Milwaukee County Professional Services Agreement

This Agreement ("Agreement") entered into on _____, 2011 (the "Effective Date"), between Milwaukee County, a Wisconsin municipal body corporate (hereinafter called "County"), represented by Milwaukee County Department of Health and Human Services Behavioral Health Division (hereinafter called "BHD") and Netsmart Technologies Inc, with its principal place of business at 3500 Sunrise Highway, Suite D122, Great River, New York, 11739 (hereinafter called "Netsmart"). When referenced together, BHD and Netsmart are referred to as "Party" or "Parties."

This Agreement consists of the following documents:

> The Milwaukee County Professional Services Agreement
> Netsmart License and Service Agreement
> Exhibit A Netsmart Hosting Addendum to License
> Exhibit B Netsmart Subscription Products Addendum
> Exhibit C Netsmart Provider Connect Addendum
> Exhibit D Netsmart Business Associate Agreement
> Exhibit E   Netsmart Response to Milwaukee County RFP (dated 2/11/11)

Any contradiction between the terms contained in any of the various parts of this Agreement shall be resolved by giving priority to the following documents in the following order:

> The Milwaukee County Professional Services Agreement
> Netsmart License and Service Agreement
> Exhibit A Netsmart Hosting Addendum to License
> Exhibit B Netsmart Subscription Products Addendum
> Exhibit C Netsmart Provider Connect Addendum
> Exhibit D Netsmart Business Associate Agreement
> Exhibit E   Netsmart Response to Milwaukee County RFP (dated 2/11/11)

The Parties agree that, with respect to all of their dealings in the negotiation and the performance of this Agreement, they will act fairly and in good faith as that principle is applied by the Wisconsin courts and found in Section 205 of the Restatement (Second) of Contracts. See Panzer v. Doyle, 271 Wis. 2d 295; 680 N.W.2d 666 (WI 2004); State v. Peppertree Resort Villas, Inc., 257 Wis. 2d 421, 651 N.W.2d 345 (Wis App 2002). In the event that the parties disagree about any requirements for Netsmart's performance under any part of this Agreement, the parties mutually agree to resolve any such disagreements through informal negotiations and, if necessary, mediation, before proceeding to arbitration or litigation.

1. STAFFING REQUIREMENTS

Netsmart represents that its employees and subcontractors possess the necessary skill, expertise, and capability, including sufficient personnel with the necessary qualifications, to perform the services required by this Agreement. Such personnel shall not be the employees of, or have any other contractual relationship with, the County. Netsmart also agrees that the

County may approve or disapprove Netsmart's subcontractors or its staff assigned to this Contract prior to the proposed staff assignment, such approval not to be unreasonably withheld, conditioned or delayed. The County's decision on this matter shall not be subject to appeal.

The County acknowledges that Netsmart's ability to perform timely is predicated on the County providing necessary information, access to appropriate personnel, and timely approval of recommendations by Netsmart, when acceptable.

3. TERM
The initial term of this agreement is for Five (5) years from the "Effective Date" as noted above with a subsequent renewal period of one (1) - five (5) year term, at BHD's election. This term applies specifically to the hosting and subscription services described in Exhibits A and B. Maintenance and support services for the licensed programs listed in the Exhibits have a 1 year initial term with the auto-renew provision as defined in Schedule 2 (h).

4. COMPENSATION, PAYMENT SCHEDULE AND TERMS
County hereby agrees to pay Netsmart all fees and amounts in accordance with Schedule 2(a) – Netsmart EMR Cost Breakdown and Payment Schedule. Netsmart shall invoice BHD and make supporting documentation of expenses available to BHD upon written request. All charges are exclusive of taxes. The total compensation to Netsmart for services performed under the Agreement shall not exceed $5,223,659 unless agreed to by BHD in advance, of each expenditure, in writing. State Prompt Pay Law, Section 66.285, does not apply to this Agreement. As a matter of practice, the County attempts to pay all invoices in 30 days. If no disputes arise, and the invoice has not been paid 60 days after it was received by the BHD, Netsmart may file a claim for 12% (annual rate) on amounts not paid after the 60th day.

5. REPORTS
Netsmart shall provide written progress reports to BHD on a biweekly basis. At the completion of the Agreement, Netsmart shall provide two (2) copies of the final report along with an electronic copy to enable knowledge transfer to the County's BHD staff. Form and content of the final report will be mutually agreed upon by both Parties. This Agreement provides for Netsmart to make one (1) oral presentation concerning the final report at times selected by County as project wrap-up

6. OWNERSHIP OF DATA
Upon completion of the work or upon termination of the Agreement, it is understood that all completed or partially completed data, findings, specifications, records, and other material that Netsmart has collected or prepared in carrying out this Agreement shall be provided to and become the exclusive property of the County. Therefore, any reports, information and data given to or prepared or assembled by Netsmart under this Agreement shall not be made available to any individual or organization by Netsmart without the prior written approval of County.

No reports or documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Netsmart.

Nothing in the foregoing grants to the County, any rights in Netsmart software other than as expressly granted under the license provided by Netsmart under this Agreement.

7. AUDIT AND INSPECTION OF RECORDS

For a period of up to four (4) years after completion of the Agreement, pursuant to §56.30(6)(d) of the Milwaukee County Code of Ordinances, the Contractor shall allow Milwaukee County, the Milwaukee County Department of Audit, or any other party acting on behalf of either, , during normal business hours at Netsmart's principal place of business, , to audit, examine and make copies of records in any form and format, meaning any medium on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by Contractor, including not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer files, computer printouts and optical disks, and excerpts or transcripts from any such records or other information directly relating to matters under this Agreement at County cost. Any subcontracting by the Contractor in performing the duties described under this contract shall subject the subcontractor and/ or associates to the same audit terms and conditions as the Contractor. Contractor (or any subcontractor) shall maintain and make available to Milwaukee County the aforementioned audit information for no less than three years after the conclusion of each contract term. Milwaukee County will provide reasonable notice of such audit and will not negatively interfere with Contractor's business operations.

8. DISADVANTAGED BUSINESS ENTERPRISE

Netsmart shall comply with Milwaukee County Ordinance 42 and CFR 49 Part 26, which have an overall goal of seventeen percent (17%) participation of certified disadvantaged business enterprises (DBEs) on professional service contracts. In accordance with this, the Netsmart shall ensure that DBEs have the maximum opportunity to participate in this project. The specific goal for the professional services within this project is seventeen percent (17%). Failure to carry out the requirements of this provision shall constitute a breach of contract and may result in termination of this contract by Milwaukee County or other such remedy as the County deems appropriate. Netsmart shall maintain records and document its performance under this item.

9. NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION PROGRAMS

In the performance of work under this Agreement, Netsmart shall not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex, or handicap, which shall include, but not be limited to, the following:

Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Netsmart will post in conspicuous places, available for employees and applicants for employment, notices to be provided by County, (or the equivalent federal or state of employment location for employees who live and work outside Wisconsin setting forth the provisions of the non-discriminatory clause.

Netsmart agrees to strive to implement the principles of equal employment opportunity through an effective Affirmative Action program, and has so indicated on the certificate attached hereto as Exhibit _F_ and made a part of this Agreement. The program shall have as its objective to increase the utilization of women, minorities and handicapped persons, and other protected groups, at all levels of employment, in all divisions of Netsmart's work force, where these groups may have been previously under-utilized and under-represented. Netsmart also agrees that in the event of any dispute as to compliance with the aforestated requirements, it shall be its responsibility to show that it has met all such requirements.

When a violation of the non-discrimination, equal opportunity or Affirmative Action provisions of this section has been determined by County, Netsmart shall immediately be informed of the violation and directed to take all action necessary to halt the violation, as well as such action as may be necessary to correct, if possible, any injustice to any person adversely affected by the violation, and immediately take steps to prevent further violations.

If, after notice of a violation to Netsmart, further violations of this section are committed during the term of the Contract, County may terminate the Agreement without liability for the uncompleted portion or any materials or services purchased or paid for by the Netsmart for use in completing the Agreement, or it may permit Netsmart to complete the Contract, but, in either event, Netsmart shall be ineligible to bid on any future contracts let by County.

10. <u>FINANCIAL RESPONSIBILITY</u>
Netsmart understands and agrees that financial responsibility for claims or damages to any person, or to Netsmart's employees and agents, shall rest with the Netsmart. Netsmart may effect and maintain any insurance coverage, including, but not limited to, Worker's Compensation, Employers Liability and General, Contractual, Professional and Automobile Liability, to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation or benefits payable under Worker's Compensation laws or other insurance provisions.

Evidence of Worker's Compensation and General and Automobile Liability insurance shall be given to the County by a certificate naming the County as an additional insured on general and automobile coverages and affording a thirty (30) day written notice of cancellation, non-renewal, or known material change for the duration of this Contract.

11. <u>INDEMNITY/INSURANCE</u>

NETSMART'S INDEMNIFICATION AND PROFESSIONAL LIABILITY INSURANCE

INDEMNITY
Netsmart agrees to the fullest extent permitted by law, to indemnify, defend and hold harmless, the County, and its agents, officers and employees, from and against all loss or expense including costs and attorney's fees by reason of liability for damages including suits at law or in equity, discrimination and civil rights actions, caused by any wrongful,

intentional, or negligent act or omission of Netsmart, or its (their) agents which may arise out of or are connected with the activities covered by this agreement.

Netsmart shall indemnify and save the County harmless from any award of damages and costs against County for any action based on U.S. patent or copyright infringement regarding computer programs involved in the performance of the tasks and services covered by this agreement.

In the event of any such action: (i) Netsmart shall be notified promptly in writing by the County of any notice of such claim; (ii) Netsmart shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; and (iii) the County shall cooperate with Netsmart in every reasonable way to facilitate settlement or defense of any claim or suit.

Netsmart shall have no liability to the County under any provision of this clause with respect to any claim of infringement that is based upon: (i) the combination or utilization of Netsmart's system with machines or devices not provided by Netsmart(other than in accordance with Netsmart's previously established specifications); (ii) the modification of Netsmart's system by anyone other than Netsmart; or (iii) the use of Netsmart's system not in accordance with Netsmart's previously established specifications.

Should the County's use of Netsmart's system be, or in Netsmart's opinion be likely to be, enjoined as a result of such claim of infringement, Netsmart shall, at its option and expense, either procure for the County the right to continue using Netsmart's system, replace or modify Netsmart's system to the reasonable satisfaction of the County so that it becomes non-infringing, or grant the County a full refund of the license and implementation fees paid for Contractor's system reduced by less a reasonable allowance for past uninterrupted use for each full month from the date of first use of the Licensed Programs, until the date of termination. The foregoing is the exclusive remedy for infringement.

INSURANCE

Netsmart shall purchase and maintain policies of insurance and proof of financial responsibility to cover costs as may arise from claims of tort, statutes and benefits under Workers' Compensation laws, as respects damage to persons or property and third parties in such coverages and amounts as required and approved by the County Risk Manager. Acceptable proof of such coverages shall be furnished to the Risk Manager prior to services commenced under this agreement.

Netsmart shall provide evidence of the following coverages and minimum amounts.

Type of Coverage	Minimum Limits
Wisconsin Workers' Compensation	Statutory
Employer's Liability	$100,000/$500,000/$100,000
Commercial or Comprehensive General Liability	

General Aggregate	$1,000,000 Per Occurrence
Bodily Injury & Property Damage	$1,000,000 Aggregate
Personal Injury	$1,000,000 Per Person
Excess Liability	$3,000,000 Per Occurrence

Professional Liability	Minimum Limits
Errors & Omissions	$2,000,000 Per Occurrence

Refer to paragraph A2 for additional conditions
     Indicate if claims made or occurrence policy

For Infrastructure and Network Technology	$5,000,000 Aggregate

Automobile Liability

Bodily Injury & Property Damage	$1,000,000 Per Accident
All Autos-Owned, non-owned and/or hired	
Uninsured Motorist	Per Wisconsin Requirements

Except for Environmental Impairment Insurance, professional Liability (Errors and Omissions), Workers Compensation and Employers Liability, the OWNER shall be named as an additional insured in the General Liability, Auto and Umbrella Policy as their interests may appear as respects to the services provided in this Agreement. A waiver of subrogation by endorsement shall be provided in favor of Milwaukee County for Workers Compensation. The policy will provide for notice to an additional insured at least 30 days (10 days in the event of nonpayment of premium) in advance of the policy cancellation date.

Coverages shall be placed with an insurance company approved by the State of Wisconsin and rated "A" per Best's Key Rating Guide. Additional information as to policy form, retroactive date, discovery provisions and applicable retentions, shall be submitted to County, if requested, to obtain, approval of insurance requirements. Any deviations, including use of purchasing groups, risk retention groups, etc., or requests for waiver from the above requirements shall be submitted in writing to the County for approval prior to the commencement of activities under this agreement.

A.1.   COMPLIANCE WITH GOVERNMENT REQUIREMENTS
Netsmart shall evidence satisfactory compliance for Unemployment Compensation and Social Security reporting as required by Federal and State laws.

A.2.   PROFESSIONAL LIABILITY – ADDITIONAL PROVISIONS
Netsmart agrees to provide additional information on their professional liability coverages as respects policy type, i.e., errors and omissions for consultants, architects, and/or engineers, etc.; applicable retention levels; coverage form, i.e., claims made, occurrence; discover clause conditions, and effective, retroactive and expiration dates, to the County of Risk Manager and Insurance as may be requested to obtain approval of coverages as respects this section.

It is understood and agreed that coverages which apply to the services inherent in this agreement will be extended for two (2) years after completion of all work contemplated in this project if coverage is written on a claims-made basis.

Netsmart shall certify and make available loss information from any insurer as to any claims filed or pending against any and all professional liability coverages in effect for the past five (5) years, if requested.

Netsmart shall certify to inform the Owner of any claims filed for errors and omissions that may be covered under professional coverages pursuant to the work within ten (10) days of notice of the occurrence or claim filing whichever is sooner.

Deviations and waivers may be requested in writing based on market conditions to the County Risk Manager and Insurance. Approval shall be given in writing of any acceptable deviations or waiver to Netsmart prior to effecting any change in conditions as contained in this section. Waivers shall not be unduly withheld nor denied without consultation with Netsmart.

It is understood and agreed that Netsmart will obtain information on the professional liability coverages of all sub-consultants and/or sub-contractors in the same form as specified above for review of the Owner.

NOTE: Professional liability will be required for architectural and engineering design and supervision. If the principle consulting firm is not eligible for this coverage, the principal consulting firm shall disclose the sub-consultant who will perform the architectural and engineering design work and evidence the existence of professional liability coverages for such sub-consultants as respects this section.

12. LIMITATION OF LIABILITY
Except for personal injury, death, or direct damage to tangible property, whether based upon breach of contract, warranty, negligence, and whether grounded in tort, contract, civil law or other theories of liability, including strict liability, neither Netsmart nor County shall be liable for damages in excess of 1.25 times the total Agreement amount. In no event shall Netsmart or County be liable for any commercial loss; inconvenience; loss of use, Time, DATA, GOOD WILL, REVENUEs, profits or savings; or other SPECIAL, incidental, INDIRECT, OR consequential damages including reprocurement costs, arising out of or related to performance under the contract.

13. WARRANTY
Unless otherwise specifically agreed to by the County, Netsmart's work product, including but not limited to all deliverables and original written materials created and prepared by Netsmart for the County as part of this Agreement shall be warranted against material deviation from the requirements specifications set forth in this Agreement and any of its attachments or Exhibits including but not limited to Exhibit E, Netsmart's Response to BHD's RFP. Netsmart further warrants that its services performed as a result of the

Agreement shall be performed in a professional and workmanlike manner in accordance with applicable professional standards.

Netsmart shall not be liable or responsible for the failure of the work product to conform with the foregoing warranty if Netsmart proves that such failure was caused by the County's misuse or modification of the work products, the County's failure to use corrections and/or enhancements made available by Netsmart, the malfunctioning of any third-party products, or information, direction or instructions furnished by the County.

If Netsmart is unable to correct the failure of its work product to conform to the applicable warranty requirements within a reasonable period of time after receiving written notice and verifying the existence of such failure, the County may recover damages against Netsmart up to the value of this Agreement. Netsmart shall refund to the County all charges previously paid to Netsmart for the nonconforming work product promptly after the County provides notice of such defective work to Netsmart.

