

CONTRACT #3
RFS # NA
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: February 23, 2016

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 desires to continue utilizing their software application, known as "AVATAR". AVATAR and its support were originally procured through an RFP process. Of the twenty companies who were sent the RFP, four submitted proposals, and NetSmart Technologies was the best choice for each of the nine evaluators.

Acquisition, support and maintenance for AVATAR can only be provided by NetSmart Technologies because of the licensing agreement. No other vendor has the rights to the AVATAR software.

Avatar currently provides the following capabilities to four Regional Mental Health Institutes (RMHIs):

- The admission, discharge and transfer of patients
- The billing of patient services to Medicare, TennCare, private insurance companies and self-pay patients
- Receiving of payments from insurance and private pay patients
- Management of patient funds (trust accounts)
- Information that interfaces to the Department's pharmacy software (currently external to Netsmart) to provide prescriptions for hospitalized patients

The new contract will allow the Department to *optionally* expand the current capabilities listed above to include the following:

- Scanning of documents, identification and insurance cards
- Electronic clinical workstation
- Physician order entry (treatments, prescriptions, etc.)
- Electronic Medication Administration Records (eMAR)
- Interface to the Department's Automated Medication Dispensing Machines (currently being procured)
- Enhanced pharmacy software (RxConnect from Netsmart)
- Integration between Avatar and RxConnect
- Dashboards and reports for meaningful use measurements
- Electronic referrals to providers outside the RMHIs
- Electronic prescription service to the patient's pharmacy on discharge

SUBJECT: NetSmart Technologies Contract Summary Letter / Page 2

The proposed contract includes a set of negotiated rates for expansion of the current capabilities as listed above, as well as, the support and maintenance agreement to cover the five year period, July 1, 2016 through June 30, 2021. The contract allows the Department to select modules we would like to procure and does not bind the State to purchase all products listed in the contract. The support and maintenance portion of the contract covers the current implementation for five years.

The Department has no operational reason to replace the system and has a significant investment in the software application. Over 1,000 administrative staff, including admissions, medical records, financial services, unit staff and central office staff rely on this application to perform their day-to-day duties. In the last two years, the Department has expended over \$150,000.00 to update the system to meet federally imposed ICD-10 requirements. As a result, the current implementation of AVATAR is technologically up to date and the Department is satisfied with the system.

The Department has reviewed other systems and their costs and determined that if we were to go through the RFP process the current vendor Netsmart would have such an economic advantage that other vendors could not win an RFP to provide comparable software and services since they would be bidding to implement a new system and Netsmart would be bidding to continue maintenance of its current system. Further, it would take at least two years and significant man hours to implement a new system. We do not believe replacing the current system is 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.

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Quinn Wilson Simpson	*Contact Phone:	615-253-7654		
*Presenter's name:	Gene Wood				
Edison Contract Number: <i>(if applicable)</i>		RFS Number: <i>(if applicable)</i>			
*Original or Proposed Contract Begin Date:	7/1/16	*Current or Proposed End Date:	6/30/21		
Current Request Amendment Number: <i>(if applicable)</i>	n/a				
Proposed Amendment Effective Date: <i>(if applicable)</i>	n/a				
*Department Submitting:	Department of Mental Health and Substance Abuse Services				
*Division:	Hospital Services				
*Date Submitted:	2/26/2016				
*Submitted Within Sixty (60) days:	yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	Netsmart Technologies, Inc.				
*Current or Proposed Maximum Liability:	\$8,681,590				
*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: 2017	FY: 2018	FY: 2019	FY: 2020	FY: 2021	FY
\$ 3,323,228	\$ 1,298,243	\$ 1,324,908	\$ 1,352,907	\$ 1,382,304	\$
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)					
FY: 2016	FY: 2015	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:		n/a			
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		n/a			
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		n/a			
*Contract Funding Source/Amount:					
State:	\$8,681,590	Federal:			
<i>Interdepartmental:</i>		<i>Other:</i>			

Supplemental Documentation Required for
Fiscal Review Committee

If “ <i>other</i> ” please define:	
If “ <i>interdepartmental</i> ” 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>	Department has a current contract with vendor via sole source procurement. In 2016, \$122,562.00 has been expended to date. \$179,680.50 was expended in 2015.
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?	n/a
*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>The Department’s AVATAR software can only be provided by Netsmart Technologies under the licensing agreement. No other vendors have rights to the AVATAR software. The Department also believes a sole source contract is in the best interest of the state for the following reasons:</p> <ul style="list-style-type: none"> • The current implementation of AVATAR took over 2 years to complete and hundreds of hours in testing, training and custom development. • The software impacts the day-to-day operations of administrative staff, admissions, medical records, financial services and unit staff. • Pursuing an RFP to find a vendor that could provide comparable software and services could take well over a year, cost millions of dollars to implement new software, hundreds of hours in training state employees and additional yearly maintenance costs. • A review of all other states revealed that Netsmart is implemented in 35 states with 17 implementations in state behavioral health hospitals • Costs for comparable systems were reviewed; closest competitor was Cerner for \$17,028,907.



STIS Pre-Approval Endorsement Request E-Mail Transmittal

TO : Joe L. Huertas, STIS Contracts
Department of Finance & Administration
E-mail : Joe.L.Huertas@tn.gov

FROM : Quinn Wilson Simpson
E-mail : quinn.wilson@tn.gov

DATE : 1/27/16

RE : Request for STIS Pre-Approval Endorsement

Applicable RFS # 33901-xxxxxxx

STIS Endorsement Signature & Date:

Chief Information Officer

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

Strategic Technology Solutions (STIS) pre-approval endorsement is required pursuant to procurement regulations pertaining to contracts with information technology as a component of the scope of service. This request seeks to ensure that STIS is aware of and has an opportunity to review the procurement detailed below and in the attached document(s). This requirement applies to any procurement method regardless of dollar amount.

