

CONTRACT #2
RFS # 343.60-24910
FA # 10-28685
Edison # 11305

Health

VENDOR:
Netsmart Technologies, Inc.
(formerly Netsmart Public
Health, Inc.)



STATE OF TENNESSEE
DEPARTMENT OF HEALTH
CORDELL HULL BUILDING
425 5th AVENUE NORTH
NASHVILLE, TENNESSEE 37243

December 2, 2011

Mr. Lucian Geise, Director
Fiscal Review Committee
320 Sixth Avenue, North, 8th Floor
Nashville, TN 37243
and
Mr. Mark Emkes, Commissioner
Department of Finance & Administration
State Capitol, First Floor
Nashville, TN 37243-0285

Dear Director Geise and Commissioner Emkes:

This request is for approval of a contract amendment with Netsmart Technologies, Inc. (formerly Netsmart Public Health, Inc.) for computer software services for the Department of Health's statewide Patient Tracking, Billing, and Management Information System (PTBMIS). Netsmart Technologies, Inc. (formerly Netsmart Public Health, Inc.) has changed their name and Federal Employer Identification Number. The Department requests approval for a non-competitive contract amendment.

Since 1989, the Department of Health has entered into a contractual agreement with Netsmart Technologies, Inc. (formerly Netsmart Public Health, Inc.) to support the operation of PTBMIS used statewide in all health department clinics by approximately 2,500 staff. The Contractor is the proprietary owner of the PTBMIS software; therefore, this contractor is the only vendor that can legally provide maintenance support and/or modifications to this system. This system provides the information infrastructure for the various health department programs administered statewide in a coordinated and integrated manner. Further, this system contains federal reporting capabilities, as well as the flexibility to rapidly enter new programs. Therefore, we request your approval for a non-competitive contract amendment request for Netsmart Technologies, Inc. (formerly Netsmart Public Health, Inc.) to continue to license use of their software product at every health department site, maintain the software, and provide periodic modifications of the software, as requested by the Department.

We appreciate your consideration for approval to proceed with this non-competitive contract amendment request. Thank you for considering for this request.

Sincerely,

John J. Dreyzehner, MD, MPH, FACOEM, Commissioner

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Michael Creighton	*Contact Phone:	615-741-0914		
*Original Contract Number:	FA-10-28685-00	*Original RFS Number:	34360-24910		
Edison Contract Number: <i>(if applicable)</i>	11305	Edison RFS Number: <i>(if applicable)</i>			
*Original Contract Begin Date:	July 1, 2009	*Current End Date:	June 30, 2014		
Current Request Amendment Number: <i>(if applicable)</i>	1				
Proposed Amendment Effective Date: <i>(if applicable)</i>	Upon Complete State Approval				
*Department Submitting:	Department of Health				
*Division:					
*Date Submitted:	12/02/11				
*Submitted Within Sixty (60) days: <i>If not, explain:</i>	Yes, but would like earliest date possible				
*Contract Vendor Name:	Netsmart Technologies, Inc.				
*Current Maximum Liability:	\$4,726,046.00				
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2010	FY: 2011	FY: 2012	FY: 2013	FY 2014	FY
\$854,705	\$898,066	\$943,416	\$990,017	\$1,039,842	\$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY: 2010	FY: 2011	FY: 2012	FY:	FY	FY
\$707,348.34	\$684,499.04	\$663,699.00	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			Contract allocation was based on an estimated yearly budget, which allowed surplus funds to be carried forward to cover software maintenance, adjustments and modifications to the system.		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			Due to this contract being a multi-year contract, authority to carry forward funds is within the contract terms and conditions.		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			N/A		
*Contract Funding	State:	\$0.00	Federal:	\$1,216,847.00	

Supplemental Documentation Required for
Fiscal Review Committee

Source/Amount:			
Interdepartmental:		\$0.00	Other: \$3,509,199.00
If "other" please define:		Current Services	
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
N/A			
Method of Original Award: <i>(if applicable)</i>		Non-Competitive Negotiation	
*What were the projected costs of the service for the entire term of the contract prior to contract award?		\$4,726,046.00	

Supplemental Documentation Required for
Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

Deliverable description:	FY:	FY:	FY:	FY:	FY:
N/A					
N/A					
N/A					

Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.

Deliverable description:	FY:	FY:	FY:	FY:	FY:
N/A					
N/A					
N/A					

Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.

Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
N/A					
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
N/A					
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
N/A					



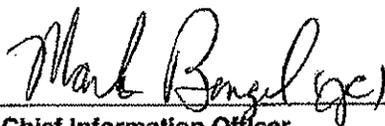
OIR Pre-Approval Endorsement Request E-Mail Transmittal

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

FROM : Mike Newman, Director,
 Office for Information Technology Services
 E-mail : Mike.Newman@Tn.gov

DATE : 12/02/11

RE : Request for OIR Pre-Approval Endorsement

Applicable RFS # 34360-24910
OIR Endorsement Signature & Date:
 
Chief Information Officer <small>NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.</small>

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

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

Contracting Agency	Tennessee Department of Health
Agency Contact (name, phone, e-mail)	Michael Creighton, 615-741-0914, Michael.Creighton@tn.gov
Subject Procurement Document (mark one)	
<input type="checkbox"/> RFP	<input type="checkbox"/> Contract
<input type="checkbox"/> Competitive Negotiation Request	<input type="checkbox"/> Contract Amendment
<input type="checkbox"/> Alternative Procurement Method Request	<input type="checkbox"/> Grant
<input type="checkbox"/> Non-Competitive Contract Request	<input type="checkbox"/> Grant Amendment
<input checked="" type="checkbox"/> Non-Competitive Amendment Request	
Information Systems Plan (ISP) Project Applicability	
<input type="checkbox"/> Not Applicable to this Request	
<input type="checkbox"/> Applicable-- ISP Project#	

Applicable RFS # 34360-24910
Response Confirmed by IT Director/Staff (name):
Required Attachments (as applicable – copies without signatures acceptable) <ul style="list-style-type: none"> <input type="checkbox"/> RFP, Competitive Negotiation Request, Alternative Procurement Method Request, Non-Competitive Contract Request, Non-Competitive Amendment Request <input checked="" type="checkbox"/> Original Contract/Grant or Amendment <input checked="" type="checkbox"/> Proposed Contract/Grant or Amendment
Subject Information Technology Service Description (Brief summary of information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, etc. As applicable, identify the contract & solicitation sections related to the IT services.) <p>An amendment to the approved contract is necessary due to a company name and Federal Employer Identification Number change.</p> <p>The Department's Bureau of Health Services is responsible for coordinating the provision of health care services statewide through seven rural offices, 89 rural health departments in approximately 110 different sites, and 6 metropolitan health departments. Tennessee is one of the few, if not the only, state that has an integrated system, connecting every local health department through regional offices to the central office, which allows capturing of data in a standardized format that supports public health management needs as well as public health preparedness needs across the state. This coordination is accomplished through Patient, Tracking Billing Management Information System (PTBMIS) software, which was developed and is owned by Netsmart Technologies, Inc. (formerly Netsmart Public Health, Inc.) PTBMIS is a unique and sophisticated proprietary software system that begins tracking patients from the time they call for an appointment, through the actual delivery of service (including automated call-backs when abnormal lab results are received), until the bill for the service provided is paid, and even later as follow-up notices are generated and mailed at the appropriate time to remind patients of future visits. The Department pays an annual license fee to use the software product at every health department site in Tennessee, as well as the central office. The contract also includes funding for periodic modifications to the software, as requested by the Department, to enhance performance and/or tailor the software to specific Tennessee needs.</p>



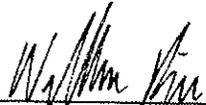
E-Health Pre-Approval Endorsement Request E-Mail Transmittal

TO : Lovel VanArsdale, Office of e-Health Initiatives
Department of Finance & Administration
E-mail : Lovel.Vanarsdale@tn.gov

FROM : Mike Newman, Director,
Office for Information Technology Services
E-mail : John.Dreyzehner@tn.gov

DATE : 12/02/11

RE : Request for eHealth Pre-Approval Endorsement

Applicable RFS # 34360-24910
Office of e-Health Initiatives Endorsement Signature & Date:

Office of e-Health Initiatives

Office of e-Health Initiatives (eHealth) pre-approval endorsement appears to be required pursuant to professional service contracting regulations pertaining to procurements with medical/mental health-related professional, pharmaceutical, laboratory, or imaging type services as a component of the scope of service. This request seeks to ensure that eHealth is aware of and has an opportunity to review the procurement detailed below and in the attached document(s).

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

Contracting Agency	Tennessee Department of Health
Agency Contact (<i>name, phone, e-mail</i>)	Michael Creighton, 615-741-0914, Michael.Creighton@tn.gov
Required Attachments (<i>as applicable – copies without signatures acceptable</i>)	
<input type="checkbox"/> RFP, Competitive Negotiation Request, Alternative Procurement Method Request, or Non-Competitive Contract/Amendment Request <input checked="" type="checkbox"/> proposed contract or amendment	
Medical/Mental Health-Related Service Description	
<p>An amendment to the approved contract is necessary due to a company name and Federal Employer Identification Number change.</p> <p>The Department's Bureau of Health Services is responsible for coordinating the provision of health care services statewide through seven rural offices, 89 rural health departments in approximately 110 different sites, and 6 metropolitan health departments. Tennessee is one of the few, if not the only,</p>	

Applicable RFS # 34360-24910

state that has an integrated system, connecting every local health department through regional offices to the central office, which allows capturing of data in a standardized format that supports public health management needs as well as public health preparedness needs across the state. This coordination is accomplished through Patient, Tracking Billing Management Information System (PTBMIS) software, which was developed and is owned by Netsmart Technologies, Inc. (formerly Netsmart Public Health, Inc.) PTBMIS is a unique and sophisticated proprietary software system that begins tracking patients from the time they call for an appointment, through the actual delivery of service (including automated call-backs when abnormal lab results are received), until the bill for the service provided is paid, and even later as follow-up notices are generated and mailed at the appropriate time to remind patients of future visits. The Department pays an annual license fee to use the software product at every health department site in Tennessee, as well as the central office. The contract also includes funding for periodic modifications to the software, as requested by the Department, to enhance performance and/or tailor the software to specific Tennessee needs.