Netsmart assigns to the County all assignable warranties regarding any third-party products provided the County. The County understands, however, that Netsmart does not warrant and shall not be responsible for the third-party product and that the County's sole and exclusive rights and remedies regarding the third-party products, including rights and remedies in the event a third-party products gives rise to an infringement claim, shall be against the owner of the third-party and not Netsmart.

14. SOURCE CODE ESCROW AGREEMENT
Simultaneously with the execution of this Agreement Netsmart shall execute a two-party Software Escrow Agreement and include County as a beneficiary under such Escrow Agreement. Escrow fees are included in the costs quoted to County under this Agreement.

15. PERMITS, TAXES, LICENSES
Netsmart is responsible for all necessary permits, licenses, fees and taxes required to carry out the provisions of this Agreement. The financial burden for such expenses rests entirely with the Netsmart providing the service under the Agreement.

16. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996
Netsmart will cooperate and abide by any requirements mandated by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), its related amendments, rules, procedures, and regulations and any other applicable law. Netsmart also agrees to assist the County in its efforts to comply with HIPAA requirements and its related amendments, rules, procedures, and regulations.

17. TERMINATION BY NETSMART
Netsmart may, at its option, terminate this Agreement upon the failure of the County to pay any amount which may become due hereunder for a period of sixty (60) days following submission of appropriate billing and supporting documentation. Upon said termination, Netsmart shall be paid the compensation due for all services rendered through the date of termination.

18. TERMINATION BY COUNTY FOR VIOLATIONS BY NETSMART
If Netsmart fails to fulfill its obligations under this in a timely or proper manner, or violates any of its material provisions, County shall thereupon have the right to terminate it by giving thirty (30)

days' written notice of termination of contract, specifying the alleged violations and effective date of termination. It shall not be terminated if, upon receipt of the notice, Netsmart promptly cures to County's satisfaction the alleged violation prior to the end of the thirty (30) day period. In the event of termination, the County will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Netsmart for use in completing the Agreement.

19. <u>UNRESTRICTED RIGHT OF TERMINATION BY COUNTY</u>
    County further reserves the right to terminate this Agreement at any time for any reason by giving Netsmart Sixty (60) days written notice by Certified Mail of such termination. In the event of said termination, Netsmart shall reduce its activities hereunder as mutually agreed to, upon receipt of said notice. Upon said termination, Netsmart shall be paid for all services rendered through the date of termination. This section also applies should the Milwaukee County Board of Supervisors fail to appropriate additional monies required for the completion of the Agreement.

20. <u>FUNDING</u>
    If funds are not appropriated for payment of this Agreement, Milwaukee County may terminate the Agreement upon thirty (30) days written notice without any early termination penalties, charges, fees, or costs of any kind to Milwaukee County. Netsmart shall be paid for all services rendered through the date of termination.

21. <u>COOPERATION UPON TERMINATION</u>
    In the event of termination, Netsmart must cooperate with the Milwaukee County so as to ensure that Milwaukee County can maintain continuity of service delivery. Such cooperation will include the provision to Milwaukee County of all necessary information to ensure that Milwaukee County maintain continuity of service delivery addressed in this Agreement. Netsmart must provide said information prior to the effective date of the termination or Agreement end. This clause does not require Netsmart to continue maintenance and support services without payment for such maintenance and support services.

22. <u>SUBCONTRACTS</u>
    Assignment of any portion of the work by subcontract must have the prior written approval of County.

23. <u>PRIME VENDOR RESPONSIBILITY</u>
    Netsmart is the prime vendor. A prime vendor is the vendor who provides a service and receives a payment for that service. The County considers the prime vendor to be the sole point of contact with regard to contractual matters, including the performance of services and the payment of any and all charges resulting from contractual obligations.

    Netsmart may, with prior written permission from the County, enter into subcontracts with third parties for its performance of any part of Netsmart's duties and obligations, provided, that in no event shall the existence of the subcontract operate to release or reduce the liability of Netsmart to the County for any breach in the performance of Netsmart's duties. Netsmart agrees that all subcontractors shall be agents of Netsmart and Netsmart agrees to

hold the County harmless hereunder for any loss or damage of any kind occasioned by the acts or omissions of Netsmart's subcontractors, their agents or employees.

The County may enter into contracts with third parties for products or services to enable the implementation of the EMR system. Netsmart agrees to cooperate, in good faith with the County and such third parties. Netsmart acknowledges that this Agreement does not provide an exclusive commitment by the County to acquire all products and services offered in Netsmart's response to the County's solicitation document from Netsmart.

24. INDEPENDENT CONTRACTOR
Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between County or its successors or assigns and Netsmart or its successors or assigns. In entering into this Contract, and in acting in compliance herewith, Netsmart is at all times acting and performing as an independent Netsmart, duly authorized to perform the acts required of it hereunder.

25. ASSIGNMENT LIMITATION
This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

Netsmart is prohibited from assigning this Agreement, in whole or in part, without the prior written consent of the County, evidenced by a resolution that has been fully adopted by its Board of Supervisors. Notwithstanding the foregoing, Netsmart may, with 21 days written notice to Milwaukee County assign this Agreement in its entirety to any entity that acquires all of substantially all of the assets of Netsmart.

26. PROHIBITED PRACTICES

A. Netsmart, during the period of this Agreement, shall not hire, retain or utilize for compensation any member, officer, or employee of County, or any person who, to the knowledge of Netsmart, has a conflict of interest.

B. Netsmart hereby attests that it is familiar with Milwaukee County's Code of Ethics which states, in part, "No person may offer to give to any County officer or employee or his immediate family, and no County officer, or employee or his immediate family, may solicit or receive anything of value pursuant to an understanding that such officer's or employee's vote, official actions or judgment would be influenced thereby."

27. CONTRACTOR CONDUCT
If there is a Request for Proposal (RFP) or an Invitation to Submit a Proposal (ISP) associated with this Agreement, during the time that the RFP or ISP is in process, i.e. from the date an RFP is issued by Milwaukee County to the date Netsmart is selected and a contract is executed, if applicable, no gratuities of any kind may or will be accepted by any County employee or official from the Proposer's employees, agents or representatives including contributions, meals, gifts or trips, except as provided for as reference site

visitations and/or during oral presentations and finalist evaluations. Violation of these conditions will constitute immediate disqualification and termination of this Agreement.

28. <u>NON-CONVICTION FOR BRIBERY</u>
Netsmart hereby declares and affirms that, to the best of its knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government.

29. <u>MEDIA RELEASES AND CONTACT</u>
Netsmart's staff, independent Contractors and subcontractors shall be restricted from releasing any information about the Agreement or events occurring within a County facility to a public forum or to the media without the authorization of the County and coordinated through the parties' public information representatives.

30. <u>BINDING EFFECT</u>
This resulting agreement shall be interpreted and enforced under the laws and jurisdiction of the State of Wisconsin. This agreement constitutes the entire understanding between the parties and is not subject to amendment unless agreed upon in writing by both parties hereto. By mutual agreement, the parties may, from time to time, promulgate scope of service documents to define the scope of services. Such scope of service documents will be incorporated into the contract agreement. Netsmart acknowledges and agrees that it will perform its obligations hereunder in compliance with 1) all applicable Federal, State, County statutes, laws, rules, regulations, and all policies, procedures, standards, and regulations of any accrediting agency; 2) all local ordinances, rules, and regulations existing on the date of the execution of this agreement by the last party to do so; and 3) all subsequent local ordinances, rules, and regulations enforcing any federal or state mandate or requirement.

31. <u>CONFIDENTIAL INFORMATION</u>
Each party hereto, using reasonable care, shall hold in trust for the other party and shall not use or disclose to any third party any confidential information (as such term is hereinafter defined) which may be disclosed to it by the other party in connection with performance under this Agreement except to the extent required to be disclosed pursuant to judicial proceeding or governmental requirement, in which event the County shall promptly notify Netsmart of such request, Netsmart may seek judicial relief to prevent such disclosure. As used herein, the term "Confidential Information" means any information which relates to the software, a trade secret of Netsmart, internal controls, computer or data processing programs, electronic data processing applications, routines, subroutines, techniques or systems, or information concerning the financial affairs, methods of operation or proposed methods of operation, accounts, transactions, proposed transactions or security procedures of either party, or any customer or vendor of either party, except such information which (I) is in the public domain at the time of its disclosure or thereafter, or (II) was properly in the recipient's possession prior to such disclosure.

During the term of this Agreement, the Parties may provide each other with Confidential Information. Each Party will: maintain the confidentiality of the other Party's Confidential Information and not disclose it to any third party, except as authorized by the disclosing Party in writing or as required by a court of competent jurisdiction; restrict disclosure of the Confidential Information to its employees who have a "need to know" and not copy or reproduce the Confidential Information; take necessary and appropriate precautions to guard the confidentiality of the Confidential Information, including informing its employees who handle the Confidential Information that it is confidential and is not to be disclosed to others, but these precautions will be at least the same degree of care that the receiving Party applies to its own confidential information and will not be less than reasonable care; and use the Confidential Information only in furtherance of the performance of this Agreement. Confidential Information is and will at all times remain the property of the disclosing Party, and no grant of any proprietary rights in the Confidential Information is given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement

32. <u>ADDITIONAL CONTRACTUAL TERMS</u>

<u>Netsmart Personnel</u>. Netsmart shall provide, as described in the Statement of Work and/or Netsmart's response to the RFP, all personnel necessary to perform the services and tasks described in this Agreement. Such personnel shall not be employees of or have any other contractual relationship with Milwaukee County. Netsmart may not replace or substitute any specific individuals identified in the SOS without the prior written consent of Milwaukee County. It is understood that any replacement person or persons shall possess substantially equivalent training, skills and levels of competence as the person or persons replaced. Milwaukee County shall have the right to request and require removal of personnel assigned by Netsmart to this project and to approve replacement personnel.

<u>Guaranteed Most Favorable Terms</u>. Netsmart certifies and agrees that all of the prices, terms, warranties and benefits granted by Netsmart herein are comparable to or better than those offered by Netsmart to other State and Local Government customers contracting under the same material terms and conditions. As used herein, material terms and conditions include those terms related to the execution of this Agreement for services procured under this Agreement and any related pricing. Should Netsmart announce a general price reduction or make available to other State or Local Government customers more favorable terms or conditions with respect to any of the services contained in the Statement of Work, such prices, terms and conditions will be made available to Milwaukee County upon the date the general price reduction or more favorable terms and conditions become effective.

<u>Compliance with Laws</u>. Netsmart agrees to comply with all applicable Federal, State, County, and Local statutes, laws, rules, regulations, ordinances, and all policies, procedures, standards and regulations of accreditation agencies or bodies. Netsmart agrees to hold Owner harmless from any loss, damage, or liability resulting from a violation on the part of Netsmart of such laws, rules, regulations, policies, procedures, standards or ordinances. 1) all applicable Federal, State, County statutes, laws, rules, regulations, and all policies, procedures, standards, and regulations of any accrediting agency; 2) all local ordinances,

rules, and regulations existing on the date of the execution of this agreement by the last party to do so; and 3) all subsequent local ordinances, rules, and regulations enforcing any federal or state mandate or requirement.

33. <u>TECHNOLOGY POLICY</u>

Netsmart hereby attests that it has been furnished with a copy of Milwaukee County's Use of Technologies Policy which prohibits the inappropriate use of County-provided technology resources. Netsmart acknowledges that it has familiarized itself with Milwaukee County's Use of Technologies Policy and that it specifically agrees that it will make its employees and agents aware of the provisions of said policy. County may, at its discretion, require specific users of County-provided technology, to sign a "User Statement" acknowledging receipt of a copy and awareness of Milwaukee County's Use of Technologies Policy.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day, month and year first above written.

RECOMMENDED FOR APPROVAL:

FOR MILWAUKEE COUNTY   **FOR NETSMART**

_____   _____
Geri Lyday   Date   Netsmart Technologies, Inc.
Director, Department of Health and Human Services

                                                 _____
                                                 Date
Witnessed by:

_____   _____
                                                 Taxpayer ID No.

Reviewed by County's Risk Manager: _____
                                                 Title

_____   _____
By Risk Manager   Date   Signature

                                                 Witnessed by:

                                                 _____

Approved with regards to Milwaukee   IF PRINCIPAL IS A CORPORATION
County Ordinance Chapter 42:   IMPRINT CORPORATE SEAL

_____
By Community Business Development Partners   Date

Approved as to appropriate use of a
professional service contract, form and
independent Netsmart status by
Corporation Counsel:

_____
By Principal Assistant Corporation Counsel   Date

LICENSE AND SERVICE AGREEMENT

Agreement made this ___ day of _____ 2011, (the "Effective Date") by and between Netsmart Technologies, Inc., a Delaware corporation with offices at 3500 Sunrise Highway, Suite D122, Great River, New York 11739, (hereinafter referred to as "Netsmart") and Milwaukee County a a Wisconsin municipal body corporation with offices at 9455 W Watertown Plank Rd Milwaukee, WI 53226-3559 (hereinafter referred to as "Licensee").

1. **SCOPE OF AGREEMENT**
This Agreement states the terms and conditions under which Netsmart will:
(a) Grant Licensee the rights to use and operate certain proprietary computer programs and related documentation on a non-exclusive basis; and
(b) Provide services such as project management, installation, training and support services to Licensee.

2. **DEFINITIONS**
As used in this Agreement, the following definitions apply to capitalized terms:
(a) "Charges" means the amounts to be paid by Licensee for the right to use the Licensed Programs, for services provided to Licensee and for hardware or other Third Party Products acquired by Licensee under the terms of this Agreement. The Charges are described in Schedule 2(a) and the payment schedule for these Charges is defined in Schedule 2(a).
(b) "Development Services" means changes to be made to the Netsmart Programs (if any) this includes conversion and interface development services required by Licensee and generally described in Schedule 2(c) attached hereto.
(c) "Implementation Plan" means the detailed work plan attached hereto as Schedule 2(d). In order to facilitate the development of the final Implementation Plan, the current version of Schedule 2(d) contains a template outlining parameters for preparation of a detailed Implementation Plan by the parties.
(d) "Hardware Configuration" means the computer hardware required to install and operate the Licensed Programs. A description of the recommended Hardware Configuration is set forth in Schedule 2(f) attached hereto.
(e) "Licensee Database" means a collection of data records that are maintained as a single logical area on a single computer system that is used, accessed, or acted upon by Licensed Programs.
(f) "Licensed Programs" means both the Netsmart Programs and the Third Party programs.
(g) "Licensee Resources" means the staff and other resources to be provided by Licensee for the installation and implementation of the Licensed Programs in accordance with the Implementation Plan. Schedule 2(g) attached hereto sets forth the required and available Licensee Resources.

(h) "Netsmart Programs" means the Netsmart computer programs in object code form and their associated documentation. Schedule 2(a) lists separately the various modules of the Netsmart Programs purchased by Licensee.
(i) "Optional Products and Services" means the additional products and services which Netsmart will make available to Licensee at prices shown in Schedule 2(j) for a period of 12 months after contract execution. Licensee is under no obligation, however, to purchase items listed in Schedule 2(j).
(j) "Problem or Defect" means any failure of the Licensed Programs to operate in substantial conformance with the Specifications.
(k) "Services" means the installation, training and other services to be provided by Netsmart as described in Schedule 2(a).
(l) "Specifications" means the description and features of the Licensed Programs as set forth in the documentation relating to the Licensed Programs supplied to Licensee by Netsmart hereunder and more particularly identified in Schedule 2(i) of this Agreement.
(m) "Support Services" means the maintenance and support services to be provided by Netsmart in accordance with Schedule 2(h).
(n) "Third Party Products" means any product acquired by Netsmart from an outside vendor on behalf of Licensee under the terms of this agreement. Third Party Products consisting of software are called Third Party Programs. Third Party Products are described in Schedule 2(a)

3. **LICENSED PROGRAMS**
a) Netsmart hereby grants Licensee a non-exclusive, perpetual (subject only to termination under Section 11) non-transferable license to use the Licensed Programs in object code form only:
   i) for Licensee's internal business purposes and not to process the data of any other entity;
   ii) to support the number of Licensee Databases and the number of named users of the Netsmart Programs set forth in Schedule 2(a);
   iii) on the number of servers, operating system and for access by the maximum number of simultaneous users or other such restrictions of the Third Party Products as set forth in Schedule 2(a);
b) Except as expressly stated in this Agreement, no other rights, express, implied or otherwise are granted to Licensee unless agreed upon by both parties.
c) The Third Party Programs are licensed subject to the same restrictions as are set forth in 3(a) above as well as such other restrictions as may be set forth in Schedule 2(a).
d) Nothing in this Agreement will be deemed to convey any title or ownership interest in the Licensed Programs to Licensee. Licensee acknowledges Netsmart's rights and the rights of the owner of the Third Party Programs in the Licensed Programs and agrees that the Licensed Programs

are trade secrets and unpublished works on which Netsmart and such third party(s) hold and will hold the sole and exclusive copyright. Licensee will not dispute the rights of Netsmart and the third party(s) in the Licensed Programs and will not sell, disclose, lease, sublease, lend or otherwise make the Licensed Programs available to others.

e) No copies of the Licensed Programs may be made by Licensee without the prior written consent of Netsmart except for backup purposes in accordance with normal data processing practices. Licensee 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) Licensee will 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 will not make any derivations, adaptations, or translations of the Licensed Programs in whole or in part, nor use the Licensed Programs to develop functionally similar computer software or to otherwise compete with Netsmart.

g) If suggestions made by Licensee are incorporated into subsequent versions of the Licensed Programs, Licensee hereby assigns to Netsmart all rights Licensee may have in and to any suggestions, concepts, or improvements concerning the Licensed Programs, or other products and services that may result from Licensee communications to Netsmart.

