

**CONTRACT #25**  
**RFS # 343.60-60815**  
**Edison # Pending**

**Department of Health**

**VENDOR:**  
**Netsmart Technologies, Inc.**



**STATE OF TENNESSEE**  
**DEPARTMENT OF HEALTH**

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JOHN J. DREYZEHNER, MD, MPH  
COMMISSIONER

BILL HASLAM  
GOVERNOR

July 28, 2014

Mr. Lucian Geise, Director  
Fiscal Review Committee  
320 Sixth Avenue North, 8<sup>th</sup> Floor  
Nashville, TN 37243

Mike Perry, Chief Procurement Officer  
Department of General Services  
Tennessee Tower, Third Floor  
Nashville, TN 37243

Dear Director Geise and CPO Perry,

This request is for approval to execute a non-competitive sole source contract with Netsmart, Inc. (RFS # 34360-60815; Edison # TBD) for maintenance and support of the Women, Infant and Children Tennessee (WIC-TN), WIC-TN (Voucher Issue), WIC-TN (Central Site), and Commodity Supplemental Food Program (Commodity Surplus) software collectively referred to as WIC software. Netsmart, Inc. developed the proprietary WIC software and has maintained the WIC software for many years. Recently the United States Department of Agriculture (USDA) and Food and Nutrition Service (FNS) required the WIC software to be in the public domain and available for use by any governmental entity for any lawful purpose, in a manner consistent with 7 CFR 3016.34. Effective June 30, 2014 the WIC software was transferred to the State and is now considered public domain software. The current contract with Netsmart, Inc. has expired and a new services contract is required to meet changing State and Federal regulations as is required from time to time to improve or add functionality to the WIC software. Recently the Division of Family Health and Wellness issued a Request for Information (RFI) to solicit vendors who would be interested in providing WIC software maintenance and support services. Netsmart, Inc. was the only vendor who responded that had the knowledge and experience to provide the WIC software support services.

The WIC software supports the delivery of WIC services to over 300,000 Tennesseans which includes services such as nutrition education, health care referrals, breastfeeding promotion and support and supplemental foods. Additionally, WIC participants receive approximately \$120 million in food (vouchers) benefits that are spent in local grocery stores and markets across

Mr. Lucian Geise, Director  
Mike Perry, Chief Procurement Officer  
July 28, 2014  
Page 2

Tennessee. This contract is necessary in order to provide continuity of services until an RFP can be issued to select new WIC software and vendor support services as part of the Department's new Electronic Public Health Information System (EPI). This contract request is for a term of three (3) years with options to extend for up to two additional years and has a total liability of \$906,933.07.

We appreciate your consideration of our request for approval to proceed with this non-competitive contract request.

Sincerely,

A handwritten signature in black ink, appearing to read 'John J. Dreyzehner', with a stylized flourish at the end.

