



STATEWIDE CONTRACT

No. 23023

ELECTRONIC HEALTH RECORDS SOLUTION

For Use by Eligible Purchasers

By and Between

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

and

NETSMART TECHNOLOGIES, INC.

Dated March 15, 2024

STATEWIDE CONTRACT

No. 23023

ELECTRONIC HEALTH RECORDS SOLUTION

This Washington Statewide Contract (“Contract”) is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency (“Enterprise Services”) and Netsmart Technologies, Inc. a Delaware corporation (“Contractor”) and is dated and effective as of March 15, 2024.

RECITALS

- A. Pursuant to Legislative authorization, Enterprise Services, on behalf of the State of Washington, is authorized to develop, solicit, and establish enterprise procurement solutions, including statewide contracts, for goods and/or services to support Washington state agencies. See RCW 39.26.050(1). The Washington State Legislature also has authorized Enterprise Services to make these contracts available, pursuant to an agreement in which Enterprise Services ensures full cost recovery, to other local or federal government agencies or entities, public benefit nonprofit organizations, and any tribes located in the State of Washington. See RCW 39.26.050(1) & (2).
- B. Pursuant to its statutory authority, Enterprise Services is establishing a Contract for Electronic Health Records Solutions that is designed to enable eligible purchasers to procure specified electronic health records services from the awarded Contractor in a cost-effective, efficient manner using the terms and conditions of the Contract.
- C. On behalf of the State of Washington, Enterprise Services, as part of a competitive governmental procurement, issued Competitive Solicitation No. 23023 dated October 6, 2023.
- D. Enterprise Services evaluated all responses to the Competitive Solicitation and identified Contractor as an apparent successful bidder.
- E. Enterprise Services has determined that entering into this Contract will meet the identified needs and be in the best interest of the State of Washington.
- F. The purpose of this Contract is to enable eligible purchasers to purchase the Goods and/or Services as set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

- 1. TERM.** The term of this Contract is seventy two (72) months, commencing March 15, 2024 and ending March 14, 2030; *Provided*, however, that if Contractor is not in default and if, by September 1, 2029, in Enterprise Services’ reasonable judgment, Contractor satisfactorily has met the performance-based goals for contract extension, Enterprise Services shall extend the term of this Contract, by written amendment, for up to forty eight (48) additional months. Such extension amendment shall be on the same terms and conditions as set forth in this Contract. To earn the performance-based Contract term extension, Contractor must achieve the following performance-based metrics:

PERFORMANCE METRIC	PERFORMANCE REQUIREMENT FOR CONTRACT EXTENSION
Data Security Certifications and Notices:	Contractor timely provides to Enterprise Services annual security reports, attestations and Data Breach notifications (if applicable) as required by this Contract. <i>See Section 6.</i>
Services Availability Service Level Standard:	Services offered at the levels consistent with the service level agreements attached as Exhibit D and E.
Technical Support Service Level Standard:	Services offered at the levels consistent with the service level agreements attached as Exhibit D and E.
Insurance Endorsements:	Contractor timely provides to Enterprise Services at the designated address, without exception, annual insurance endorsements for the insurance coverages required by this Contract. <i>See Exhibit C – Insurance Requirements at § 4.</i>
Vendor Management Fee:	Contractor timely remits to Enterprise Service, with no less than a 75% on time rate over the contract term, the applicable Vendor Management Fee (VMF). <i>Note: Contractor must pay the VMF within thirty (30) calendar days of invoice from Enterprise Services. If Contractor is delinquent in timely paying the VMF for three (3) or more quarters within the first nine (9) quarters of the Contract term, Contractor will not be eligible for a performance-based extension.</i>
Contract Sales Reports:	Contractor timely provides to Enterprise Services, with no less than a 75% on time rate over the contract term, the required Contract quarterly sales reports. <i>Note: Contractor must provide the quarterly sales reports to Enterprise Services within thirty (30) calendar days of the quarter’s end. If Contractor is delinquent in providing the quarterly sales reports for three (3) or more quarters within the first nine (9) quarters of the Contract term, Contractor will not be eligible for a performance-based extension.</i>

2. ELIGIBLE PURCHASERS. This Contract may be utilized by any of the following types of entities (each an eligible “Purchaser”):

- 2.1. WASHINGTON STATE AGENCIES. All Washington state agencies, departments, offices, divisions, boards, and commissions.
- 2.2. WASHINGTON STATE INSTITUTIONS OF HIGHER EDUCATION (COLLEGES). Any the following institutions of higher education in Washington:
 - State universities – i.e., University of Washington & Washington State University;
 - Regional universities – i.e., Central Washington University, Eastern Washington University, & Western Washington University

- Evergreen State College;
 - Community colleges; and
 - Technical colleges.
- 2.3. CONTRACT USAGE AGREEMENT PARTIES. Any of the following types of entities that have executed a Contract Usage Agreement with Enterprise Services:
- Political subdivisions (e.g., counties, cities, school districts, public utility districts) in the State of Washington;
 - Federal governmental agencies or entities;
 - Public-benefit nonprofit corporations (i.e., § 501(c)(3) nonprofit corporations that receive federal, state, or local funding); and
 - Federally-recognized Indian Tribes located in the State of Washington.

3. SCOPE – INCLUDED GOODS AND/OR SERVICES AND PRICE.

- 3.1. CONTRACT SCOPE. Pursuant to this Contract, Contractor is authorized to sell and provide only those Goods and/or Services set forth in *Exhibit A – Included Goods/Services* for the prices set forth in *Exhibit B – Prices for Goods/Services*. Contractor shall not represent to any Purchaser under this Contract that Contractor has contractual authority to sell or provide any Goods and/or Services beyond those set forth in *Exhibit A – Included Goods/Services*.
- (a) Goods. For purposes of this Contract, “Goods” means all equipment, materials, supplies, ancillary parts, accessories, components and other items purchased by Purchaser pursuant to this Contract and as identified in the Purchase Order.
 - (b) Services. For purposes of this Contract, “Services” means all services of any nature ordered by Purchaser pursuant to this Contract and as identified in the Purchase Order.
 - (c) Specifications. Where applicable, specifications for Goods and/or Services are detailed in this Contract and the Purchase Order. Unless otherwise specified in the Purchase Order, all Goods and/or Services provided shall be new and unused of the latest model or design.
 - (d) For the avoidance of doubt Good and Services does not include any right to the Contractor’s intellectual property.
- 3.2. STATE’S ABILITY TO MODIFY SCOPE OF CONTRACT. Subject to mutual agreement between the parties, Enterprise Services reserves the right to modify the Goods and/or Services included in this Contract; *Provided*, however, that any such modification shall be effective only upon thirty (30) calendar days advance written notice; and *Provided further*, that any such modification must be within the scope of the Competitive Solicitation for this Contract.
- 3.3. PRICE CEILING. Although Contractor may offer lower prices to Purchasers, during the term of this Contract, Contractor guarantees to provide the Goods and/or Services at no greater than the prices set forth in *Exhibit B – Prices for Goods/Services*.
- 3.4. CONTRACT INFORMATION. Enterprise Services shall maintain and provide to eligible Purchasers information regarding this Contract, including scope, pricing, and lowest responsive, responsible bidder designation. In addition, Enterprise Services identifies awarded contractors who qualify as Washington Small Businesses, Certified Veteran-Owned

Businesses, or that, pursuant to the Contract provide Goods/Services that meet specified state procurement priorities as set forth in the Competitive Solicitation.

- 4. CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor makes each of the following representations and warranties as of the effective date of this Contract and at the time any order is placed pursuant to this Contract. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.
- 4.1. **QUALIFIED TO DO BUSINESS.** Contractor represents and warrants that Contractor is (a) in good standing; (b) qualified to do business in the State of Washington; and (c) registered with the Washington State Department of Revenue and the Washington Secretary of State.
 - 4.2. **TAXES.** Contractor represents and warrants that Contractor is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.
 - 4.3. **LICENSES; CERTIFICATIONS; AUTHORIZATIONS; & APPROVALS.** Contractor represents and warrants that Contractor possesses and shall keep current during the term of this Contract all required licenses, certifications, permits, authorizations, and approvals necessary for Contractor's proper performance of this Contract.
 - 4.4. **SUSPENSION & DEBARMENT.** Contractor represents and warrants as previously certified in Contractor's Bidder's Certification, that neither Contractor nor its principals or affiliates presently are nor have ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental contract by any governmental department or agency within the United States.
 - 4.5. **WAGE VIOLATIONS.** Contractor represents and warrants as previously certified in Contractor's Bidder's Certification, that during the term of this Contract and the three (3) year period immediately preceding the award of the Contract, Contractor has not been determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW 49.46, 49.48, or 49.52.
 - 4.6. **CIVIL RIGHTS.** Contractor represents and warrants that Contractor complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - 4.7. **PUBLIC CONTRACTS AND PROCUREMENT FRAUD.** Contractor represents and warrants that, within the three (3) year period prior to this Contract, neither Contractor nor its principals or affiliates: (a) have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, local, or tribal) contract or purchase order under a public contract; (b) have been in violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) have been indicted for or otherwise criminally or civilly charged by a government entity (federal, state, local, or tribal) with commission of any of the offense enumerated in subsection (b) of this provision; or (d) had one or more public contracts (federal, state, local, or tribal) terminated for cause or default.