4. **IMPLEMENTATION**

Promptly after execution of this Agreement, the respective project managers appointed by each party will jointly develop the Implementation Plan. The Implementation Plan will set forth the tasks to be performed by each party, the time frames in which such tasks will be performed, and will identify the roles and responsibilities of the persons who will be provided by Licensee to support the implementation pursuant to Schedule 2(g), Licensee Resources.

5. **CHARGES AND PAYMENT TERMS**

a) In consideration of the licenses granted hereunder, Services to be performed and Third Party Products to be provided by Netsmart. Licensee agrees to pay Netsmart the Charges at the times and in the amounts set forth in Schedule 2(a).

b) Invoices are payable net thirty (30) days after invoice date. Thereafter, any outstanding balance will bear simple interest at the lower of 18% per annum or the highest interest rate permitted by law.

6. **TAXES**

The Charges set forth in this Agreement do not include any taxes. Where applicable, there will be added to such Charges, and Licensee will pay, amounts equal to any taxes (however designated, levied, or based) on such Charges including, but not limited to, state and local sales, privilege, property, use or excise taxes, but not including taxes based on the net income of Netsmart. If Licensee claims a tax exemption, Licensee will provide to Netsmart a certificate of exemption from taxes, or other evidence sufficient to permit Netsmart to exclude taxes from Charges.

7. **WARRANTIES**

a) Netsmart warrants that the Licensed Programs will substantially conform in all material respects with their Specifications. Netsmart will correct any Problems or Defects in accordance with the Support Services provisions set forth in Schedule 2(h). The foregoing will be Netsmart's sole liability with regard to Problems or Defects in the Licensed Programs or Netsmart's performance or nonperformance of its obligations under this Agreement.

b) Netsmart further represents and warrants that it has the right to grant the licenses granted to Licensee hereunder and that to the best of Netsmart's knowledge the Licensed Programs do not infringe upon or violate the United States patent rights of any third party and do not infringe upon or violate the copyright, or trade secret right of any third party.

c) If any modifications, additions or alterations of any kind or nature are made to the Licensed Programs by Licensee or anyone acting with the consent of or under the direction of Licensee, all warranties will immediately terminate and Netsmart will have no further obligation or liability to Licensee. Licensee will have an affirmative obligation to immediately inform Netsmart in writing of any modifications, additions or alterations.

8. **LIMITATION OF WARRANTY.**

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS EXPRESS OR IMPLIED, WHETHER IN RELATION TO THE LICENSED PROGRAMS, HARDWARE OR THE PROVISION OF ANY SERVICES INCLUDING, BUT NOT LIMITED TO, THOSE CONCERNING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ARISING BY TRADE USAGE OR COURSE OF DEALING. LICENSEE'S EXCLUSIVE REMEDY IN THE EVENT OF A BREACH OF THE SECTION 7(a) WARRANTY AND NETSMART'S SOLE OBLIGATION IS TO ATTEMPT TO MODIFY THE SOFTWARE TO ELIMINATE THE PROBLEM OR DEFECT. IN THE EVENT NETSMART CANNOT ELIMINATE THE PROBLEM OR DEFECT, IT WILL REFUND TO LICENSEE, THE LICENSE FEE PAID TO NETSMART LESS A REASONABLE ALLOWANCE FOR ANY PRODUCTIVE USE. LICENSEE'S EXCLUSIVE REMEDY IN THE EVENT OF A BREACH OF THE SECTION 7(b) WARRANTY IS SET FORTH IN SECTION 10.

9. **LIMITATION OF LIABILITY**

a) **LIMITATION ON SPECIFIED DAMAGES** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES (INCLUDING DAMAGES RELATED TO DELAYS, LOSS OF DATA, INTERRUPTION OF SERVICE OR LOSS OF BUSINESS OR PROFITS OR REVENUE), EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. EXCEPT AS SET FORTH IN SECTION 10, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY THIRD PARTY CLAIM.

b) **LIMITATION ON CUMULATIVE LIABILITY**. EXCEPT AS SET FORTH IN SECTION 10, THE CUMULATIVE LIABILITY OF NETSMART TO LICENSEE FOR ANY ACTUAL OR ALLEGED DAMAGES ARISING OUT OF, BASED ON OR RELATING TO THIS AGREEMENT, WHETHER BASED UPON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR ANY OTHER LEGAL THEORY, WILL NOT EXCEED THE AMOUNT OF THE LICENSE FEES PAID TO NETSMART UNDER THIS AGREEMENT.

10. **INDEMNIFICATION**

a) In the event of any claim by a third party against Licensee (the "Claim"), alleging that the use of the Licensed Programs infringes upon any intellectual property rights of such third party, Licensee will promptly notify Netsmart and Netsmart will defend such Claim, in Licensee's name but at Netsmart's expense, and will indemnify Licensee against any liability paid by Licensee, including but not limited to attorneys' fees and disbursements, arising out of such Claim. In the event such an infringement is found and Netsmart cannot either procure the right to continued use of the Licensed Programs, or replace or modify the Licensed Programs with a non-infringing program, then Netsmart may terminate the license of the Licensed Programs, and will refund to Licensee the amount of the license fee paid by Licensee, reduced by one sixtieth for each full month from the date of first use of the Licensed Programs, until the date of termination. Netsmart will not have any liability under Section 7(b), and Netsmart will be indemnified by Licensee with respect to any Claim, to the extent that the Claim is based upon (i) the use of the Licensed Programs in combination with other products or services not made or furnished by Netsmart, provided that the Licensed Programs alone are not the cause of such Claim; or (ii) the modification of the Licensed Programs or any portion thereof by anyone other than Netsmart, provided that the Licensed Programs in unmodified form are not the cause of such Claim.

b) Licensee will indemnify and hold harmless Netsmart from and against all claims, suits or actions by any third party against Netsmart relating to, arising out of or resulting from Licensee's misuse of the Licensed Programs, or any claim by any party receiving services from Licensee.

11. **TERMINATION**

a) If either party is in default of any of its material obligations hereunder, and has not commenced cure within ten (10) days and effected cure within thirty (30) days of receipt of written notice of default from the other party (the "non defaulting party"), then the non-defaulting party may terminate the Agreement on written notice to the defaulting party.

b) Within thirty (30) days of the date of termination of this Agreement by either party Licensee will erase from all computer storage any image or copies of the Licensed Programs, related specifications and documentation and will certify in writing to Netsmart that the original and all copies of such property have been destroyed.

c) Notwithstanding any termination of this Agreement for any reason, the terms and conditions set forth in the following Sections of this Agreement will survive and will be binding on the representatives, successors, heirs and assignees of the parties:

i)	Section 9	"Limitation of Liability"
ii)	Section 10	" Indemnification"
iii)	Section 12	" Confidentiality "
iv)	Section 13	"Non-Solicitation"
v)	Section 15	"General Provisions"

12. **CONFIDENTIALITY**

a) Netsmart recognizes and acknowledges the sensitive and confidential nature of information it may obtain with regard to Licensee's clients and their treatment, and agrees that information with respect to Licensee's clients and their treatment will be kept in strict confidence in perpetuity by Netsmart. Netsmart agrees to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d ("HIPAA") and any current and future regulations promulgated there under including without limitation the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Part 142 (the "Federal Security Regulations"), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162, all collectively referred to herein as "HIPAA Requirements". Netsmart agrees not to use or further disclose any Protected Health Information (as defined in 45 C.F.R. Section 164.501) or Individually Identifiable Health Information (as defined in 42 U.S.C. Section 1320d), other than as permitted by HIPAA Requirements and the terms of this Agreement. Netsmart will make its internal practices, books, and records relating to the use

and disclosure of Protected Health Information available to the Secretary of Health and Human Services to the extent required for determining compliance with the Federal Privacy Regulations.

b) Licensee will take adequate steps and security precautions to prevent unauthorized disclosure of information which is proprietary to Netsmart and/or the owner of the Third Party Programs including, without limitation the Licensed Programs and to maintain the confidentiality of such information, including but not limited to: (i) instructing its employees having access to such information not to copy or duplicate the same or any part thereof and to withhold disclosure or access or reference thereto from unauthorized third parties; (ii) effecting sufficient security measures including, at the request of Netsmart, non-disclosure agreements with its employees, to safeguard such information from theft or from access by un-authorized parties.

13. **NON-SOLICITATION**

During the term of this Agreement and for a period of one (1) year following its termination, neither party will directly or indirectly solicit for employment or as a consultant, an employee or consultant of the other party, or any person who was an employee or consultant of the other party at any time during the six (6) month period immediately prior to the date such employee or consultant is solicited, hired or retained.

14. **FORCE MAJEURE**

Neither party will be responsible for delays or failures in performance resulting from acts or events beyond its reasonable control, including but not limited to, acts of nature, governmental actions, fire, labor difficulties or shortages, civil disturbances, transportation problems, interruptions of power supply or communications or natural disasters, provided such party takes reasonable efforts to minimize the effect of such acts or events.

15. **GENERAL PROVISIONS**

(a) This Agreement will be construed in accordance with the laws of the State of Wisconsin, without giving effect to the conflict of law rules thereof.

(b) This Agreement and the schedules and exhibits attached hereto contain the entire understanding of the parties with respect to the matter contained herein. There are no promises, covenants or undertakings contained in any other writing or oral communication. In the event of any conflict between or among the documents comprising this Agreement, the latest dated document will prevail

(c) This Agreement may not be modified except in a writing signed by authorized representatives of the parties.

(d) Any notices required or permitted to be sent hereunder will be in writing and will be sent, Certified Mail, Return Receipt Requested, or by a recognized international courier. Notices will be sent to the addresses first set forth above or to such other address as a party may designate by notice pursuant hereto. Notices to either party will be sent "Attention: Chief Financial Officer". Notices will be effective upon the date when delivery is either effected or refused.

(e) A waiver of a breach or default under this Agreement will not be a waiver of any subsequent breach or default. Failure of either party to enforce compliance with any term or condition of this Agreement will not constitute a waiver of such term or condition.

(f) In the event that either party will cease conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under a Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then (at the option of the other party) this Agreement will terminate and be of no further force and effect and any property or rights of such other party, whether tangible or intangible, will forthwith be returned to it.

(g) The license granted hereunder to Licensee may not be assigned, or sublicensed, or shared, nor may Licensee use the Licensed Programs to provide the software features as a service (Software as a Service) to a third party without the written consent of Netsmart. Licensee may, however, assign all of its rights under this Agreement to an assignee who acquires all or substantially all of the assets of Licensee, is not a competitor of Netsmart and has financial resources at least equal to those of Licensee. Any permitted assignee will assume in writing, all obligations of the assignor.

(h) Licensee authorizes Netsmart to identify Licensee as a client, Netsmart can use Licensee's name and logo in any of Netsmart's advertising copy, promotional material or press releases with prior written approval from Licensee.

(i) It is specifically agreed that the breach of this Agreement, and in particular the provisions concerning non-disclosure of proprietary information will result in irreparable injury and the party who claims such a breach will be entitled to specific performance and injunctive relief to correct and enjoin such breach in addition to all other remedies which might be available.

(j) The parties will use reasonable efforts, including, without limitation, face-to-face negotiations, to resolve any differences arising between them as a result of this Agreement prior to exercising their respective rights at law or equity. If a trial results from this Agreement, the parties waive their right to a

jury trial. No action, regardless of form, arising out of this Agreement will be brought more than two (2) years after the cause of action accrues.

(k) If any provision of this Agreement is found to be invalid, illegal or unenforceable under any applicable statute or law, it is to that extent deemed to be omitted, and the remaining provisions of this Agreement will not be affected in any way.

(l) This Agreement may be executed in two or more counterparts, each of which will be deemed an original.

(m) This Agreement may be executed by electronic signature as follows:

(i) a fax copy of this Agreements with a signature page that displays the image of a handwritten signature; or

(ii) a digital file that is transmitted by one party to the other which, when displayed on an electronic video display terminal, presents an image of this Agreement with a signature page bearing the image of a handwritten signature.

(n) The headings of the paragraphs and sections of this Agreement are for convenience only and will not control or affect the meaning or construction of any provision of this Agreement.

(o) Licensee agrees to comply with all laws and regulations, including all United States and multilateral export laws and regulations, to assure that the Licensed Programs are not exported, directly or indirectly, in violation of law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Netsmart Technologies Inc.

BY: _____

_____
(PRINTED NAME)

TITLE: _____

DATE: _____

FOR MILWAUKEE COUNTY

_____
Geri Lyday
Director, Department of Health and Human Services

_____
Date

Witnessed by:

_____

_____
Taxpayer ID No.

_____
Reviewed by County's Risk Manager: Title

_____   _____
By Risk Manager   Date   Signature

Witnessed by:

_____

Approved with regards to Milwaukee

If Principal is a Corporation
County Ordinance Chapter 42:   IMPRINT CORPORATE SEAL

_____
By Community Business Development Partners   Date

Approved as to appropriate use of a
professional service contract, form and
independent Netsmart status by
Corporation Counsel:

_____
By Principal Assistant Corporation Counsel   Date

Schedule 2(a)

Expense Category	Software Cost (TOTAL)	Year 1 SW Payment	Year 2 SW Cost	Year 3 SW Cost	Year 4 SW Cost	Year 5 SW Cost	Five Year Total SW Cost
Overall Assumptions:							
BHD - Netsmart Hosted Option, Avatar software installed at Netsmart Data Center							
Pricing is valid through October 28, 2011. All pricing after that is estimated and subject to change.							
1. EMR Software- Please list each application component here that the County will have to pay separately.							
RADPlus* (1,000 user-count)	$0	$0					$0
Practice Management (PM)	$0	$0					$0
Clinician Workstation (CWS)	$0	$0					$0
Managed Services Organization (MSO)	$50,000	$50,000					$50,000
2 General Ledger Interfaces	$20,000	$20,000					$20,000
Avatar Order Entry (OE) includes Lab results module	$35,000	$35,000					$35,000
eMAR (Based on 322 beds)	$50,000	$50,000					$50,000
Avatar Incident Tracking	$2,500	$2,500					$2,500
Avatar eSig (electronic Signature)	$10,000	$10,000					$10,000
Document Management/POS Scanning	$14,000	$14,000					$14,000
CareConnect	$60,000	$60,000					$60,000
One-time CMHC/MIS License Transfer Fee to	$75,000	$75,000					$75,000
MDS Software:							
Writer, MDS 2.0, MDS Scheduler, Resident Planner, Quality Indicators, 672/802 Federal Survey	$19,440	$19,440					$19,440
Avatar Web Services Bundle	$75,000	$75,000					$75,000
Subtotal:	**$410,940**	**$410,940**	**$0**	**$0**	**$0**	**$0**	**$410,940**
List all assumptions here:							
*RADPlus price includes CMHC/MIS licensure exchange credit, and assumes 1,000 named users in a single system.							