Dept. of Health - Office of General Counsel
Approval

Kelly L. Evans

From: Mary Kennedy
Sent: Thursday, December 01, 2011 3:16 PM
To: Kelly L. Evans; Tish Justice
Cc: Cristina Alford
Subject: RE:

I approve the amendment in order to respond to Netsmart's change in corporate status.

From: Kelly L. Evans
Sent: Thursday, December 01, 2011 12:24 PM
To: Tish Justice; Mary Kennedy
Cc: Cristina Alford
Subject:
Importance: High

The attached contract amendment (60-249-10 Netsmart Technologies, Inc., Software Services, Amendment #1) requires your approval in order to be presented to the Fiscal Review Committee for approval. This amendment is necessary in order to change the name of the vendor and the FEIN. Please review and respond with your approval at your earliest convenience.

Supporting documentation is also attached.

Kelly Evans, Contract Analyst
State of Tennessee
Health Services Administration
Cordell Hull Building, 4th Floor
425 5th Avenue North
Nashville, Tennessee 37243
(615) 532-3210
kelly.levans@tn.gov

Mission: To promote, protect and improve the health of persons living in, working in or visiting the State of Tennessee!



Request Tracking #	34360-24910
<p>public health management needs as well as public health preparedness needs across the state. This coordination is accomplished through Patient, Tracking Billing Management Information System (PTBMIS) software, which was developed and is owned by Netsmart Technologies, Inc. (formerly Netsmart Public Health, Inc.) PTBMIS is a unique and sophisticated proprietary software system that begins tracking patients from the time they call for an appointment, through the actual delivery of service (including automated call-backs when abnormal lab results are received), until the bill for the service provided is paid, and even later as follow-up notices are generated and mailed at the appropriate time to remind patients of future visits. The Department pays an annual license fee to use the software product at every health department site in Tennessee, as well as the central office. The contract also includes funding for periodic modifications to the software, as requested by the Department, to enhance performance and/or tailor the software to specific Tennessee needs.</p>	
<p>15. Name & Address of the Contractor's Principal Owner(s) <i>- NOT required for a TN state education institution</i></p> <p>Netsmart Technologies, Inc., 3500 Sunrise Highway, Ste D122, Great River, NY 11739</p>	
<p>16. Evidence Contractor's Experience & Length Of Experience Providing the Service</p> <p>The Department has had a successful affiliation with the contractor since 1989. During this time, the Department has had a contractual agreement with Netsmart Technologies, Inc. (formerly Netsmart Public Health, Inc.) to support the operation of PTBMIS in all health department clinics for the various programs within the health department, including, but not limited to, such programs as WIC, Family Planning, Children's Special Services, HIV/AIDS, Immunization, Tuberculosis Control, Sexually Transmitted Diseases, Adolescent Pregnancy, Tobacco Control and Prevention, Rape Prevention Education and Breast and Cervical Cancer. This Contractor has responded rapidly to Department needs to comply with federal and state mandates, as well as requests for changes for enhancements to existing modules and development of new modules within PTBMIS. The PTBMIS system was the first in the state to become HIPAA compliant due to the service provided by this contractor.</p>	
<p>17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives</p> <p>The PTBMIS software is proprietary. Therefore, without a new system design, development, and implementation, there is no other vendor that can legally support and/or modify the existing data processing system that supports local health department activities across the state.</p>	
<p>18. Justification – <i>specifically explain why non-competitive negotiation is in the best interest of the state</i></p> <p>The PTBMIS software is proprietary. Netsmart Technologies, Inc. (formerly Netsmart Public Health, Inc.) owns the software and is the only company that can legally provide support and/or modifications to the PTBMIS system that currently operates in every local health department in the state, with over 2500 users. This system provides the information infrastructure for practically every program administered by the Bureau of Health Services and gives the Department the capability to perform the patient tracking, billing and management functions needed for comprehensive statewide provision of health care services in a coordinated and integrated manner. It also provides federal reporting capabilities, as well as the flexibility to rapidly deploy new programs. For example, Tennessee was one of the first states in the nation to be able to respond quickly with the capability of tracking exposed individuals in the event of a Severe Acute Respiratory Syndrome (SARS) outbreak. This is due to the flexibility of the system and the prompt Contractor response to request for software changes and enhancements. Therefore, we request your approval for non-competitive procurement to contract with Netsmart Technologies, Inc. (formerly Netsmart Public Health, Inc.) to continue to license use of their software product at every health department site in Tennessee, to maintain the software, and to provide periodic modifications of the software, as requested.</p>	