- 4.8. PROCUREMENT ETHICS & PROHIBITION ON GIFTS. Contractor represents and warrants that Contractor complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to Enterprise Services and Purchasers' employees.
- 4.9. WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS). Contractor represents and warrants that Contractor is registered in Washington's Electronic Business Solution (WEBS), Washington's contract registration system and that, all of Contractor's information therein is current and accurate and that throughout the term of this Contract, Contractor shall maintain an accurate profile in WEBS.
- 4.10. WASHINGTON'S STATEWIDE PAYEE DESK. Contractor represents and warrants that Contractor is registered with Washington's Statewide Payee Desk, which registration is a condition to payment.
- 4.11. CONTRACT PROMOTION; ADVERTISING AND ENDORSEMENT. Contractor represents and warrants that Contractor shall use commercially reasonable efforts both to promote and market the use of this Contract with eligible Purchasers and to ensure that those entities that utilize this Contract are eligible Purchasers. Contractor understands and acknowledges that neither Enterprise Services nor Purchasers are endorsing Contractor's Goods and/or Services or suggesting that such Goods and/or Services are the best or only solution to their needs. Accordingly, Contractor further represents and warrants that Contractor shall make no reference to Enterprise Services, any Purchaser, or the State of Washington in any promotional material without the prior written consent of Enterprise Services.
- 4.12. CONTINGENT FEES. Contractor represents and warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents as defined in the Federal Acquisition Regulations.
- 4.13. FINANCIALLY SOLVENT. Contractor represents and warrants that Contractor has not commenced bankruptcy proceedings and that there are no judgment, liens, or encumbrances of any kind affecting title to any Goods and/or Services that are the subject of this Contract.
- 4.14. OPERATIONAL CAPABILITY. Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor has the operational and financial capability to perform the Contract.
- 4.15. CONTRACT TRANSITION. Contractor represents and warrants that, in the event this Contract or a similar contract, is transitioned to another contractor (e.g., Contract expiration or termination), Contractor shall use commercially reasonable efforts to assist Enterprise Services (including the Purchasers hereunder) for a period of sixty (60) calendar days to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington and such Purchasers; *Provided*, however, that, if costs are incurred, Contractor shall be compensated for such costs consistent with the terms and conditions pertaining to this Contract for the sixty (60) day period immediately before such transition.
- 4.16. ACCESSIBILITY. Contractor represents and warrants it shall exercise commercially reasonable efforts to comply with the Office of Chief Information Officer (OCIO) Standard 188.10 – Minimum Accessibility Standard located at <https://ocio.wa.gov/policy/minimum-accessibility-standard>. Contractor shall regularly review its systems and at the

commencement of this Contract, and annually thereafter, certify to Enterprise Services the current status of Contractors compliance to the OCIO Standard 188.10 by providing the most recent Contractors VPAT of accessibility guidelines product conformance report generated by the VPAT WCAG Edition.

5. QUALITY; WARRANTY; REMEDIES.

- 5.1. **FUNCTIONALITY WARRANTY.** Netsmart warrants that the Software Services will substantially conform in all material respects with the Documentation, provided Client is on the most current or next to most current version of the Software Services and no modifications, additions or alterations of any kind have been made. In the event of a breach of the foregoing warranty and provided Client is receiving Support Services, Netsmart will (i) correct any reproducible Problems or Defects in the Software Services which prevent it from operating in substantial conformance with the Documentation, or (ii) provide a commercially reasonable alternative that will substantially conform with the Documentation in accordance with the Support Services provisions set forth in Schedule A. The foregoing warranty will only apply if Client meets the Hardware Configuration. Client's exclusive remedy under this section and Netsmart's sole obligation is to modify the software services to eliminate the problem or defect. In the event Netsmart cannot modify or eliminate the problem or defect, client may terminate the agreement pursuant to the termination section and seek all available remedies at law and in equity. Netsmart warrants that the Licensed Programs will substantially conform in all material respects with their Documentation. Netsmart will correct any Problems or Defects in accordance with its Support Services program as then in effect.
- 5.2. **SERVICES WARRANTY.** Netsmart warrants that the Services will be performed in a professional manner in accordance with the terms in this Agreement.
- 5.3. **DISCLAIMER OF ALL OTHER WARRANTIES.** The foregoing warranties are in lieu of all other warranties and conditions express or implied, whether in relation to the software services, 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.

6. SAFETY; SECURITY. Contractor's failure to comply with any of the requirements in this Section shall be cause for termination.

- 6.1. **ACCIDENT AND INJURY REPORTING.** If Contractor, its agents, employees, or subcontractors are present at Purchaser's premises, Contractor promptly will report in writing all injuries, accidents, property damage, near-miss incidents, or any claims regarding damages or injury involving Contractor, its agents, employees, or subcontractors occurring at such premises. Contractor agrees to cooperate and assist in any Purchaser investigation of incidents.
- 6.2. **ON SITE REQUIREMENTS.** While on Purchaser's premises, Contractor, its agents, employees, or subcontractors shall comply, in all respects, with Purchaser's physical, fire, access, safety, and other security requirements and not interfere with Purchaser's operations. Contractor represents and warrants that Contractor, its agents, employees, or subcontractors who access Purchaser's premises will be adequately trained and at all times comply with Purchaser's requirements.
- 6.3. **DATA SECURITY.**
- a) **SECURITY COMPLIANCE.** Contractor is responsible for establishing an information security program and maintaining physical, technical, administrative, and organizational

safeguards, that comply with: (a) applicable industry standards and guidelines; (b) requirements set forth in *Exhibit A – Included Goods/Services*; (c) applicable Washington State IT policies and standards located at <https://ocio.wa.gov/policies>. Netsmart maintains security policies and standards aligned to NIST 800-53 Revision 5 Moderate, the U.S. Health Insurance Portability and Accountability Act (“HIPAA”), including as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH”). Netsmart Policies include administrative, technical, and physical safeguards designed to protect the processing of Confidential Information, including client data. Where applicable, if there are specific policies of concern, Netsmart will make commercially reasonable efforts to comply with State IT policies and standards that may differ from above that do not conflict with Netsmart policy.

- b) ANNUAL SECURITY CERTIFICATIONS. Contractor will host the EHR solutions in a FedRAMP compliant cloud environment. Validation of FedRAMP compliance is available through <https://marketplace.fedramp.gov/products>
- c) DATA BREACH. Contractor must have an incident response process that follows National Institute of Standards and Technology (NIST) standards and includes breach detection, breach notification and breach response. Upon discovery or reasonable belief of any access, destruction, loss, theft, use or disclosure of Purchaser’s Data by an unauthorized party (“Data Breach”), Contractor shall notify the Purchaser and Enterprise Services by the fastest means available and also in writing. Contractor shall provide such notification within forty-eight (48) hours after Contractor reasonably believes there has been such a Data Breach. Contractor’s notification shall identify:
 - i. The nature of the Data Breach;
 - ii. The Data accessed, used or disclosed;
 - iii. The person(s) who accessed, used, disclosed and/or received Data (if known);
 - iv. What Contractor has done or will do to quarantine and mitigate the Data Breach; and
 - v. What corrective action Contractor has taken or will take to prevent future Data Breaches.

Contractor shall quarantine the Data Breach, ensure secure access to Data, and restore Services as needed to comply with terms and conditions of this Contract. Contractor shall conduct an investigation of the Data Breach and shall share the report of the investigation with Enterprise Services.

In the event of the Data Breach, Contractor agrees to comply with all applicable state and federal statutory provisions, including but not limited to Revised Code of Washington (RCW) 19.255.010 and RCW 42.56.590. Where notifications are required to the public or regulators, Contractor shall coordinate and cooperate with the Purchaser and Enterprise Services in the development of a communication plan, and promptly and at no cost, provide advance copies of any notifications for Purchaser’s and Enterprise Services review before disseminating. If a Data Breach occurs and is found to be the result of Contractor’s acts, omissions or negligence, Contractor shall assume complete responsibility for notification of affected parties, and be liable for all associated costs incurred by the Purchaser and Enterprise Services in responding to or recovering from the Data Breach.

- d) **TECHNICAL EXAMINATION AND AUDIT.** Contractor is offering its standard security framework as part of this proposal and will operate according to its policies and procedures. Contractor governs and aligns its ISMS to NIST 800-53 Rev 5 Moderate Cybersecurity Framework. For Plexus Cloud Services, Netsmart annually completes third party audits for compliance with SSAE18 SOC 2 Type 2, and the U.S. Health Insurance Portability and Accountability Act (“HIPAA”), including as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH”) and undergoes a minimum of annual penetration tests and regular vulnerability analysis.

Contractor performs regular vulnerability scans and addresses findings according to Contractor policy and procedures. The Contractor's vulnerability assessment and remediation process is validated in Contractor's annual SOC 2 Type 2 report which is available to the State upon request.

Netsmart contracts with an independent, accredited, 3rd party to perform an annual HIPAA Security Risk Assessment. The latest executive summary letter describing the assess and results is available upon request.

7. SUBCONTRACTORS.

- 7.1. **CONTRACTOR RESPONSIBILITY.** Notwithstanding any provision to the contrary, in the event Contractor elects to utilize subcontractors to perform this Contract, Contractor shall: (a) be fully responsible for the performance of any such subcontractors (regardless of tier) and ensure that subcontractors comply with each and every Contractor obligation set forth in this Contract; (b) be the sole point of contact for Enterprise Services and any Purchasers regarding all contractual matters; (c) ensure that such subcontractors are registered in WEBS; and (d) defend, indemnify, and hold Enterprise Services and Purchasers harmless in case of negligence, other tortious fault, or intentional misconduct by any such subcontractors (regardless of tier). Prior to utilizing any subcontractor to perform this Contract, Contractor shall provide written notice to Enterprise Services' contract administrator. Such notice shall confirm that the subcontractor is registered in WEBS and provide the necessary information for Enterprise Services' contract administrator to include such subcontractor(s) in Washington's Purchasing Contract Management System (PCMS).
- 7.2. **REPORTING.** If Contractor is required to report to Purchaser and/or Enterprise Services, such report(s) will include subcontractor data, by subcontractor, for any data that Contractor is required to report as well as a consolidated 'rollup' report combining Contractor and subcontractor data.
- 7.3. **SUBCONTRACTOR REPRESENTATIONS AND CERTIFICATIONS.** Any Contractor representations or certifications set forth in this Contract shall apply to subcontractors (at any tier) and Contractor shall not utilize any subcontractors (at any tier) who cannot provide such representations or certifications, excepting the certification to be registered with Washington's Statewide Payee Desk, unless Purchaser will pay such subcontractor directly.

8. USING THE CONTRACT – PURCHASES.

- 8.1. **ORDERING REQUIREMENTS.** Eligible Purchasers shall order Goods and/or Services from this Contract, consistent with the terms hereof and by using any ordering mechanism agreeable both to Contractor and Purchaser but including, at a minimum, a purchase order. When

practicable, Contractor and Purchaser also shall use telephone orders, email orders, web-based orders, and similar procurement methods (collectively "Purchaser Order"). All Purchase Orders must reference the Contract number. The terms of this Contract shall apply to any Purchase Order and, in the event of any conflict, the terms of this Contract shall prevail. Notwithstanding any provision to the contrary, in no event shall any 'click-agreement,' software or web-based application terms and conditions, or any other agreement modify the terms and conditions of this Contract.