Milwaukee County Professional Services Agreement
20110913

Expense Category	Software Cost	Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost	Year 5 Cost	Five Year Total Cost
2. Third Party Software- Please list each application component here that the County will have to pay separately.							
Security Certificate (renewable after 3 years). Required for ConsumerConnect Product	n/a	$995	n/a	n/a	$995	n/a	$1,990
MicroMedex Ultimedix Drug library subscription services based upon 322 beds (annual recurring)	n/a	$6,980	$7,329	$7,695	$8,080	$8,484	$38,569
Kofax capture software v. 8.0-1 concurrent station package	$2,200	$2,200	n/a	n/a	n/a	n/a	$4,400
Kofax capture software v. 8.0- image volume 300K/year	$1,600	$1,600	$0	$0	$0	$0	$3,200
Kofax capture software v. 8.0- image volume 300K/year - Annual Support		$763	$801	$841	$883	$927	$4,216
Iron Mountain Escrow		$1,200	$1,260	$1,323	$1,389	$1,459	$6,631
Wiley Treatment Planners - 1 plan type up to 500 users		$17,500	$17,500	$17,500	$17,500	$17,500	$87,500
LaserBand LB2-Adult-L3 Wristband: 1000 wristbands per case (Qty 1 Case) *		$280	$280	$280	$280	$280	$1,400
VPN Appliance - needed for Webservices in hosted environment	$3,500	$3,500	$0	$0	$0	$0	$3,500
VPN Appliance Support - needed for Webservices in hosted environment		$750	$773	$796	$820	$844	$3,982
Subtotal:	$7,300	$35,768	$27,943	$28,435	$29,947	$29,494	$155,388

List all assumptions here:
The Ultimedix license assumes up to 322 beds at one location.
Cost for the Wiley Tx Planner is based on 500 clinical staff. Pricing can be adjusted to customer's user requirements.
The Kofax Capture software is priced based on 300,000 scans per year. Pricing for larger license sizes can be provided upon request.
*Laserband Wristband pricing is estimated. Pricing is for 1 case; based upon actual usage, the number of cases and total cost may increase. For use with Avatar.
All 3rd party pricing after year 1 is estimated, as Netsmart cannot guarantee 3rd party pricing beyond year 1

Expense Category	Total Implementation Cost	Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost	Year 5 Cost	Five Year Total Cost
3. Data Conversion-							
Netsmart Standard Demographic and Movement History Conversion		$11,250	$0	$0	$0	$0	$11,250
MSO Performing Provider							
MSO Authorizations							
MSO Contracting Provider Total for MSO Conversions		$15,000					$15,000
PM-Practioner Number by Guarantor & Program		$4,500					$4,500
Subtotal:	$0	$30,750	$0	$0	$0	$0	$30,750

List all assumptions here:

The above mentioned conversions are standard Netsmart conversions. Any modifications to these conversions would be at an additional cost. Any data elements above and beyond what is included will be at an additional cost.

Expense Category	Implementation Cost	Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost	Year 5 Cost	Five Year Total Cost
4. Interfaces - Software							
GLI interface pricing is listed under Section 1 - Software Cost		$0	$0	$0	$0	$0	$0
837/835/270/271 Comes Standard with the Avatar PM Software							
Pharmacy HL7 Interface: Order Outbound	$15,000	$15,000					$15,000
ADT Outbound	$15,000	$15,000					$15,000
Fill Details Inbound	$15,000	$15,000					$15,000
HL7 MDS Interface – ADT into the MDS and RUGS Score back into Avatar	$32,500	$32,500					$32,500
1 Dynacare Lab Interface: Outbound-Orders, Inbound-results - license fees	$16,000	$16,000					$16,000
Subtotal:	$93,500	$93,500	$0	$0	$0	$0	$93,500

List all assumptions here:

Avatar includes the National Standardized Format (NSF) of the 837/835. Avatar also includes tools that allows an orgnization to configure information on the 837 based on guarantor/program. Any custom changes to the file itself would need to be evaluated by Netsmart to determine LOE.

The above interfaces are standard HL7 interfaces developed by Netsmart. Customization may be needed to accomdate Milwaukee's requirements. Estimated funding for this has been provided in the Customization section below.

Expense Category	Total Implementation Cost	Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost	Year 5 Cost	Five Year Total Cost
5. Vendor Implementation, Installation, Training, ETC.							
Avatar Software Installation (24 hours)	$4,500	$4,500					$4,500
Implementation Costs (PM, BA, etc.) Full Time BA - 12 Months	$270,000	$270,000					$270,000
DBE Services	$75,433	$75,433					$75,433
312 Training Hours	$58,500	$58,500					$58,500
48 hours Project executive	$9,000	$9,000					$9,000
72 hours Document management consulting services	$13,500	$13,500					$13,500
13 hours Batch Scanning scanstation build charge	$2,438	$2,438					$2,438
CareConnect Meaningful use stage 1 - implementation services	$4,688	$4,688					$4,688
ProviderConnect Professional Services	$25,000	$25,000					$25,000
Netsmart Data Center installation and set-up fee	$7,500	$7,500					$7,500
Consumer Connect implementation and set-up	$1,800	$1,800					$1,800
84 hours Pharmacy and Lab HL7 interfaces professional services: Specification Discovery Meeting & Interface Configuration, Refinement, Installation, QA	$16,800	$16,800					$16,800
MDS Software project plan, s/w installation, training & conversion of prior MDS's	$20,000	$20,000					$20,000
MDS project oversite	$10,000	$10,000					$10,000
Subtotal:	**$519,159**	**$519,159**	**$0**	**$0**	**$0**	**$0**	**$519,159**
List all assumptions here:							

The scanstation hardware and software components are priced as a self-installable unit that has been pre-configured by Netsmart. If any of the components are not purchased from Netsmart, an additional installation fee of $4,800 will apply for the build services. Netsmart will not be responsible for installing the Kofax Capture software if it is not purchased as part of the Netsmart package. Travel time and expenses for any client requested on-site time will be an additional charge and billed as incurred.

Ten (10GB) gigabyte of disk storage has been included on the Netsmart Data Center server for storage of scanned documents. It is estimated that this amount will store approximately 50,000 single-sided black and white images. Additional storage may be purchased at an additional charge. The throughput is governed by the size, quality and quantity of the images being stored or recalled.

TRAVEL EXPENSES AND TRAVEL TIME ARE AN ADDITIONAL CHARGE AND NOT INCLUDED IN THE ABOVE PRICING:

Travel time will be billable at $150/hour (4 hour maximum per one way trip). Scheduled travel and living expenses are as follows:

MEALS: $50 per diem
AIRLINE: Coach class on major airlines
VEHICLE: $.505 per mile in route to/from on-site services
RENTAL CAR: Mid-size vehicle at local rates
ANCILLARIES: Gas, Tolls, Parking
HOTEL: At local rates

Expense Category		Year 1 Cost (Support and maintenance)	Year 2 Cost (Support and maintenance)*	Year 3 Cost (Support and maintenance)*	Year 4 Cost (Support and maintenance)*	Year 5 Cost (Support and maintenance)*	Five Year Total Cost
6. Annual Hosted and Maintenance Costs							
Netsmart Hosting fees, based on a 5-year Contract	Software ownership remains with Milwaukee County	$444,000	$444,000	$444,000	$444,000	$444,000	$2,220,000
ConsumerConnect		$25,000	$25,000	$25,000	$25,000	$25,000	$125,000
ProviderConnect (Enterprise License up to 1,500 Named Provider Users)		$60,000	$60,000	$60,000	$60,000	$60,000	$300,000
EMR Software and Care Connect Support and Maintenance (*)		No Avatar maintenance cost until January 1, 2013 (*)	$211,062	$217,394	$223,916	$230,634	$883,006
MDS Software & HL7 Maintenance		$10,702	$10,702	$10,702	$10,702	$10,702	$53,510
Pharmacy HL7 Interface Maintenance		$9,450	$9,450	$9,450	$9,450	$9,450	$47,250
Dynacare Lab Interface: Lab Results-Inbound/Lab Orders Outbound - Subscription Fee (This is required in order to electronically send the data back and forth. If Milwaukee only wants to transfer a file to a FTP site, this fee is not needed.		$6,720	$6,720	$6,720	$6,720	$6,720	$33,600
Avatar Web Services Maintenance		$15,750	$15,750	$15,750	$15,750	$15,750	$78,750
HL7 Interface Development Annual Support (estimated based on the HL7 dev work listed in section 8. Actual support cost will be based on 21% of the total cost of development)		$4,725	$4,725	$4,725	$4,725	$4,725	$23,625
* At the sole discretion of BHD. Please see Schedule 2(h)(h)							
Subtotal:	$0	$576,347	$787,409	$793,741	$800,263	$806,981	$3,764,741

List all assumptions here:

(*) Year one of the EMR Software Support and Maintenance will be based on the 2012 CMHC/MIS support cost. That cost will be additional.

Pricing is based on the Netsmart Data Center hosted model. All subscription pricing is based on a 5-year agreement. The Netsmart hosted pricing is based on a rate of up to 1,000 named users beginning month one and assumes that all will be on-line within the first year.

The HL7 Interface Development Annual Support is an assumption based on the estimated development funding provided in the Customization section of this sheet. Any add on support for the interfaces will be based on 21% of the total cost for the customization.

Expense Category	Software Costs	Year 1 Cost (Maintenance)	Year 2 Cost (Maintenance)	Year 3 Cost (Maintenance)	Year 4 Cost (Maintenance)	Year 5 Cost (Maintenance)	Five Year Total Cost (SW + Maintenance)
7. In-House and Maintenance Costs							
Server Costs (Explain Configuration)							$0
The server to host the Avatar software is included within the Netsmart hosted monthly rate identified above. Maintenance for the hardware is also included.	Included in Hosted Rate	Included	Included	Included	Included	Included	
ConsumerConnect configuration- one-time cost includes: web server configuration in Netsmart data center	$8,000	$8,000	$0	$0	$0	$0	$8,000
ProviderConnect configuration package: web server configuration in Netsmart data center	$8,000	$8,000	$0	$0	$0	$0	$8,000
Scanner - Panasonic KV-S1025C, 26ppm/52ipm, simplex/duplex, bitonal/color, ADF, USB - Point of Service	$888	$888	$0	$0	$0	$0	$888
Scanner - Panasonic KV-S1025C, 26ppm/52ipm, simplex/duplex, bitonal/color, ADF, USB - Point of Service - Support		$100	$105	$110	$116	$122	$553
Scanner- Fujitsu 6240 40ppm/80 ipm, 50 page (ADF), flatbed, card scanning, VRS professional - Batch	$2,231	$2,231	$0	$0	$0	$0	$2,231
Scanner- Fujitsu 6240 40ppm/80 ipm, 50 page (ADF), flatbed, card scanning, VRS professional - Batch - Support		$100	$105	$110	$116	$122	$553
Shipping and Delivery		$780	$0	$0	$0	$0	$780
							$0
Subtotal:	$19,119	$20,099	$210	$221	$232	$243	$21,004

List all assumptions here:
All of the hardware above is priced based on quantities of one. Additional hardware may be required.

Expense Category	Implementation Cost	Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost	Year 5 Cost	Five Year Total Cost
8. Customization							
Includes Wisconsin State reporting requirements as they relate to data typically captured within our products.							
HL7 Interface Development Bucket - 15 Days	$22,500	$22,500					$22,500
Subtotal:	$22,500	$22,500	$0	$0	$0	$0	$22,500
List all assumptions here:							
The interface development is an estimate of what may be needed to customize the Hl7 interfaces listed in the Interface section of this sheet. Based on how much, if any, development is needed support will be added to the current HL7 support costs. That is addressed in the Support section of this sheet.							

Expense Category	Cost	Year 1 Cost	Year 2 Cost	Year 3 Cost	Year 4 Cost	Year 5 Cost	Five Year Total Cost
9. Optional Products/Services							
							$0
RxConnect - Pharmacy System (This price include interfaces with Avatar)	$87,500	$87,500					$87,500
RxConnect - Pharmacy System Annual Support		$26,250	$27,563	$28,941	$30,388	$31,907	$145,048
RxConnect - Pharmacy System Implementation Services (42 Days - Includes Project Management, Training, set up/install, interface setup/install). This is an estimated LOE. A final LOE can be provided upon request.	$63,000	$63,000					
Avatar RADplus Named User (Per User Cost)	$800	$800					$800
Avatar RADplus Named User Annual Support (Per User Cost)	$168	$168					$168
Netsmart Per Additional User Hosting Fee (During term of original contract)	$37	$37					$37
Subtotal:	$151,505	$177,755	$27,563	$28,941	$30,388	$31,907	$233,553
List all assumptions here:							

Please note that the Pricing included in this section is only valid through November 1, 2011. If Milwaukee County signs a contract with Netsmart prior to the expiration of the pricing, Netsmart will extend pricing for the items included in the Optional Products/Services section for a term of 24 months from the date of contract execution.

See Schedule 2 (c)	Implementation	Year 1	Year 2	Year 3	Year 4	Year 5	Five Year Total
10.Meaningful Use Dollars							
							$0
Medicaid Meaningful Use Incentives Based on Eligible Professionals		TBD	TBD	TBD	TBD	TBD	$0
							$0
							$0
Medicare MU Incentives is based upon meeting the criteria listed below:		TBD	TBD	TBD	TBD	TBD	$0
							$0
							$0
							$0
							$0
Subtotal:	$0	$0	$0	$0	$0	$0	$0

The incentives breakdown as follows is based upon each EP selecting either Medicare or Medicaid and assigning their benefits to Milwaukee County. Regulations as of July 2011:

Medicaid - Funding can begin upon adoption/implementation/upgrade of Meaningful Use Certified software. Incentives are based on $63,750 per Eligible Professional (EP) defined as doctors, nurse practitioners, certified nurse midwife, dentist and physician assistant who furnish services in an FQHC. These EP's must do at least 30% Medcaid encounters and at least 50% of encounters need to be at organization(s) that are using a certified EHR. Although the pricing sheet goes out 5 years the incentive funding is for a term of 6 years.

Medicare - Funding begins upon full implementation of Meaningful Use Certified software and is also based on the number of EP's (doctor, dentist or chiropractor). Although the pricing sheet goes out 5 years the incentive funding is for a term of 6 years. Under Medicare, the EPs must meet the minimum threshold percentage of the MU criteria (*see criteria below) within any 90 day period.

An in-patient professional is eligible as an individual EP if they meet all other requirements and spend less than 90% of their time billing under one of the following POS codes (21—Inpatient Hospital, 22—Outpatient Hospital, 23—Emergency Room, Hospital).

(*) Meaningful Use Criteria
MU Measure Min % Of
Clinical Summary – Office Visit 50% Clients Seen
Clinical Summary – Transition in Care Out   (menu) 50% Transitions Out
Computerized Provider Order Entry (CPOE) 30% Medication Orders
Demographics 50% Clients Seen
Education Resources   (menu) 10% Clients Seen
Electronic Copy of Health Information 50% Client Requests
Electronic Prescribing 40% Non-controlled Prescriptions
Lab Test Results Import   (menu) 40% Lab Orders
Medication Allergy List 80% Clients Seen
Medication List 80% Clients Seen
Medication Reconciliation (menu) 50% Transitions In
Online Access to Health Information   (menu) 10% Clients Seen
Problem List 80% Clients Seen
Reminders   (menu) 20%   Clients 5-65 yrs
Smoking Status 50% Clients Seen 13+ yrs
Vital Signs 50% Clients Seen 2+ yrs

Totals

Breakdown by Section and Year

Section		Year 1	Year 2	Year 3	Year 4	Year 5	Subtotals
1	EMR Software	$410,940	$0	$0	$0		$410,940
2	Third Party Software	$35,768	$27,943	$28,435	$29,947	$29,494	$151,588
4	Interface Software	$93,500	$0	$0	$0	$0	$93,500
	Total Software:	**$540,208**	**$27,943**	**$28,435**	**$29,947**	**29494.404**	**$656,028**
3	Data Conversion	$30,750	$0	$0	$0	$0	$30,750
	Total Data Conversion	**$30,750**	**$0**	**$0**	**$0**	**$0**	**$30,750**
5	Vendor Implementation	$519,159	$0	$0	$0	$0	$519,159
8	Customization	$22,500	$0	$0	$0	$0	$22,500
	Implementation Costs:	**$541,659**	**$0**	**$0**	**$0**	**$0**	**$541,659**
6	Hosted and Maintenance	$576,347	$787,409	$793,741	$800,263	$806,981	$3,764,741
7	In-House Maintenance	$20,099	$210	$221	$232	$243	$21,004
	Total Hosted and Maintenance Costs(*):	**$596,446**	**$787,619**	**$793,962**	**$800,495**	**$807,224**	**$3,785,745**
	Total Cost:	**$1,709,063**	**$815,562**	**$822,397**	**$830,442**	**$836,719**	**$5,014,182**
	Maintenance Coverage Through	October 2011 - September 2012	October 2012 - September 2013	October 2013 - September 2014	October 2014 - September 2015	October 2015 - September 2016	Total based on 60 months of hosting and support.

