modules may be authorized via the Change Orders process. These six (6) steps are:

- (1) The State prepares specifications for a modification or enhancement;
- (2) The 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) The State accepts the estimate and authorizes the work via a separate Change Order document signed by both parties or rejects the estimate and disapproves the work;
- (4) The Contractor delivers the software product or change as defined below;
- (5) The State accepts the software product or change; and
- (6) The State shall pay Contractor's invoice for the work authorized, up to the amount of the estimate.

c. Upgraded Caché Software Licenses. The Contractor shall upgrade the State's Caché software and licensing to Caché Multi-Server Platform-Specific Software under the following conditions:

- (1) The State reserves the right to elect or, at its own discretion, not to implement these license upgrades. Such a decision by the State shall not constitute a breach of this Contract; and
- (2) If the State agrees to the upgrade, once this software and licensing are upgraded, the Contractor shall provide on-going maintenance and support for Caché Multi-Server Platform-Specific software.

A.3. Software Licensure. 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.7. Software maintenance fees shall be 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.

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 otherwise not in default of this contract.
- 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 Contract 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 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 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 with online documentation for all licensed programs. The State may print hardcopies for internal use only, and will not alter or eliminate any copyright notice on any copy of the documentation.
- A.6. System Warranty. Pursuant to the terms outlined in A.7., the Contractor expressly warrants licensed software provided to meet Contractor's specifications, be 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 and defects in the AVATAR software reported by the State, and to provide such corrections in a timeframe mutually determined by the State and the Contractor.
- A.7. Software Maintenance and Support – Contractor Responsibilities. The Contractor shall:
- a. 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 will use commercially reasonable efforts to either correct any reproducible problems or defects in the then current or immediately prior release of licensed programs by the Contractor which prevent it from operating in substantial conformance with the specifications and applicable Federal regulatory requirements or provide a commercially reasonable alternative that will substantially conform to the specifications and applicable Federal regulatory requirements and laws.
- b. If analysis by the Contractor indicates that a reported problem is caused by a reproducible problem or defect, the Contractor will use commercially reasonable efforts to provide support services in accordance with the following prioritization of reported problems:
- Priority 1: Will be assigned when the licensed programs or a material program function component of the licensed programs is non-operational as a result of a defect [in Production environment only] such as the Production system cannot be accessed or utilized in any capacity, a direct patient safety issue is present, or a HIPAA compliance violation as a result of a server incident or Contractor application defect. Best efforts will be made to correct Priority 1 problems, or to provide a plan for such correction, within two (2) business days.

Priority 2: Will be assigned to Production defects that result in functions that have a significant negative impact on daily operations but do not constitute as a "System Down". A workaround may be available and/or the capacity to maintain daily business functionality. Commercially reasonable efforts will be made to correct Priority 2 problems, or to provide a plan for such correction, within five (5) business days.

Priority 3: Will be assigned for system defects that result in functions that have no major impact on daily operations; an issue that allows for the continuation of function, including issues in which a reasonable workaround is available. Commercially reasonable efforts will be made to correct Priority 3 problems, or to provide a plan for such correction, within ten (10) business day.

Priority 4: Will be assigned to cosmetic defects that do not affect system usability or non-defect related requests including, but not limited to, system set up/configuration, training, functionality questions, documentation, portal access, and upgrade requests. Commercially reasonable efforts will be made to address Priority 4 issues, or to provide a plan for such correction, within fifteen (15) business day.