John J. Dreyzehner, MD, MPH, FACOEM

Supplemental Documentation Required for  
Fiscal Review Committee

|  |   |                                    |              |              |    |
|--|---|------------------------------------|--------------|--------------|----|
| *Contact Name:   | Melissa Blair                                   | *Contact Phone:                    | 615-253-7779 |              |    |
| *Presenter's name(s):  | Dr. Michael Warren, Mike Newman, Eugene Neubert |                                    |              |              |    |
| Edison Contract Number: <i>(if applicable)</i>   |   | RFS Number: <i>(if applicable)</i> | 34360-60815  |              |    |
| *Original or Proposed Contract Begin Date:   | 10/01/2014                                      | *Current or Proposed End Date:     | 9/30/2019    |              |    |
| Current Request Amendment Number: <i>(if applicable)</i>   |   |                                    |              |              |    |
| Proposed Amendment Effective Date: <i>(if applicable)</i>  |   |                                    |              |              |    |
| *Department Submitting:  | Health  |                                    |              |              |    |
| *Division:   | Division of Family Health and Wellness          |                                    |              |              |    |
| *Date Submitted:   | 07256/2014                                      |                                    |              |              |    |
| *Submitted Within Sixty (60) days:   | Yes   |                                    |              |              |    |
| <i>If not, explain:</i>  |   |                                    |              |              |    |
| *Contract Vendor Name:   | Netsmart, Inc.                                  |                                    |              |              |    |
| *Current or Proposed Maximum Liability:  | \$906,933.07                                    |                                    |              |              |    |
| *Estimated Total Spend for Commodities:  |   |                                    |              |              |    |
| <b>*Current or Proposed Contract Allocation by Fiscal Year:</b><br><i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>     |   |                                    |              |              |    |
| FY:15  | FY:16   | FY:17                              | FY:18        | FY19         | FY |
| \$145,793.84   | \$180,627.38                                    | \$189,026.95                       | \$192,962.95 | \$198,521.95 | \$ |
| <b>*Current Total Expenditures by Fiscal Year of Contract:</b><br><i>(attach backup documentation from Edison)</i>                             |   |                                    |              |              |    |
| FY:  | FY:   | FY:                                | FY:          | FY           | FY |
| \$   | \$  | \$                                 | \$           | \$           | \$ |
| <b>IF</b> Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent: |   |                                    |              |              |    |
| <b>IF</b> surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:          |   |                                    |              |              |    |
| <b>IF</b> Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage: |   |                                    |              |              |    |

Supplemental Documentation Required for  
Fiscal Review Committee

|  |  |  |              |
|--|--|--|--------------|
| <b>*Contract Funding Source/Amount:</b>  |  |  |              |
| State:   |  | Federal:   | \$906,933.07 |
| <i>Interdepartmental:</i>  |  | <i>Other:</i>  |              |
| If “ <i>other</i> ” please define:   |  |  |              |
| If “ <i>interdepartmental</i> ” please define:   |  |  |              |
| Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>  |  | Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>   |              |
|  |  |  |              |
|  |  |  |              |
|  |  |  |              |
| Method of Original Award: <i>(if applicable)</i>   |  |  |              |
| *What were the projected costs of the service for the entire term of the contract prior to contract award?<br>How was this cost determined?  |  |  |              |
| *List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State. |  | The WIC/CSFP software was competitively procured over 20 years ago and is proprietary. Netsmart Technologies, Inc. owns the software and is the only company that has legally provided support and/or modifications to the WIC/CSFP system from installation circa 1992 to the present. The renewal of the Netsmart contract for the continuation of the Department’s WIC/CSFP software programs is essential to meeting current public health service requirements. |              |



## OIR Pre-Approval Endorsement Request E-Mail Transmittal

**TO :** Jane Chittenden, OIR Contracts  
Department of Finance & Administration  
E-mail : [Jane.Chittenden@tn.gov](mailto:Jane.Chittenden@tn.gov)

**FROM :** Carole Sumner, ITSD Administrative Services  
Department of Health  
E-mail : [Carole.sumner@tn.gov](mailto:Carole.sumner@tn.gov)

**DATE :** 7/18/14

**RE :** Request for OIR Pre-Approval Endorsement

**Applicable RFS #** 34360-60815 NetSmart Technologies, Inc.

**OIR Endorsement Signature & Date:**

*Mark Benzel (off)*  
Chief Information Officer

7/18/14

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

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

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

|   |  |
|---|--|
| <b>Contracting Agency</b>                   | <b>Dept. of Health, ITSD</b>   |
| <b>Agency Contact (name, phone, e-mail)</b> | <b>Mike Newman, Health CIO 615/253-5417</b><br><b><a href="mailto:Mike.Newman@tn.gov">Mike.Newman@tn.gov</a></b> |

**Applicable RFS # 34360-60815 NetSmart Technologies, Inc.**

**Attachments Supporting Request (mark all applicable)**

Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to OIR. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. OIR is aware that these documents will not have CPO signature when submitted with this request.

- Solicitation Document
- Special Contract Request
- Amendment Request
- Proposed Contract/Grant or Amendment
- Original Contract/Grant and Previous Amendments (if any)

**Information Systems Plan (ISP) Project Applicability**

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

IT Director/Staff Name Confirming (required): Mike Newman, Health CIO

- Applicable – Approved ISP Project#
- Not Applicable

**Subject Information Technology Service Description**

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

The Contractor shall provide for software maintenance as outlined in the Scope of Services, Section A.3. Description of Services for the Patient Care Management System (PCMS) known in Tennessee as PTBMIS.