Please indicate STIS 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, 615-532-8636
<p>Attachments Supporting Request (mark all applicable)</p> <p>Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to STIS. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. STIS is aware that these documents will not have CPO signature when submitted with this request.</p> <p><input type="checkbox"/> Solicitation Document</p> <p><input checked="" type="checkbox"/> Special Contract Request</p> <p><input type="checkbox"/> Amendment Request</p> <p><input checked="" type="checkbox"/> Proposed Contract/Grant or Amendment</p> <p><input type="checkbox"/> Original Contract/Grant and Previous Amendments (if any)</p>	
Information Systems Plan (ISP) Project Applicability	

Applicable RFS # 33901-xxxxxxx

To avoid delay of STS pre-approval, the applicability of an ISP project to the procurement must be confirmed with agency IT staff prior to submitting this request to STS. If necessary, agency IT staff should contact STS Planning with questions concerning the need for an ISP project.

IT Director/Staff Name Confirming (required):

- Applicable – Approved ISP Project#
- Not Applicable

Subject Information Technology Service Description

Provide a brief summary of the information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, *etc.* As applicable, identify the contract or solicitation sections related to the IT services.

This contract will provide for 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 STS's data center. The ISP number for the original contract is CI97K300.

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 #	
1. Contracting Agency	Tennessee 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 checked="" type="checkbox"/> Sole Source <input checked="" type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
3. Requestor Contact Information	Quinn Wilson 615-253-7654 Quinn.wilson@tn.gov
4. Brief Goods or Services Caption	Expansion of the department's existing AVATAR electronic clinical record system, maintenance and support.
5. Description of the Goods or Services to be Acquired	<p>Continued maintenance and support of the AVATAR system used to manage service recipient administrative records and revenue collection at the State's four Regional Mental Health Institutes.</p> <p>Expansion of AVATAR's electronic clinical record system to include optionally clinical workstation, physician order entry, medication administration, pharmacy administration, and electronic referrals to patient's providers.</p>

Request Tracking #	
6. Proposed Contractor	Netsmart Technologies, Inc.
7. Name & Address of the Contractor's principal owner(s) – NOT required for a TN state education institution	James L. Conway, Chairman & Chief Executive Officer 3500 Sunrise Hwy, Suite D-122 Great River, NY 11739
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 – To Begin July 1, 2016
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	\$ 8,681,590
14. Was there an initial government estimate? If so, what amount?	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, \$11,580,267
15. Cost Determination Used- How did agency arrive at the estimate of expected costs?	The contractor provided a detailed estimate on October 26, 2015 so the department could prepare a budget request.
16. Explanation of Fair and Reasonable Price- Explain how agency determined that price is fair and reasonable	Costs for comparable systems were reviewed; closest competitor was Cerner for \$17,028,907.
17. Documentation of Discussions with Contractor- How did agency document discussions with Contractor? Attach documentation to this request as applicable.	Discussion with vendor occurred via email, phone calls and face to face meetings. Netsmart provided a budget estimate of \$11,580,267 and the current proposed contract is \$8,681,590.

Request Tracking #	
<p>18. Explanation of Need for or requirement placed on the State to acquire the goods or services</p>	<p>TDMHSAS is looking to fulfill the following goals in a proposed electronic solution: *</p> <ul style="list-style-type: none"> * Provide complete electronic medical records to replace the paper chart * Create greater accuracy in the RMHIs by including functionality such as voice transcription/dictation and integrated electronic pharmacy systems utilizing Computerized Physician Order Entry or CPOE to reduce errors related to poor handwriting or transcription of medication orders * Improve clinical outcomes and best practices through evidence of successful treatments traced in robust reporting * Clinical standardization and oversight utilizing best practices and processes with the use of technology * Simultaneous access to medical records across all RMHIs * Provide the right information at the right time by utilizing menu-driven options, alerts, and medicine scanning and administration services * Offer a Robust / Real-time system which will provide doctors, nurses and other medical professionals state-of-the-art tools to serve those in need.

Request Tracking #	
19. Proposed contract impact on current State operations	<p>The system is expected to allow staff to improve quality of care and safety for the patient being served by creating efficiency in processes for both patient and staff involved, and thereby improve mental health outcomes through tighter care coordination with the community. Patient safety and quality improvements are achieved by reducing errors in both prescribing and administering medications, ensuring that medical orders are accurately noted through use of Computerized Physician Order Entry (CPOE) where handwriting cannot be misread, and by making a full patient record available to all care-giving staff, enabling them to collaborate on patient care. Staff efficiency is achieved with this system by providing more time to be spent with the patient and less time searching for a copy of a chart or lab result from a different department.</p> <p><u>Impact if Project is not Completed:</u> An electronic health record system is necessary because most medical providers which contribute to the care of a patient outside the RMHIs are implementing some type of an EHR or EMR system and TDMHSAS will be disadvantaged, further and further, as technology advances and the RMHIs do not have the capability to communicate or share information for the care of patients electronically. From a cost perspective, TDMHSAS will continue to accumulate and ever-growing chart population accompanied by chart construction costs and storage fees, without a way to remove these costs. By completing this project, the fees incurred for chart construction will be eliminated immediately and chart storage fees will be eliminated after the storage duration regulations expire for existing charts. Also from the cost perspective, TDMHSAS will be able to avoid expense of adding staff to pharmacies in the RMHIs for weekend coverage via the tools included in the expansion.</p>

