



STATE OF TENNESSEE
DEPARTMENT OF HEALTH
ANDREW JOHNSON TOWER, 5TH FLOOR
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243

BILL LEE
GOVERNOR

LISA PIERCEY, MD, MBA, FAAP
COMMISSIONER

July 13, 2020

Krista Lee Carsner, Director
Fiscal Review Committee
Suite G-102, Cordell Hull Building
425 5th Avenue North
Nashville, TN 37243

Mike Perry, Chief Procurement Officer
Central Procurement Office, Department of General Services
22nd Floor, Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243

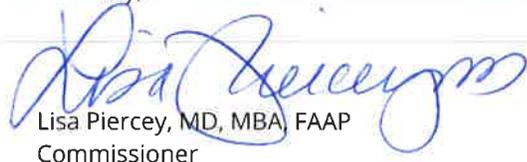
Dear Director Carsner and CPO Perry:

The Department of Health requests approval to amend a previously approved, three year sole source contract with two one-year options to renew with NetSmart Technologies, Inc. for the current Patient Care Management System (formally known as the Patient Tracking Billing Management Information System, or PTBMIS) in Tennessee.

The amendment will remove the Women, Infants and Children (WIC) program module from the contract, as those services are no longer needed in fiscal years 21, 22, 23, and 24. The department implemented its own WIC benefits system based on federal guidance that replaced PTBMIS for WIC. The contract funding is provided by state and federal monies. With the removal of the WIC program module, the five-year contract will have an estimated liability of \$5,318,736.00, a reduction of \$762,851.00.

We respectfully submit the contract amendment for consideration and approval by the Fiscal Review Committee.

Sincerely,


Lisa Piercey, MD, MBA, FAAP
Commissioner

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Jenny Crane	*Contact Phone:	615-741-0135		
*Presenter's name(s):	Alexa Witcher, Lindsay Oliveras, Brandon Corbin				
Edison Contract Number: <i>(if applicable)</i>	64512	RFS Number: <i>(if applicable)</i>	34360-24920		
*Original or Proposed Contract Begin Date:	10/1/2019	*Current or Proposed End Date:	9/30/2022		
Current Request Amendment Number: <i>(if applicable)</i>	1				
Proposed Amendment Effective Date: <i>(if applicable)</i>	9/10/2020				
*Department Submitting:	Department of Health				
*Division:	Community Health Services				
*Date Submitted:	July 10, 2020				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	NetSmart Technologies, Inc.				
*Current or Proposed Maximum Liability:	\$ 6,081,587.00				
*Estimated Total Spend for Commodities:	N/A				
*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY: 2020	FY: 2021	FY: 2022	FY: 2023	FY: 2024	FY:
\$1,119,488	\$1,182,732	\$1,207,159	\$1,258,854	\$1,313,354	\$
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)					
FY:	FY:	FY:	FY:	FY	FY
\$705,916.00	\$0	\$0	\$0	\$0	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			TDH overestimated spend in FY20 based on the start date of October 1.		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			N/A		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			N/A		

Supplemental Documentation Required for
Fiscal Review Committee

*Contract Funding Source/Amount:			
State:	\$5,142,858 (85%)	Federal:	\$938,729 (15%)
<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>	
N/A			
Method of Original Award: <i>(if applicable)</i>		Non-Competitive	
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		The original costs were projected at \$6,081,587 based on vendor quote. The updated costs are \$5,318,736 based on current spend and the removal of scope items.	
*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.		NetSmart is the sole provider of the proprietary software the State of Tennessee has been using for more than 25 years to support the Patient Tracking Billing Management System used in every local health department in Tennessee. The software is crucial in continuing to provide services to the residents and visitors of Tennessee.	