Request Tracking #	34360-24910
Agency Head Signature and Date – <i>MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances</i>	

**AMENDMENT ONE
OF CONTRACT FA-10-28685**

This Amendment is made and entered by and between the State of Tennessee, Department of Health, hereinafter referred to as the "State" and Netsmart Technologies, Inc. (as amended herein), hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. The following is added as Contract section E.12.:
E.12. Contractor Name. All references to "Netsmart Public Health, Inc." shall be deleted and replaced with "Netsmart Technologies, Inc."
2. The following is added as Contract section E.13.:
E.13. Federal Employer Identification Number. All references to FEIN, "20-5289534" shall be deleted and replaced with FEIN, "13-3680154."

The revisions set forth herein shall be effective on the date of final approval by all appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury). All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

NETSMART TECHNOLOGIES, INC.:

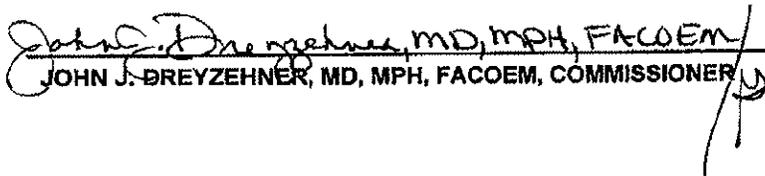


SIGNATURE 10-26-2011
DATE

JOSEPH MCGOVERN, EVP

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF HEALTH:



JOHN J. DREYZEHNER, MD, MPH, FACOEM, COMMISSIONER 10-27-11
DATE



1500 South de Longueville Street, Suite 2100
Greenville, SC 29615
803-733-1000
www.netsmarts.com

November 11, 2009

Dear Netsmart Customer:

Over the past several years, Netsmart has grown to include the following organizations that are all an important part of our parent company, Netsmart Technologies, Inc.:

Netsmart New York, Inc.
Netsmart Ohio, Inc.
Netsmart Public Health, Inc.
Therapist Helper, Inc.

To enhance our service to you, we are integrating these companies into a single legal entity, Netsmart Technologies, Inc., effective January 1, 2010. We are notifying all of our customers of this change as a point of information since one of the companies listed above may be referenced in your agreement with us.

There will be no changes in your terms of service, support or maintenance fees as a result of this action.

Thank you for being a part of the Netsmart customer community; we appreciate the opportunity to serve as your technology partner.

A handwritten signature in black ink, appearing to read "Anthony F. Grisanti", written over a horizontal line.

Anthony F. Grisanti
Chief Financial Officer

BASE CONTRACT

CONTRACT SUMMARY SHEET

021908

RFS # 343.60 — 249 — 10	Contract # FA-10-28685-00
State Agency DEPARTMENT OF HEALTH	State Agency Division BUREAU OF HEALTH SERVICES
Contractor Name NETSMART PUBLIC HEALTH, INC.	Contractor ID # (FEIN or SSN) <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 20-5289534-00

Service Description
COMPUTER SOFTWARE SERVICES

Contract Begin Date JULY 1, 2009	Contract End Date JUNE 30, 2014	SUBRECIPIENT or VENDOR? VENDOR	CFDA # MULTI. SEE SUPPLEMENT
--	---	--	--

Mark Each TRUE Statement
 Contractor is on STARS
 Contractor's Form W-9 is on file in Accounts

Allotment Code 343. MULTIPLE	Cost Center MULTIPLE	Object Code 082	Fund 11	Funding Grant Code	Funding Subgrant Code
--	--------------------------------	---------------------------	-------------------	---------------------------	------------------------------

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2010		\$220,101		\$634,604	\$854,705
2011		\$231,271	<div style="border: 1px solid black; padding: 5px; display: inline-block;"> CON RELEASED JUL 24 2009 TO ACCOUNTS </div>	\$666,795	\$898,066
2012		\$242,865		\$700,551	\$943,416
2013		\$254,903		\$735,114	\$990,017
2014		\$267,707		\$772,135	\$1,039,842
TOTAL:		\$1,216,847		\$3,509,199	\$4,726,046

— COMPLETE FOR AMENDMENTS ONLY —			State Agency Fiscal Contact & Telephone # CRYSTAL ALLEN 741-9419
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	State Agency Budget Officer Approval <i>Crystal Allen</i>
			Funding Certification (certification, required by T.C.A., § 9-4-6113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)
			JUL 02 2009
TOTAL:			
End Date:			

Contractor Ownership (complete for ALL base contracts— N/A to amendments or delegated authorities)