(*)Please note that the Year 1 Hosted and Maintenance does not include the CMHC/MIS Annual Support.

Totals by Year

October 2011 - September 2012	October 2012 - September 2013	October 2013 - September 2014	October 2014 - September 2015	October 2015 - September 2016	Total based on 60 months of hosting and support.		
$1,709,063	$815,562	$822,397	$830,442	$836,719	$5,014,182		
CMHC/MIS maintenance fee is in addition to this charge							
Remaining Recurring Costs for October 2012 - December 2012: Hosting = $111,000: Provider Connect=$15,000; Consumer Connect=$6,250;, Micromedix=$1,745;, Kofax Capture software maintenance=$191;, Iron Mountain escrow=$300;, Wiley treatment planner=$4,375; MDS software=$2,676; VPN appliance maintenance=$188;remaining interfaces & web services listed in Section 6 above) =$9,161	$150,886						
Avatar maintenance begins on January 1, 2013.							

Payment Terms

October 1, 2011 - December 31, 2012	January 1, 2012 - December 31, 2012	January 1, 2013 - December 2013	January 1, 2014 - December 2014	January 2015 - December 2015	January 2016 - December 2016	Total	
$1,279,416	$580,533	$815,562	$822,397	$830,442	$836,719	$5,165,068	
First year payment due ue upon Execution: Based on Oct 2011 Contract execution with maintenance/hosting through December 31, 2012 **CMHC/MIS maintenance fee for calendar year 2012 is additional and is not included in this charge.**	Remainder of Year 1 will be due at the completion of implementation or January 5, 2013 whichever occurs first. Support and Hosting for this year are covered by the previous payment.	Payment Due by January 5, 2013. Includes Hosting and Support for calendar year 2013.	Payment Due by January 5, 2014. Includes Hosting and Support for calendar year 2014.	Payment Due by January 5, 2015. Includes Hosting and Support for calendar year 2015.	Payment Due by January 5, 2016. Includes Hosting and Support for calendar year 2016.	Total Based on 63 months of maintenance, subscription and hosting fees	

TRAVEL AND LIVING AND TRAVEL TIME EXPENSES
Billed monthly as incurred at the most economical rates.
Travel Time will be billable at $150 per hour.
Travel and Living Expenses are as follows:
Meals: Charged at Netsmart's then current daily per diem rate. The current rate is $50.00 per day
Airline: Coach Class on Major Airline including any additional fees applied by the airline
Personal Vehicle: Personal vehicle usage will be reimbursed at the currently defined rate by the IRS
 Rental Car: Mid Size vehicle at local rates
Ancillaries: Gas, Tolls, Parking
Hotel: At local rates

Schedule 2(b)

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Schedule 2(c)
Netsmart Development Services

All Development Services provided by Netsmart on behalf of the Licensee will be based on the prior preparation and approval of functional specifications. Approved specifications are incorporated by reference in Schedule 2(i). Prices indicated below include the costs associated with the creation of specification and quality assurance. Additional fees for maintenance of custom software will be included in Schedule 2(a), Section 6.

Unless otherwise stated below, Development Services and its attendant costs are not included under this Agreement

In the event additional Development Services are required, Netsmart will make these services available as described in Schedule 2(j)

Description	Price
Standard Conversion Demographic and Movement History	Please see Schedule 2(a) for Pricing and Payment Terms.
MSO Performing Provider, Authorizations and Contracting Providers	Please see Schedule 2(a) for Pricing and Payment Terms.
Avatar PM - Practitional Number by Guarantor & Program	Please see Schedule 2(a) for Pricing and Payment Terms.
HL7 Customization Funding - 15 Days	Please see Schedule 2(a) for Pricing and Payment Terms.
	$
	$
	$
	$
	$
	$
Total Fees for Development Services	Please see Schedule 2(a) for Pricing and Payment Terms.

Schedule 2(d)
Implementation Plan

Netsmart and Licensee will formally develop and approve a detailed implementation plan within thirty (30) days of Agreement execution. Professional Services have been set based on the expectation of a twelve to 24 month implementation plan. In the event extensions to this plan are required, additional Netsmart Implementation Services may be required. High-level project milestones are as follows:

Project Activity	Days from Agreement Execution
Hardware installation	30
Software installation	90
System table definition	120
Training of trainers	*TBD
Go Live	*TBD

*To be determined based on a mutually agreed upon project plan.

Schedule 2(e)

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Schedule 2(f)
Hardware Configuration

Licensee is not purchasing hardware from Netsmart.

If Licensee is acquiring their own hardware, Netsmart will require a detailed description of the intended server configuration for Netsmart's approval prior to purchase.

If Netsmart is providing hardware the detailed configuration is described below.

User's Computer (Minimum)

Processor	1 gigahertz (GHz) or faster 32-bit (x86)
Operating System	Windows XP, or later
RAM	1 GB or greater
Hard Disk Space	512 MB or greater
Monitor	VGA or higher (1024 x 768 pixels)
Mouse	Microsoft Mouse, or compatible pointing device
Browser	Internet Explorer 6.0 SP1 or higher (32-bit only)
Minimum Java Requirement	JRE 1.6.0_17 (32-bit only)

User's Computer (Recommended)

Processor	2 gigahertz (GHz) or faster 32-bit (x86) or 64-bit
Operating System	Windows XP, or later
RAM	2 GB or greater
Hard Disk Space	1 GB or greater
Monitor	VGA or higher (1024 x 768 pixels)
Mouse	Microsoft Mouse, or compatible pointing device
Browser	Internet Explorer 7.0 or greater (32-bit only)
Minimum Java Requirement	JRE 1.6.0_17 (32-bit only)

Schedule 2(g)
Licensee Resources

Licensee will provide the resources described below for the implementation of the Netsmart Programs. Failure to provide these resources could compromise the project and may result in the need for additional Netsmart Implementation Services

For Avatar PM: Client Side Project Manager, Subject Matter Expert(s) as needed, Trainers for End Users, Business Analyst, System Analyst, configuration, Crystal Report writing (if needed), RADplus Development (if needed)
Avatar CWS: Client Side Project Manager (can be the same as the PM Project Manager),Clinical Subject Matter Experts to cover all programs of service, System Analyst (configuration, crystal report writing, RADplus Development, etc), End User Train
Avatar MSO: Client Side Project Manager (can be the same as the PM Project Manager), MSO Subject Matter Experts to cover all services and funding sources
Avatar Order Entry: Client Side Project Manager (can be the same as the PM Project Manager), Orders Subject Matter Experts – for all order types that will be used, Pharmacy, Lab, Dietary, etc

The Support Services described in this Schedule will be performed by Netsmart subject to the terms and conditions of this License and Service Agreement.

(a)   Netsmart will maintain the then current version of the Licensed Programs in substantial conformance with its Specifications as amended from time to time by Netsmart, and with applicable Federal regulatory requirements and laws. Netsmart will use commercially reasonable efforts to either:

      (i)   Correct any reproducible Problems or Defects in the then current or immediately prior release of Licensed Programs by Netsmart which prevent it from operating in substantial conformance with the Specifications and applicable Federal regulatory requirements; or

      (ii)   Provide a commercially reasonable alternative that will substantially conform with the Specifications and applicable Federal regulatory requirements and laws.

(b)   Licensee will make requests for Support Services by giving Netsmart written notice specifying a Problem or Defect in the Licensed Programs. In making a verbal request for Support Services, Licensee will provide Netsmart within twenty four (24) hours after such verbal notice with such written information and documentation as may be reasonably prescribed by Netsmart.

(c)   If analysis by Netsmart indicates that a reported problem is caused by a reproducible Problem or Defect, Netsmart 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 Program or a material Licensed Program functional component is not operational, such as patient registration screen input/update/inquiry. Commercially reasonable 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 for less critical functions, such as low impact screens and report printing errors. 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 to problems not having a major impact on the Licensee's ability to run the Licensed Program but which obviously requires correction. Priority 3 problems will be responded to within ten (10) working days with a corrective plan and scheduled date for the implementation of the correction.

(d)   Licensee will provide and maintain, at its expense, hardware and/or software to allow Netsmart to access Licensee's system remotely. Licensee will provide Netsmart with appropriate access credentials.

(e)   On a timely basis Netsmart will also provide Licensee with:

      (i)   such updates as are distributed without charge to other similar Licensees which reflect modifications and incremental improvements made to the Licensed Programs by Netsmart;

      (ii)   an opportunity to obtain enhancements to the Licensed Programs for which charges are imposed on the same terms as such enhancements are generally made available to other Licensees.

(f)   Netsmart will make technical support personnel available from 9:00 a.m. to 6:00 p.m., Netsmart local time Monday through Friday, exclusive of Netsmart holidays.

(g)   If reasonable analysis by Netsmart indicates that a reported Problem or Defect is caused by a problem related to Hardware used by Licensee, the hardware's system software, or applicable software other than Licensed Programs, or Licensee's misuse or modification of the Licensed Programs, Netsmart's responsibility will be limited to the correction of the portion, if any, of the problem caused by a Problem or Defect in the Licensed Programs. Licensee will, at Netsmart's option, pay Netsmart for the cost of analyzing the reported problem at Netsmart's then prevailing time-and-materials rate.

(h)   The initial term for provision of Support Services for Licensed Programs will begin on the Effective Date and end on the next succeeding December 31, with the following January 1 being the "Anniversary Date". After the initial term, Support Services will be automatically renewed on an annual basis as of each Anniversary Date ("Option Term") unless Licensee gives Netsmart written notice of termination not less than sixty (60) days prior to the next Anniversary Date, or in accordance with other provisions of this Agreement.

(i)   Netsmart agrees that it will not revise the Charges for Support Services during the initial term. Netsmart will give Licensee not less than sixty (60) days written notice prior to any Anniversary Date of any revised schedule of Support Service Charges. Charges will not be increased for any renewal term by more than the most recent increase in the US Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) - Medical Care or 5%, whichever is lower.

(j)   Absent a bona fide dispute, if Licensee fails to pay for Support Services when due, Netsmart may refuse to provide Support Services until Licensee makes payment of all Charges due. If Licensee has missed any mandatory upgrades Netsmart will also charge, and Licensee will pay, for software and services necessary to bring the Licensed Programs up to Netsmart's then-current level before Netsmart will certify that Licensee is again eligible for maintenance hereunder.

Schedule 2(i)
Specifications

As set forth in the following documentation:

☒	Avatar PM User Guide
☒	Avatar PM Welcome Guide
☒	Avatar PM Kickoff Manual
☒	Avatar CWS User Guide
☒	Avatar CWS Welcome Guide
☒	Avatar CWS Kickoff Manual
☒	Avatar MSO User Guide
☒	Avatar MSO Welcome Guide
☒	Avatar MSO Kickoff Manual
☒	Avatar GLI User Guide
☒	RADplus User Guide
☒	Setup and Utilization of Third Party Reporting Software
☒	System Administration Procedures for Netsmart Systems Utilizing Cache'
☐	
☐	
☐	
☐	
☐	
☐	

Note: Electronic versions of all documentation will be delivered with the system. Licensee may make additional copies for internal use only, and will not alter or eliminate any copyright notice on any copy of the documentation.

Schedule 2(j)
Optional Products and Services

Licensee may exercise the option granted to it hereunder for the purchase of the products and services listed in this Schedule, by signing and sending to Netsmart a copy of the Additional Purchase Amendment attached to this Schedule 2. Licensee may also request Netsmart to provide it with the availability and pricing for other products and services not listed in this Schedule. The purchase of additional products and services will be effective when Netsmart returns an executed copy of the Additional Purchase Amendment.

The following pricing will hold firm for a period of 24 months from the Agreement Effective Date. (Prices for Third Party Programs are subject to change by the owner or distributor of the Third Party Programs).

Optional Software

Item	License Price	Annual Maintenance
Additional RADplus Named Users	**$800**	**$168**
ProviderConnect Additional Provider Named Users		**$495**
Additional Hosting Per User Pricing		**$444**

Optional Subscriptions and Services	Fee
NA	**NA**

Infoscriber

If Infoscriber has not been purchased as part of this agreement, it is available as software subscription. Fees are expressed as monthly amounts and include all updates to libraries for drug-to-drug and pregnancy / lactation interactions and inclusions of new medications as they come available to the market. InfoChannel establishes automatic update of demographic information from Avatar over a secure Internet connection.	
Lots of 5 Prescribers:	
--Subscription Fee (includes Support Fee)	$N/A *per month*
--InfoChannel (Per Root System Code):	$N/A *per year*
--Setup / Training (16 hours):	$N/A *one-time fee*
Additional non-prescribing users (each):	$N/A per month.

Additional Professional Services

In the event additional Netsmart Installation Services are required, Netsmart will make these services available at a cost of $1,600 per day as authorized by the Licensee. This rate will remain in effect for 180 days from contract execution and then will be available at Netsmart's then current daily rate

In the event additional Netsmart Development Services are required, Netsmart will make these services available at a cost of $$1,800 per day as authorized by the Licensee. This rate will remain in effect for 180 days from contract execution and then will be available at Netsmart's then current daily rate

Notes
1. Backup software currently supported:	*Backup tape media currently supported*
CA Brightstor/Arcserv	Ultrium LTO
Veritas	DLT
Microsoft Windows Back-up	DAT

Sample Additional Purchase Amendment

This is an Amendment ("Amendment") to a License Agreement dated _____, 200_, between Netsmart _____, Inc. ("Netsmart") and _____("Licensee").

The parties hereby amend the Agreement as follows:

1.   All terms used in this Amendment, which are defined in the Agreement, will have the same meaning as in the Agreement.

2.   Licensee agrees to license or purchase the following additional products or services:

Product/Service	Purchase/License	Charges

3.   The terms and conditions of the Agreement will be applicable to the additional products or services purchased or licensed hereunder.

4.   Except as amended herein, the License Agreement is hereby ratified and confirmed.

5.   Payment terms:_____

_____

_____

IN WITNESS WHEREOF, Netsmart and Licensee have executed this Amendment as of the later of the dates below.

Netsmart Technologies, Inc.   Licensee

By:_____   By:_____

Date:_____   Date:_____

Schedule 2(k)

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This Addendum dated _____ __, 2011 is a supplement to the terms of the License and Services Agreement dated as of _____ __, 2011, ("Master License Agreement") by and between Netsmart Technologies, Inc. ("Netsmart") and Milwaukee County ("Customer").

1. **PURPOSE OF ADDENDUM** This Addendum states the terms and conditions, under which Netsmart will provide software hosting services and permit Customer to load Data on the Hosted System via a virtual private network ("VPN") or Secure Socket Layer ("SSL").

2. **DEFINITIONS** Capitalized terms in this Addendum that are not defined below will have the same meaning as the terms that are given in the Master License Agreement. All references to Schedules mean the Schedules attached to this Netsmart Hosting Addendum to License unless otherwise indicated.

   a) "Client Hardware" means the computer hardware and communications equipment required by customer to log on to the System and use the Software Services and is the responsibility of Customer to obtain.
   b) "Netsmart Provided Hardware" means any equipment provided to the Customer by Netsmart
   c) "Data" has the meaning provided in Section 6
   d) "Effective Date" as used in this Addendum is the date on which Customer has access to a functional system to permit Customer to obtain training for its end-users and receive Hosting Services
   e) "Hosted System" means the hardware and software in Netsmart's data center, including the Licensed Programs as defined in the Master License Agreement that are used to provide Software Services to Customer.
   f) "Service Charges" means the amount to be paid by Customer for
      i) Netsmart's data center usage;
      ii) Any Netsmart Provided Hardware ;
      iii) Any Professional Services
      iv) The payment terms for Service Charges is set forth in Addendum Schedule 3(b) for professional services, Addendum Schedule 3(c) for third party products and Addendum Schedule 3(d) for monthly recurring charges.
   g) "SLA" is an abbreviation for Service Level Agreement. The Service Level Agreement, or SLA, describes the functions, features and performance capabilities of the Hosted System as available at Customer's site and is set forth in Addendum Schedule 3(e).