8.2. DELIVERY REQUIREMENTS. Contractor must ensure that the Goods and/or Services are delivered or provided as required by this Contract, the Purchase Order used by Purchaser, and as otherwise mutually agreed in writing between Purchaser and Contractor. The following apply to all deliveries:

(a) LOCATION OF SERVICES. The Services shall be provided solely from within the continental United States and on computing and data storage devices residing therein.

8.3. RECEIPT AND INSPECTION OF GOODS AND/OR SERVICES. Goods and/or Services purchased under this Contract are subject to Purchaser's reasonable inspection, testing, and approval at Purchaser's destination. Purchaser reserves the right to reject and refuse acceptance of Goods and/or Services that are not in accordance with this Contract and Purchaser's Purchase Order. If there are any apparent defects in the Goods and/or Services at the time of delivery, Purchaser promptly will notify Contractor. At Purchaser's option, and without limiting any other rights, Purchaser may require Contractor to repair or replace, at Contractor's expense, any or all of the damaged Goods and/or Services or, at Purchaser's option, Purchaser may note any such damage on the receiving report, decline acceptance, and deduct the cost of rejected Goods and/or Services from final payment. Payment for any Goods and/or Services under such Purchase Order shall not be deemed acceptance.

8.4. LICENSE FOR SERVICES.

(a) AUTHORIZED USERS. Subject to the terms of this Contract and the Purchase Order, Contractor grants Purchaser Software Services, in object code only:

- a. for Client's internal business purposes and not to process the data of any other entity; and
- b. to support one production database within the Scope of Use for the Software Services set forth on the applicable Purchase Agreement.

(b) License Rights. The license rights granted in this section may be exercised by Client, its employees, and independent contractors (provided that such independent contractors are not competitors of Netsmart) (each a "User"). Client shall be responsible for each User(s) compliance with the terms of this Agreement.

(c) License Restrictions. Except as expressly stated in this Agreement, no other rights, express, implied, or otherwise, are granted to Client and Netsmart reserves all rights not expressly granted herein. Client will not permit the Software Services or Third Party Products (i) to be disassembled or reversed engineer, (ii) to be sold, disclosed, leased, subleased, lent or otherwise made available to others including third party hosting providers, (iii) to be or attempted to be accessed, modified, make additions to or altered, (iv) make any derivations, adaptations, or translations of the Software Services in whole or in part, and (v) to be used to develop functionally similar computer software or to otherwise compete with Netsmart. No copies of the Software Services or Third Party Products may be made by Client without the prior

written consent of Netsmart except for backup purposes in accordance with normal data processing practices. Client agrees to reproduce any copyright notices and/or other proprietary legends, regardless of form, contained in, affixed to, or appearing on the Licensed Software and Third Party Products.

- (d) Software Title. The Software Services are proprietary to Netsmart and are based upon and contain trade secrets and other Confidential Information. Netsmart reserves title to the Software Services and all other rights not expressly granted herein.
- (e) Third Party Products. Third Party Products are licensed subject to the same restrictions as are set forth in this Agreement. Third Party Products are also subject to and Client agrees to the pass through terms that apply to those Third Party Products at <https://www.ntst.com/lp/pass-through-terms>.
- (f) PRE-EXISTING MATERIALS. Enterprise Services acknowledges that, in the course of performing the Services, Contractor may use software and related processes, instructions, methods, and techniques that have been previously developed by Contractor (collectively, the "Pre-existing Materials") and that the same shall remain the sole and exclusive property of Contractor.
- (g) CHANGES IN FUNCTIONALITY. During the term of the Contract, Contractor shall not reduce or eliminate functionality in the Services. Where Contractor has reduced or eliminated functionality in the Services, Enterprise Services, at Enterprise Services' sole election and in Enterprise Services' sole determination, shall: (a) have, in addition to any other rights and remedies under this Contract or at law, the right to immediately terminate this Contract and be entitled to a return of any prepaid fees; or, (b) determine the value of the reduced or eliminated functionality and Contractor will immediately adjust the Services fees accordingly on a prospective basis. If improved features or versions (e.g., patches, bug fixes, updates or releases) are made available to other Services' users at no additional cost, Contractor also shall make such improved features or versions available to Purchasers at no additional cost and with the same rights, obligations and limitations as for the Services.
- (h) DOCUMENTATION. Contractor shall provide the documentation for the Services ("Documentation") that accurately and completely describes the functions and features of the Services, including all subsequent revisions thereto. The Documentation shall be understandable by a typical end user and shall provide Authorized Users with sufficient instructions such that an Authorized User can become self-reliant with respect to access and use of the Services.

8.5. DATA OWNERSHIP, USE, RECOVERY.

- (a) DATA OWNERSHIP AND USE. Purchaser's data ("Data") shall include data collected, used, processed, stored, or generate as the result of the use of the Services. Data is and shall remain the sole and exclusive property of the Purchaser. Contractor is provided a limited, non-exclusive license to access and use Data solely for performing its obligations under the Contract. Contractor shall: (a) keep and maintain Data in strict confidence and as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; and, (b) not use, sell, rent, transfer, distribute, or otherwise disclose or make available Data for Contractor's own purposes or for the benefit of anyone other than Purchaser without Purchaser's prior written consent.

- (b) DATA BACKUP. As part of the Services, Contractor is responsible for maintaining a backup of Data and for an orderly and timely recovery of such Data in the event that the Services may be interrupted. Contractor shall maintain a contemporaneous backup of Data that can be recovered within the Recovery Point Objective (RPO) specified in part (e) of this section.
- (c) EXTRACTION OF DATA. Contractor shall, within a reasonable timeframe of Purchaser's request, provide Purchaser, at then current Netsmart services pricing and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the Data a machine readable format
- (d) RETURN OF DATA. Sixty (60) days prior to the expiration date of the Purchase Order, or upon notice of termination of the Purchase Order, Contractor, without charges and without any conditions or contingencies, shall assist Purchaser in extracting and/or transitioning all Data in in a machine readable format. After all Data is returned to Purchaser, Contractor shall within sixty (60) days delete all Data from all Contractor's systems in compliance with procedures established by the National Institute of Standards and Technology (NIST). Within the same time period, Contractor shall certify to Purchaser that Contractor has destroyed all Purchaser's Data disclosed to it under this Contract.
- (e) DISASTER RECOVERY. In the event of disaster or catastrophic failure that results in significant Data loss or extended loss of access to Data, Contractor shall notify Purchasers and Enterprise Services by the fastest means available and also in writing. Contractor shall provide such notification within twenty-four (24) hours after Contractor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Contactor shall inform Purchasers and Enterprise Services of:
 - i. The scale and quantity of the Data loss;
 - ii. What Contractor has done or will do to recover the Data and mitigate any deleterious effect of the Data loss; and
 - iii. What corrective action Contractor has taken or will take to prevent future Data loss.

Contractor shall restore continuity of Services to meet the 24 hours Recovery Point Objective (RPO) and 72 hours Recovery Time Objective (RTO) from the official Netsmart declaration of a disaster. At the commencement of the Contract, Contractor shall provide a copy of its disaster recovery plan and obtain Enterprise Services' written approval of the disaster recovery plan. Contractor shall annually demonstrate the completion of disaster recovery testing and present a summary of test findings and any resulting remedial actions.

8.6. SERVICE LEVEL AGREEMENT. See attached Exhibit D – Service Level Agreement.

9. INVOICING & PAYMENT.

9.1. CONTRACTOR INVOICE. Contractor shall submit properly itemized invoices to Purchaser's designated invoicing contact for Goods and/or Services delivered under this Contract. Such invoices shall itemize the following:

- (a) Contract No. 23023;

- (b) Purchaser's Purchase Order Number;
- (c) Contractor name, address, telephone number, and email address for billing issues (i.e., Contractor Customer Service Representative);
- (d) Contractor's Federal Tax Identification Number;
- (e) Date(s) of delivery;
- (f) Applicable Goods and/or Services;
- (g) Invoice amount; and
- (h) Payment terms, including any available prompt payment discounts.

Contractor's invoices for payment shall reflect accurate Contract prices. Invoices will not be processed for payment until receipt of a complete invoice as specified herein.

- 9.2. **PAYMENT.** Payment is the sole responsibility of, and will be made by, the Purchaser. Purchaser's obligation to pay invoices is subject to receipt of a timely and accurate invoice and conforming Goods and/or Services. Unless Contractor has provided a prompt payment discount set forth in *Exhibit B – Prices for Goods/Services*, Purchaser's payment is due within thirty (30) calendar days of invoice. Purchaser retains the right of setoff for any amount due or owing to Purchaser. Purchaser may make payments electronically (e.g., ACH payments). Contractor shall provide information necessary to facilitate electronic payments. If Purchaser fails to make timely payment(s), Contractor may invoice Purchaser in the amount of one percent (1%) per month on the amount overdue or a minimum of \$1. Payment will not be considered late if a check or warrant is mailed within the time specified.
- 9.3. **PROJECT IMPLEMENTATION FEES.** Purchasers shall pay to Contractor the project implementation fees based on the rates set forth in *Exhibit B - Prices for Goods/Services* and as mutually agreed between the Purchaser and Contractor. Notwithstanding any provision to the contrary, Contractor's compensation to implement the Services is contingent upon Purchaser's approval of Contractor's satisfactory completion of the deliverables and milestones set forth in the Purchaser Order. The parties understand and agree that this is a performance-based contract. Accordingly, in regard to implementation of the Services, Contractor shall be paid pursuant to the milestone schedule as mutually agreed between the Purchaser and Contractor and set forth in the Purchase Order.
- 9.4. **OVERPAYMENTS.** Contractor promptly shall refund to Purchaser the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) calendar days of written notice to Contractor; *Provided*, however, that Purchaser shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely refunds of overpayment(s) (either directly or by credit memo), Contractor shall pay Purchaser interest at the rate of one percent (1%) per month on the amount overdue thirty (30) calendar days after notice to Contractor.
- 9.5. **ADVANCE PAYMENT PROHIBITED.** Except as authorized by law, Contractor shall not request or receive advance payment for any Goods and/or Services furnished by Contractor pursuant to this Contract.
- 9.6. **NO ADDITIONAL CHARGES.** Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, insurance, or payment processing.