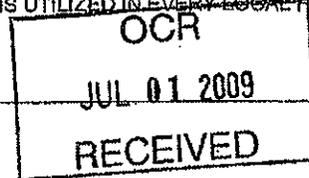
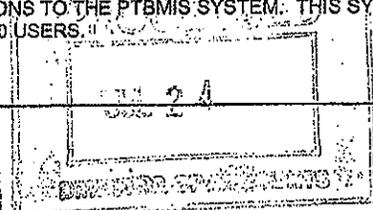
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> Government
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input checked="" type="checkbox"/> NOT Minority/Disadvantaged	<input type="checkbox"/> Other

Contractor Selection Method (complete for ALL base contracts— N/A to amendments or delegated authorities)

<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation *	<input type="checkbox"/> Alternative Competitive Method *
<input checked="" type="checkbox"/> Non-Competitive Negotiation *	<input type="checkbox"/> Negotiation w/ Government (ID, GG, GU)	<input type="checkbox"/> Other *

*** Procurement Process Summary** (complete for selection by Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)

THE PTBMS SOFTWARE IS PROPRIETARY. NETSMART PUBLIC HEALTH, INC., OWNS THE SOFTWARE AND IS THE ONLY COMPANY THAT CAN LEGALLY PROVIDE SUPPORT AND/OR MODIFICATIONS TO THE PTBMS SYSTEM. THIS SYSTEM IS UTILIZED IN EVERY LOCAL HEALTH DEPARTMENT IN THE STATE AND HAS MORE THAN 2,600 USERS.



CONTRACT SUMMARY SHEET SUPPLEMENT

Contract Number

Fiscal Year

2010

Allotment Code	Cost Center	Object Code	Fund	Grant Code	Subgrant Code	CFDA #	Amount
343.53	10	082	11			10.557	\$84,215
343.53	51	082	11			10.565	\$15,080
343.49	105	082	11			93.268	\$120,806
343.60	99	082	11				\$634,604
TOTAL							\$854,705

CONTRACT SUMMARY SHEET SUPPLEMENT

Contract Number

Fiscal Year

2012

Allotment Code	Cost Center	Object Code	Fund	Grant Code	Subgrant Code	CFDA #	Amount	
343.53	10	082	11			10.557	\$92,898	
343.53	51	082	11			10.565	\$16,643	
343.49	105	082	11			93.268	\$133,324	
343.60	99	082	11				\$700,551	
TOTAL								\$943,416



C O N T R A C T

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

Agency Tracking # <p style="text-align: center; margin-top: 10px;">34360-24910</p>	Edison ID
---	------------------

Contractor Netsmart Public Health, Inc.	Contractor Federal Employer Identification or Social Security # <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 20-5289534-00
---	---

Service
Computer software services

Contract Begin Date July 1, 2009	Contract End Date June 30, 2010	Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA #(s) 10.557,10.565, 93.268
--	---	---	---

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2010		\$220,101		\$634,604	\$854,705
2011		\$231,271		\$666,795	\$898,066
2012		\$242,865		\$700,551	\$943,416
2013		\$254,903		\$735,114	\$990,017
2014		\$267,707		\$772,135	\$1,039,842
TOTAL:		\$1,216,847		\$3,509,199	\$4,726,046

--- OCR Use ---	Agency Contact & Telephone # Crystal Allen 741-9419
Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred)	
Speed Code	Account Code

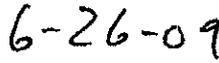
Contractor Ownership/Control

<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> Government
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input checked="" type="checkbox"/> NOT Minority/Disadvantaged	<input type="checkbox"/> Other

Contractor Selection Method

<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation *	<input type="checkbox"/> Alternative Competitive Method *
<input checked="" type="checkbox"/> Non-Competitive Negotiation *	<input type="checkbox"/> Other *	

***Procurement Process Summary**
Non-competitive request attached.

FA CONTRACT INFORMATION SUPPLEMENT	
FOR ALL FA-TYPE CONTRACTS — COMPLETE EITHER SECTION A OR SECTION B	
Contract RFS #	34360-24910
Contractor:	Netsmart Public Health, Inc.
SECTION A— CONTRACTOR IS AN INDIVIDUAL	SECTION B— CONTRACTOR IS A COMPANY (e.g., sole proprietorship, partnership, or corporation)
Is or has the contractor been a state employee? <input type="checkbox"/> NO (no additional information required) <input type="checkbox"/> YES	Does an individual, who is or has been a state employee, own controlling interest in (or own) the contractor company? <input checked="" type="checkbox"/> NO (no additional information required) <input type="checkbox"/> YES
Was such employment within the past six months? <input type="checkbox"/> NO <input type="checkbox"/> YES (an approved rule exception permitting a contract within six months of employment is also required)	Was such employment within the past six months? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES (an approved rule exception permitting a contract within six months of employment is also required)
Does the contractor receive Tennessee Consolidated Retirement System (TCRS) retirement benefits? <input type="checkbox"/> NO <input type="checkbox"/> YES (the procuring agency general counsel MUST sign an analysis of this procurement using the TCRS analysis guidelines)	Does the individual who owns controlling interest in the contractor company receive Tennessee Consolidated Retirement System (TCRS) retirement benefits? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES (the procuring agency general counsel MUST sign an analysis of this procurement using the TCRS analysis guidelines)
CONTRACTOR SIGNATURE	
	
	
CONTRACTOR	DATE

**CONTRACT
 BETWEEN THE STATE OF TENNESSEE,
 DEPARTMENT OF HEALTH
 AND
 NETSMART PUBLIC HEALTH, INC.**

This Contract, by and between the State of Tennessee, Department of Health, hereinafter referred to as the "State" and Netsmart Public Health, Inc., hereinafter referred to as the "Contractor," is for the provision of computer software services, as further defined in the "SCOPE OF SERVICES."