# Contract Approval – Agency Legal Certification

A completed contract routed for Central Procurement Office (CPO) approval via Edison must be accompanied by this Agency Legal Certification template that has been signed and attached in PDF format.

|   |  |
|---|--|
| 1. Edison Contract ID #   | 34360-60815  |
| 2. Contracting Agency Name  | Health   |
| 3. Contractor Name  | Netsmart, Inc.   |
| 4. Service Caption  | Computer Software Services   |
| 5. Agency Contact (name, phone, e-mail)   | <p><b>Mike Newman</b><br/> <b>Information Technology Services Division</b><br/> <b>Department of Health</b><br/> <b>710 James Robertson Parkway</b><br/> <b>Nashville, TN 37243</b><br/> <b>Mike.Newman@tn.gov</b></p> |
| <p><b>6. Legal Certification</b></p> <p><i>By signing below, the department's legal staff certifies that:</i></p> <ol style="list-style-type: none"> <li>1) the contract as submitted includes only CPO template language (unless the agency has obtained an approved rule exception request);</li> <li>2) the contract is legally sufficient both in form and substance to protect the best interests of the State; and</li> <li>3) the contract does not contravene applicable law.</li> </ol>  |  |
| <hr/> <p>Agency Attorney Signature &amp; Date  July 23, 2014</p>   |  |
| <p><b>7. (Optional) Alternative to Legal Certification Request</b></p> <p><b>Note:</b> If there are extenuating circumstances and a department's legal staff is unable to certify to a contract in the above manner, you must provide a written explanation with Agency Head signature, in the space provided below. Once the explanation is received by the CPO, instructions will be provided to the department as to what will be needed in order to gain approval of the contract, e.g., providing a Microsoft Word version of the contract, etc. <u>Please keep in mind that this alternative will slow down the approval process and should be the exception, not the rule.</u></p> |  |

|   |             |
|---|-------------|
| 1. Edison Contract ID #   | 34360-60815 |
| <p><b>Justification The WIC/CSFP software was competitively procured over 20 years ago and is proprietary. Netsmart Technologies, Inc. owns the software and is the only company that has legally provided support and/or modifications to the WIC/CSFP system from installation</b><br/>ci</p> |             |
| <hr/> <p><b>Agency Head Signature &amp; Date</b> – <i>contracting agency head or authorized signatory</i></p>   |             |



July 30, 2014

Mike Newman  
Chief Information Officer  
Tennessee Department of Health  
Andrew Johnson Tower  
710 James Robertson Parkway  
Nashville, TN 37243

Mr. Newman,

Netsmart Technologies, Inc., "Netsmart," is the sole source for the WIC Software which is comprised of the WIC-Tennessee, WIC-TN (Voucher Issue), WIC-TN (Central Site), and Commodity Supplemental Food Program ("Commodity Surplus") modules. Netsmart is also the sole source provider for all associated modules, professional services, and Maintenance and Support Services.

The State of Tennessee request for the above products and services requires Netsmart to provide a combination of licensed software, professional services, and professional support services for use with the existing installed proprietary and unique software provided exclusively by Netsmart.

Netsmart is the sole provider of WIC software and services and is the only entity with access to the source code. The Netsmart WIC software currently licensed by Tennessee Department of Health is provided to the State in object code.

Netsmart Technologies, Inc. Tax ID #: 13-3680154

Sincerely,  
Troy Fowler  
Client Alignment Executive

# Special Contract Request

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

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

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

|                           |      |                             |      |
|---------------------------|------|-----------------------------|------|
| <b>APPROVED</b>           |      | <b>APPROVED</b>             |      |
| CHIEF PROCUREMENT OFFICER | DATE | COMPTROLLER OF THE TREASURY | DATE |