- 9.7. TAXES/FEEES. Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Contract. Failure to do so shall constitute breach of this Contract. Unless otherwise agreed, Purchaser shall pay applicable sales tax imposed by the State of Washington on purchased Goods and/or Services. Contractor’s invoices shall separately state (a) taxable and non-taxable charges and (b) sales/use tax due by jurisdiction. In regard to federal excise taxes, Contractor shall include federal excise taxes only if, after thirty (30) calendar days written notice to Purchaser, Purchase has not provided Contractor with a valid exemption certificate from such federal excise taxes.

10. CONTRACT MANAGEMENT.

- 10.1. CONTRACT ADMINISTRATION & NOTICES. Except for legal notices, the parties hereby designate the following contract administrators as the respective single points of contact for purposes of this Contract. Enterprise Services’ contract administrator shall provide Contract oversight. Contractor’s contract administrator shall be Contractor’s principal contact for business activities under this Contract. The parties may change contract administrators by written notice as set forth below.

Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

Enterprise Services	Contractor
Attn: DES Contracts Team Cypress Washington Dept. of Enterprise Services PO Box 41411 Olympia, WA 98504-1411 Tel: (360) 407-2218 Email: DESContractsTeamCypress@des.wa.gov	Attn: Stu Parker Netsmart Technologies, Inc. 11100 Nall Avenue Overland Park, KS 66211 Tel: (913) 272 - 2270 Email: SParker@ntst.com , contracts_notice@ntst.com

Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

- 10.2. CONTRACTOR CUSTOMER SERVICE REPRESENTATIVE. Contractor shall designate a customer service representative (and inform Enterprise Services of the same) who shall be responsible for addressing Purchaser issues pertaining to this Contract.
- 10.3. LEGAL NOTICES. Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

Enterprise Services	Contractor
Attn: Legal Services Manager Washington Dept. of Enterprise Services PO Box 41411 Olympia, WA 98504-1411 Email: greg.tolbert@des.wa.gov	Attn: General Counsel Netsmart Technologies, Inc. 11100 Nall Avenue Overland Park, KS 66211 Email: contracts_notice@ntst.com

Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon return receipt, or, if emailed, upon transmission to the designated email address of said addressee.

11. CONTRACTOR SALES REPORTING; VENDOR MANAGEMENT FEE; & CONTRACTOR REPORTS.

11.1. CONTRACT SALES REPORTING. Contractor shall report total Contract sales quarterly to Enterprise Services, as set forth below.

- (a) Contract Sales Reporting System. Contractor shall report quarterly Contract sales in Enterprise Services’ Contract Sales Reporting System. Enterprise Services will provide Contractor with a login password and a vendor number. The password and vendor number will be provided to the Sales Reporting Representative(s) listed on Contractor’s Bidder Profile.
- (b) Data. Each sales report must identify every authorized Purchaser by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The “Miscellaneous” option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasers specified herein during the term of the Contract. If there are no Contract sales during the reporting period, Contractor must report zero sales.
- (c) Due dates for Contract Sales Reporting. Quarterly Contract Sales Reports must be submitted electronically by the following deadlines for all Contract sales invoiced during the applicable calendar quarter:

QUARTER	FOR SALES MADE IN CALENDAR QUARTER ENDING	CONTRACT SALES REPORT	
		DUE BY	PAST DUE
1	January 1 – March 31	April 30	May 1
2	April 1 – June 30	July 31	August 1
3	July 1 – September 30	October 31	November 1
4	October 1 – December 31	January 31	February 1

11.2. VENDOR MANAGEMENT FEE. Contractor shall pay to Enterprise Services a vendor management fee (“VMF”) of 1.25 percent on the purchase price for all Contract sales (the purchase price is the total invoice price less applicable sales tax).

- (a) The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:

$$\text{Amount owed to Enterprise Services} = \text{Total Contract sales invoiced (not including sales tax)} \times .0125.$$
- (b) The VMF must be rolled into Contractor’s current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.
- (c) Enterprise Services will invoice Contractor quarterly based on Contract sales reported by Contractor. Contractor is not to remit payment until Contractor

receives an invoice from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference this Contract number, the year and quarter for which the VMF is being remitted, and Contractor's name as set forth in this Contract, if not already included on the face of the check.

- (d) Contractor's failure to report accurate total net Contract sales, to submit a timely Contract sales report, or to remit timely payment of the VMF to Enterprise Services, may be cause for Enterprise Services to suspend Contractor or terminate this Contract or exercise remedies provided by law. Without limiting any other available remedies, the parties agree that Contractor's failure to remit to Enterprise Services timely payment of the VMF shall obligate Contractor to pay to Enterprise Services, to offset the administrative and transaction costs incurred by the State to identify, process, and collect such sums, the sum of \$200.00 or twenty-five percent (25%) of the outstanding amount, whichever is greater, or the maximum allowed by law, if less.
- (e) Enterprise Services reserves the right, upon thirty (30) calendar days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases, and reserves the right to renegotiate Contract pricing with Contractor when any subsequent adjustment of the VMF might justify a change in pricing.

11.3. ANNUAL CONTRACT SALES REPORT. Contractor shall provide to Enterprise Services a detailed annual Contract sales report. Such report shall include, at a minimum: the Goods and/or Services sold (including, as applicable, item number or other identifier), per unit quantities sold, items and volumes purchased by Purchaser, shipment/delivery locations by Purchaser, and Contract price. This report must be provided in an electronic format that can be read by Microsoft (MS) Excel. Such report is due within thirty (30) calendar days of the annual anniversary of the effective date of this Contract.

12. RECORDS RETENTION & AUDITS.

12.1. RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Contract and orders placed by Purchasers under it to the extent and in such detail as shall adequately reflect contract performance and administration of purchases, payments, taxes, and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Contract or final payment for any order placed by a Purchaser against this Contract, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

12.2. AUDIT. Enterprise Services reserves the right to audit, or have a designated third party audit, applicable records to ensure that Contractor properly has invoiced Purchasers and that Contractor has paid all applicable vendor management fees to Enterprise Services. Accordingly, Contractor shall permit Enterprise Services, any Purchaser, and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Contract or Purchase Orders placed by a Purchaser under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following expiration or termination of this Contract or final payment for any

order placed by a Purchaser against this Contract, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

- 12.3. OVERPAYMENT OF PURCHASES OR UNDERPAYMENT OF FEES. Without limiting any other remedy available to any Purchaser, Contractor shall (a) reimburse Purchasers for any overpayments inconsistent with the terms of this Contract or Purchase Orders placed thereunder, at a rate of 125% of any such overpayments, found as a result of the examination of Contractor's records; and (b) reimburse Enterprise Services for any underpayment of vendor management fees, at a rate of 125% of such fees found as a result of the examination of Contractor's records (e.g., if Contractor underpays the Vendor Management Fee by \$500, Contractor would be required to pay to Enterprise Services $\$500 \times 1.25 = \625); *Provided*, however, that, in the event Contractor timely discovers and corrects any Purchaser overpayment or Contractor underpayment of vendor management fees and does so prior to the initiation of any audit, Contractor shall be entitled to reimburse Purchaser or pay to Enterprise Services the actual amount of such Purchaser overpayment or such underpayment of vendor management fees.

13. INSURANCE.

- 13.1. REQUIRED INSURANCE. Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit C – Insurance Requirements*. All costs for insurance, including any payments of deductible amounts, shall be considered incidental to and included in the prices for Goods and/or Services and no additional payment shall be made to Contractor.
- 13.2. WORKERS COMPENSATION. Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Enterprise Services may terminate this Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from Contractor. If Contractor performs Services on Purchaser's behalf in the State of Washington, and only to the extent of claims against Contractor by Purchaser under the Indemnity obligations in this Contract, Contractor expressly waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. Contractor's indemnification obligation will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The parties expressly acknowledge and certify that the waiver of immunity under Title 51 RCW was mutually negotiated and agreed upon.

14. CLAIMS.

- 14.1. ASSUMPTION OF RISKS; CLAIMS BETWEEN THE PARTIES. Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees and agents in connection with its operations under this Contract. Enterprise Services has made no representations regarding any factor affecting Contractor's risks. Contractor shall pay for all damage to any Purchaser's property resulting directly or indirectly from Contractor's acts or omissions under this Contract, even if not attributable to negligence by Contractor or its agents.
- 14.2. THIRD-PARTY CLAIMS; GENERAL INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold Enterprise Services and any Purchaser and their employees and agents harmless from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities, or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "Claims") arising out of Contractor's or its successors', agents', or subcontractors' negligence, other tortious fault, or intentional misconduct under this Contract; *Provided*, however, that no right to indemnity will exist as to that portion of a Claim resulting from the sole negligence, tortious fault, or intentional misconduct of Enterprise Services or Purchaser. The parties agree that if there are any limitations of Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability shall not apply to injuries to persons (including death), damages to property, data breach (only as set forth in section 16.8), and/or intellectual property infringement. Contractor shall take all steps needed to keep Purchaser's property free of liens arising from Contractor's activities, and promptly obtain or bond the release of any such liens that may be filed.
- 14.3. INTELLECTUAL PROPERTY INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold Enterprise Services and any Purchaser and their employees and agents harmless from against any and all Claims resulting from allegations of infringement of any patents, copyrights, trade secret, or similar intellectual property rights covering the Goods and/or Services provided, or the use of the Goods and/or Services under this Contract. If Purchaser's use of Goods and/or Services provided by Contractor is enjoined based on an intellectual property infringement Claim, Contractor shall, at its own expense, either procure for Purchaser the right to continue using the Goods and/or Services or, after consulting with Purchaser and obtaining Purchaser's consent, replace or modify the Goods and/or Services with substantially similar and functionally equivalent non-infringing Goods and/or Services.

15. DISPUTE RESOLUTION. The parties shall cooperate to resolve any dispute pertaining to this Contract efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior managers of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute.