- c. On a timely basis, the Contractor shall also provide the State with:
- (1) Such updates as are distributed without charge to other similar clients which reflect modifications and incremental improvements made to the licensed programs by the Contractor;
 - (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 clients; and
 - (3) Mandatory and optional upgrades to the licensed programs available to the State at no charge while this Contract is in effect. If the State requires assistance from the Contractor to install and configure any upgrade, the Contractor will provide support as a separate charge in addition to the annual support services fees. If the State fails to implement any mandatory upgrades, the Contractor may decline to renew this Contract on the next "anniversary date" unless the State brings the licensed programs up to the then current level. "Anniversary date" is defined as the first day of the State's fiscal year period for each of the fiscal years covered by this Contract. The Contractor may charge, and the State will pay, for software and services necessary to bring the licensed programs up to Contractor's then-current level before the Contractor will certify that the State is again eligible for maintenance hereunder.
- d. Absent a bona fide dispute, if the State fails to pay for support services when due, the Contractor may refuse to provide support services until the State makes payment of all Charges due.
- e. The Contractor will make technical support personnel available from 9:00 a.m. to 6:00 p.m., Eastern Standard Time, Monday through Friday, exclusive of Contractor holidays. The Contractor shall be provided access to the State's system remotely for troubleshooting and installation assistance.
- f. If reasonable analysis by the Contractor indicates that a reported problem or defect is caused by a problem related to hardware used by the State, the hardware's system software, or applicable software other than licensed programs, or the State's misuse or modification of the licensed programs, the Contractor's responsibility will be limited to the correction of the portion, if any, of the problem caused by defect in the licensed programs.

A.8. Software Maintenance and Support – State’s Responsibilities. The State shall:

- a. The State will make requests for support services by giving the Contractor written notice specifying a problem or defect in the licensed programs. In making a verbal request for Support Services, the State will 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. The State will immediately inform the Contractor in writing of any modifications, additions or alterations to the licensed programs. If any modifications, additions or alterations of any kind or nature are made to the licensed programs by the State or anyone acting with the consent of or under the direction of the State, the Contractor may immediately terminate this contract without further obligation or liability to the State.
- c. The State understands and agrees that it is and will be responsible for establishing and maintaining a procedure for backing up its data in accordance with industry standards, and for maintaining procedures for reconstruction and/or recompilation of any and all data lost or destroyed during the use of the licensed programs, or storage of the data. The Contractor will not be liable under any circumstances for any damages caused by or arising from such lost or destroyed data. The Contractor will use commercially reasonable efforts, on a time and material basis to assist the State in reconstruction and/or recompilation of such data.

A.9. Source Code in Escrow:

- a. The Contractor represents that it maintains, in a secure environment, a current copy of the software source code in escrow with its escrow agent. The Contractor acknowledges that throughout the term of the Contract, the source code in escrow shall be kept current with the most current version of the source code periodically escrowed by the Contractor.
- b. The Contractor shall ensure that a copy of the up-to-date source code shall be deposited with the escrow company at the time of the execution of this Contract. The State may demand confirmation at any time during the course of the Contract from the Contractor or the escrow company that the source code in escrow is up to date and the Contractor or the escrow company will provide confirmation of such within thirty (30) calendar days of such request.
- c. If the Contractor goes out of business, the State shall be able to obtain the source code from the escrow company.

A.10. Federal and Tennessee Data Security and Privacy Compliance:

- a. Any and all methods of data transmission, use, disclosure, and storage must conform to current State of Tennessee and federal privacy laws including but not limited to Title 33 of the Tennessee Code Annotated; Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its regulations at 45 Code of Federal Regulations (CFR) Parts 160 and 164; and the Confidentiality of Alcohol and Substance Abuse Patient Records as regulated at 42 CFR Part 2; and state and federal privacy and security standards to ensure that data is secure at all times, including but not limited to, at rest; during transmission; and while stored.
- b. The Contractor agrees to comply with the following privacy and security provisions:
 - (1) The Contractor shall use appropriate procedural, physical, and electronic safeguards to prevent use or disclosure of Protected Health Information (PHI). Said safeguards shall include, but are not limited to, requiring employees to agree to use or disclose PHI or other data only as permitted or required by state and federal law and taking related disciplinary actions for inappropriate use or disclosure as necessary.