Request Tracking #	
<p>20. Justification – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.</p>	<p>The Department has no operational reason to replace the system and has a significant investment in the software application. Over 1,000 administrative staff, including admissions, medical records, financial services, unit staff and central office staff rely on this application to perform their day-to-day duties. In the last two years, the Department has expended over \$150,000.00 to update the system to meet federally imposed ICD-10 requirements. As a result, the current implementation of AVATAR is technologically up to date and the Department is satisfied with the system.</p> <p>The Department has reviewed other systems and their costs and determined that if we were to go through the RFP process the current vendor Netsmart would have such an economic advantage that other vendors could not win an RFP to provide comparable software and services since they would be bidding to implement a new system and Netsmart would be bidding to continue maintenance of its current system. Further, it would take at least two years and significant man hours to implement a new system. We do not believe replacing the current system is a cost-effective option for the State.</p>
For No Cost and Revenue Contracts Only	
<p>21. What costs will the State incur as a result of this contract? If any, please explain.</p>	
<p>22. What is the total estimated revenue that the State would receive as a result of this contract?</p>	
<p>23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.</p>	<input type="checkbox"/> NO <input type="checkbox"/> YES
<p>24. Summary of State responsibilities under proposed contract</p>	
For Sole Source and Proprietary Procurements Only	

Request Tracking #	
25. Explanation of Need for or requirement placed on the State to acquire the goods or services	TDMHSAS is looking to fulfill the following goals in a proposed electronic solution: * Provide complete electronic medical records to replace the paper chart * Create greater accuracy in the RMHIs by including functionality such as voice transcription/dictation and integrated electronic pharmacy systems utilizing Computerized Physician Order Entry or CPOE to reduce errors related to poor handwriting or transcription of medication orders * Improve clinical outcomes and best practices through evidence of successful treatments traced in robust reporting * Clinical standardization and oversight utilizing best practices and processes with the use of technology * Simultaneous access to medical records across all RMHIs * Provide the right information at the right time by utilizing menu-driven options, alerts, and medicine scanning and administration services * Offer a Robust / Real-time system which will provide doctors, nurses and other medical professionals state-of-the-art tools to serve those in need.
26. Evidence of Contractor's experience & 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 agencies. The company has over 30 years of experience and currently contracts for these services with approximately 35 state agencies across the country.
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 Hwy, Suite D-122; Great River, NY 11739
28. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	Contractor was initially selected via competitive procurement process (RFP). Costs for comparable systems were reviewed; closest competitor was Cerner for \$17,028,907.
Signature Required for all Special Contract Requests	

Request Tracking #	
Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)	
Signature:	Date:
<hr/>	

**CONTRACT**

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

Begin Date July 1, 2016	End Date June 30, 2021	Agency Tracking # 33901-xxxxxxx	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
2017	\$3,323,228				
2018	\$1,298,243				
2019	\$1,324,908				
2020	\$1,352,907				
2021	\$1,382,304				
TOTAL:	\$8,681,591				\$8,681,591
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. Compliance with Enterprise Information Security Policies. The Contractor is required to meet all the security controls stated in the Tennessee *Enterprise Information Security Policies* (http://www.tn.gov/assets/entities/finance/oir/attachments/PUBLIC-Enterprise-Information-Security-Policies-v2.0_1.pdf), and conform to all applicable State and Federal laws regarding information security. As additional State and Federal Security and Regulatory requirements are imposed, the Contractor shall ensure that the environment content and applications are kept up to date with the emerging requirements.

A.11. Compliance with State’s Technology Standards.

- a. In the event that the Contractor wishes to introduce non-State standard software or hardware components (“products”) into the State’s technology environment, in support of, or related to, the services the Contractor is providing under this Contract, the Contractor must make a formal written request to the State prior to introducing the non-State Standard Products. Such a request is referred to as a “Non-State Standard Product Request.”
- b. Non-State Standard Products are defined as:

Any software that is not listed and designated as "Current" in, or is not compatible with the standards listed in the *Enterprise Technology Architecture*; or
 Any hardware that is not listed and designated as "Current" in, or is not compatible with standards listed in the *Enterprise Technology Architecture*.

- c. The State's Department of Finance and Administration, Office for Information Resources (OIR), shall consider the Non-State Standard Product Request and shall render a written determination, in the State's best interest, to approve or disapprove the request. If OIR disapproves the request, the Contractor agrees to withdraw the request and substitute State Standard Products in place of the Non-State Standard Products, at no additional cost to the State.
- A.12. Encryption. All data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the data. The Contractor shall ensure drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all personal data. The solution should support 256 bit encryption or latest State standard. This provision also applies to the data-at-rest and data-in-transit protections provided by the solution, even if protection of data-at-rest and/or data-in-transit is implemented by external modules (rather than the solution itself).
- A.13. Separation of Duties. To reduce the risk of accidental change or unauthorized access to operational software and business data, there should be a separation of duties based on development, test, and operational facilities.

Confidential data should not be copied into test and development systems. Development and test environments should not be directly connected to production environments. Data and operational software test systems should emulate production systems as closely as possible. The Contractor shall limit staff knowledge of State data to that which is absolutely necessary to perform job duties.

- A.14. Removable Media. Removable media should be sanitized prior to removing it from the facilities for maintenance or repair. Removable media should be disposed of securely when no longer required, using approved State procedures. Removable media containing confidential information, confidential data, or sensitive data must be protected against unauthorized access, misuse or corruption during transport.
- A.15. Protection of Information. The Contractor shall be responsible for properly protecting all information used, gathered, or developed as a result of work under this contract. It is anticipated that this information will be gathered, created, and stored within the primary work location. If contractor personnel must remove any information from the primary work area they should protect it to the same extent they would their own proprietary data and/or company trade secrets. The use of any information that is subject to the Privacy Act will be utilized in full accordance with all rules of conduct as applicable to Privacy Act Information. The State will retain unrestricted rights to State data. The State also maintains the right to request full copies of the data at any time.