16. TERMINATION; EXPIRATION; SUSPENSION; & REMEDIES.

- 16.1. **TERMINATION.** This Contract may be terminated: (a) upon the mutual written agreement of the parties; (b) by the non-breaching party where the breach is not cured within thirty (30) calendar days after written notice of breach is delivered to the breaching party, unless a different time for cure is otherwise stated in this Contract; and (c) as otherwise expressly provided for in this Contract. This Contract shall terminate automatically and without further action if a party becomes insolvent or is placed in receivership, reorganization, liquidation, or bankruptcy. In addition to any other available remedies, the non-breaching party may terminate this Contract as provided in subsection (b) above without further liability by written notice to the breaching party. A termination for breach will not affect rights or obligations accrued or owed before the effective date of the termination notice.
- 16.2. **TERMINATION FOR NONAPPROPRIATION OR REDUCTION OF FUNDS OR CHANGES IN LAW.** Enterprise Services may suspend or terminate this Contract and Purchasers may suspend or terminate applicable Purchase Orders, in whole or in part, at the sole discretion of Enterprise Services or, as applicable, Purchaser, if Enterprise Services or, as applicable, Purchaser reasonably determines that: (a) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract or applicable Purchase Order; or (b) that a change in available funds affects Purchaser's ability to pay under the applicable Purchase Order. A change of available funds as used in this section includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor. If a written notice is delivered under this provision, Purchaser will reimburse Contractor for Goods properly ordered and/or Services properly performed until the effective date of said notice. Except as stated in this provision, in the event of termination for nonappropriation or reduction of funds or changes in law, Purchaser will have no obligation or liability to Contractor.
- 16.3. **TERMINATION FOR PUBLIC CONVENIENCE.** Enterprise Services, for public convenience, may terminate this Contract; *Provided*, however, that such termination for public convenience must, in Enterprise Services' judgment, be in the best interest of the State of Washington; and *Provided further*, that such termination for public convenience shall only be effective upon sixty (60) calendar days prior written notice; and *Provided further*, that such termination for public convenience shall not relieve any Purchaser from payment for Goods/Services already ordered/performed (which shall include all work in progress under an applicable Purchase Order) as of the effective date of such notice. Except as stated in this provision, in the event of such termination for public convenience, neither Enterprise Services nor any Purchaser shall have any obligation or liability to Contractor.
- 16.4. **PURCHASER OBLIGATIONS – EXPIRATION.** Upon expiration of this Contract, Purchaser shall accept and take delivery of all outstanding and not yet fulfilled Purchase Orders and pay Contractor the price as set out in the Contract. Notwithstanding any provision to the contrary, in no event shall a Purchaser's Purchase Order pursuant to this Contract that is executed prior to expiration of this Contract allow for Contractor to provide Goods and/or Services more than twelve (12) months beyond the expiration date of the Contract.
- 16.5. **DEFAULT.** Any of the following events shall constitute cause for Enterprise Services to declare Contractor in default of this Contract:
- (a) Contractor fails to perform or comply with any of the material terms or conditions of this Contract;

- (b) Contractor fails to timely report contract sales;
- (c) Contractor fails to timely pay the vendor management fees when due; or
- (d) Contractor breaches any material representation or warranty provided herein.

16.6. SUSPENSION & TERMINATION FOR DEFAULT. Each Party may suspend this Contract provided that the other party has not provided a cure or reasonable plan to cure after thirty (30) calendars day from a written cure notice of any default. Suspension shall continue until the default is remedied to reasonable satisfaction; *Provided*, however, that, if after thirty (30) calendar days from such a suspension notice, the breaching party remains in default, the contract may be terminated. All of obligations of Contractor, Enterprise Services, and Purchasers survive termination of Contractor's rights under this Contract, until such obligations have been fulfilled.

16.7. REMEDIES FOR DEFAULT.

- (a) Enterprise Services' rights to suspend and terminate Contractor's rights under this Contract are in addition to all other available remedies.

16.8. LIMITATION ON DAMAGES. Notwithstanding any provision to the contrary, the parties agree that in no event shall any party or Purchaser be liable to the other for indirect, special, incidental, consequential, exemplary or punitive damages; *Provided*, however, that nothing contained in this Section will in any way exclude or limit: (a) a party's liability for all damages arising out of that party's intentional acts or omissions; (b) the operation of any Goods or Services warranty provided in this Contract; or (c) damages subject to the Intellectual Property Indemnity section of this Contract. Any limitation of either party's obligations under this Contract, by delivery slips or other documentation is void.

LIMITATION ON CUMULATIVE LIABILITY. Except as set forth in this section 16.8, the maximum aggregate liability of contractor to enterprise services or purchaser for any actual or alleged damages arising out of, based on or relating to this contract, whether based upon breach of contract, tort (including negligence), warranty or any other legal theory, will not exceed the fees paid to Netsmart for the impacted products and services during the prior twelve (12) month period preceding the event giving rise to the cause of action.

Notwithstanding the foregoing, the above referenced limitation on damages will not apply to and Contractor will fully indemnify the eligible Purchaser as defined under Sections 2.1 and 2.2 of this Agreement for:

- i. Purchaser's actual out of pocket costs of notice, mitigation, or remediation of any Breach of Unsecured PHI (as defined under HIPAA) to the extent arising out of any negligence by Contractor; and
- ii. Fines or penalties that are assessed against Purchaser by a state or federal regulatory agency due to the Breach of Unsecured PHI (as defined under HIPAA) to the extent arising out of any negligence by Contractor.

- 16.9. **SUSPENSION/TERMINATION PROCEDURE.** Regardless of basis, in the event of suspension or termination (in full or in part), the parties shall cooperate to ensure an orderly and efficient suspension or termination. Accordingly, Contractor shall deliver to Purchasers all Goods and/or Services that are complete (or with approval from Enterprise Services, substantially complete) and Purchasers shall inspect, accept, and pay for the same in accordance with this Contract and the applicable Purchase Order. Unless directed by Enterprise Services to the contrary, Contractor shall not process any orders after notice of suspension or termination inconsistent therewith.
- 16.10. **PURCHASER PURCHASE ORDERS.** Purchaser Orders may be terminated: (a) upon the mutual written agreement of the parties; (b) by the non-breaching party where the breach is not cured within thirty (30) calendar days after written notice of breach is delivered to the breaching party, unless a different time for cure is otherwise stated in the applicable Purchase Order; and (c) as otherwise expressly provided for in the applicable Purchase Order. Purchase Orders shall terminate automatically and without further action if a party becomes insolvent or is placed in receivership, reorganization, liquidation, or bankruptcy. In addition to any other available remedies, the non-breaching party may terminate the Purchase Order as provided in subsection (b) above without further liability by written notice to the breaching party. A termination for breach will not affect rights or obligations accrued or owed before the effective date of the termination notice.

17. PUBLIC INFORMATION & PUBLIC RECORDS DISCLOSURE REQUESTS.

- 17.1. **WASHINGTON'S PUBLIC RECORDS ACT.** Unless statutorily exempt from public disclosure, this Contract and all related records are subject to public disclosure as required by Washington's Public Records Act, RCW 42.56.
- 17.2. **CONTRACTOR OBLIGATION.** Contractor shall identify and mark the precise portion(s) of the relevant page(s) of any records provided to Enterprise Services that Contractor believes are statutorily exempt from disclosure and identify the precise statutory basis for exemption from disclosure. In addition, if, in Contractor's judgment, certain portions of such records are not statutorily exempt from disclosure but are sensitive because particular portions of Contractor's records (NOT including pricing) include highly confidential, proprietary, or trade secret information (or the equivalent) that Contractor protects through the regular use of confidentiality or similar agreements and routine enforcements through court enforcement actions, Contractor shall identify and mark the precise portion(s) of the relevant page(s) of any records that include such sensitive information.
- 17.3. **ENTERPRISE SERVICES' OBLIGATION.** In the event that Enterprise Services receives a public records disclosure request pertaining to records that Contractor has submitted and marked either as (a) statutorily exempt from disclosure; or (b) sensitive, Enterprise Services, prior to disclosure, will do the following: Enterprise Services' Public Records Officer will review any records marked by Contractor as statutorily exempt from disclosure. In those situations, where the designation comports with the stated statutory exemption from disclosure, Enterprise Services will redact or withhold the record(s) as appropriate. For records marked 'sensitive' or for records where Enterprise Services determines that no statutory exemption to disclosure applies or is unable to determine whether the stated statutory exemption to disclosure properly applies, Enterprise Services will notify Contractor, at the address provided in the Contract, of the public records disclosure request and identify the date that Enterprise Services intends to release the record(s) (including records marked 'sensitive' or exempt from

disclosure) to the requester unless Contractor, at Contractor's sole expense, timely obtains a court order enjoining Enterprise Services from such disclosure. In the event Contractor fails to timely file a motion for a court order enjoining such disclosure, Enterprise Services will release the requested record(s) on the date specified. Contractor's failure properly to identify exempted or sensitive information or timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such records are exempt or protected from public disclosure.

18. GENERAL PROVISIONS.

- 18.1. **TIME IS OF THE ESSENCE.** Time is of the essence for each and every provision of this Contract.
- 18.2. **COMPLIANCE WITH LAW.** Contractor shall comply with all applicable law. Contractor shall obtain all necessary permits and approvals and give all stipulations, certifications, and representations that may be required for it to perform this Contract.
- 18.3. **ENTIRE AGREEMENT.** This Contract constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.
- 18.4. **AMENDMENT OR MODIFICATION.** Except as set forth herein, this Contract may not be amended or modified except in writing and signed by a duly authorized representative of each party.
- 18.5. **AUTHORITY.** Each party to this Contract, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Contract and that its execution, delivery, and performance of this Contract has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 18.6. **NO AGENCY.** The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Contract. Neither party is an agent of the other party nor authorized to obligate it.
- 18.7. **INDEPENDENT CONTRACTOR.** The parties intend that an independent contractor relationship is created by this Contract. Contractor and its employees or agents performing under this Contract are not employees or agents of Enterprise Services. Contractor shall not have authorization, express or implied, to bind Enterprise Services to any agreement, liability, or understanding, except as expressly set forth herein. Contractor and its employees and agents are not entitled to unemployment insurance or worker's compensation benefits through Enterprise Services or the State of Washington and Enterprise Services and the State of Washington will not pay for or otherwise provide such coverage for Contractor and its employees and agents.
- 18.8. **ASSIGNMENT.** Contractor may not assign its rights under this Contract without Enterprise Services' prior written consent and Enterprise Services may consider any attempted assignment without such consent to be void; *Provided*, however, that, if Contractor (a) provides written notice to Enterprise Services within thirty (30) calendar days of such event and (b) timely executes Enterprise Services' Assignment, Assumption, and Consent Agreement, Contractor may assign its rights under this Contract in full to any parent, subsidiary, or affiliate of Contractor that controls or is controlled by or under common control with Contractor, is merged or consolidated with Contractor, or purchases a majority or

controlling interest in the ownership or assets of Contractor. Unless otherwise agreed, Contractor guarantees prompt performance of all obligations under this Contract notwithstanding any prior assignment of its rights.