- (2) The Contractor shall require its employees, agents, and subcontractors to immediately report any suspected unauthorized use or disclosure of PHI or other data.
- (3) The Contractor may be an "information holder" under the terms of Tennessee Code Annotated (TCA) § 47-18-2107, and as such, in the event of a breach of the Contractor's system, as herein defined, the Contractor shall indemnify and hold the State harmless for expenses and/or damages related to the breach.
- (4) The Contractor shall track all security incidents and shall report such security incidents immediately, with the following understandings:
 - i. The State shall not consider as security incidents, for the purpose of reporting, external activities (port enumeration) typically associated with the "footprinting" of a computing environment so long as such activities have only identified but have not compromised the logical network perimeter, including but not limited to externally facing firewalls and web servers;
 - ii. The Contractor shall reasonably use its own vulnerability assessment of damage potential and monitoring to define levels of security incidents and responses for the Contractor's operations. However, the Contractor shall immediately notify the State of any security incident which would constitute a security event including any "breach of the security of the system" under TCA § 47-18-2107, in a preliminary report within one (1) business day with a full report within five (5) business days of the time the Contractor became aware of the incident; and
 - iii. The Contractor shall likewise notify the State in a preliminary report within one (1) business day of any unauthorized acquisition including but not limited to internal user access to non-test records reported to the Contractor's privacy manager or other appropriate personnel; and any use, disclosure, modification or destruction of PHI by an employee or otherwise authorized user of its system of which the Contractor becomes aware with a full report of the incident not less than five (5) business days of the time it became aware of the incident.
- (5) A breach of the security of the Contractor's system shall mean the unauthorized acquisition, including, but not limited to, access to, use, disclosure, modification or destruction, of unencrypted computerized data that materially compromises the security, confidentiality or integrity of personal information maintained by or on behalf of the State. If data acquired (including but not limited to access to or use, disclosure, modification or destruction of such data) is in encrypted format, but the decryption key which would allow decoding of the data is also taken, the parties shall treat the acquisition as a breach for the purpose of determining the appropriate response.
- (6) The term "encryption" shall mean the process of using publicly known algorithms to convert plain text and other data into a form intended to protect the data from being able to be converted back to the original plain text by known technological means.
- (7) The term "security incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
- (8) The term "security event" shall mean an immediately reportable subset of security incidents, which would include:

- i. A suspected penetration of the Contractor's information system of which the Contractor becomes aware but for which it is not able to verify within twenty-four (24) hours (of the time of becoming aware of the suspected incident) that PHI or other confidential data was not accessed, stolen, used, disclosed, modified or destroyed;
 - ii. Any indication, evidence or other security documentation that the Contractor's network resources, including, but not limited to, software, network routers, firewalls, database and application servers, intrusion detection systems or other security appliances may have been damaged, modified, taken over by proxy or otherwise compromised, for which the Contractor cannot refute the indication within forty-eight (48) hours of the time the Contractor became aware of such indication;
 - iii. A breach of the security of the Contractor's information system(s) by unauthorized acquisition, including, but not limited to, access to or use, disclosure, modification or destruction of unencrypted computerized data, and which incident materially compromises the security, confidentiality or integrity of PHI; and/or
 - iv. The unauthorized acquisition, including but not limited to access to or use, disclosure, modification or destruction of unencrypted electronic PHI or other confidential information of the State by an employee or authorized user of the Contractor's system(s) which materially compromises the security, confidentiality or integrity of PHI or other confidential information of the State.
- c. To ensure continual awareness of any information system activity; and to enable the State to record and examine system activity to (1) identify suspect data activity, (2) see if high-risk patterns are present, and (3) to assess the security program and respond to potential weaknesses; and pursuant to the privacy and security regulations of HIPAA governing information system activity review and audit controls, particularly Title 45 Code of Federal Regulations §§ 164.312, the State requires that any software deliverable provided and/or developed under the terms of this Contract which will collect and/or house protected health information (PHI) as defined under the privacy and security provisions of HIPAA shall provide for a system-generated and system-maintained audit trail which identifies, at a minimum, the following:
- (1) A system stamp of date and time of any transaction (add, change, delete, view) which initially records or updates any information in the record, file, and/or database.
 - (2) The user account of the person originating the transaction;
 - (3) The internet protocol (IP) address from where the transaction originated;
 - (4) Any data entered, if added type transaction;
 - (5) Any data changed, if changed type transaction; and
 - (6) Any data deleted, if deleted type transaction.
- d. Each audit trail shall be maintained for a minimum of three (3) years from time of creation.