3. **TERM**

   a) Netsmart hereby grants Customer a non-transferable, non-exclusive right to access the Hosted System from Netsmart's Data Center for a period of 60 months from the Effective Date (the "Initial Term").
   b) At the expiration of the Initial Term this Agreement will be automatically renewed pursuant to paragraph 3 of the Professional Services Agreement. .
   c) The Hosted Software Services may be used by Customer only:
      i) for Customer's internal business purposes and not to process the data of any other entity; and
      ii) for access by the maximum number of named users permitted under the master License Agreement; and
      iii) so long as the Customer is not otherwise in default under the Master License Agreement or this Addendum.
   d) This Addendum does not convey to Customer any title or ownership interest in the Hosted Systems or the Licensed Programs. Customer has additional rights in the Licensed Programs, however, under the Master License Agreement.
   e) The Hosting Services covered by this Addendum are provided solely to Customer. Customer is prohibited from engaging in any activity that makes these Hosting Services available to third parties.

4. **CHARGES AND PAYMENT TERMS**
   Customer agrees to pay Netsmart the Service Charges in the amounts and at the times set forth in Addendum Schedules.

   a) Invoices are payable net thirty (30) days after invoice date. Thereafter, any outstanding balance shall bear simple interest at the lower of 18% per annum or the highest interest rate permitted by law.

5. **TAXES**
   The Charges set forth in this Agreement do not include any taxes. Where applicable, there shall be added to such Service Charges and Customer shall pay amounts equal to any taxes (however designated, levied, or based) on such Service Charges including, but not limited to, state and local sales, privilege, property, use or excise taxes, but not including taxes based on the net income of Netsmart.

6. **OWNERSHIP OF CUSTOMER DATA**
   As used in this paragraph 6, the word "Data" means all information acquired from, or stored by Netsmart for Customer during the performance of this Agreement, including, but not limited to, all information relating to Customer's clients used by Netsmart in the course of

providing Hosting Services to Customer. Netsmart acknowledges that such Data is the property of Customer, and shall be returned to the Customer upon termination of this Agreement for any reason and will meet all compliance issues identified in the Master License Agreement Schedule 2(o) The Business Associate Agreement.

7. **GENERAL TERMS**

Except as expressly set forth in this Addendum, the relationship between Netsmart and Customer will be governed by the provisions of the Master License Agreement.

8. **SURVIVAL OF TERMS**

In the event this Addendum terminates pursuant to its terms, the Master License Agreement will continue in full force and effect.

9. **CROSS DEFAULT**

A default by Customer and resulting termination of the Master License Agreement will similarly terminate the license rights granted by this Addendum. A default and termination of this Addendum, however, will not constitute grounds for termination of the Master License Agreement, unless the default under this Addendum would likewise be grounds for termination of the Master License Agreement

10. **USE OF NETSMART WEBSERVICES AND AVATAR MOBILE SOFTWARE**

If separately purchased, Netsmart supports the use of Netsmart provided web services and Avatar mobile software in both the SaaS and hosted environmental platforms. The only medium for transmission of web services and mobile software data into the Netsmart environment will be through VPN tunneling across the Internet. Netsmart offers two VPN offerings, depending upon the needs of the customer, which include VPN client software installed on each machine submitting web services or mobile software data or VPN appliances which establish a permanent VPN tunnel between the client environment and the Netsmart data center.

Exhibit A
Addendum Schedule 3(a)
Client Hardware

User's Computer (Minimum)

Processor	1 gigahertz (GHz) or faster 32-bit (x86)
Operating System	Windows XP, or later
RAM	1 GB or greater
Hard Disk Space	512 MB or greater
Monitor	VGA or higher (1024 x 768 pixels)
Mouse	Microsoft Mouse, or compatible pointing device
Browser	Internet Explorer 6.0 SP1 or higher (32-bit only)
Minimum Java Requirement	JRE 1.6.0_17 (32-bit only)

User's Computer (Recommended)

Processor	2 gigahertz (GHz) or faster 32-bit (x86) or 64-bit
Operating System	Windows XP, or later
RAM	2 GB or greater
Hard Disk Space	1 GB or greater
Monitor	VGA or higher (1024 x 768 pixels)
Mouse	Microsoft Mouse, or compatible pointing device
Browser	Internet Explorer 7.0 or greater (32-bit only)
Minimum Java Requirement	JRE 1.6.0_17 (32-bit only)

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Exhibit A
Addendum Schedule 3(b)
Netsmart Professional Services

Item	Price	Payment Terms
Set-up Services: • Building the live and test databases, the reporting systems, and the web server system in the Netsmart Data Center • Installation of all Licensed Programs together with any patches for optimal performance • Configuration & testing of software programs • Establishing security infrastructure • Establishing backup/disaster recovery environments • Setting up VPN client, VPN appliance, or SSL connectivity One copy of client installable Checkpoint VPN Software (if applicable)		Please see Schedule 2(a) for Pricing and Payment Terms
Total Charges - Professional Services		

Exhibit A
Addendum Schedule 3(c)
Third Party Products

Item	Price	Payment Terms
VPN Appliance – DUE ON CONTRACT EXECUTION Provides a secure VPN tunnel for all local network users, freeing your network personal from having to install individual VPN client software on each computer that will use the Netsmart Avatar Software Products. Traffic passing through the VPN tunnel to the Hosting Environment, must use Network Address Translation (NAT) to a Netsmart specified IP address range Customer must agree to make any firewall modifications to accommodate upgrades or changes to the NTST - Hosting Firewall infrastructure.		Please see Schedule 2(a) for Pricing and Payment Terms
VPN Appliance Annual Maintenance		
Security Certificate		Please see Schedule 2(a) for Pricing and Payment Terms
Total Charges - Third Party Products		

Exhibit A
Addendum Schedule 3(d)
Recurring Monthly Charges

Description	Due Monthly
Hosting of Licensed Programs purchased by Customer as described in Schedule 2(a) of the Master License Agreement. • Licensed Programs will be at the Netsmart Data Center. • Monthly price is based upon a rate of $37 per named user per month and a minimum purchase of 1,000 named users per month • Monthly fee will begin on the first day of the first month following the date of addendum execution and will continue for a minimum period of 60 months. • Additional named users can be added at a rate not to exceed $37 per named user per month for a period of one year from the date of this Agreement.	Please see Schedule 2(a) for Pricing and Payment Terms
Checkpoint VPN Client Software (if applicable) Client installable on individual devices	Included
Total Monthly Recurring Charges	

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Exhibit A
Addendum Schedule 3(e)
SERVICE LEVEL AGREEMENT
For
Hosting Account Services

1. Coverage; Definitions

This Hosting Availability Service Level Agreement (SLA) applies to you ("Customer") if you have contracted for any of the following web-based services from Netsmart: Avatar or Cache hosting, e-mail hosting, or web hosting.

As used herein, the term "Hosting Availability" means the percentage of a particular month (based upon 24 hour days for the number of days in the subject month) that the Netsmart content is accessible on the Internet.

2. Service Level

    a. Goal: Netsmart's goal is to achieve 100% Hosting Availability for all of our customers.
    b. Remedy: Subject to Sections 3 and 4 below, if the Hosting Availability is less than 99% in any month, Netsmart will issue a credit to Customer in accordance with the following schedule, with the credit being calculated on the basis of the monthly service charge for the affected service(s):

Hosting Availability	Credit Percentage
99.0 to 100%	0%
98.0 to 98.9%	5%
97.0 to 97.9%	10%
95.0 to 96.9%	15%
94.9 or below	25%

3. Exceptions

Customer shall not receive any credits under this SLA in connection with any failure or deficiency of Hosting Availability caused or associated with:

    a. Circumstances beyond Netsmart's reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, virus attacks or hackers, failure of third party software (including, without limitation, web server software, FTP Servers, or statistics) or inability to obtain supplies, or power used in or equipment needed for provision of services;
    b. Failure of access circuits to the Netsmart Network, unless such failure is caused solely by Netsmart;
    c. Scheduled maintenance, scheduled backups, scheduled restores and emergency maintenance and upgrades;
    d. Issues with FTP, POP, or SMTP customer access;
    e. Customer's acts or omissions (or acts or omissions of others engaged or authorized by Customer), including, without limitation, custom scripting or coding (e.g., CGI, Perl, Java, HTML, ASP, etc), any negligence, willful misconduct, or misuse of the Services;
    f. E-mail or webmail delivery and transmission;
    g. Outages elsewhere on the Internet that hinder access to your account. Netsmart is not responsible for browser or DNS caching that may make your site appear inaccessible when others can still access it. Netsmart will guarantee only those areas considered under the control of Netsmart: Netsmart server links to the Internet, Netsmart's routers, and Netsmart's servers.
    h. Use of a VPN or similar connection which is not exclusively within Netsmart's control at both ends of such connection, and where the problem occurs in the part of the VPN which is not under Netsmart's control.

4. Scheduled Maintenance
    a. Netsmart reserves the right to establish a monthly maintenance window for the purpose of upgrading, patching, modifying, and repairing portions or the entire ASP/Hosting environment. The monthly window is generally scheduled on the 3rd Sunday of the month, from 5:00AM – 11:00AA EST.

5. Credit Request and Payment Procedures

In order to receive a credit, Customer must submit a request for credit to Netsmart Technologies, Inc. Accounting at AR@ntst.com, within ten (10) business days after both parties have agreed on the nature of the incident being reported. Each request must include Customer's account number (per Netsmart's invoice) and the dates and times of the unavailability of the services. If the unavailability is confirmed by Netsmart as an incident eligible for credit, credits will be applied within two billing cycles after Netsmart's receipt of Customer's request. Credits are not refundable and can be used only towards future billing charges.

Notwithstanding anything to the contrary herein, the total amount credited to Customer in a particular month under this SLA cannot exceed the total hosting fee paid by Customer for the month in which Services were impacted. Credits are exclusive of any applicable taxes charged to Customer or collected by Netsmart and are Customer's sole and exclusive remedy with respect to any failure or deficiency in level of services described in this SLA.

Exhibit B
Netsmart Subscription Products Addendum

Introduction

This Addendum is a supplement to the terms of the License and Services Agreement dated _____ __, 2011 by and between Netsmart Technologies, Inc. ("Netsmart"), and Milwaukee County, ("Licensee"), which will be referred to in this Addendum as the "Master Agreement". The terms and conditions of this Addendum will apply to Subscription Products and Services identified below by check mark. All references to Schedules in this Addendum refer to the Schedules of this Addendum.

Subscription Products and Services Descriptions.
The Subscription Products and Services identified with a check mark will be provided under the terms of the Master License and the supplemental terms of this Addendum. Subscription Products and Services will include all generic versions, corrections, enhancements and improvements developed by Netsmart during the Term of this Addendum:

☐ OrderConnect ☒ Not Included

The OrderConnect suite is an e-Prescribing and medication management product. The full version of this product has the ability to exchange web-based pharmaceutical information, prescriptions, medication orders, disease specific information, laboratory orders, and radiology/imaging and results with defined allied healthcare partners.

☒ ProviderConnect ☐ Not Included

A software product that supports data exchange between the Netsmart host system and outside providers of care.

☒ CareConnect ☐ Not Included

A software service that enables clinical data to be shared between providers and other entities such as RHIOs Regional Health Information Organizations (RHIOs), HIE's, State agencies for quality measures, public health organizations for immunizations, reportable labs and syndromic surveillance data in support of national standards related to continuity of care. The specific modules and functions that will be provided as part of the CareConnect Products and Services are listed in Schedule A - CareConnect

☒ ConsumerConnect ☐ Not Included

A Consumer web portal that enables Care Providers to proactively involve Consumers in their care. Using the portal, Consumers can schedule appointments, review and comment on their treatment plans, view current medications and track administration, and communicate with their Care Providers.

Additional (supplemental) Definitions

INITIAL

Any capitalized term not defined below but used in this Addendum will have the meaning given to in the Master Agreement.

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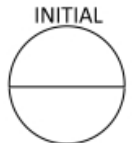
"Agent" means any person who is authorized under applicable law and regulations to transmit or relay prescription authorization information between a Prescriber and a pharmacy. An Agent is typically a nurse who is authorized by a physician to communicate with a pharmacy or laboratory on behalf of a Prescriber.

"Anniversary Date" means the calendar anniversary of the Effective Date.

"Availability Date" is the first day of the month following the date on which Netsmart demonstrates that the Products and Services are accessible to Licensee over the Internet.

"Care Provider" means an organization that provides medical or health services and any other person or organization that furnishes, bills, or is paid for health care in the normal course of business including a hospital, critical access hospital, skilled nursing facility, or comprehensive outpatient rehabilitation facility.

"Charges" means the amounts to be paid by Licensee for the right to use the Subscription Products and Services and for hardware or other Third Party Products acquired by Licensee under the terms of this Addendum. The Charges and payment schedule are set forth in Schedule A.

"Consumer" means an individual who is receiving services from a Care Provider, and who has the right to access specific portions of their electronic health record and the ability to exchange messages with their Care Provider through a Subscription Services Product.

"Drug Information Data" or "DID" means context-relevant drug database products licensed from one of the following publishers: Cerner Multum, Inc. ("VantageRx"), First DataBank Evaluations of Drug Interactions ("EDI") or Thompson Reuters, Inc. ("UltiMedex") that provides drug and allergy interaction and dosage information (collectively, "DID Publishers").

"Effective Date" means the date on which both parties have executed this Addendum.

"Implementation Plan" means the standard work plan attached hereto as Schedule D which may be modified by Netsmart and Licensee following execution of this Addendum.

"Initial Term" has the meaning stated in section #3 in the Milwaukee Professional Services Agreement.

"Non-Prescribing User" means any person who is granted limited access to OrderConnect for the purpose of editing information that is not required to be entered or modified by a Prescriber or Agent under applicable law and regulations. A Non-Prescribing User typically generates reports without modification of the information in the reports, and can update basic demographic information,

"Patient Data" or "Consumer Data" means names, addresses, social security numbers, medical records and any other information concerning or relating to Consumers which is deemed to be protected health information under the rules and regulations of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Deidentified Data (as such term is defined by HIPAA) shall not be considered to be Patient Data.

"Prescriber" means any person who possesses a DEA number and who is authorized by law to write prescriptions.

"Products and Services", or " Subscription Products and Services" means the products and associated services made available for the items selected for inclusion in this Addendum under Section II above.

"Service Level Agreement" means the minimum performance criteria that Netsmart will meet while delivering the Subscription Service and the remedial action if performance falls below the target criteria as provided in Schedule E.

"Specifications" is defined in the Master Agreement and will be supplemented with the specifications for Subscriber Products and Services as set forth in the documentation relating to the Subscription Services supplied to Licensee by Netsmart.

"Supplemental Services" means the installation, training and other services for Subscription Products and Services described in Schedule A.

"Technology Environment" means the computer hardware, private network and internet access capabilities, required to install and operate the Subscription Services. A description of the recommended Technology Environment is set forth in Schedule C attached hereto.

"User" means an individual or entity, other than a Consumer, that has been granted access with a user ID and password to a Subscription Product or Service by the Licensee.

License Terms and Conditions

The Subscription Products and Services are specifically included within the grant of license and term of license as "Licensed Programs" under the Master Agreement.

Licensee grants to Netsmart a non-exclusive, non-transferable license (the "Usage License") to use all Patient Data for the sole purpose of operating the Subscription Products and Services for the benefit of Licensee and its clients and for maintaining the Subscription Products and Services (for example, creating backups of the Patient Data or moving it between servers) so long as Netsmart has a bona fide need to do so subject to and for the sole purpose required by this Addendum and the Master Agreement. The Usage License does not confer on Netsmart any right to share Patient Data with third parties other than Netsmart employees or consultants who are bound by agreements that contain confidentiality provisions equivalent to those contained in the Master Agreement. The foregoing restriction on Netsmart's use of Patient Data does not prohibit Netsmart from making use of Deidentified Data as described and permitted under HIPAA.

Term and Termination

Netsmart will make the Hosting and Subscription Products and Services available and Charges will apply, during the five (5) year terms shown in Schedule 2(a). After the Initial Term, the Hosting and Subscription Products and Services will continue to be available per paragraph 3of the professional services agreement, unless either party gives the other written notice not less than (90) days prior to an Anniversary Date that it is terminating its use of the Hosting and Subscription Products and Services.

In the event that Licensee discontinues using the Hosting and Subscription Products and Services for any reason, Licensee shall be entitled to the return of all data entered into the Subscription Product. In the event Netsmart ceases doing business, Licensee shall also be entitled to the return of all data entered into the Subscription Product. In the event data is returned to Licensee, it will be provided in comma delimited file format or another format mutually agreed to by both parties.