The data that is processed and stored by the various applications within the network infrastructure contains financial data as well as Personally Identifiable Information (PII). This data shall be protected against unauthorized access, disclosure or modification, theft, or destruction. The Contractor shall ensure that the facilities that house the network infrastructure are physically secure. The data must be available to the State upon request within one business day or within the timeframe specified otherwise, and shall not be used for any other purpose other than that specified herein. The contractor shall provide requested data at no additional cost to the State..

- A.16. Confidentiality and Non-Disclosure. The State has unlimited data rights to all deliverables and associated working papers and materials.

All documents produced for this project are the property of the State and cannot be reproduced, or retained by the contractor. All appropriate project documentation will be given to the State

during and at the end of this contract. The contractor shall not release any information without the written consent of the State. Personnel working on any of the described tasks may, at State request, be required to sign formal non-disclosure and/or conflict of interest agreements to guarantee the protection and integrity of State information and documents. Data will only be disclosed to authorized personnel on a "Need-To-Know" basis. The contractor shall ensure that appropriate administrative, technical, and physical safeguards are established to ensure the security and confidentiality of this information, data, and/or equipment is properly protected. Any information made available to the Contractor by the State shall be used only for the purpose of carrying out the provisions of this contract and shall not be divulged or made known in any manner to any persons except as may be necessary in the performance of the contract. In performance of this contract, the Contractor assumes responsibility for protection of the confidentiality of State records. Each officer or employee of the Contractor to whom any State record may be made available or disclosed shall be notified in writing by the Contractor that information disclosed to such officer or employee can be used only for that purpose and to the extent authorized herein. Further disclosure of any such information, by any means, for a purpose or to an extent unauthorized herein, may subject the offender to criminal sanctions.

- A.17. Data Ownership. 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 State configuration details for the purpose of preventive maintenance or diagnosis and resolution of system problems or user support issues.
- A.18. Transfer of Data. Upon termination of this Contract all data created and managed by the State on Contractor's equipment shall be removed and returned to the State in a usable format acceptable to the State, unless the parties enter into a similar, successive Contract. Contractor must perform a sanitization of confidential digital data and destruction of hard copy confidential data when the contract ends.
- A.19. System Availability and performance (if Contractor is hosting Licensed Software).

If the State elects to purchase Netsmart Hosting services during the term of this contract, the services will be provided under a scope of work and project plan which will be reviewed and agreed upon by the parties prior to commencement of the services. In addition, the State security requirements referred to in Section A.20 will also apply.

- a. Following implementation, the System shall be available continuously, as measured over the course of each calendar month, an average of 99% of the time. "Available" means the System shall be available for access and use by the State to conduct normal business associated with this system.
- b. For purposes of calculating the availability percentage, the following are "Exceptions" to the service level requirement:
 - (1) regularly scheduled downtime (which shall occur only upon advance written notice during non-core business hours); or
 - (2) loss of the State's Internet connectivity
- c. Consistent and responsive system performance is important to provide uninterrupted availability of means to dispense and administer medication to patients, even during peak workload times. System performance will be measured in terms of response time. The average System response time shall be no more than one (1) to three (3) seconds. Ninety five percent (95%) of all response time should be less than two (2) seconds.
- d. Contractor must notify the State as soon as possible if system performance or availability is outside of the specified requirements. Notification must happen through telephone and/or email to contacts provided by the State. Acknowledgment of the notification must be logged. The notification should be specific and detailed. The Contractor will provide

frequent and regular updates until system performance or availability has returned to normal as per the specified requirements.

A.20 State Security Requirements (if Contractor is hosting Licensed Software).

a. Malicious Code.

The Contractor shall represent and warrant that the Software, Application and Network shall be free from all computer viruses, worms, time-outs, other harmful or malicious code intended to or which may damage, disrupt, inconvenience or permit access to the Software user's or another's software, hardware, networks, data or information. If the Contractor is aware of any security incident, vulnerability or other malicious code within their software or network the Contractor shall immediately disclose this information to the State via telephone and e-mail, as well as identify a timeline to mitigate and eliminate the risk.

b. Data Location.

The Contractor shall provide its services to the State and its end users solely from data centers in the United States of America. Storage of State data at rest shall be located solely in data centers in the U.S. The Contractor shall not allow its personnel or contractors to store State data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its personnel and contractors to access State data remotely only as required to provide technical support solely within the U.S.

c. Import and Export of Data.

The State shall have the ability to Import or export data piecemeal or in entirety at its discretion without interference from the Contractor. This includes the ability for the State to import or export data to or from other service providers.

d. Security Incident and Data Breach.

The Contractor shall inform the State of any security incident or data breach. The Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the State should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.

The Contractor shall report any security incident to the appropriate State identified contact immediately. If the Contractor has actual knowledge of a confirmed data breach that affects the security of any State content that is subject to applicable data breach notification law, the Contractor shall

1. Promptly notify the appropriate State identified contact within 24 hours or sooner, unless shorter time is required by applicable law,
2. Take commercially reasonable measures to report perceived security incidents to address the data breach in a timely manner
3. Cooperate with the State as reasonably requested by the State to investigate and resolve the data breach,
4. Promptly implement necessary remedial measures, if necessary, and
5. Document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

Unless otherwise stipulated, if a data breach is a direct result of the Contractor breach of its contract obligation to encrypt personal data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by state law; (3) a credit monitoring service required by state (or federal) law; (4) a website or a toll-free number and call center for affected individuals required by state law - all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$201 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at

the time of the data breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to this contract's limitation of liability.

e. Access to Security Logs and Reports.