|  |   |
|--|---|
| <b>Request Tracking #</b>  | 34360-60815   |
| <b>1. Contracting Agency</b>   | Department of Health  |
| <b>2. Type of Contract or Procurement Method</b>   | <input type="checkbox"/> No Cost<br><input type="checkbox"/> Revenue<br><input type="checkbox"/> Sole Source<br><input type="checkbox"/> Proprietary<br><input type="checkbox"/> Competitive Negotiation<br><input checked="" type="checkbox"/> Other ___non-competitive<br>_____ |
| <b>3. Requestor Contact Information</b>  | Mike Newman<br>Information Technology Services<br>Division<br>Department of Health<br>710 James Robertson Parkway<br>Nashville, TN 37243<br><a href="mailto:Mike.Newman@tn.gov">Mike.Newman@tn.gov</a>  |
| <b>4. Brief Goods or Services Caption</b>  | Computer Software Services  |
| <b>5. Description of the Goods or Services to be Acquired:</b>   |   |
| <p>Computer software services and support for the federally funded Women, Infant and Children and Commodity Supplement Food Program used by approximately 2,500 Tennessee Department of Health employees located at the TDH's central, regional and county health department locations. Services of Contractor have provided support for these federal programs for over 20 years. The vendor is responsible for repairs and adjustments to facilitate operations, compliance with applicable federal laws, and provide system enhancements or revisions associated with new releases of software. In addition, the vendor provides tech support and consultation after hours and in response to emergencies as necessary.</p> |   |
| <b>6. Proposed Contractor</b>  | Netsmart Technologies, Inc.   |

|  |  |
|--|--|
| <b>Request Tracking #</b>  | 34360-60815  |
| <b>7. Name &amp; Address of the Contractor's principal owner(s)</b><br>– NOT required for a TN state education institution   | Genstar Capital, LLC<br>4 Embarcadero Center<br>San Francisco, CA 94111              |
| <b>8. Proposed Contract Period</b> – with ALL options to extend exercised<br><i>The proposed contract start date shall follow the approval date of this request.</i>   | 60 months  |
| <b>9. Office for Information Resources Pre-Approval Endorsement Request</b><br>– information technology (N/A to THDA)  | <input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached |
| <b>10. eHealth Pre-Approval Endorsement Request</b><br>– health-related professional, pharmaceutical, laboratory, or imaging   | <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached |
| <b>11. Human Resources Pre-Approval Endorsement Request</b><br>– state employee training   | <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached |
| <b>12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.</b>  | <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,                 |
| <b>13. Maximum Contract Cost</b> – with ALL options to extend exercised  | \$ 906,933.07  |
| <b>14. Was there an initial government estimate? If so, what amount?</b>   | <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, \$              |
| <b>15. Cost Determination Used-</b> How did agency arrive at the estimate of expected costs?<br><br>Upon analyzing the deliverables and outcomes requested, TDH estimates that the total contract cost will be similar to the FY 2009-FY2014 contract amount based on time requirements, hourly rates and past experience with system maintenance/support and with system modification/enhancements. For this type of work, Netsmart bills both a flat rate for software maintenance/support and a variable rate for software modifications/enhancements subject to prescribed hourly rate and time limits per state fiscal year period. Any adjustments to same will consider actual spending rates of the current budgeted contract or approximately 80% of same from SFY 2009–SFY 2014.   |  |
| <b>16. Explanation of Fair and Reasonable Price-</b> Explain how agency determined that price is fair and reasonable<br><br>Initially competitively procured, the Tennessee Department of Health (TDH) has contracted with Netsmart Technologies, Inc. (Netsmart) for over 20 years. The projected contract amount is expected to remain similar to the current five-year contract amount for the FY 2009-FY2014 period. The projected time frames of the work to provide software maintenance and software modifications/enhancements are based upon past experience with routine and ongoing support of the Department's patient tracking, billing and management information system and the vendor is willing to complete the work as requested in the timeframe specified by TDH. The proposed contract amount is reasonable considering the Department's experience with the vendor's routine/ongoing support for over 20 years and in consideration of Netsmart's unique experience in developing a public health software support system product. |  |
| <b>17. Documentation of Discussions with Contractor-</b> How did agency document discussions with Contractor? Attach documentation to this request as applicable.<br><br>Representatives of the Department and Netsmart management and customer liaison staff from the vendor's corporate headquarters in New York communicated through phone, email and face to face meetings. Discussions included contract deliverable clarification, including the clarification of scope of services and pricing based on expected changes to WIC and CSFP pertaining to interoperability with the Department's new electronic health record project (EPI).   |  |