The Contractor is special purpose corporation or association.
 Contractor Federal Employer Identification or Social Security Number: 20-5289534
 Contractor Place of Incorporation or Organization: Delaware

A. SCOPE OF SERVICES:

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

A.2. Definitions:

- a. **Delivery:** The time at which the Contractor installs a software product or change on the State computer system (or physically delivers an "install" tape or other computer readable media with the software product or change). A "delivery" implies that the software (1) must be installed (or installable) on the State computer system, (2) must operate without abnormal program interruptions, and (3) must substantially provide the functions as required by the specifications.
- b. **Notice of Delivery:** The date of a communication from the Contractor to the State announcing that a software change has been delivered.
- c. **Acceptance:** The time at which the State determines, by testing delivered software products or changes, that the software operates as required by the specifications; i.e., it (1) completely provides the functions as required by the specification, (2) has no shortcomings in documentation and (3) has no shortcomings in efficiency or performance.
- d. **Modification and Enhancement Process:** A five-step process used to define, specify, develop, test, and implement changes to the software. The five steps are (1) the State prepares specifications for a modification or enhancement, (2) the Contractor prepares an estimate for the delivery date and cost, at the contract rates, for development of the software, (3) the State accepts the estimate and authorizes the work, (4) the Contractor delivers the software product or changes as defined elsewhere, and (5) the State accepts the software product or change.

A.3. Description of Services for Patient Care Management System (PCMS) known in Tennessee as PTBMIS and SIIS.

a. The Contractor shall:

- 1) Provide for software maintenance, as described below, to the software products known as Patient Care Management System (PCMS) and SIIS including, but not limited to, the modules listed:

PATIENT REGISTRATION	ENCOUNTER PROCESSING
PATIENT BILLING	ERP FQHC MEDICARE
ECS FQHC MEDICARE	IMMUNIZATION TRACKING
LAB RESULTS TRACKING	PATIENT TRACKING
HOME HEALTH	EPSDT TENNESSEE
APPOINTMENT SCHEDULE	TENNESSEE SUPPLEMENT
TB - NATIONAL	CASE MANAGEMENT
BCRR	MANAGED CARE

EPI INFORMATION	PRE-NATAL (PTBMIS-VE)
PHARMACY	STD TENNESSEE
TIME AND ACTIVITY	WIC - TENNESSEE
SYSTEM SUPPORT	AS400 - PC TRANSFER
DENTAL BILLING	DRUG ISSUANCE
ECS HOME HEALTH	ERP HOME HEALTH
PHARMACY/MEDI-SPAN	RX DRUG-DRUG INTERACTION
RECTRANS	BREAST & CERVICAL
TENNCARE	STATE IMMUNIZATION REGISTRY
ECS MEDICARE	STEP DOWN BILLING
MCO/HMO BILLING	POMR/SOAP MEDICAL RECORD
WIC-TN (VOUCHER ISSUE)	LAB REQUISITION SYSTEM
WIC-TN (CENTRAL SITE)	LAB ORDER ENTRY
COMMODITY SURPLUS	ST. CENTRAL CLIENT INDEX
ACCOUNT WRITEOFF	PANDEMIC FLU
HUGS	SPLIT

- 2) Make necessary adjustments and repairs to keep the software operating without abnormal interruptions and to correct latent deficiencies with respect to software specifications.
- 3) Make all necessary modifications, adjustments, and repairs to keep the software operating in compliance with applicable federal laws and regulations.
- 4) Maintain software for the current operating system environments, IBM OS/400 versions 5.2 and 5.x for the term of the contract.
- 5) Maintain a copy of the State's current production version of software on the Contractor's computer.
- 6) Provide, from time to time, new versions of the software to keep the State abreast of the PCMS and SIIS National Standard Model. Complete documentation of all system enhancements or revisions will be provided with new releases of software. Documentation must describe, in a user-friendly manner, what the user needs to know to understand each level on which the software operates.
- 7) Provide services between the hours of 8:00 a.m. and 4 p.m. Central Time, Monday through Friday, excluding Contractor holidays.
- 8) Respond to problems, technical support, or requests for information within three (3) days, by either correcting the problem, providing information, or technical support as requested, or providing a plan, including a delivery date, for the information or support requested.

b. The State:

- 1) May request modifications and enhancements to the software using the "Modification and Enhancement Process" as defined, in A.2.d. All such modifications and enhancements will be developed consistent with and will operate with the existing software at no loss of function to the existing software.
- 2) Shall test modifications and enhancements within thirty (30) days of the later of delivery or notice of delivery. If the delivery of the software is not contested within those thirty (30) days, it will be deemed delivery for purpose of payment of invoice.
- 3) May request technical assistance after hours and/or on weekends under special circumstances. The State will endeavor to give the contractor at least thirty (30) days advance notice of the need for technical assistance. There shall be no additional charges for the provision of technical advice as described herein.