- 18.9. **BINDING EFFECT; SUCCESSORS & ASSIGNS.** This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 18.10. **ASSIGNMENT OF ANTITRUST RIGHTS REGARDING PURCHASED GOODS AND/OR SERVICES.** Contractor irrevocably assigns to Enterprise Services, on behalf of the State of Washington, any claim for relief or cause of action which Contractor now has or which may accrue to Contractor in the future by reason of any violation of state or federal antitrust laws in connection with any Goods and/or Services provided in Washington for the purpose of carrying out Contractor's obligations under this Contract, including, at Enterprise Services' option, the right to control any such litigation on such claim for relief or cause of action.
- 18.11. **FEDERAL FUNDS.** To the extent that any Purchaser uses federal funds to purchase Goods and/or Services pursuant to this Contract, such Purchaser shall specify, with its Purchase Order, any applicable requirement or certification that must be satisfied by Contractor at the time the Purchase Order is placed or upon delivery of such Goods and/or Services to Purchaser.
- 18.12. **SEVERABILITY.** If any provision of this Contract is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Contract, and to this end the provisions of this Contract are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Contract.
- 18.13. **WAIVER.** Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Contract, nor shall any purported oral modification or rescission of this Contract by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision.
- 18.14. **SURVIVAL.** All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Contract shall survive and remain in effect following the expiration or termination of this Contract, *Provided*, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.
- 18.15. **EMERGENCY/FORCE MAJEURE.** Except for obligations to pay for Services performed or products delivered, neither party will be responsible for delays or failures in performance resulting from an event of Force Majeure. The delayed party will perform its obligations within a reasonable time after the cause of the failure has been remedied, and the other party will accept the delayed performance. As used herein, "**Force Majeure**" mean acts or events beyond its reasonable control, including but not limited to, acts of nature, governmental actions (including a governor declared state of emergency) , acts of terrorism, fire, labor, civil disturbances, pandemics, transportation problems, interruptions of power supply or communications, breakdown of internet service provider and natural disasters, any of which makes performance impossible.

- 18.16. **GOVERNING LAW.** The validity, construction, performance, and enforcement of this Contract shall be governed by and construed in accordance with the laws of the State of Washington, without regard to any choice of law principles that would provide for the application of the laws of another jurisdiction.
- 18.17. **JURISDICTION & VENUE.** In the event that any action is brought to enforce any provision of this Contract, the parties agree to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.
- 18.18. **ATTORNEYS' FEES.** In the event of litigation or other action brought to enforce this Contract, each party shall bear its own attorneys' fees and costs.
- 18.19. **FAIR CONSTRUCTION & INTERPRETATION.** The provisions of this Contract shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Contract. Each party hereto and its counsel has reviewed and revised this Contract and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Contract. Each term and provision of this Contract to be performed by either party shall be construed to be both a covenant and a condition.
- 18.20. **FURTHER ASSURANCES.** In addition to the actions specifically mentioned in this Contract, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Contract including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Contract.
- 18.21. **EXHIBITS.** All exhibits referred to herein are deemed to be incorporated in this Contract in their entirety.
- 18.22. **CAPTIONS & HEADINGS.** The captions and headings in this Contract are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Contract nor the meaning of any provisions hereof.
- 18.23. **ELECTRONIC SIGNATURES.** An electronic signature or electronic record of this Contract or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Contract or such other ancillary agreement for all purposes.
- 18.24. **NONDISCRIMINATION.**
- (a) Nondiscrimination Requirement. During the term of this Contract, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.
 - (b) Obligation to Cooperate. Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).

- (c) Default. Notwithstanding any provision to the contrary, Enterprise Services may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until Enterprise Services receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), Enterprise Services may terminate this Contract in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.
- (d) Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. Enterprise Services and/or Purchasers shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe Enterprise Services and/or Purchasers for default under this provision.

18.25. COUNTERPARTS. This Contract may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Contract at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Contract.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON
Department of Enterprise Services

By: *Elena McGrew*
 Elena McGrew
 Its: Statewide Enterprise Procurement
 Manager

NETSMART TECHNOLOGIES, INC.,
a Kansas corporation

By: *Joseph McGovern* 04 - 03 - 2024
 Joseph McGovern
 Its: Executive Vice President

EXHIBIT A

As responded to by Contractor in Exhibit B1-Performance Requirements and Exhibit B3-Module List
INCLUDED GOODS/SERVICES

- 1.1 Proposed solutions/products must meet the Office of the National Coordinator for Health IT (ONC) Certified Health IT Product List (CHITPL) certification.
- 1.2 Proposed solutions must support the current and all future versions of USCore HL7, including HL7 Fast Healthcare Interoperability Resources (FHIR).
- 1.3 Proposed solutions must provide the capability to implement interoperability standard, Substitutable Medical Applications, Reusable Technologies (SMART) on FHIR.
- 1.4 Proposed solutions must provide the capability to implement connections to external Clinical Decision Support (CDS) tools.
- 1.5 Proposed solution must be hosted in a FedRAMP compliant cloud environment.
- 1.6 Proposed solutions must provide the capability to meet an availability standard of 99.9%
- 1.7 Proposed solutions must provide the capability to display and print at the facility any patient's essential medical data (diagnosis, medications, allergies), and all scheduled appointments in the event of planned or unplanned downtime/outage of the primary/secondary EHR System.
- 1.8 Proposed solutions must provide the capability to interoperate with the client devices using Microsoft Windows Operating system, including MS Windows 10, 11, and future versions when available to the market.
- 1.9 Proposed solution must comply with OCIO requirements regarding media handling and disposal.
- 1.10 Solution must support the authentication, auto-registration, and provisioning of users through Identity Providers. Such providers include, but are not limited to:
 - Microsoft Azure Active Directory (AD) / Office 365 Modern Authentication via OAuth 2.0
 - Active Directory Federated Services (ADFS) with SAML 2.0 requirement
 - Single Sign On (SSO)
- 1.11 Solution is able to handle multiple concurrent users and continue running at optimal speed for basic navigation, downloads, uploads, and system functions, even at speeds as low as 10 mbps.
- 1.12 Solution is compatible with IPV6.
- 1.13 Solution retains configuration settings during application version upgrades.
- 1.14 The solution meets state of Washington minimum level of compliance for accessibility – Web Content Accessibility Guidelines (WCAG) 2.1 Level AA compliance.
- 1.15 Solution provides the ability to track records retention and disposition dates.
- 1.16 All data transfers are encrypted using 256 bit (or higher) TLS 1.2 for HTTP traffic and SSH version 2 for any batch or real-time non-http transfers. Furthermore, SSL certificates must be SHA2 and signed by a trusted third party; no self-signed certificates will be considered.
- 1.17 Proposed solution must be a commercial, off the shelf (COTS) product, that will not require any custom development to meet requirements.

1.18 Proposed EHR solution must be capable of being hosted through a commercial cloud system.

1.19 Proposed EHR solution must be capable of being hosted internally by Agencies.

Required EHR Functionality/Module	Description	Category	
Scheduling Module	The module requires the ability for scheduling staff to book an appointment, then check patients in on arrival. Visibility between physicians to view entire clinics scheduling.	Administration	Required
Admission, Discharge and Transfer Module	ADT module must be able to perform secure transfers of patient data, as well as storing contact information and other patient information.	Administration	Required
Medical Records Transmission Module	Module must compile patient and other records in a variety of requested formats, and output to various file types for distribution based on medical records requests.	Administration	Required
Payment and Billing Module (Physician and Facility)	Payment and billing module must enable organizations to enroll members, bill insurance premiums, process referrals and pay claims. Must include ANSI 837 v5010 Institutional and Professional electronic claims and 835 v5010 electronic remittance formats. Must support real-time eligibility and benefits queries and claim status messages with the ability to drive follow-up actions based on payer responses.	Administration	Required
Chart Tracking Module	Chart tracking module must notify physicians of missing documentation based on configurable system triggers. Module must also track completion and authentication on all documents and orders regardless of storage type, including scanned and electronic documents.	Clinical	Required
Patient Data Transfer Module	Patient data module must have the ability to share patient data between providers located at different facilities.	Clinical	Optional

Pharmacy Module	Pharmacy module must store patient and medication data in a central repository. Module must manage all processes involved in dispensing and receiving pharmacy supplies	Clinical	Optional
Inventory Module	Module must maintain inventory of hospital supplies, and interface with Pharmacy Module for tracking and ordering. Outputs must be updated no less than daily.	Clinical	Optional
Infection Control Module	Module must provide infection control surveillance, documentation and reporting. Must provide stewardship tools for antimicrobial usage, antibiogram, days of therapy and medication use optimization.	Clinical	Optional
Clinical and Anatomic Pathology Module	Module must support laboratory workflows combining all aspects of laboratory operations.	Clinical	Optional
Radiology Module	Module must support scheduling ,documentation, results communication, tracking and statistical reporting for radiology departments	Clinical	Optional
Ophthalmology Module	Module must support charting, treatment planning, prescription writing and documentation for eye related care	Clinical	Optional
Dentistry Module	Module must include dental charting, treatment planning, care documentation and risk assessment	Clinical	Optional
Nurse Module	Module must provide tools to support nursing through triage, providing access to patient records and clinical protocols.	Clinical	Optional
Behavior Health Module	Module must offer tools for mental health and substance abuse treatment facilities. Includes inpatient, outpatient and residential levels of care. Must provide the ability for group therapy documentation and activity-based cost tracking.	Clinical	Optional
Rehabilitation Module	Module must provide tools supporting rehabilitation and therapy workflows for inpatient, outpatient and acute care settings. Must provide tracking and monitoring of therapy sessions, length of stay, discharge planning and reporting on outcomes.	Clinical	Optional