The Contractor shall provide reports to the State in a format as agreed to by both the Contractor and the State. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all State files related to this contract.

f. Security Audits.

The State may conduct audits of Contractor's compliance with the State's Enterprise Information Security Policy ("The Policy") or under this Contract, including those obligations imposed by Federal or State law, regulation or policy. The Policy, as may be periodically revised, can be located at the following link: http://www.tn.gov/assets/entities/finance/oir/attachments/PUBLIC-Enterprise-Information-Security-Policies-v2.0_1.pdf

The State's right to conduct security audits is independent of any other audit or monitoring required by this Contract. The timing and frequency of such audits shall be at the State's discretion and may, but not necessarily shall, be in response to a security incident.

A security audit may include the following: (i) review of access logs, screen shots and other paper or electronic documentation relating to Contractor's compliance with the Policy. This may include review of documentation relevant to subcontractors or suppliers of security equipment and services used with respect to State data; (ii) physical inspection of controls such as door locks, file storage, communications systems, and employee identification procedures; and (iii) interviews of responsible technical and management personnel regarding security procedures.

Contractor shall provide reports or additional information upon request of the state and access by the State or the State's designated staff to Contractor's facilities and/or any location involved with providing services to the State or involved with processing or storing State data, and Contractor shall cooperate with State staff and audit requests submitted under this Section. Any confidential information of either party accessed or disclosed during the course of the security audit shall be treated as set forth under this Contract or federal or state law or regulations. Each party shall bear its own expenses incurred in the course of conducting this security audit. Contractor shall at its own expense promptly rectify any non-compliance with the Policy or other requirements identified by this security audit and provide proof to the State thereof.

g. Change Control and Advance Notice.

The Contractor shall give advance notice to the State of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It usually includes a new version number.

h. Security Certification, Accreditation, Audit.

At the State's request, the contractor shall provide proof of any security certifications, accreditation, or audit on a yearly basis to the State to validate the hosting solution security. (Examples: SOC 2 Type II/ SOC 3, ISO 27001).

i. Physical Security.

All enterprise data processing facilities that process or store data shall have multiple layers of physical security. Each layer should be independent and separate of the preceding and/or following layer(s).

All facilities should have, at a minimum, a single security perimeter protecting it from unauthorized access, damage and/or interference. Secure areas should be protected by appropriate entry controls to restrict access only to authorized personnel. Procedures for working in secure areas should be created and implemented. Access points such as delivery and loading areas and other points where unauthorized persons could enter the premises should be controlled, and if possible, isolated from information processing facilities. Equipment should be located in secured areas or protected to reduce the risks from environment threats and hazards, and to reduce the

opportunities for unauthorized access. Secured cabinets or facilities should support further segregation based on role and responsibility.

Users should ensure that unattended data processing equipment has appropriate protection. All systems and devices owned and operated by or on behalf of the State should be configured to clear and lock the screen or log the user off the system after a defined period of inactivity.

The Contractor shall perform an independent audit of its data centers at least annually at its expense, and provide a redacted version of the audit report upon request. The Contractor may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

j. Assessment of the System.

1. The contractor shall comply with requirements, including making available any documentation, physical access, and logical access needed to support this requirement. The contractor shall create, maintain and update logs and documentation according to certification standard controls.
2. Information systems must be reassessed by the State whenever there is a significant change to the system's security posture.
3. The State reserves the right to perform Penetration Testing. If the State exercises this right, the Contractor shall allow State employees (or designated third parties) to conduct Security Assessment activities to include control reviews. Review activities include but are not limited to scanning operating systems, web applications, wireless scanning; network device scanning to include routers, switches, and firewall, and IDS/IPS; databases and other applicable systems, including general support structure, that support the processing, transportation, storage, or security of State information for vulnerabilities.
4. The Contractor is responsible for mitigating all security risks found during Assessment and continuous monitoring activities. All high-risk vulnerabilities and moderate risk vulnerabilities must be mitigated within 30 days from the date vulnerabilities are formally identified. The State will determine the risk rating of vulnerabilities.

The Contractor shall certify applications are fully functional and operate correctly as intended on systems using the Standard State Desktop Configuration. The standard installation, operation, maintenance, updates, and/or patching of software shall not alter the configuration settings from the approved configuration. Applications designed for normal end users shall run in the standard user context without elevated system administration privileges. Contractor shall provide all services requested through this Contract within the context of the technical environment described in *Tennessee Information Resources Architecture*.

k. Click Through Licenses.

No "click through" licenses or provisions will be allowed during this contract.

l. System Patching and Penetration Scanning.

1. The Contractor will conduct periodic and special vulnerability scans, and install software / hardware patches and upgrades to protect all automated information assets. These audits shall be performed by a third party qualified to perform such tests, including penetration tests of the internal and external user interface, annually.
2. The Contractor must submit, for review and approval by the State, the proposed scope of testing as well as the name and qualifications of the party performing the tests. The Contractor is responsible for the costs of this testing.
3. The State may elect to perform independent testing.
4. The Contractor must report the results of the vulnerability scans described above to the State within 10 calendar days following the Contractor's receipt of said results.
5. The Contractor must address and resolve any vulnerability as directed by the State. The Contractor must arrange for repeat testing to ensure that all identified vulnerabilities have been addressed as directed by the State.