CONTRACT AMENDMENT COVER SHEET

Agency Tracking # 34360-24920	Edison ID 64512	Contract # FA-20-64512	Amendment # 1		
Contractor Legal Entity Name NetSmart Technologies, Inc			Edison Vendor ID 123622		
Amendment Purpose & Effect(s) Deletion of WIC year 2-5					
Amendment Changes Contract End Date: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		End Date: 9/30/2022			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):			\$ -\$762,851		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2020	\$923,396.00	\$18,930.00			\$942,326.00
2021	\$1,021,392.00	\$24,000.00			\$1,045,392.00
2022	\$1,039,001.00	\$24,888.00			\$1,063,889.00
2023	\$1,083,758.00	\$25,819.00			\$1,109,577.00
2024	\$1,130,754.00	\$26,798.00			\$1,157,552.00
TOTAL:	\$5,198,301.00	\$120,435.00			5,318,736.00
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.			CPO USE		
Speed Chart (optional) HL00011979		Account Code (optional) 70899000			

**AMENDMENT 1
OF CONTRACT FA2064512**

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., hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract section C.1. is deleted in its entirety and replaced with the following:
 - C.1. **Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed Five Million Three Hundred Eighteen Thousand Seven Hundred Thirty-Six Dollars (\$5,318,736.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

2. Contract section C.3.b. is deleted in its entirety and replaced with the following:

Goods or Service Description	Amount (per compensable increment)
Year One – FY2020	
PCMS Milestones – Regional and Local Health	
PCMS Event 1 – System Maintenance and Support	\$528,105
PCMS Event 2 – System Modifications and Enhancements Hourly rate at \$250.17 not to exceed 800 hours	\$200,136
WIC Milestones (October 1, 2019- June 30, 2020)	
WIC Event 1 – System Maintenance and Support	\$84,557
WIC Event 2 – System Modifications and Enhancements Hourly Contract rate at \$250.17 not to exceed 75 hours	\$18,763
CSFP Milestones (October 1, 2019- June 30, 2020)	
CSFP Event 1 – System Maintenance and Support	\$12,676
CSFP Event 1 – System Modification and Enhancements Hourly contract rate at \$250.17 not to exceed 25 hours	\$6,254
MPI Milestones	
MPI Event 1 – System Maintenance and Support	\$73,072
MPI Event 2 – System Modification and Enhancements Hourly contract rate at \$250.17 not to exceed 75 hours	\$18,763
Year One Total	\$942,326

Service Description	Amount (per compensable increment)
Year Two – FY2021	

PCMS Milestones – Regional and Local Health	
PCMS Event 1 – System Maintenance and Support	\$750,226
PCMS Event 2 – System Modifications and Enhancements Hourly rate at \$250.17 not to exceed 600 hours	\$150,102
CSFP Milestones	
CSFP Event 1 – System Maintenance and Support	\$17,746
CSFP Event 1 – System Modification and Enhancements Hourly contract rate at \$250.17 not to exceed 25 hours	\$6,254
MPI Milestones	
MPI Event 1 – System Maintenance and Support	\$102,301
MPI Event 2 – System Modification and Enhancements Hourly contract rate at \$250.17 not to exceed 75 hours	\$18,763
Year Two Total	\$1,045,392

Service Description	Amount (per compensable increment)
Year Three – FY2022	
PCMS Milestones – Regional and Local Health	
PCMS Event 1 – System Maintenance and Support	\$787,737
PCMS Event 2 – System Modifications and Enhancements Hourly rate at \$250.17 not to exceed 500 hours	\$125,085
CSFP Milestones	
CSFP Event 1 – System Maintenance and Support	\$18,634
CSFP Event 1 – System Modification and Enhancements Hourly contract rate at \$250.17 not to exceed 25 hours	\$6,254
MPI Milestones	
MPI Event 1 – System Maintenance and Support	\$107,416
MPI Event 2 – System Modification and Enhancements Hourly contract rate at \$250.17 not to exceed 75 hours	\$18,763
Year Three Total	\$1,063,889