|  |  |
|--|--|
| <b>Request Tracking #</b>  | 34360-60815  |
| <p><b>18. Explanation of Need for or requirement placed on the State to acquire the goods or services:</b></p> <p>Currently the TDH provides WIC services to approximately 300,000 Tennesseans under the federally funded program and requires a computer application to operate the program for printing vouchers, sending records to the bank and printing reports for the USDA.</p>   |  |
| <p><b>19. Proposed contract impact on current State operations:</b></p> <p>This contract allows the Department to continue to provide Women, Infant and Children as well as Commodity Supplemental Food Program nutrition services to rural and metro regions, county health departments and other affiliates of the Department of Health enterprise in TN.</p>  |  |
| <p><b>20. Justification</b> – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.</p> <p>The WIC/CSFP software was competitively procured over 20 years ago and is proprietary. Netsmart Technologies, Inc. owns the software and is the only company that has legally provided support and/or modifications to the WIC/CSFP system from installation circa 1992 to the present. The renewal of the Netsmart contract for the continuation of the Department's WIC/CSFP software programs is essential to meeting current public health service requirements. The WIC software is unique to Tennessee and has been customized as such and Netsmart, Inc. is the only company that can support the software.</p>          |  |
| <p><b>For No Cost and Revenue Contracts Only</b></p>   |  |
| <p><b>21. What costs will the State incur as a result of this contract? If any, please explain.</b></p>  |  |
| <p><b>22. What is the total estimated revenue that the State would receive as a result of this contract?</b></p>   |  |
| <p><b>23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.</b></p>  | <p><input type="checkbox"/> NO      <input type="checkbox"/> YES</p> |
| <p><b>24. Summary of State responsibilities under proposed contract</b></p>  |  |
| <p><b>For Sole Source and Proprietary Procurements Only</b></p>  |  |
| <p><b>25. Explanation of Need for or requirement placed on the State to acquire the goods or services:</b></p> <p>The WIC/CSFP software was competitively procured over 20 years ago and is proprietary. Netsmart Technologies, Inc. owns the software and is the only company that has legally provided support and/or modifications to the WIC/CSFP system from installation circa 1992 to the present. The renewal of the Netsmart contract for the continuation of the Department's WIC/CSFP software programs is essential to meeting current public health service requirements..</p>  |  |
| <p><b>26. Evidence of Contractor's experience &amp; length of experience providing the goods or services to be procured.</b></p> <p>This service has been provided by Netsmart Technologies, Inc. to the local health departments, rural and metro regions across Tennessee through a contract with the Department of Health for the past twenty (20) years. NetSmart is presently the only provider that supports the WIC/CSFP software system that supports the public health services of TDH. Netsmart has collaborated with and supported TDH throughout this period through the assessment of information needs, including face-to-face assistance when needed to identify IT problems and identify solutions to resolve and correct in a timely and cost effective manner as possible.</p> |  |

|   |  |
|---|--|
| <b>Request Tracking #</b>   | 34360-60815  |
| <b>27. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.</b>  | <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES,<br>Method: Contract<br>Name/Address:<br>Netsmart Technologies, Inc. |
| <b>28. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives</b><br><br>Initially competitively procured, Netsmart Technologies, Inc. has developed and maintained a patient care information system unique to the Tennessee Department of Health's public health enterprise for over 20 years. The Department has developed a roadmap for the future through an Electronic Public Health Information (EPI) business plan, inclusive of RFI and RFP initiatives through the state procurement process. As noted, Netsmart Technologies, Inc. is the sole owner of the software support services that TDH utilizes to document, track and report public health services provided statewide. The business relationship between NetSmart and TDH has been successful and has paved the way for future technological enhancements that will be procured through a competitive bidding process. The state partnership with Netsmart, Inc. to deliver WIC services has resulted in one of the lowest operational cost for WIC service delivery in the country. |  |
| <b>Signature Required for all Special Contract Requests</b>   |  |
| <b>Agency Head Signature and Date</b> – <i>MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented circumstances</i><br><br><div style="text-align: center;">  </div> <div style="text-align: right;"> Date: 7-28-17 </div>   |  |