A.21 Optional Products and Services. The following products and services may be purchased by the State at any time during the term of this contract for the fees stated below so long as Netsmart is then distributing and supporting such products and services. Prior to commencement of installation and product implementation activities the parties will agree upon a scope of work, project plan and specific payment milestones related to the optional product and services being purchased. Payment milestones will require the delivery and receipt of tangible deliverables.

Ref	Area	Service Type	Service Title	Service Description
a.	Practice Management Expansion	License	Avatar RADplus Named User: 1218 - 1400 Named User Expansion	License fee to expand the number of users on the Avatar software application.
b.	Practice Management Expansion	License	POS and Batch Scanning Powered by Perceptive	License fee to scan and store documents into the patient's records.
c.	Practice Management Expansion	License	Avatar Electronic Signature License.	License fee for Electronic Signature integration into the patient record.
d.	Practice Management Expansion	License	Avatar Addiction Severity Index (ASI)	License fee for Addiction Severity Index content and integration into the patient record.
e.	Practice Management Expansion	Professional Services	Implementation: Clinical Workstation (CWS), Electronic Signature, Addiction Severity Index, POS/Batch Scanning	Project Management and Implementation services for Practice Management expansion.
f.	Medication Management Expansion	License	RxConnect Browser License Fee	License for the Pharmacy Module, RxConnect.
g.	Medication Management Expansion	License	Rx-ADM Browser Interface License	License fee for the interface from Pharmacy Management Software to Automated Medication Dispensing Machines
h.	Medication Management Expansion	License	Crystal Reports Developer's Version License	License Fee for advanced report writing functionalities specific to Pharmacy Management
i.	Medication Management Expansion	License	Avatar Order Entry Module License	License Fee for Computerized Physician Order Entry
j.	Medication Management Expansion	License	Avatar eMAR Module License	License Fee for Electronic Medication Administration Record
k.	Medication Management Expansion	Professional Services	Implementation: Closed Loop Medication Management - with interface to Automated Dispensing Machines	Project Management and Implementation services for Medication Management expansion.
l.	Medication Management Expansion	Hardware	RxScan 2D USB	Prescription scanning equipment
m.	Medication Management Expansion	Subscription	RxScan NDC Translator	Software for prescription scanning equipment

Ref	Area	Service Type	Service Title	Service Description
n.	Medication Management Expansion	Subscription	Ultimedex Suite Subscription	Subscription fee for access to Ultimedex drug-drug and drug-allergy interaction checking, medication instructions, and dosing indications including integration into the electronic clinical record software.
o.	Interoperability (Meaningful Use), Consumer Use (MU), Reporting Tools	Professional Services	Implementation: All Interoperability and Reporting Tool Implementations	Project Management and Implementation services for Interoperability (Meaningful Use), Consumer Use (MU), Reporting Tools.
p.	Interoperability (Meaningful Use), Consumer Use (MU), Reporting Tools	Subscription	CareConnect Base	Subscription fee for access to connect the four RMHI's with other providers, hospitals, physicians, HIE, Labs, Referral Networks, Immunization and Syndromic Surveillance systems
q.	Interoperability (Meaningful Use), Consumer Use (MU), Reporting Tools	Subscription	CareConnect Referral Connector	Subscription fee for access to connect the 4 RMHI's directly to another inpatient or outpatient provider
r.	Interoperability (Meaningful Use), Consumer Use (MU), Reporting Tools	Subscription	CareConnect Lab Orders (Outbound)	Subscription fee to allow for real time electronic submittal of Lab Orders
s.	Interoperability (Meaningful Use), Consumer Use (MU), Reporting Tools	Subscription	CareConnect Lab Results (Inbound)	Subscription fee to access real time electronic Lab Results
t.	Interoperability (Meaningful Use), Consumer Use (MU), Reporting Tools	Subscription	Direct Message Mailbox-CareConnect	Subscription fee for Direct Messaging that enables care providers to communicate with a patient's care team outside the agency.
u.	Hosting	License	Plexus Cloud Hosting - Avatar	License fee for Avatar system vendor hosting including disaster recovery for up to 400 concurrent system users
v.	Hosting	License	Plexus Cloud Hosting - Avatar Data Warehouse	License fee for Avatar Vendor Hosted Data Warehouse Server
w.	Hosting	License	Plexus Cloud Hosting - Perceptive document management software	License for Document Capture point of service and batch scanning hosting including disaster recovery for up to 400 concurrent system users

Ref	Area	Service Type	Service Title	Service Description
x.	Hosting	License	Plexus Cloud Hosting - RxConnect (10 Users)	License fee for RxConnect (Pharmacy expansion) in a hosted environment.
y.	Hosting	Professional Services	Hosting Set-Up, Hosting Cutover.	Project Management and Implementation services to set up vendor hosted environment.
z.	Hosting	Professional Services	Hosting Migration Implementation	Project Management and Implementation services to migrate existing product and data to the vendor hosted environment.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning July 1, 2016, and ending on June 30, 2021. 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 Eight Million Six Hundred Eighty One Thousand and Five Hundred Ninety One Dollars (\$8,681,591). 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:

	Service Description	Amount				
		(per compensable increment)				
		1-Jul-16 to 30-Jun-17	1-Jul-17 to 30-Jun-18	1-Jul-18 to 30-Jun-19	1-Jul-19 to 30-Jun-20	1-Jul-20 to 30-Jun-21
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)	\$42,868.00	\$44,583.00	\$46,366.32	\$48,220.97	\$50,149.81
QM2	DA/SQL as noted in Section A.2.a.(6)	\$5,080.00	\$5,283.00	\$5,494.32	\$5,714.09	\$5,942.66
QM3	Caché (AVATAR - Production 199 concurrent users; Test 16 concurrent users; Platform-Specific, Single Server) as noted in Section A.2.a.(8)	\$10,215.00	\$10,725.00	\$11,154.00	\$11,600.16	\$12,064.17
QM4	AVATAR Incident Tracking as discussed in Section A.2.a.(9)	\$897.00	\$933.00	\$970.32	\$1,009.13	\$1,049.50
QM5	HL7 interface from AVATAR to the Pharmacy / CPOE / eMAR System as noted in Section A.2.a.(10)	\$4,984.00	\$5,183.00	\$5,390.32	\$5,605.93	\$5,830.17
QM6	ICD-10 / DSM-5 Diagnosis Content Subscription as noted in Section A.2.a.(11)	\$1,507.00	\$1,582.00	\$1,645.28	\$1,711.09	\$1,779.53
QM7	Escrow Account Service as described in Section A.9.	\$322.00	\$335.00	\$348.40	\$362.34	\$376.83
CO1	Change Orders as discussed in Section A.2.b.	\$225.00 per hour x 515 hours	\$225.00 per hour x 537 hours	\$225.00 per hour x 558 hours	\$225.00 per hour x 580 hours	\$225.00 per hour x 603 hours
	TOTAL ANNUAL DUES:	\$379,368.00	\$395,326.00	\$411,024.00	\$427,394.00	\$439,270.00

Optional Components and Services

	Service Description	Amount
One-Time	Avatar RADplus Named User: 1218 - 1400 Named User Expansion as noted in Section A.21.a	\$145,600.00
One-Time	POS and Batch Scanning Powered by Perceptive as noted in section A.21.b	\$70,000.00
One-Time	Avatar Electronic Signature License as noted in section A.21.c	\$40,000.00
One-Time	Avatar Addiction Severity Index (ASI) as noted in section A.21.d	\$7,500.00
One-Time	Implementation: Clinical Workstation (CWS), Electronic Signature, Addiction Severity Index, POS/Batch Scanning, Hosting Set-Up, Hosting Cutover. As noted in section A.21.e	\$907,400.00
One-Time	Hosting Set-Up and Hosting Cutover as noted in section A.21.y and A.21.z	\$61,200.00
One-Time	Rx-RxConnect Browser License Fee 0 - 100 Beds Memphis Site as noted in section A.21.f	\$33,750.00
One-Time	Rx-RxConnect Browser License Fee 101 - 200 Beds: Moccasin, Middle, Western Sites as noted in section A.21.f	\$126,000.00
One-Time	Rx-ADM Browser Interface License: All four locations as noted in section A.21.g	\$10,000.00
One-Time	RxScan 2D USB as noted in section A.21.i	\$199.00
One-Time	Crystal Reports Developer's Version License as noted in section A.21.h	\$495.00
One-Time	Avatar Order Entry as noted in section A.21.i	\$35,000.00
One-Time	Avatar eMAR as noted in section A.21.j	\$35,000.00

	Service Description	Amount
One-Time	Implementation: Closed Loop Medication Management - with interface to Automated Dispensing Machines as noted in section A.21.k	\$368,236.00
One-Time	Implementation: All Interoperability and Reporting Tool Implementations as noted in section A.21.o	\$210,000.00

	Service Description	Amount				
		(per compensable increment)				
		Year 1	Year 2	Year 3	Year 4	Year 5
QM8	Plexus Cloud Hosting - Avatar as noted in section A.21.u	\$144,000.00	\$144,000.00	\$144,000.00	\$144,000.00	\$144,000.00
QM9	Plexus Cloud Hosting - Avatar Data Warehouse as noted in section A.21.v	\$2,400.00	\$2,400.00	\$2,400.00	\$2,400.00	\$2,400.00
QM10	Plexus Cloud Hosting - Perceptive as noted in section A.21.w	\$17,136.00	\$17,136.00	\$17,136.00	\$17,136.00	\$17,136.00
QM11	Plexus Cloud Hosting - RxConnect (10 Users) as noted in section A.21.x	\$2,700.00	\$2,700.00	\$2,700.00	\$2,700.00	\$2,700.00

	Service Description	Amount				
		(per compensable increment)				
	Year 1	Year 2	Year 3	Year 4	Year 5	
QM12	Avatar RADplus Named User Maintenance: 1218 - 1400 Named User Expansion as noted in section A.21.a	\$7,644.00	\$8,026.20	\$8,427.51	\$8,848.89	\$9,291.33
QM13	Avatar RADplus Named User Maintenance - 24x7 Premium: 00 - 1400 Named User Expansion as noted in section A.21.a	\$26,460.00	\$27,783.00	\$29,172.15	\$30,630.76	\$32,162.30
QM14	POS and Batch Scanning Powered by Perceptive Maintenance as noted in section A.21.b	\$3,675.00	\$3,858.75	\$4,051.69	\$4,254.27	\$4,466.99
QM15	Avatar Electronic Signature Maintenance as noted in section A.21.c	\$2,025.00	\$2,126.25	\$2,232.56	\$2,344.19	\$2,461.40
QM16	Avatar ASI Maintenance as noted in section A.21.d	\$394.00	\$413.70	\$434.39	\$456.10	\$478.91