Service Description	Amount (per compensable increment)
Year Four – FY2023 (Pursuant to B.2. being exercised)	
PCMS Milestones – Regional and Local Health	
PCMS Event 1 – System Maintenance and Support	\$827,123
PCMS Event 2 – System Modifications and Enhancements Hourly rate at \$250.17 not to exceed 500 hours	\$125,085
CSFP Milestones	

CSFP Event 1 – System Maintenance and Support	\$19,565
CSFP Event 1 – System Modification and Enhancements Hourly contract rate at \$250.17 not to exceed 25 hours	\$6,254
MPI Milestones	
MPI Event 1 – System Maintenance and Support	\$112,787
MPI Event 2 – System Modification and Enhancements Hourly contract rate at \$250.17 not to exceed 75 hours	\$18,763
Year Four Total	\$1,109,577

Service Description	Amount (per compensable increment)
Year Five – FY2024 (Pursuant to B.2. being exercised)	
PCMS Milestones – Regional and Local Health	
PCMS Event 1 – System Maintenance and Support	\$868,480
PCMS Event 2 – System Modifications and Enhancements Hourly rate at \$250.17 not to exceed 500 hours	\$125,085
CSFP Milestones	
CSFP Event 1 – System Maintenance and Support	\$20,544
CSFP Event 1 – System Modification and Enhancements Hourly contract rate at \$250.17 not to exceed 25 hours	\$6,254
MPI Milestones	
MPI Event 1 – System Maintenance and Support	\$118,426
MPI Event 2 – System Modification and Enhancements Hourly contract rate at \$250.17 not to exceed 75 hours	\$18,763
Year Five Total	\$1,157,552

Required Approvals. The State is not bound by this Amendment 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).

Amendment Effective Date. The revisions set forth herein shall be effective once all required approvals are obtained. 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

DATE

JOSEPH MCGOVERN, EVP

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF HEALTH:

LISA PIERCEY, MD, MBA, FAAP, COMMISSIONER

DATE



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

TO : Office of e-Health Initiatives
Department of Finance & Administration
E-mail: office.eHealth@tn.gov

FROM : **Scott Creel, TDH - ITSD**
E-mail: Scott.Creel@tn.gov

DATE : May 28, 2020

RE : Request for eHealth Pre-Approval Endorsement

Applicable RFS # 34360-94920
Office of e-Health Initiatives Endorsement Signature & Date:
<i>W. Creel 6/3/2020</i>
Office of e-Health Initiatives

Office of e-Health Initiatives (eHealth) pre-approval endorsement is required pursuant to procurement regulations pertaining to contracts 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). This requirement applies to any procurement method regardless of dollar amount.

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	Health
Agency Contact (name, phone, e-mail)	Scott Creel, (615) 770-1152, Scott.Creel@tn.gov
Attachments Supporting Request (as applicable – copies without signatures acceptable)	
<input type="checkbox"/> Solicitation Document <input type="checkbox"/> Special Contract Request <input type="checkbox"/> Amendment Request <input type="checkbox"/> Proposed contract or amendment	
Subject Medical/Mental Health-Related Service Description (Brief summary of eHealth services involved. As applicable, identify the contract and solicitation sections related to eHealth services.)	
NetSmart Amendment 1 Adjust services and cost	



STS Pre-Approval Endorsement Request E-Mail Transmittal

TO : STS Contracts
Department of Finance & Administration
E-mail : it.abc@tn.gov

FROM : Scott Creel
E-mail : Scott.Creel@tn.gov

DATE : May 28, 2020 Received by STS on Thursday, May 28, 2020

RE : Request for STS Pre-Approval Endorsement

Applicable RFS # 34360-24920 (END0000407)

State Security Confidential Information Applicability

Under Tenn. Code Ann. §10-7-504(i) vendor identity or a description of the goods or services provided by the vendor shall be confidential.