- 4) May choose to purchase additional/new module(s). If the State so chooses, maintenance for the additional/new module(s) will be included in the acquisition cost in the Contract fiscal year in which it was purchased; in subsequent fiscal years, the costs will be added to annual maintenance fees. This action will be accomplished through an amendment to the current contract.
- 5) Shall stay within one year of current release of PCMS and SIIS software.
- 6) Shall provide the Contractor necessary access to the PCMS and SIIS software and equipment on which it runs in order to effect necessary adjustments and repairs.

B. CONTRACT TERM:

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

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Four Million Seven Hundred Twenty Six Thousand Forty Six Dollars (\$4,726,046). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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

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

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

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

Service Description	Amount (per compensable increment)
YEAR ONE	
PCMS MILESTONES	
PCMS Event 1 System Maintenance and Support	\$ 409,834

PCMS Event 2 PCMS System Modifications and Enhancements Hourly contract rate at \$169 not to exceed 1330 hours	\$ 224,770
WIC MILESTONES	
WIC Event 1 System Maintenance and Support	\$ 71,540
WIC Event 2 System Modifications and Enhancements Hourly contract rate at \$169 not to exceed 75 hours	\$ 12,675
CSFP MILESTONES	
CSFP Event 1 System Maintenance and Support	\$ 10,855
CSFP Event 2 System Modification and Enhancements Hourly contract rate at \$169 not to exceed 25 hours	\$ 4,225
SIIS MILESTONES	
SIIS Event 1 System Maintenance and Support	\$ 87,006
SIIS Event 2 SIIS System Modifications and Enhancements Hourly contract rate at \$169 not to exceed 200 hours	\$ 33,800
YEAR ONE TOTAL	\$854,705

YEAR TWO	
PCMS MILESTONES	
PCMS Event 1 System Maintenance and Support	\$ 430,325
PCMS Event 2 PCMS System Modifications and Enhancements Hourly contract rate at \$178 not to exceed 1330 hours	\$ 236,470
WIC MILESTONES	
WIC Event 1 System Maintenance and Support	\$ 75,117
WIC Event 2 System Modifications and Enhancements Hourly contract rate at \$178 not to exceed 75 hours	\$ 13,350
CSFP MILESTONES	
CSFP Event 1 System Maintenance and Support	\$ 11,398
CSFP Event 2 System Modification and Enhancements Hourly contract rate at \$178 not to exceed 25 hours	\$ 4,450
SIIS MILESTONES	
SIIS Event 1 System Maintenance and Support	\$ 91,356
SIIS Event 2 SIIS System Modifications and Enhancements Hourly contract rate at \$178 not to exceed 200 hours	\$ 35,600
YEAR TWO TOTAL	\$898,066

YEAR THREE	
PCMS MILESTONES	
PCMS Event 1 System Maintenance and Support	\$ 451,841
PCMS Event 2 PCMS System Modifications and Enhancements Hourly contract rate at \$187 not to exceed 1330 hours	\$ 248,710

WIC MILESTONES	
WIC Event 1 System Maintenance and Support	\$ 78,873
WIC Event 2 System Modifications and Enhancements Hourly contract rate at \$187 not to exceed 75 hours	\$ 14,025
CSFP MILESTONES	
CSFP Event 1 System Maintenance and Support	\$ 11,968
CSFP Event 2 System Modification and Enhancements Hourly contract rate at \$187 not to exceed 25 hours	\$ 4,675
SIIS MILESTONES	
SIIS Event 1 System Maintenance and Support	\$ 95,924
SIIS Event 2 SIIS System Modifications and Enhancements Hourly contract rate at \$187 not to exceed 200 hours	\$ 37,400
YEAR THREE TOTAL	\$943,416

YEAR FOUR	
PCMS MILESTONES	
PCMS Event 1 System Maintenance and Support	\$ 474,434
PCMS Event 2 PCMS System Modifications and Enhancements Hourly contract rate at \$196 not to exceed 1330 hours	\$ 260,680
WIC MILESTONES	
WIC Event 1 System Maintenance and Support	\$ 82,817
WIC Event 2 System Modifications and Enhancements Hourly contract rate at \$196 not to exceed 75 hours	\$ 14,700
CSFP MILESTONES	
CSFP Event 1 System Maintenance and Support	\$ 12,566
CSFP Event 2 System Modification and Enhancements Hourly contract rate at \$196 not to exceed 25 hours	\$ 4,900
SIIS MILESTONES	
SIIS Event 1 System Maintenance and Support	\$ 100,720
SIIS Event 2 SIIS System Modifications and Enhancements Hourly contract rate at \$196 not to exceed 200 hours	\$ 39,200
YEAR FOUR TOTAL	\$990,017