	Service Description	Amount				
		(per compensable increment)				
	Year 1	Year 2	Year 3	Year 4	Year 5	
QM17	Rx-RxConnect Browser Maintenance Fee 0 - 100 Beds as noted in section A.21.f	\$2,531.00	\$2,657.55	\$2,790.43	\$2,929.95	\$3,076.45
QM18	Rx-RxConnect Browser Maintenance Fee 101 - 200 Beds as noted in section A.21.f	\$9,450.00	\$9,922.50	\$10,418.63	\$10,939.56	\$11,486.53
QM19	Rx-ADM Maintenance Fee 0-200 beds: All four locations as noted in section A.21.g	\$650.00	\$682.50	\$716.63	\$752.46	\$790.08
QM20	RxScan NDC Translator as noted in section A.21.m	\$299.25	\$314.21	\$329.92	\$346.42	\$363.74
QM21	Ultimedex Suite Subscription as noted in section A.21.n	\$5,400.00	\$5,670.00	\$5,953.50	\$6,251.18	\$6,563.73
QM22	Crystal Reports Developer's Version Maintenance as noted in section A.21.h	\$25.00	\$26.25	\$27.56	\$28.94	\$30.39

	Service Description	Amount				
		(per compensable increment)				
		Year 1	Year 2	Year 3	Year 4	Year 5
QM23	Avatar Order Entry Maintenance as noted in section A.21.i	\$1,837.50	\$1,929.38	\$2,025.84	\$2,127.14	\$2,233.49
QM24	Avatar eMAR Maintenance as noted in section A.21.j	\$1,837.50	\$1,929.38	\$2,025.84	\$2,127.14	\$2,233.49
QM26	CareConnect Base as noted in section A.21.p	\$6,900.00	\$7,245.00	\$7,607.25	\$7,987.61	\$8,386.99
QM27	CareConnect Referral Connector as noted in section A.21.g	\$2,400.00	\$2,520.00	\$2,646.00	\$2,778.30	\$2,917.22
QM31	CareConnect Lab Orders (Outbound) Out of network or state labs may require aggregator fees as noted in section A.21.r	\$2,400.00	\$2,520.00	\$2,646.00	\$2,778.30	\$2,917.22
QM32	CareConnect Lab Results (Inbound) Out of network or state labs may require aggregator fees. as noted in section A.21.s	\$2,400.00	\$2,520.00	\$2,646.00	\$2,778.30	\$2,917.22

	Service Description	Amount				
		(per compensable increment)				
	Year 1	Year 2	Year 3	Year 4	Year 5	
QM33	Direct Message Mailbox-CareConnect as noted in section A.21.t	\$240.00	\$252.00	\$264.60	\$277.83	\$291.72

- 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.
- e. For the optional products and services contained in this contract, payments will be made in accordance with an agreed upon payment schedule that will be detailed in the document of authorization to proceed.

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. MANDATORY TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

- D.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. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

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:

Timothy Donovan, Vice President and General Counsel
 Netsmart Technologies, Inc.
 3500 Sunrise Highway, Suite D122
 Great River, NY 11739
 E-mail: tdonovan@ntst.com
 Phone: (631) 969-7322

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. 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 materially violates any terms of this

Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation 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 under 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 (6) 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 (6) months has been, an employee of the State of Tennessee.

D.9. 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, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 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 agrees 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 2, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor 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 Term, 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 under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from 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. Contractor's 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 Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) 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.12. 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.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, 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 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.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party 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 are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i)

intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

- D.19. 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 to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, 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 the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 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 under Tenn. Code Ann. §§ 8-35-101, *et seq.*, 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 Term.

- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. 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 offense 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.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in

Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.

- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, 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, whether written or oral.
- D.28. 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 of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment 1 – System Requirements, Attachment 2 – Attestation Re: Personnel Used in Contract Performance, Attachment 3 – Letter of Diversity Commitment, and Attachment 4 – State of Tennessee Enterprise Architecture,
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking 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, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E. 2. Ownership of Software and Work Products.
- a. Definitions.
 - (1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
 - (2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor solely for State.
 - (3) "Rights Transfer Application Software," shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.
 - (4) "Third-Party Software," shall mean software not owned by the State or the Contractor.

(5) "Work Product," shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor exclusively for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the deliverables under this Contract include Rights Transfer Application Software, the definition of Work Product shall also include such software. Work Product shall not include Contractor-Owned Software or Third-Party Software.

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted under this Contract.
- (2) All right, title and interest in to the State's data shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.
- (3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted under this Contract.

c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.

E.3. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.

E.4. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.

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**

ATTACHMENT 2

SAMPLE LETTER OF DIVERSITY COMMITMENT

Netsmart Technologies, Inc.
4950 College Boulevard
Overland Park, KS 66211

(Salutation),

Netsmart Technologies, Inc. is committed to achieving or surpassing a goal of (numeral) percent spend with certified diversity business enterprise firms on State of Tennessee contract # (Edison document #). Diversity businesses are defined as those that are owned by minority, women, small business and Tennessee service-disabled veterans which are certified by the Governor's Office of Diversity Business Enterprise (Go-DBE).

We confirm our commitment of (percentage) participation on the (Contract) by using the following diversity businesses:

Name and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled veteran) of anticipated diversity subcontractors and suppliers:

(ii) Participation estimates (expressed as a percent of the total contract value to be dedicated to diversity subcontractors and suppliers):
_____ %.

(iii) Description of anticipated services to be performed by diversity subcontractors and suppliers:

We accept that our commitment to diversity advances the State's efforts to expand opportunity of diversity businesses to do business with the State as contractors and sub-contractors.

Further, we commit to:

Using applicable reporting tools that allow the State to track and report purchases from businesses owned by minority, women, Tennessee service-disabled veterans and small business.

Reporting quarterly to the Go-DBE office the dollars spent with certified diversity businesses owned by minority, women, Tennessee service-disabled veterans and small business accomplished under contract # (Edison number).

Netsmart Technologies, Inc. is committed to working with the Go-DBE office to accomplish this goal.

Regards,

(Company authority – signature and title)