**CONTRACT**

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

|   |                                       |  |                                   |              |                              |
|---|---------------------------------------|--|-----------------------------------|--------------|------------------------------|
| <b>Begin Date</b><br>October 1, 2014  | <b>End Date</b><br>September 30, 2017 | <b>Agency Tracking #</b><br>34360-60815  | <b>Edison Record ID</b>           |              |                              |
| <b>Contractor Legal Entity Name</b><br>NetSmart Technologies, INC.  |                                       |  | <b>Edison Vendor ID</b><br>123622 |              |                              |
| <b>Service Caption</b> (one line only)<br><b>Computer Software Services</b>   |                                       |  |                                   |              |                              |
| <b>Subrecipient or Vendor</b><br><input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor   |                                       | <b>CFDA #</b><br>Multiple – see CPW summary sheet supplement worksheet   |                                   |              |                              |
| <b>Funding —</b>  |                                       |  |                                   |              |                              |
| <b>FY</b>   | <b>State</b>                          | <b>Federal</b>   | <b>Interdepartmental</b>          | <b>Other</b> | <b>TOTAL Contract Amount</b> |
| 2015  |                                       | \$145,793.84   |                                   |              | \$145,793.84                 |
| 2016  |                                       | \$180,627.38   |                                   |              | \$180,627.38                 |
| 2017  |                                       | \$189,026.95   |                                   |              | \$189,026.95                 |
| 2018  |                                       |  |                                   |              |                              |
| 2019  |                                       |  |                                   |              |                              |
| <b>TOTAL:</b>   |                                       | <b>\$515,448.17</b>  |                                   |              | <b>\$515,448.17</b>          |
| <b>American Recovery and Reinvestment Act (ARRA) Funding:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO   |                                       |  |                                   |              |                              |
| <b>Ownership/Control</b>  |                                       |  |                                   |              |                              |
| <input type="checkbox"/> African American <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Female<br><input type="checkbox"/> Person w/Disability <input type="checkbox"/> Small Business <input type="checkbox"/> Government <input checked="" type="checkbox"/> NOT Minority/Disadvantaged<br><input type="checkbox"/> Other: |                                       |  |                                   |              |                              |
| <b>Selection Method &amp; Process Summary</b> (mark the correct response to confirm the associated summary)   |                                       |  |                                   |              |                              |
| <input type="checkbox"/> RFP  |                                       | The procurement process was completed in accordance with the approved RFP document and associated regulations.   |                                   |              |                              |
| <input type="checkbox"/> Competitive Negotiation  |                                       | The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.  |                                   |              |                              |
| <input type="checkbox"/> Alternative Competitive Method   |                                       | The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.  |                                   |              |                              |
| <input checked="" type="checkbox"/> Non-Competitive Negotiation   |                                       | The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.   |                                   |              |                              |
| <input type="checkbox"/> Other  |                                       | The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class." |                                   |              |                              |
| <b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.   |                                       |  | <i>OCR USE - FA</i>               |              |                              |
| <b>Speed Chart</b> (optional)<br>Current = HL00011979   |                                       | <b>Account Code</b> (optional)<br>Current = 70899000   |                                   |              |                              |

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

This Contract, by and between the State of Tennessee, Department of Health, hereinafter referred to as the "State" and Netsmart Technologies, 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 a Special Purpose Corporation Or Association.  
Contractor Place of Incorporation or Organization: Delaware  
Contractor Edison Registration ID # 13-3680154

**A. SCOPE OF SERVICES:**

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.

A.2. Definitions:

- a. Delivery: The time at which the Contractor installs a software product or changes 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.

a. The Contractor shall:

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

WIC-TN (VOUCHER ISSUE) WIC – TENNESSEE  
WIC-TN (CENTRAL SITE)  
COMMODITY SURPLUS FOOD PROGRAM

- (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 version 6.x or greater 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 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 software and equipment on which it runs in order to effect necessary adjustments and repairs.
- (6) Shall provide the contractor necessary access to the PCMS software and equipment on which it runs in order to effect necessary adjustments and repairs.