Long Term Care	Module must provide assistance in completion and submission of MDS assessments. Must enable real time medication adjudication, tracking therapy and integration with hospital billing systems.	Clinical	Optional
Home and Hospice Module	Module must support patient care cycle from referral to collection of final claims while meeting regulatory requirements for certified home health care and hospice care. Module should provide in home care tools for providers working in limited or zero connectivity environments.	Clinical	Optional
Secure Chat Module	Module must support instant text messaging between all staff at their workstation, smartphones and tablets. Must support real time push notifications, read receipts, image messaging, group messaging, and voice messaging.	Clinical	Required
Data Analytics Module(s)	Modules must support extraction and display of data from the EHR system . Displays must be visualized in easy to read dashboards, with data extractable for quality, regulatory and financial performance indicators. Module must support benchmarking metrics, trends in intake and care and allow physicians to search for similar cases.	Clinical	Required
Cognitive Computing Module	Cognitive computing module must enable usage of custom predictive modules for the HER/ Predictive models must be able to integrate with decision support systems in real time with up to date patient information to provide actionable outputs.	Clinical	Optional
Population Management Module	Module must meet ACA requirements for Accountable Care Organizations through reports, dashboards and workflow tools to manage patient populations in and out of ACO's. Module must support care coordination with patient populations to address social determinants of health, provide caregivers access to support networks and connect people with community services and measure outcomes	Clinical	Optional

Customer Relationship Management Module	Module must proactively monitor patient sentiment and analyze real-time feedback, customize patient outreach materials, leverage external systems to merge data from multiple sources, automate tedious processes to save time and increase value for patients. Must Leverage integrations with external systems to merge data from multiple sources and store it in a centralized place.	Clinical	Optional
Value based Care Module	Must support quality measure performance for patients under value-based care agreements. Requires certified measures to match NCQA specifications.	Clinical	Optional
Patient Kiosk Module	Module must support stand-alone patient kiosks with touch screen interaction to perform tasks such as checking in, answering questionnaires, signing forms, printing maps. Must include registration and billing integrations to allow patients to make payments and update registration information at kiosks. Must support for multiple languages and vision or hearing impairments	Clinical	Optional
Patient Portal Module	Must provide a web-based scheduling, medical records, clinical results, provider secure messaging, and pharmacy integration portal for patients. Must support access through PC, Mac, smartphone or tablet in multiple language and support vision or hearing impaired patients.	Clinical	Required

PRICES FOR GOODS/SERVICES

Section 1: Implementation Fees		
	Component Pricing Rate Exhibit B-1 <u>Mandatory</u> Requirements	Total Pricing for the Scenario and Exhibit B-1 <u>Mandatory</u> Requirements
Initial/Setup Costs	<i>\$185 per hour for Netsmart consulting project team</i>	\$ 861,000.00
Hardware	<i>No hardware is included in our quote</i>	\$ -
Data Migration	<p><i>DES has indicated that this scenario is for a facility with all paper files (no digital files to migrate). Below are the included assumptions for a back-file scanning project as noted. We have included assumptions for a digital conversion in the Scope section of Exhibit B-2, Part 2</i></p> <ul style="list-style-type: none"> <i>-2,000 files</i> <i>-15 pages per file (30,000 total images, considered as 1 side of one sheet of paper)</i> <i>-all documents are 8.5 x 11</i> <i>-all documents can be run through scanner's document feeder vs manual</i> <i>-Maximum of 3 index fields</i> <i>-Random QC of 30% per box of charts</i> <i>-monochrome images</i> <i>-dis-assembly and re-assembly for no more</i> 	\$ 25,000.00

	<p>than 25% of documents -remote scanning, meaning agency will box up the files and they will be securely sent to a central scanning site -upload of final documents through a SFTP site</p>	
Training	\$185 per hour for Netsmart consulting project team	\$ 110,000.00
Section 2: Annual Subscription Fees for Exhibit B-1 Mandatory Requirements		
<i>Subscription fees have to include all support and maintenance as provided in Services Level Agreement (SLA).</i>	Year 1	Year 2
Hosting Fees on Commercial Cloud	<i>hosting fees included in SaaS licensing</i>	<i>hosting fees included in SaaS licensing</i>
Per User License Pricing [<u>number of users priced*</u>]		
<i>Core/Mandatory System [75]</i>	\$ 1,817.00	\$ 1,927.00
<i>Patient Portal and Kiosk [198]</i>	\$ 141.00	\$ 150.00
<i>Multi-factor Authentication [198]</i>	\$ 114.00	\$ 121.00
<i>Outside Laboratory Interface [198]</i>	\$ 43.00	\$ 46.00
<i>Pharmacy (Outpatient) [7]</i>	\$ 3,458.00	\$ 3,666.00

<i>*pricing may have more assumptions than just number of users. See assumptions in Exhibit B-2, Part 2, Scope for full details</i>		
<i>Unlimited Number and Type of Users/Access</i>	<i>N/A</i>	<i>N/A</i>
Section 3: Annual Subscription Fees for Optional Modules, Third-Party Add-Ons, and Other Services		
<i>Subscription fees have to include all support and maintenance as provided in Services Level Agreement (SLA).</i>	Year 1	Year 2
<i>Pharmacy (Inpatient) [5]</i>	\$ 16,474.00	\$ 17,463.00
<i>Laboratory Information System [6]</i>	\$ 114,024.00	\$ 29,245.00
<i>Connection to HIE and Carequality [198]</i>	\$ 69.00	\$ 74.00
<i>Dentistry [10]</i>	\$ 20,251.00	\$ 10,025.00
<i>Rehabilitation [5]</i>	\$ 1,361.00	\$ 1,443.00
<i>Long-Term Care [30]</i>	\$ 4,737.00	\$ 5,022.00
<i>MDS Claims Scrubber Suite [198]</i>	\$ 26.00	\$ 28.00
<i>Home and Hospice [1,002]</i>	\$ 302.00	\$ 321.00
<i>Public Health [75]</i>	\$ 1,140.00	\$ 1,209.00
<i>Secure Chat [198]</i>	\$ 441.00	\$ 468.00
<i>Data Analytics [198]</i>	\$ 216.00	\$ 229.00
<i>Population Health [1,002]</i>	\$ 63.00	\$ 67.00
<i>Value Based Care Measures [198]</i>	\$ 135.00	\$ 144.00
<i>Developmental Disabilities [75]</i>	\$ 2,616.00	\$ 2,773.00
<i>RCM/Billing [198]</i>	\$ 30.00	\$ 32.00
<i>Document Management System [198]</i>	\$ 118.00	\$ 126.00

<i>Blended labor rate for additional services</i>	\$ 185.00	\$ 185.00
<i>Additional cost for Architecture and Design: for development and/or recommendations surrounding system architecture and design. Architecture includes virtual, physical, and process components</i>	\$ 215.00/ hour	\$ 215.00/ hour
	\$ -	
<i>Additional cost for integration layer: to support integration between the Core/Enterprise EHR solution and any non-core components, such as third-party modules</i>	\$ 181.00	\$ 192.00

INSURANCE REQUIREMENTS

1. **INSURANCE OBLIGATION.** During the Term of this Contract, Contractor shall possess and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
 - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial general liability insurance (and, if necessary, commercial umbrella liability insurance) covering bodily injury, property damage, products/completed operations, personal injury, and advertising injury liability on an 'occurrence form' that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) under the most recent version of form CG 00 01 in the amount of \$2,000,000 per occurrence and \$4,000,000 general aggregate. This coverage shall include blanket contractual liability coverage. This coverage shall include a cross-liability clause or separation of insured condition.
 - b. **WORKERS' COMPENSATION INSURANCE.** Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits as required by law.
 - c. **EMPLOYERS' LIABILITY (STOP GAP) INSURANCE.** Employers' liability insurance (and, if necessary, commercial umbrella liability insurance) with limits in the amount of \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 bodily injury by disease policy limit.
 - d. **PROFESSIONAL LIABILITY (ERRORS & OMISSIONS) INSURANCE.** Professional liability insurance in the amount of \$1,000,000 combined single limit per occurrence, \$2,000,000 general annual aggregate for errors and omissions coverage against liability for damages because of personal injury, bodily injury, death, or damage to property, including the loss of use thereof, and damages because of negligent acts, errors, and omissions in any way related to this Contract.
 - e. **CYBER RISK LIABILITY INSURANCE.** Cyber Risk insurance, on an occurrence form. This coverage shall include Contractual Liability insurance for the indemnity provided under this Contract. Limits are \$4,000,000 per claim/\$8,000,000 annual aggregate.

The insurance coverage limits set forth herein are the minimum. Contractor's insurance coverage shall be no less than the minimum amounts specified. Coverage in the amounts of these minimum limits, however, shall not be construed to relieve Contractor from liability in excess of such limits. Contractor waives all rights against the State of Washington for the recovery of damages to the extent such damages are covered by any insurance required herein.

2. **INSURANCE CARRIER RATING.** Coverages provided by Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. Enterprise Services reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

3. **ADDITIONAL INSURED.** Commercial General Liability and Commercial Automobile Liability shall include the State of Washington and all authorized Purchasers (and their agents, officers, and employees) as Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.
4. **CERTIFICATE OF INSURANCE.** Prior to execution of the Contract, Contractor shall furnish to Enterprise Services, as evidence of the insurance coverage required by this Contract, a certificate of insurance satisfactory to Enterprise Services that insurance, in the above-stated kinds and minimum amounts, has been secured. In addition, within (10) calendar days of renewal, Contractor shall furnish to Enterprise Services an updated or renewed certificate of insurance, satisfactory to Enterprise Services, that insurance, in the above-stated kinds and minimum amounts, has been secured. Failure to maintain or provide proof of insurance, as required, will result in contract cancellation. **All policies and certificates of insurance shall include the Contract number stated on the cover of this Contract.** All certificates of Insurance and any related insurance documents shall be sent via email to Enterprise Services, and shall be sent to the email address set forth below:

Email: DEScontractsteamcypress@des.wa.gov

Note: For Email notice, the Email Subject line must state:

**Contract Insurance Certificate – Statewide Contract No. 23023 –
EHR Solutions**

5. **PRIMARY COVERAGE.** Contractor's insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any Purchaser. All insurance or self-insurance of the State of Washington and/or Purchasers shall be excess of any insurance provided by Contractor or subcontractors.
6. **SUBCONTRACTORS.** Contractor shall include all subcontractors as insureds under all required insurance policies. Alternatively, prior to utilizing any subcontractor, Contractor shall cause any such subcontractor to provide insurance that complies with all applicable requirements of the insurance set forth herein and shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.
7. **WAIVER OF SUBROGATION.** Contractor waives all rights of subrogation against the State of Washington and any Purchaser for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.
8. **NOTICE OF CHANGE OR CANCELLATION.** There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part, without at least sixty (60) calendar days prior written Legal Notice by Contractor to Enterprise Services. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Contract number stated on the cover of this Contract.