A.11. Data Ownership and Data Security.

- a. Data created and managed by the State remain the sole property of the State. The Contractor will not review, share, distribute, print, or reference any Client's data except as

expressly defined by the terms of a Contract between the Contractor and the State. The Contractor may at times view or access individual records and the State's configuration details for the purpose of preventive maintenance or diagnosis and resolution of system problems or user support issues.

- b. The Contractor will implement reasonable and appropriate measures to secure the State's data against accidental or unlawful access or disclosure. Security measures are in place at multiple levels to protect against the loss, misuse, and alteration of the data.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning July 1, 2014, and ending on June 30, 2019. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract 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 Nine Hundred Thousand Four Hundred Thirteen Dollars (\$1,900,413.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor 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. Payment Methodology. The Contractor shall be compensated based on the payment 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.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

		Amount (per compensable increment)				
	Service Description	July 1, 2014 to June 30, 2015	July 1, 2015 to June 30, 2016	July 1, 2016 to June 30, 2017	July 1, 2017 to June 30, 2018	July 1, 2018 to June 30, 2019
QM1	AVATAR PM; AVATAR MPI; AVATAR Client Banking (CFMS); AVATAR CWS; DSS; and RADplus Modeling Tool as noted in Sections A.2.a.(1) through A.2.a.(5) and Section A.2.a.(7)	\$38,634.00 per quarter	\$41,219.00 per quarter	\$42,868.00 per quarter	\$44,583.00 per quarter	\$46,366.00 per quarter
QM2	DA/SQL as noted in Section A.2.a.(6)	\$4,697.00 per quarter	\$4,885.00 per quarter	\$5,080.00 per quarter	\$5,283.00 per quarter	\$5,495.00 per quarter
QM3	Caché (AVATAR - Production 199 concurrent users; Test 16 concurrent users; Platform- Specific, Single Server) as noted in Section A.2.a.(8)	\$9,265.00 per quarter	\$9,728.00 per quarter	\$10,215.00 per quarter	\$10,725.00 per quarter	\$11,262.00 per quarter
QM4	AVATAR Incident Tracking as discussed in Section A.2.a.(9)	\$829.00 per quarter	\$862.00 per quarter	\$897.00 per quarter	\$933.00 per quarter	\$970.00 per quarter
QM5	HL7 interface from AVATAR to the Pharmacy / CPOE / eMAR System as noted in Section A.2.a.(10)	\$4,608.00 per quarter	\$4,792.00 per quarter	\$4,984.00 per quarter	\$5,183.00 per quarter	\$5,391.00 per quarter
QM6	ICD-10 / DSM-5 Diagnosis Content Subscription as noted in Section A.2.a.(11)	\$1,367.00 per quarter	\$1,435.00 per quarter	\$1,507.00 per quarter	\$1,582.00 per quarter	\$1,662.00 per quarter
QM7	Escrow Account Service as described in Section A.9.	\$298.00 per quarter	\$310.00 per quarter	\$322.00 per quarter	\$335.00 per quarter	\$349.00 per quarter
CO1	Change Orders as discussed in Section A.2.b.	\$225.00 per hour x 475 hours	\$225.00 per hour x 495 hours	\$225.00 per hour x 515 hours	\$225.00 per hour x 537 hours	\$225.00 per hour x 559 hours
	TOTALS:	\$349,667.00	\$364,304.00	\$379,368.00	\$395,326.00	\$411,748.00

c. QM = Quarterly Maintenance; all quarterly maintenance fees shall be paid in arrears.

d. In the event the State fails to pay for service within sixty (60) days from date of receipt of each accurate invoice properly submitted, except for amounts disputed by the State in good faith, the Contractor may refuse to provide service until the State pays the amount due when service was discontinued; quarterly maintenance fees that would have been paid had service not been discontinued to bring the system current; and any current amount due pursuant to this Contract.