**B. CONTRACT PERIOD:**

- B.1. This Contract shall be effective for the period beginning October 1, 2014, and ending on September 30, 2017. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that such an extension of the contract term is effected prior to the current contract expiration date by means of a contract amendment. If a term extension necessitates additional funding beyond that which was included in the original Contract, an increase of the State's maximum liability will also be effected through contract amendment, and shall be based upon payment rates provided in the original Contract.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Five Hundred Fifteen Thousand Four Hundred Forty-Four Dollars and Seventeen Cents (\$515,448.17). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
- a. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

| <b>Service Description</b>                          | <b>Amount</b><br>(per compensable increment) |
|---|--|
| <b>Year One</b>                                     |  |
| <b>WIC Milestones</b>                               |  |
| WIC Event 1 – System maintenance and Support        | \$73,043.88                                  |
| WIC Event 2 – System modifications and enhancements | \$51,500                                     |

|   |                     |
|---|---------------------|
| Hourly rate at \$206 not to exceed 250 hours  |                     |
| <b>CSFP Milestones</b>  |                     |
| CSFP Event 1 – System maintenance and Support   | \$10,949.96         |
| CSFP Event 2 – System modifications and enhancements<br>Hourly rate at \$206 not to exceed 50 hours | \$10,300            |
| <b>Year One Total</b>   | <b>\$145,793.84</b> |

| Service Description  | Amount<br>(per compensable increment) |
|--|---------------------------------------|
| <b>Year Two</b>  |                                       |
| <b>WIC Milestones</b>  |                                       |
| WIC Event 1 – System maintenance and Support   | \$ 102,261.43                         |
| WIC Event 2 – System modifications and enhancements<br>Hourly rate at \$210.12 not to exceed 250 hours | \$52,530                              |
| <b>CSFP Milestones</b>   |                                       |
| CSFP Event 1 – System maintenance and Support  | \$15,329.95                           |
| CSFP Event 2 – System modifications and enhancements<br>Hourly rate at \$210.12 not to exceed 50 hours | \$10,506                              |
| <b>Year Two Total</b>  | <b>\$180,627.38</b>                   |

| Service Description  | Amount<br>(per compensable increment) |
|--|---------------------------------------|
| <b>Year Three</b>  |                                       |
| <b>WIC Milestones</b>  |                                       |
| WIC Event 1 – System maintenance and Support   | \$107,374.50                          |
| WIC Event 2 – System modifications and enhancements<br>Hourly rate at \$218.52 not to exceed 250 hours | \$54,630                              |
| <b>CSFP Milestones</b>   |                                       |
| CSFP Event 1 – System maintenance and Support  | \$16,096.45                           |
| CSFP Event 2 – System modifications and enhancements<br>Hourly rate at \$218.52 not to exceed 50 hours | \$10,926                              |
| <b>Year Three Total</b>  | <b>\$189,026.95</b>                   |

| Service Description                                   | Amount<br>(per compensable increment) |
|---|---------------------------------------|
| <b>Year Four – (Pursuant to B.2. being exercised)</b> |                                       |
| <b>WIC Milestones</b>                                 |                                       |
| WIC Event 1 – System maintenance and Support          | \$107,374.50                          |
| WIC Event 2 – System modifications and enhancements   | \$57,910                              |

|  |                     |
|--|---------------------|
| Hourly rate at \$231.64 not to exceed 250 hours  |                     |
| <b>CSFP Milestones</b>   |                     |
| CSFP Event 1 – System maintenance and Support  | \$16,096.45         |
| CSFP Event 2 – System modifications and enhancements<br>Hourly rate at \$231.64 not to exceed 50 hours | \$11,582            |
| <b>Year Four Total</b>   | <b>\$192,962.95</b> |