Either party may terminate this Addendum in the event the other is in material breach of the terms of this Addendum, or as permitted under the Master Agreement.

Charges and Payment Terms

Customer shall pay Netsmart for the Hosting and Subscription Products and Services as provided in Schedule 2(a). Netsmart will give Licensee not less than sixty (60) days written notice prior to any Anniversary Date of any revised schedule of Charges for a subsequent term. Charges will not be increased for any renewal term by more than the most recent increase in the US Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) - Medical Care or 5%, whichever is lower. Netsmart will invoice Licensee for all recurring charges on an annual basis. All invoices shall bear terms of net cash, thirty (30)days from date of mailing.

Licensee Obligations

In addition to the obligations under the Master Agreement Licensee agrees:

That it has no ownership rights in data or information in the DID services or content.

To restrict use of Drug Information Data to licensed healthcare professional directly connected with the Licensee, either as an employee or an authorized affiliate. Such use shall be made only under the supervision of, and reliance upon, the clinical discretion and judgment of a licensed physician. As between the Licensee and the publisher of the Drug Information Data, Licensee assumes full responsibility for ensuring the appropriateness of using and relying upon the information supplied by the Drug Information Data publisher, in view of all attendant circumstances, indications and contraindications. Except as provided above, it will not otherwise make the DID content available to any person, or entity including the government, whether affiliated or not, except as required by subpoena or other legal process and after notice to the owner of the content.

To maintain accurate and up to date Patient Data in all systems covered by the Master Agreement.

To provide support to its Users and Consumers related to their use of the Subscription Products and Services.

To notify Netsmart in the event Licensee becomes aware of or suspects misuse, unauthorized access, data corruption or any other threat to the security of the Subscription Products system and related data or if Licensee receives a subpoena or other legal process requiring disclosure of Netsmart confidential information or DID content.

To require each Consumer and User to enter into a binding agreement governing their use of the Hosting and Subscription Products and Services including such terms as Licensee believes are necessary for its business, legal and risk management objectives, but including, at a minimum, terms that are the same as or equivalent to the terms stated in Schedule F.

Netsmart Obligations

In addition to the obligations of the Master Agreement, Netsmart will be responsible for:

Establishing SSL connectivity between the Consumer's computing device and the Care Provider's firewall;

Meeting the service levels as stated in Schedule E;

Keeping Patient Data confidential in accordance with the terms of the Master Agreement.

Limitation on Cumulative Liability

EXCEPT FOR A CONTRACTUAL OBLIGATION TO INDEMNIFY LICENSEE, THE CUMULATIVE LIABILITY OF NETSMART TO LICENSEE FOR ANY ACTUAL OR ALLEGED DAMAGES ARISING OUT OF, BASED ON OR RELATING TO THE HOSTING AND SUBSCRIPTION PRODUCTS AND SERVICES COVERED BY THIS ADDENDUM, WHETHER BASED UPON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR ANY OTHER LEGAL THEORY, WILL NOT EXCEED THE AMOUNT OF THE CHARGES PAID TO NETSMART UNDER SCHEDULE A FOR THE PRIOR TWELVE (12) MONTHS.

List of Schedules

Schedule A   Included Subscription Products, Supplemental Services and Price
Schedule B   Intentionally Left Blank
Schedule C   Technology Environment
Schedule D   Implementation Plan

Schedule E   Service Level Agreement
Schedule F   Sample Subscription Agreement
Schedule G   Licensee Resources
Schedule H   Support Services
Schedule I   User Guides
Schedule J   Optional Products and Services
Schedule K   Intentionally Left Blank

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Exhibit B
Schedule A – OrderConnect Charges and Payment Terms
☐ **Full Suite**   **See Schedule 2(a) for Pricing and Payment Terms**
☐ **Lab/Radiology module**
☐ **e-Prescribing module**

Product Description	Quantity	Unit Cost	Monthly Cost	One-time Setup Fees	Recurring Annual Cost: 5-yr contract (10% discount)
Base Fee (payable annually)					**See Schedule 2 (a)**
Prescriber Monthly Subscription	Named Users		$ 0		
Non-Prescribing Users (i.e. prescriber agents, system admin's, and data entry)	Named Users		$ 0		
Free Fax Pages*	free pages				
One-time Training Fee**	Hrs. (web-based)			$ 0	
One-time Installation, Configuration Fee***					
TOTAL Cost			$ 0	$ 0	**See Schedule 2 (a)**
Order Connect Payment Schedule :					
Year 1 Due on Effective Date of this Addendum					
Year 2 and following are payable annually in advance on the Anniversary Dates.					

*Each facility is allowed to fax 100 fax pages directly from the application per month for each prescriber license purchased. Faxed pages in excess of that allowance in any calendar month will be billed at $0.20 per page for the balance of that month.
** Additional training hours available at $225.00 per hour.
*** No on-site travel is included for this product implementation.

MANDATORY DISCLAIMER ON DID PUBLICATIONS AND SERVICES: Information provided by the DID publishers is believed to be accurate, up-to-date, and complete, but no guarantee is made by any of the DID publishers to that effect. In addition, the drug information contained therein may be time sensitive. The DID publishers do not endorse drugs, diagnose patients or recommend therapy. The DID services are informational resources designed to assist licensed healthcare practitioners in caring for their patients and/or to serve end-users viewing this service as a supplement to, and not a substitute for, the expertise, skill, knowledge and judgment of healthcare practitioners. Healthcare practitioners should use their professional judgment in using the information provided. DID information is not a substitute for the care provided by licensed healthcare practitioners. The absence of a warning for a given drug or drug combination in no way should be construed to indicate that the drug or drug combination is safe, effective, or appropriate for any given patient. In connection with the use of RED BOOK information in Drug Information Data, Licensee acknowledges and agrees that THE PRICES CONTAINED IN RED BOOK ARE BASED ON DATA REPORTED BY MANUFACTURERS. THE DID PUBLISHERS HAVE NOT PREFORMED ANY INDEPENDENT ANALYSIS OF THE ACTUAL PRICES PAID BY WHOLESALEPRS AND PROVIDERS IN THE MARKETPLACE. THUS, ACTUAL PRICES PAID BY WHOLESALERS AND PROVIDERS MAY WELL VARY FROM THE PRICES CONTAINED IN THE DATABASE AND ALL PRICES ARE SUBJECT TO CHANGE WITHOUT NOTICE

Exhibit B
Schedule A – CareConnect Charges and Payment Terms
See Schedule 2(a) for Pricing and Payment Terms

Description		Amount Due
Netsmart Programs: Due on Effective Date.		
CareConnect Base License: For Meaningful Use Stage 1		
Total Payment - Netsmart Programs		
Year 1 Annual Maintenance and Subscription Fees*: Payable annually in advance on component Availability Date(s).		**See Schedule 2 (a)**
CareConnect Base Maintenance		
Quality Measures Outbound Interface	☐Included ☒Not Included	
Syndromic Surveillance Outbound Interface	☐Included ☒Not Included	
Immunizations Outbound Interface	☐Included ☒Not Included	
Single Lab Results In-Network Inbound Interface	☐Included ☒Not Included	
Dynacare Lab Interface: Outbound-Orders, Inbound-results - license fees		
Dynacare Lab Interface: Outbound-Orders, Inbound-results - Subscription Fee		
Y2 Annual Maintenance and Subscription Fees*: Payable on 1st Anniversary Date.		
CareConnect Base Maintenance (Optional Renewal)		
Quality Measures Outbound Interface	☐Included ☒Not Included	
Syndromic Surveillance Outbound Interface	☐Included ☒Not Included	
Immunizations Outbound Interface	☐Included ☒Not Included	
Single Lab Results In-Network Inbound Interface	☐Included ☒Not Included	
Dynacare Lab Interface: Outbound-Orders, Inbound-results - Subscription Fee		
Y3 Annual Maintenance and Subscription Fees*: Payable on 2nd Anniversary Date.		
CareConnect Base Maintenance (Optional Renewal)		
Quality Measures Outbound Interface	☐Included ☒Not Included	
Syndromic Surveillance Outbound Interface	☐Included ☒Not Included	
Immunizations Outbound Interface	☐Included ☒Not Included	
Single Lab Results In-Network Inbound Interface	☐Included ☒Not Included	
Dynacare Lab Interface: Outbound-Orders, Inbound-results - Subscription Fee		
Y4 Annual Maintenance and Subscription Fees*: Payable on 3rd Anniversary Date.		
CareConnect Base Maintenance (Optional Renewal)		
Quality Measures Outbound Interface	☐Included ☒Not Included	
Syndromic Surveillance Outbound Interface	☐Included ☒Not Included	
Immunizations Outbound Interface	☐Included ☒Not Included	
Single Lab Results In-Network Inbound Interface	☐Included ☒Not Included	
Dynacare Lab Interface: Outbound-Orders, Inbound-results - Subscription Fee		
Y5 Annual Maintenance and Subscription Fees*: Payable on 4th Anniversary Date.		
CareConnect Base Maintenance (Optional Renewal)		
Quality Measures Outbound Interface	☐Included ☒Not Included	
Syndromic Surveillance Outbound Interface	☐Included ☒Not Included	
Immunizations Outbound Interface	☐Included ☒Not Included	
Single Lab Results In-Network Inbound Interface	☐Included ☒Not Included	
Dynacare Lab Interface: Outbound-Orders, Inbound-results - Subscription Fee		
Total Payment - Netsmart Annual Maintenance and Subscription Fees		**See Schedule 2 (a)**

Exhibit B
Schedule A – CareConnect Charges and Payment Terms (cont'd)
See Schedule 2(a) for Pricing and Payment Terms

CareConnect Setup: Due on Effective Date	
Netsmart CareConnect set up	
Total Payment – CareConnect Setup	
Total Amounts To Be Paid**	**See Schedule 2 (a)**

*   In-Network Labs include LabCorp, Quest, and Sterling.   Licensee will select their desired Lab prior to Installation.

** No on-site travel is included for this implementation

Exhibit B
Schedule A – ConsumerConnect Charges and Payment Terms – 5 Year
See Schedule 2(a) for Pricing and Payment Terms

Description	Amount Due
Netsmart Programs: Payable annually in advance	**See Schedule 2 (a)**
Annual payment for Year 1	
Annual payment for Year 2	
Annual payment for Year 3	
Annual payment for Year 4	
Annual payment for Year 5	
Total Payment - Netsmart Programs	
These amounts are based upon the existing 1000 user licenses for your Netsmart enterprise application. These fees will be adjusted based upon any increase in named users at a cost of $25 per user per year or the then current list price.	
Third Party Products Added By this Addendum: Due on Effective Date	
NTST Data Center Web Server Configuration Fee	
Security Certificate (renewable after 3 years).	
Total Payment -Third Party Products	
ConsumerConnect Services: Due on Effective Date	
Netsmart ConsumerConnect set up services	
Total Payment – ConsumerConnect Services	
Total ConsumerConnect System Cost	
TRAVEL AND LIVING AND TRAVEL TIME EXPENSES Billed monthly as incurred at the most economical rates. Travel Time will be billable at $150 per hour. Travel and Living Expenses are as follows: Meals: Charged at Netsmart's then current daily per diem rate. The current rate is $50.00 per day Airline: Coach Class on Major Airline including any additional fees applied by the airline Personal Vehicle: Personal vehicle usage will be reimbursed at the currently defined rate by the IRS Rental Car: Mid Size vehicle at local rates Ancillaries: Gas, Tolls, Parking Hotel: At local rates	Billed as incurred

Required Web Server Hardware Configuration
If server is to be supplied by Licensee, Licensee will make available a Web Server that either meets or exceeds the configuration shown in Schedule C Technology Environment.

Exhibit B
Schedule B

(Intentionally Left Blank)

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General Requirements

- 30kbps of sustained Internet bandwidth, per concurrent connected patient.
- Client must provide a public IP address for the web services server
- Client web services server must reside in DMZ, off of their firewall.
- Client is responsible for all public DNS changes and domain management

Required Web Server Hardware Configuration for ConsumerConnect*

Module	Description
PowerEdge R410	PowerEdge R410 Chassis w/up to 4 Cabled HDs, Quad-Pack LED Diagnostics
Operating System	Windows Server 2008 R2, Standard Edition,x64, Includes 5 CALS
Memory	4GB Memory (2x2GB), 1333MHz Single Ranked RDIMMs for 1 Proc, Advanced ECC
Processor	Intel® Xeon® X5650, 2.66Ghz, 12M Cache,Turbo, HT, 1333MHz Max Mem
Additional Processor	Single Processor Only
1st Hard Drive	HD Multi-Select
Internal Controller	PERC H700 Adapter, Internal RAID Controller 512MB Cache
Embedded Management	Baseboard Management Controller
Internal Optical Drive	DVD-ROM Drive, Internal
Hard Drive Configuration	RAID 1 for PERC/SAS 6ir, PERC H200/H700 Controllers
Rails	Sliding Ready Rails without Cable Management Arm
Hardware Support Services	3 Year ProSupport and Mission Critical 4HR 7x24 Onsite Pack
Hard Drives (Multi-Select)	(2) 300GB 15K RPM Serial-Attach SCSI 6Gbps 3.5in Cabled Hard Drive

* Vendor choices shown are for illustration purpose only.

Exhibit B
Schedule D
Implementation Plan

[To be created promptly after execution of this Addendum]

Exhibit B
Schedule E
Service Level Agreement

1. Coverage; Definitions

This Service Level Agreement (SLA) applies to you ("Licensee") if you have contracted for any of the Hosting and Subscription Products and Services identified in Section II of this Addendum. As used herein, the term "Service Availability" means the percentage of a particular month (based upon 24 hour days for the number of days in the subject month) that the Netsmart content is accessible on the Internet.

2. Service Level
    a. Goal:

Netsmart's goal is to achieve 100% Service Availability for all of our customers.

    b. Remedy:

Subject to Sections 3 and 4 below, if the Service Availability is less than 99% in any month, Netsmart will issue a **service** credit to Licensee in accordance with the following schedule, with the credit being calculated on the basis of the monthly service charge for the affected service(s):

Service Availability	Credit Percentage
99.0 to 100%	0%
98.0 to 98.9%	5%
97.0 to 97.9%	10%
95.0 to 96.9%	15%
94.9 or below	25%

3. Exceptions

Licensee shall not receive any credits under this SLA in connection with any failure or deficiency of Service Availability caused or associated with:
    i.   Circumstances beyond Netsmart's reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, virus attacks or hackers, failure of third party software (including, without limitation, web server software, FTP Servers, or statistics) or inability to obtain supplies, or power used in or equipment needed for provision of services;
    j.   Failure of access circuits to the Netsmart Network, unless such failure is caused solely by Netsmart;
    k.   Licensee's acts or omissions (or acts or omissions of others engaged or authorized by Licensee), including, without limitation, custom scripting or coding), any negligence, willful misconduct, or misuse of the Services in breach of Netsmart's Terms and Conditions and Acceptable Use Policy;
    l.   Outages elsewhere on the Internet that hinder access to your account. Netsmart is not responsible for browser or DNS caching that may make your site appear inaccessible when others can still access it. Netsmart will guarantee only those areas considered under the control of Netsmart: Netsmart server links to the Internet, Netsmart's routers, and Netsmart's servers.

4. Scheduled Maintenance

Netsmart reserves the right to establish a monthly maintenance window for the purpose of upgrading, patching, modifying, and repairing portions or the entire ASP environment. The monthly window is generally scheduled on the 3rd Sunday of the month, from 5:00am – 11:00Am EST. Licensee shall not receive any credits under this SLA in connection with any scheduled maintenance event.

5. Credit Request and Payment Procedures

In order to receive a credit, Customer must submit a request for credit, within ten (10) business days after the incident supporting the request, by notice to Netsmart, Attention: Chief Financial Officer. Each request must include Customer's account number (per Netsmart's invoice) and the dates and times of the unavailability of the services. If the unavailability is confirmed by Netsmart as an incident eligible for credit, credits will be applied within sixty (60) days after Netsmart's receipt of Customer's request. Credits are not refundable and can be used only towards future billing charges.

Notwithstanding anything to the contrary herein, the total amount credited to Customer in a particular month under this SLA cannot exceed the prorated annual subscription fee for the month in which Services were impacted. Credits are exclusive of any applicable taxes charged to Customer or collected by Netsmart and are Customer's sole and exclusive remedy with respect to any failure or deficiency in level of services described in this SLA.