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 present said invoices no more

often than monthly (monthly for milestone payments and change orders, and quarterly for maintenance fees), with all necessary supporting documentation, to:

Tennessee Department of Mental Health and Substance Abuse Services
 ATTN: Fiscal Services
 Andrew Jackson Building, 6th Floor
 500 Deaderick Street
 Nashville, TN 37243

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice Number (assigned by the Contractor);
 - (2) Invoice Date;
 - (3) Contract Number (assigned by the State);
 - (4) Customer Account Name: Department of Mental Health and Substance Abuse Services, Division of Administrative Services, Office of Information Technology;
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor Name;
 - (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract;
 - (8) Contractor Contact for Invoice Questions (name, phone, e-mail, and/or fax);
 - (9) Contractor Remittance Address;
 - (10) Description of Delivered Service; and
 - (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.
- b. The Contractor understands and agrees that an invoice 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) only be submitted for completed service and shall not include any charge for future work;
 - (3) not include sales tax or shipping charges; and
 - (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.
- 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. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.
- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, 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).
 - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- 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 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, each 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.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

- 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 handicap or 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 *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, 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 1, 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 *Tennessee Code Annotated*, Section 12-4-124, *et seq.* 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. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401, *et seq.*
- D.11. 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.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. 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.14. 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.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. 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.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. 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.19. 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.20. 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.21. 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:

Richard Zhu, Director, Office of Information Technology
 Division of Administrative Services
 Tennessee Department of Mental Health and Substance Abuse Services
 Andrew Jackson Building, 6th Floor
 500 Deaderick Street
 Nashville, TN 37243
 E-mail: Richard.Zhu@tn.gov
 Phone: (615) 532-8636

The Contractor:

Anthony Ritz, Chief Financial Officer
 Netsmart Technologies, Inc.
 4950 College Boulevard
 Overland Park, KS 66211
 E-mail: ARitz@ntst.com
 Phone: (800) 842-1973

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, if a retired member of TCRS, 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. Tennessee Department of Revenue Registration. The Contractor shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.
- E.6. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.
- a. The Contractor shall maintain, at minimum, the following insurance coverage:
 - (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
 - (2) Comprehensive Commercial General Liability (including personal injury and property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
 - (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.
 - (4) Professional Malpractice Liability with a limit of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.
 - b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company and Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.
- E.7. 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.8. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. 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. 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 Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract 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.9. Rule 2 Compliance. The State and 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. 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. 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.10. 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 State of Tennessee 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; and
 - (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 this 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.11. 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.12. 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.13. Public Accountability. If the Contractor is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor shall display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this Contract, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

E.14. 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.15. 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.16. 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.17. 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.18. Disclosure of Personal Identity Information. The Contractor shall report to the State any instances of unauthorized disclosure of confidential information that come to the attention of the Contractor. Any such report shall be made by the Contractor within twenty-four (24) hours after the instance has come to the attention of the Contractor. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Contractor shall bear the cost of notification to individuals having personal identity information involved in a potential disclosure event, including individual letters and/or public notice.
- E.19. Drug-Free Workplace. The Contractor agrees that it shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, Title 41 of the United States Code (41 USC) §§ 701 et seq., and the regulations in Title 45 of the Code of Federal Regulations (45 CFR) Part 82.
- E.20. Professional Practice. The Contractor shall assure that there is a code of conduct in place and applicable to all employees that covers, at minimum, business practices, clinical practices, and service recipient/staff interaction/fraternization. Further, Contractor's personnel shall conduct their practice in conformity with all applicable statutes, rules and regulations, and recognized ethical standards of their profession. Procedures for reporting violations of the ethical standards shall be developed and communicated to staff upon hire and annually thereafter, which shall include a non-reprisal approach for persons reporting suspected violations, as well as a description of possible sanctions for violating the standards. Failure to implement a code of conduct in accordance with this section and to adequately address suspected violations of the code of conduct may be cause for termination of this Contract.
- E.21. 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,

NETWORK TECHNOLOGIES, INC.:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES:

E. DOUGLAS VARNEY, COMMISSIONER

DATE

ATTACHMENT 1

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER (Edison Record ID):	
CONTRACTOR LEGAL ENTITY NAME:	Netsmart Technologies, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number or <u>Edison Vendor ID</u>)	6819

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