| <b>Service Description</b>   | <b>Amount</b><br>(per compensable increment) |
|--|--|
| <b>Year Five – (Pursuant to B.2. being exercised)</b>  |  |
| <b>WIC Milestones</b>  |  |
| WIC Event 1 – System maintenance and Support   | \$107,374.50                                 |
| WIC Event 2 – System modifications and enhancements<br>Hourly rate at \$250.17 not to exceed 250 hours | \$62,542.50                                  |
| <b>CSFP Milestones</b>   |  |
| CSFP Event 1 – System maintenance and Support  | \$16,096.45                                  |
| CSFP Event 2 – System modifications and enhancements<br>Hourly rate at \$250.17 not to exceed 50 hours | \$12,508.50                                  |
| <b>Year Five Total</b>   | <b>\$198,521.95</b>                          |

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

Michael Creighton  
 Division of Information Technology Systems  
 Department of Health  
 Andrew Johnson Tower  
 710 James Robertson Parkway  
 Nashville, TN 37243

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice Number (assigned by the Contractor)
  - (2) Invoice Date
  - (3) Contract Number (assigned by the State)
  - (4) Customer Account Name: Department of Health  
Division of Information Technology Systems
  - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
  - (6) Contractor Name
  - (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
  - (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)

- (9) Contractor Remittance Address
- (10) Description of Delivered Service
- (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
  - v. Total Amount Due for the invoice period

b. The Contractor understands and agrees that an invoice under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) only be submitted for completed service and shall not include any charge for future work;
- (3) not include sales tax or shipping charges; and
- (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.

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

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

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.

- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
- b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

#### **D. STANDARD TERMS AND CONDITIONS:**

D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not

limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401, *et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier

service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Mike Newman  
 Agency Chief Information Officer  
 Information Technology Services Division  
 Department of Health  
 Andrew Johnson Tower  
 710 James Robertson Parkway  
 Nashville, TN 37243  
 Mike.Newman@tn.gov  
 Telephone # 615-253-5417  
 FAX # 615-532-1886

The Contractor:

Anthony Ritz  
 Chief Financial Officer  
 Netsmart Technologies, Inc.  
 4950 College Boulevard  
 Overland Park, KS 66211  
 ARitz@NTST.com  
 Telephone # 800-482-1973  
 FAX # 913-696-3487

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

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

- E.5 Tennessee Department of Revenue Registration. The Contractor shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.
- E.6. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.
- a. The Contractor shall maintain, at minimum, the following insurance coverage:
    - (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
    - (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
    - (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.
    - (4) Professional Malpractice Liability with a limit of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.
  - b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.
- E.7. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.
- The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.
- It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.
- E.8. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

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

E.9. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

E.10. 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.11. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in

connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

- E.12. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

- a. Reporting of Total Compensation of the Contractor's Executives.
  - (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
    - i. 80 percent or more of the Contractor's annual gross revenues from Federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
    - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

Executive means officers, managing partners, or any other employees in management positions.
  - (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
    - i. Salary and bonus.
    - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax qualified.
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
  - c. If this Contract is amended to extend its term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the amendment to this Contract becomes effective.
  - d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

E.13. 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:

- 10.557 – Special Supplemental Nutrition Program for Women, Infants, and Children
- 10.565 – Commodity Supplemental Food Program
- 93.268 – Immunization Cooperative Agreements

Add Appropriate and Contingently Required Special Terms & Conditions (refer to instructions for details)

**IN WITNESS WHEREOF,**

**NETSMART TECHNOLOGIES, INC.:**

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**CONTRACTOR SIGNATURE**

**DATE**

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**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**DEPARTMENT OF HEALTH:**

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**JOHN J. DREYZEHNER, MD, MPH, FACOEM**

**DATE**

## ATTACHMENT 1

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

|   |                            |
|---|----------------------------|
| <b>SUBJECT CONTRACT NUMBER:</b>   | 34360-24915                |
| <b>CONTRACTOR LEGAL ENTITY NAME:</b>  | NETSMART TECHNOLOGIES, INC |
| <b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b><br>(or Social Security Number) | V13-3680154                |

**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.**

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**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.

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**PRINTED NAME AND TITLE OF SIGNATORY**


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**DATE OF ATTESTATION**