ConsumerConnect Sample Subscription Agreement

This Agreement states the terms and condition under which we will make available to you a supplementary communication medium (to be used in conjunction with your in-person visits and treatment ("the System").

When we use these terms in this Agreement, we mean the following:

"PHI" means information that either of us may send or receive over the System that relates to your past, present, or future physical or mental health or condition; the provision of health care to you; or the past, present, or future payment for the provision of health care to you.

[OTHER DEFINITIONS]

[THE NAME OF THE PROVIDER HIPAA POLICY and an electronic link to same]

["You "and "Your"]

["We", "Us", "Our"]

 The System is not a diagnostic or decision making system. Personal, one-on-one observation and follow up will always be the cornerstone of your care and treatment program.

Also please note that the System is NOT a so called "real time" or instant messaging system. There will likely be a delay between the time you submit information and the point at which your medical care professionals will read and respond to that information.

IF THERE IS ANY DOUBT AS TO WHETHER YOU CAN WAIT FOR A RESPONSE TO A MEDICAL QUESTION, CALL YOUR PROVIDER AT (___) ___-_____.

IN THE EVENT OF A MEDICAL EMERGENCY, YOU MUST IMMEDIATELY CALL 911.

When you accept these terms, we grant to you and you alone, permission to use the System subject to the terms and conditions of this license. This permission cannot be transferred by you to anyone else. Similarly, you grant us permission to use any information you submit over the System for the purpose of providing you with medical care and to maintain the System (for example, back up, archiving).

 You also grant us permission to provide this information to the operator of the System, to insurance carriers when you ask us to do so or to anyone that is authorized by law to receive this information, in all cases as permitted or authorized by the terms of Provider's release of information form.

You agree that we may send to you via the system, general information about your health care, in addition to information that is specific to your specialized treatment needs.

This agreement will continue until either of us provides notice to the other that we no longer wish to make available, on the one hand, or to use, on the other, the System and services.

 In order to use the System, you will need a personal computing device that is connected to the Internet. You will be given either the opportunity to select a user name and password or we will assign you a user name and password. You must provide accurate and complete registration information any time you register to use the System. Communication between your personal computer and our system will be encrypted by Secure Socket Layer ("SSL") technology.

You agree to follow instructions and rules on use of the system that we may establish from time to time and communicate to you over the System.

You are responsible for maintaining security measures on your personal computer and home network, if any, to guard against use of your name and password, or any use of your account, by anyone other than you. At a minimum, you should have up to date anti-spyware, anti-virus protection, and if you are using a home network, a secure configuration of your network.

You must immediately notify us of any unauthorized use of your password or account or any unauthorized access to information stored on your home computing system.

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You must not attempt to access information other than your own PHI.

As a condition to your acceptance of these terms, we also ask that you read and accept our privacy policy [PROVIDER TO USE THEIR POLICY via LINK FROM SYSTEM PORTAL]

Either you or we may terminate availability or use of the services at any time. If Provider terminates service on the system and as a result eliminates availability, you will receive thirty days advance notice.

THIS COMMUNICATION SYSTEM IS PROVIDED TO YOU WITHOUT CHARGE AS A SUPPLEMENT TO CONVENTIONAL COMMUNICATION WITH YOUR MEDICAL CARE PROVIDER AND MADE AVAILABLE "AS IS" AND WITHOUT WARRANTY AS TO AVAILABILITY, NOW OR IN THE FUTURE.

 USE OF THE SYSTEM IS A CHOICE AMONG COMMUNICATION ALTERNATIVES AVAILABLE TO YOU. PROVIDER MAY NOT BE HELD LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATED TO YOUR INABILITY TO USE THE SYSTEM, OR YOUR CHOICE TO USE THIS SYSTEM RATHER THAN AN ALTERNATE COMMUNICATION MEDIUM SUCH AS TELEPHONE OR IN PERSON COMMUNICATION.

Exhibit C
Netsmart Provider Connect Addendum
Schedule A – ProviderConnect Charges and Payment Terms – 5 Year

Description	Amount Due
Netsmart Programs: Payable annually in advance	
Annual payment for Year 1	
Annual payment for Year 2	
Annual payment for Year 3	
Annual payment for Year 4	
Annual payment for Year 5	
Total Payment - Netsmart Programs	Please see Schedule 2(a) for Pricing and Payment Terms
These amounts are based on either: ☒**Enterprise License for up to 1,500 staff members** **or** ☐　　named users at Provider Location **And will be adjusted based upon any increase in named users at a cost of　　　per user per year or the then current list price.**	
Third Party Products Added By this Addendum: Due on Effective Date	
Web Server as described below (if zero, server to be supplied by Licensee)	N/A
Hardware Set up/Configuration Services	N/A
ProviderConnect configuration package: web server configuration in Netsmart data center	Please see Schedule 2(a) for Pricing and Payment Terms.
Total Payment -Third Party Products	
ProviderConnect Professional Services: Due on Effective Date	
Netsmart ProviderConnect professional services include: software set-up; synchronization with Netsmart software systems; one-day remote training; web services software configuration for ProviderConnect environment.	Please see Schedule 2(a) for Pricing and Payment Terms.
Total Payment – Professional Services	
Total Provider Connect System Cost	
TRAVEL AND LIVING AND TRAVEL TIME EXPENSES Billed monthly as incurred at the most economical rates. Travel Time will be billable at $150 per hour. Travel and Living Expenses are as follows: Meals: Charged at Netsmart's then current daily per diem rate. The current rate is $50.00 per day Airline: Coach Class on Major Airline including any additional fees applied by the airline Personal Vehicle: Personal vehicle usage will be reimbursed at the currently defined rate by the IRS Rental Car: Mid Size vehicle at local rates Ancillaries: Gas, Tolls, Parking Hotel: At local rates	Billed as incurred

Required Web Server Hardware Configuration
If server is to be supplied by Licensee, Licensee will make available a Web Server that either meets or exceeds the configuration shown in Schedule C Technology Environment.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement effective on   2011, is entered into by and between Netsmart Technologies, Inc. and   ("Covered Entity").

RECITALS

A.   The purpose of this Agreement is to comply with the Standards of Privacy and Security of Individually Identifiable Health Information ("protected health information") published on December 28, 2000 by the Secretary of the U.S. Department of Health and Human Services ("HHS") to amend 45 C.F.R. Part 160 and Part 164 (the "Privacy Regulation") under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and 42 CFR Part 2, and Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), including Sections 164.308, 164.310, 164.312 and 164.316 of Title 45 of the Code of Federal Regulations.

B.   This Agreement sets forth the terms and conditions pursuant to which protected health information that is provided by, or created or received by Netsmart Technologies, Inc. from or on behalf of Covered Entity will be handled.

C.   Terms used in this Agreement, not otherwise defined, shall have the same meaning as those terms in 45 CFR §§164.103, 164.304, 164.501 and 164.502.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter addressed, the parties agree as follows:

1.   Services. Netsmart Technologies, Inc. provides services for Covered Entity that involve the use and disclosure of protected health information. Except as otherwise specified herein, Netsmart Technologies, Inc. may make any and all uses of protected health information necessary to perform its obligations under the Services Agreement between the parties. Additionally, Netsmart Technologies, Inc. may use or disclose protected health information for the purposes authorized by this Agreement, and, except as otherwise limited by this Agreement, for the proper management and administration of Netsmart Technologies, Inc. or to carry out its legal responsibilities. Further, Netsmart Technologies, Inc. may use protected health information to report violations of law to appropriate Federal and State authorities consistent with 45 CFR §164.502 (j)(i).

2.   Responsibilities of Netsmart Technologies, Inc. With regard to its use and/or disclosure of protected health information, Netsmart Technologies, Inc. hereby agrees to do the following:

        (a)   Use and/or disclose the protected health information only as permitted or required by this Agreement or as otherwise required by law;

(b)   Mitigate to the extent practicable, any harmful effect that is known to it of a use or disclosure of protected health information by it in violation of the requirements of this Agreement;

(c)   Report to the designated privacy officer of Covered Entity, in writing, any use and/or disclosure of the protected health information that is not permitted or required by this Agreement or a security incident of which Netsmart Technologies, Inc. becomes aware within fifteen (15) days of Netsmart Technologies, Inc.'s discovery of such unauthorized use and/or disclosure;

(d)   Use commercially reasonable efforts to maintain the security of the protected health information and to prevent unauthorized use and/or disclosure of such protected health information and to implement Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of protected health information as required by 45 CFR Part 164 Subpart C ("Security Rule");

(e)   Require all of its employees, representatives, subcontractors or agents that receive or use or have access to protected health information under this Agreement to agree in writing to adhere to the same restrictions and conditions on the use and/or disclosure of protected health information that apply herein, including the obligation to return or destroy the protected health information as provided under (h) of this section;

(f)   Make available all records, books, agreements, policies and procedures relating to the use and/or disclosure of protected health information to the Secretary of HHS for purposes of determining Covered Entity's compliance with the Privacy and Security Regulations, subject to attorney-client and other applicable legal privileges;

(g)   Upon written request, make available during normal business hours at Netsmart Technologies, Inc.'s offices all records, books, agreements, policies and procedures relating to the use and/or disclosure of protected health information to the Covered Entity within thirty (30) days for purposes of enabling Covered Entity to determine Netsmart Technologies, Inc.'s compliance with the terms of this Agreement;

(h)   Within forty five (45) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by the Covered Entity to permit Covered Entity to respond to a request by the subject individual for amendment and accounting purposes of the disclosures of the individual's protected health information in accordance with 45 C.F. R. §164.526 and §164.528;

(i)   Return to Covered Entity or destroy, as requested by Covered Entity, within thirty (30) days of the termination of this Agreement, the protected health information in Netsmart Technologies, Inc.'s possession and retain no copies or back-up tapes;

(j)   If Netsmart Technologies, Inc. maintains, retains, modifies, records, stores, destroys or otherwise holds, uses, or discloses Unsecured Protected Health Information

(as defined in HITECH Section 4402 (h)(i)), it shall, following the discovery of a breach of such information, notify Covered Entity of such breach. Such notice shall include the identification of each individual whose Unsecured Protected Health Information has been or is reasonably believed by Netsmart Technologies, Inc. to have been accessed, acquired or disclosed during such breach; and

(k)   Netsmart Technologies, Inc. represents that if applicable to it, it has policies and procedures in place designed to detect, prevent and mitigate the risk of Identity Theft to comply with the Federal Trade Commissions Identity Theft Prevention Red Flags Rule (16 CFR § 681.2).

3.   Responsibilities of Covered Entity With regard to the use and/or disclosure of protected health information by Netsmart Technologies, Inc., Covered Entity hereby agrees:

(a)   To inform Netsmart Technologies, Inc. of any changes or limitations in the form of notice of privacy practices that Covered Entity provides to individuals pursuant to 45 C.F.R. §164.520 and provide Netsmart Technologies, Inc. a copy of the notice currently in use;

(b)   To inform Netsmart Technologies, Inc. of any changes in, or withdrawal of, the consent or authorization provided to Covered Entity by individuals whose protected health information may be used and/or disclosed by Netsmart Technologies, Inc. under this Agreement pursuant to 45 C.F.R. §164.506 or §164.508; and

(c)   To notify Netsmart Technologies, Inc. in writing and in a timely manner, of any restrictions on the use and/or disclosure of protected health information agreed to by Covered Entity as provided for in 45 C.F.R. §164.522.

(d)   Covered Entity shall not request Netsmart Technologies, Inc. to use or disclose protected health information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, provided that, to the extent permitted by the Service Arrangement, Netsmart Technologies, Inc. may use or disclose Protected Health Information for Netsmart Technologies, Inc.'s Data Aggregation activities or proper management and administrative activities.

4.   Mutual Representation and Warranty. Each party represents and warrants to the other party that all of its employees, agents, representatives and members of its work force, whose services may be used to fulfill obligations under this Agreement, are or will be appropriately informed of the terms of this Agreement and are under legal obligation to fully comply with all provisions of this Agreement.

5.   Term and Termination.

(a)   Term. This Agreement will become effective on the Effective Date and will continue in effect until all obligations of the parties have been met, unless terminated as provided herein or by mutual agreement of the parties.

(b)   Termination. As provided for under 45 C.F.R. §164.504 (e)(2)(iii), Covered Entity may immediately terminate this Agreement and any related agreement if it determines that Netsmart Technologies, Inc. has breached a material provision of this Agreement, provided that Covered Entity agrees that if a breach is curable, it will: (i) provide Netsmart Technologies, Inc. with five (5) days written notice of the existence of an alleged material breach; and (ii) afford Netsmart Technologies, Inc. an opportunity to cure said alleged material breach upon mutually agreeable terms. Failure to cure in the manner set forth in this Section is grounds for the immediate termination of the Agreement and any related agreement. If termination is not feasible, Covered Entity will report the breach to the Secretary of HHS. This Agreement will automatically terminate without any further action of the parties upon the termination or expiration of the related agreement.

6.   Survival.   The respective rights and obligations of Netsmart Technologies, Inc. and Covered Entity under the provisions of Sections 2(h) and 8 will survive the termination of this Agreement indefinitely.

7.   Amendment. This Agreement may not be modified or amended, except in writing as agreed to by each party.

8.   No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor will anything herein confer, upon any person other than the parties hereto any rights, remedies, obligations, or liabilities whatsoever.

9.   Notices. Any notices required or permitted to be sent hereunder will be in writing and will be sent, Certified Mail, Return Receipt Requested, or by a recognized international courier. Notices will be sent to the addresses first set forth above or to such other address as a party may designate by notice pursuant hereto. Notices to Netsmart will be sent "Attention: Chief Financial Officer". Notices will be effective upon the date when delivery is either effected or refused.

10.   Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA, the Privacy Rule, the Security Rule and HITECH.

11.   Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA and HITECH.

12.   Binding Effect. This Agreement shall be binding upon the parties hereto, and their respective legal representatives, trustees, receivers, successors and permitted assigns.

13.   Severability. Should any provision of this Agreement be found unenforceable, it shall be deemed severable and the balance of the Agreement shall continue in full force and effect as if the unenforceable provision had never been made a part hereof.

Milwaukee County Professional Services Agreement
20110913

14.   Entire Agreement. This Agreement, including such portions as are incorporated by reference herein, constitutes the entire agreement by, between and among the parties, and such parties acknowledge by their signature hereto that they do not rely upon any representations or undertakings by any person or party, past or future, not expressly set forth in writing herein.

15.   Security Rule Assurances

(a)   Netsmart Technologies, Inc. will implement and use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity.

(b)   If Netsmart Technologies, Inc. maintains, retains, modifies, records, stores, destroys or otherwise holds, uses or discloses Unsecured Protected Health Information (as defined in HITECH Section 4402 (h)(i)), it shall, following the discovery of a breach of such information, notify Covered Entity of such breach. Such notice shall include the identification of each individual whose Unsecured Protected Health Information has been or is reasonably believed by Netsmart Technologies, Inc. to have been accessed, acquired or disclosed during such breach.

(c)   Netsmart Technologies, Inc. will ensure than any agent, including a subcontractor, to whom it provides electronic PHI agrees in a written contract to implement and use administrative, physical and technical safeguards that reasonably protect the integrity and availability of the electronic PHI. Business Associates must enter into the written contract before any use or disclosure of electronic PHI by such agent. The written contract must identify Covered Entity as a direct and intended third party beneficiary, with the right to enforce any breach of the contract concerning the use or disclosure of electronic PHI. Netsmart Technologies, Inc. will provide a copy of the written contract to Covered Entity upon request. The Business Associate Agreement or written contract will include notification of a breach of unsecured protected health information as referenced in Section 2(i) herein and compliance with the Red Flags Rule as referenced in Section 2(k) herein.

(d)   Netsmart Technologies, Inc. will report in writing to Covered Entity any security incident pertaining to such electronic PHI (whether involving Netsmart Technologies, Inc. or an agent, including a subcontractor). Netsmart Technologies, Inc. will provide such written report within 15 days after it becomes aware of any such security incident. Netsmart Technologies, Inc. will provide Covered Entity with the information necessary for Covered Entity to investigate any such security incident.

(e)   A security incident means "the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system".

(f)   Netsmart Technologies, Inc. will comply with any reasonable policies and procedures that Covered Entity implements to obtain compliance under the Security Rule.