YEAR FIVE	
PCMS MILESTONES	
PCMS Event 1 System Maintenance and Support	\$ 498,155
PCMS Event 2 PCMS System Modifications and Enhancements Hourly contract rate at \$206 not to exceed 1330 hours	\$ 273,980
WIC MILESTONES	
WIC Event 1 System Maintenance and Support	\$ 86,957

WIC Event 2 System Modifications and Enhancements Hourly contract rate at \$206 not to exceed 75 hours	\$ 15,450
CSFP MILESTONES	
CSFP Event 1 System Maintenance and Support	\$ 13,194
CSFP Event 2 System Modification and Enhancements Hourly contract rate at \$206 not to exceed 25 hours	\$ 5,150
SIIS MILESTONES	
SIIS Event 1 System Maintenance and Support	\$ 105,756
SIIS Event 2 SIIS System Modifications and Enhancements Hourly contract rate at \$206 not to exceed 200 hours	\$ 41,200
YEAR FIVE TOTAL	\$1,039,842

- c. The Contractor shall not be compensated for travel time to the primary location of service provision.
- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.
- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:
- Michael Creighton
Office of Information Technology Systems
Department of Health
6th Floor, Cordell Hull Building
425 Fifth Avenue, North
Nashville, TN 37243
- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.
- (1) Invoice/Reference Number (assigned by the Contractor);
 - (2) Invoice Date;
 - (3) Invoice Period (period to which all invoiced charges are applicable);
 - (4) Contract Number (assigned by the State to this Contract);
 - (5) Account Name: Department of Health, Office of Information Technology Systems;
 - (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
 - (7) Contractor Name;
 - (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
 - (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
 - (10) Contractor Remittance Address;
 - (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;

- ii. Number of Completed Units, Increments, Hours; or Days as applicable, of each service invoiced;
- iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
- iv. Amount Due by Service; and
- v. Total Amount Due for the invoice period.

c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) not include any future work but will only be submitted for completed service; and
- (3) not include sales tax or shipping charges.

d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

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

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

D. **STANDARD TERMS AND CONDITIONS:**

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

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

D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date.

The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated, Section 12-4-401 et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.

- D.16. **Force Majeure.** The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. **State and Federal Compliance.** The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. **Completeness.** This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. **Severability.** If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. **Headings.** Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. **Conflicting Terms and Conditions.** Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. **Communications and Contacts.** All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Michael Creighton
 Office of Information Technology Systems
 Department of Health
 6th Floor, Cordell Hull Building
 425 Fifth Avenue, North
 Nashville, TN 37243
 Michael.creighton@tn.gov
 Telephone # 615-741-0914
 FAX # 615-532-5114

The Contractor:

Kevin Davidson, Vice President and General Manager

NetSmart Public Health, Inc.
 Piedmont Center East
 37 Villa Road, Suite 508
 Greenville, South Carolina 29615-3040
 Email: kdavidson@ntst.com
 Telephone # 864-232-2666 / 800-922-4426
 FAX # 864-370-2230

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

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.
- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
 - b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
 - c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall

be at the sole discretion of the head of the state agency that is a Party to this Contract; the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

E.6. Insurance. The Contractor shall carry adequate liability and other appropriate forms of Insurance.

E.7. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

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

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

E.8. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.

E.9. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering

into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

E.10. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

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

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

E.11. CFDA Number(s). When applicable, the Grantee shall inform its licensed independent public accountant of the federal regulations that are to be complied with in performance of an audit. This information shall consist of the following Catalog of Federal Domestic Assistance Numbers and Grant Names:

10.557 – WIC 10.565 – CSFP 93.268 – IMMUNIZATION

IN WITNESS WHEREOF,

NETSMART PUBLIC HEALTH, INC.:

Kevin Davidson

6-26-09

CONTRACTOR SIGNATURE

DATE

Kevin Davidson Vice President & General Mgr.

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF HEALTH:

Susan R. Cooper, MSN, RN

6-30-09

SUSAN R. COOPER, MSN, RN, COMMISSIONER

DATE

APPROVED:

M.D. Gertz, J/Ag

COMMISSIONER OF FINANCE & ADMINISTRATION

7/16/09

DATE

Jack P. Wilson

COMPTROLLER OF THE TREASURY

7/21/09

DATE

ATTACHMENT 1

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	NETSMART PUBLIC HEALTH, INC.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	V20-5289534

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



CONTRACTOR SIGNATURE

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

Kevin Davidson Vice President & General Mgr.

PRINTED NAME AND TITLE OF SIGNATORY

6-26-09

DATE OF ATTESTATION