9. **EXTENDED REPORTING PERIOD.** If any required insurance coverage is on a claims-made basis (rather than occurrence), Contractor shall maintain such coverage for a period of no less than three (3) years following expiration or termination of the Contract.

* * * END OF INSURANCE REQUIREMENTS * * *

SERVICE LEVEL AGREEMENT

Schedule A: Application Support Services

The following is a description of the Support Services to be performed by Netsmart during the time period in which Client is purchasing Support Services.

1. Netsmart will support and maintain the most current version of the Licensed Software in substantial conformance with applicable Federal laws. Client acknowledges and agrees that, in the event Client has chosen to utilize a less than current version of the Licensed Software or has missed any mandatory upgrades, Client will bring the Licensed Software up to Netsmart's then-current version in order for Client to maintain compliance with applicable Federal law.
2. Priority1 issues must be called in directly to the Netsmart Support department. For all other concerns Client can call or use Netsmart's designated online support system to log issues specifying a Problem or Defect in the Licensed Software.
3. If self-hosted, Client will provide and maintain, at its expense, hardware and/or software to allow Netsmart to access Client's system remotely.
4. Netsmart will also provide Client with:
 - a. updates that are distributed without charge to other similar clients which reflect modifications and incremental improvements made to the Licensed Software by Netsmart;
 - b. an opportunity to obtain enhancements to the Licensed Software for which fees are imposed on the same terms as such enhancements are generally made available to other clients
5. Netsmart will provide a toll-free problem-reporting and support telephone line available 8:00 a.m. to 5:00 p.m., Central time Monday through Friday, exclusive of Federal holidays.
6. Client agrees to grant Netsmart access to the Licensed Software on Client's system(s) for the sole purpose of performing Netsmart's obligations under this Agreement. Netsmart will ensure all connectivity to Client's system is through a single point of connectivity utility which audits Netsmart's activity on Client's system(s) when Netsmart is connected to Client's system(s). These audit logs are retained for 90 days.
7. If reasonable analysis by Netsmart indicates that a reported Problem or Defect is caused by a problem related to hardware used by Client, the hardware's system software, or applicable software other than Licensed Software, or Client's misuse or modification of the Licensed Software, 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 Software.
8. 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:

Service Level Agreement

Priority	Definition
<p>1 - Critical</p>	<p>Priority 1: will be assigned when the Licensed Software or a material functional component thereof is non-operational as a result of a defect, in the production environment only, such as the production system cannot be accessed or utilized in any capacity, a direct patient safety issue is present, or a HIPAA compliance violation as a result of a server incident or Netsmart application defect. Best efforts will be made to correct Priority 1 problems, or to provide a plan for such correction, within two (2) business days. Notwithstanding the above, Netsmart will work continuously toward resolution.</p> <p><u>Client's Commitment:</u></p> <ul style="list-style-type: none"> • This case Priority must be called in directly to the Netsmart Support department. • Client provides specific, detailed information required for troubleshooting/investigation. • Client provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate client resources, the case will be downgraded to Priority 2 after three business days.
<p>2 - High</p>	<p>Priority 2: will be assigned to defects in the live production environment that have a significant negative impact on daily operations but do not cause a "System Down". A workaround may be available and/or the capacity to maintain daily business functionality. Commercially reasonable efforts will be made to correct Priority 2 problems, or to provide a plan for such correction, within five (5) business days.</p> <p><u>Client's Commitment:</u></p> <ul style="list-style-type: none"> • Client provides specific, detailed information required for troubleshooting/investigation. • Client provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate client resources, the case will be downgraded to Priority 3 after six business days.

<p>3 - Medium</p>	<p>Priority 3: will be assigned for system defects that result in functions that have no major impact on daily operations. An issue that allows the continuation of function, including issues in which a reasonable workaround is available. Commercially reasonable efforts will be made to correct Priority 3 problems, or to provide a plan for such correction, within ten (10) business day.</p> <p><u>Client's Commitment:</u></p> <ul style="list-style-type: none"> • Client provides specific, detailed information required for troubleshooting/investigation. • Client provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate client resources, the case will be downgraded to Priority 4 after eleven (11) business days.
<p>4 - Low</p>	<p>Priority 4: will be assigned to cosmetic defects that do not affect system usability or non-defect related requests including, but not limited to, system set up/configuration, training, functionality questions, documentation, portal access, and upgrade requests. Commercially reasonable efforts will be made to address Priority 4 issues, or to provide a plan for such correction, within fifteen (15) business day.</p> <p><u>Client's Commitment:</u></p> <ul style="list-style-type: none"> • Client provides specific, detailed information required for troubleshooting/investigation. • Client provides appropriate staff and resources to sustain continuous communication and work effort as required.

Schedule A-1: Service Level Agreement for Software Services

1. Definitions.

- i. **Major System Change** means a material change to the system, including a backend upgrade, operating system upgrade, new release upgrade, SAN upgrade, database upgrade.
- ii. **Service Package** means software designed to fix identified Problems or Defects in the Software Services, including documentation and release notes made available with such patch or service pack.
- iii. **System Stabilization Period** is the period during the seventy-two (72) hour window following the First Productive Use and following a Major System Change.

2. Coverage.

This Section sets forth the System Availability commitments for Software Services. If monthly System Availability (as defined below) falls below 99.9%, Netsmart will provide a credit against the Client’s next monthly recurring Software Services fees to account for the downtime. The appropriate credit percentage (%) will be determined based on the following table.

For the absence of doubt, Software Services include 24x7x365 Support Services for Priority 1 issues.

System Uptime %	Credit %
>= 99.0% and < 99.9%	5%
98.0 to 98.9%	10%
96.0 to 97.9%	15%
< 95.9 or below	25%

3. System Availability Calculation

- a. Netsmart will calculate System Availability as set forth below for each month during the Term.
- b. System Availability will be calculated as follows (and will be rounded to up to the next one tenth of a percentage point):

$$\text{System Availability} = [(\text{Base Time} - \text{Unscheduled Downtime}) / (\text{Base Time})] \times 100$$

Base Time equals the product of the number of days in the applicable month times 24 hours times 60 minutes.

Unscheduled Downtime equals the time (in minutes) during which the production system is not operational (excluding “Scheduled Downtime”) from the Netsmart-provided hosting facility internet connection based on the measuring methodology documented below.

Scheduled Downtime equals the aggregate total of all minutes of planned and scheduled maintenance performed during the month to perform any necessary hardware, operating system, network, database, application software maintenance, repair, upgrades, and updates. Netsmart will work with Client to determine and use commercially reasonable efforts to schedule downtime after regular business hours, during times that minimize the disruption to operations. The amount of scheduled downtime may vary from month to month depending on the level of change to the system such as the project implementation phase, adding new products, upgrading products, etc

- c. Client is permitted to audit Unscheduled Downtime based on the methodology established below. Netsmart agrees to cooperate with Client in connection with any audit of Unscheduled Downtime. This audit must take place within 30 days of the month end.
- d. Netsmart recommends that Client implement, on a timely basis, the Service Packages that will be provided to Client by Netsmart on a periodic basis. Netsmart will advise Client on Service Packages that may enhance performance and availability and will advise Client of the advantages of implementing the Service Packages as well as the implication of electing not to implement the Service Packages. Netsmart will perform the technical requirements needed for Client to use the Service Packages that Client elects to implement, at no additional charge and as part of the recurring SaaS/Hosting fees. Client and Netsmart will work together to establish a mutually agreeable implementation schedule for the Service Packages. Upon notice to Client that the system's performance and availability will be adversely affected if Client elects not to implement a Service Package, Client will waive any credits set forth above, until such time as Client performs its obligations as necessary to implement the required Service Packages.
- e. Client must allow Netsmart to implement the latest Netsmart supported layered software version (i.e. OS, DBMS, etc.) and patches within six (6) months of the general support announcement from Netsmart. Netsmart will advise Client regarding the layered software enhancements as well as the implications of electing not to implement the layered software enhancements. Netsmart will perform the technical requirements needed for Client to use the layered software enhancements that Client elects to implement as part of the fees. Client and Netsmart will work together to establish an implementation schedule for the layered software enhancements. If Netsmart provides notice to Client that the system's performance and availability will be adversely affected if Client elects not to implement the layered software enhancements, Client waives its right to any credits set forth above until Client implements the required layered software enhancements.
- f. If Client is operating beyond the Scope of Use limits, Client waives its right to any credits set forth above until Client is in compliance with Scope of Use.
- g. During a System Stabilization Period, changes to the System may be required to achieve optimal performance and Unscheduled Downtime or Scheduled Downtime minutes do not apply.

4. Exceptions

Client shall not receive any credits under this Schedule in connection with any failure or deficiency of System Availability caused or associated with:

- a. an event of Force Majeure;
- 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 Client access;
- e. Client's acts or omissions (or acts or omissions of others engaged or authorized by Client), including, without limitation, custom scripting or coding (e.g., CGI, Perl, Java, HTML, ASP, etc), any negligence, willful misconduct, or misuse of the Software 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; and
- 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.

5. 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 cloud computing environment. The monthly window is generally scheduled on the 3rd Sunday of the month, from 2:00AM – 5:30AM EST.

6. Credit Request and Payment Procedures.

In order to receive a credit, Client must submit a request for credit to Netsmart Accounting at AR@ntst.com, within thirty (30) days after the incident supporting the request. Each request must include Client'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 Client's request. Credits are not refundable and can be used only towards future billing fees.

Notwithstanding anything to the contrary herein, the total amount credited to Client in a particular month under this Schedule cannot exceed the total SaaS fees paid by Client for the month in which Services were impacted. Credits are exclusive of any applicable taxes charged to Client or collected by Netsmart and are Client's sole and exclusive remedy with respect to any failure or deficiency in level of services described in this Schedule if Client applied for and received a credit. Nothing in this Schedule precludes Client from pursuing an alternate contract remedy for any future incident that may occur.