- Applicable
 Not Applicable

Additional language is attached and endorsement is contingent upon inclusion of this additional language:

- Applicable
 Not Applicable

STS Endorsement Signature & Date:

Stephanie Dedmon,
CIO (WMH)

Digitally signed by Stephanie
Dedmon, CIO (WMH)

Date: 2020.06.03 16:16:42 -05'00'

Chief Information Officer

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

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

Contracting Agency

Health

Applicable RFS # 34360-24920 (END0000407)	
Agency Contact (name, phone, e-mail)	Scott Creel, (615) 491-0612, Scott.Creel@tn.gov
<p>Attachments Supporting Request (mark all applicable)</p> <p>Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to STS. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. STS is aware that these documents will not have CPO signature when submitted with this request.</p> <p> <input type="checkbox"/> Solicitation Document <input type="checkbox"/> Special Contract Request <input type="checkbox"/> Amendment Request <input type="checkbox"/> Proposed Contract/Grant or Amendment <input type="checkbox"/> Original Contract/Grant and Previous Amendments (if any) </p>	
<p>Information Systems Plan (ISP) Project Applicability</p> <p>To avoid delay of STS pre-approval, the applicability of an ISP project to the procurement must be confirmed with agency IT staff prior to submitting this request to STS. If necessary, agency IT staff should contact STS Planning with questions concerning the need for an ISP project.</p> <p>IT Director/Staff Name Confirming (required): Brandon Corbin, Health CIO</p> <p> <input type="checkbox"/> Applicable – Approved ISP Project# <input checked="" type="checkbox"/> Not Applicable </p>	
<p>Subject Information Technology Service Description</p> <p>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.</p> <p>NetSmart Amendment 1: Adjust services and cost</p>	

Amendment Technology

Subject: 34301_Removing WFO Milestones in future years

[Review/Edit Approvers](#)

Amendment Technology

Amendment Technology: 2078: **Approved** [View/Hide Comments](#)

Amendment Technology

Approved

✓ Rachel Hardaway
Agency Forms Approver
07/02/20 - 9:12 AM

Skipped

⚠ Lindsay Oliveras
Agency Forms Approver
07/01/20 - 1:49 PM

Approved

✓ Kevin Wleck
CPO Tech Forms Approver
07/06/20 - 8:16 AM

Comments

Amendment Request #2078

This request form is not required for amendments to grant contracts. Upload the completed document and route for approvals by selecting the Amendment Request e-Form in Edison. For additional guidance, please see the e-Forms Job Aid available online at the following: <https://www.teamtn.gov/cpo/learning-development/cpo-job-aids.html>.

APPROVED

CHIEF PROCUREMENT OFFICER

DATE

Agency request tracking #	34360-24920	
1. Procuring Agency	TN Department of Health	
2. Contractor	NetSmart Technologies, Inc.	
3. Edison contract ID #	64512	
4. Proposed amendment #	1	
5. Contract's Original Effective Date	10/1/2019	
6. Current end date	9/30/2022	
7. Proposed end date	9/30/2022	
8. Current Maximum Liability or Estimated Liability	\$ 6,081,587.00	
9. Proposed Maximum Liability or Estimated Liability	\$ 5,318,736.00	
10. Strategic Technology Solutions Pre-Approval Endorsement Request <i>– information technology service (N/A to THDA)</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
11. eHealth Pre-Approval Endorsement Request <i>– health-related professional, pharmaceutical, laboratory, or imaging</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
12. Human Resources Pre-Approval Endorsement Request <i>– state employee training service</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
13. Explain why the proposed amendment is needed	<p>The proposed amendment will remove the WIC milestones in years 2-5 and associated costs because this will now be handled by another system. In addition, some costs are reduced to reflect the actual costs invoiced to the contract by the vendor; some costs were paid as a one-time purchase during negotiations to eliminate a lapse in service.</p>	
14. If the amendment involves a change in Scope, describe efforts to identify reasonable, competitive, procurement alternatives to amending the contract.		

Agency request tracking #	34360-24920
A change of scope does not occur; changes are only being made to the payment methodology in years 2-5.	
Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)	

**CONTRACT**

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

Begin Date October 1, 2019		End Date September 30, 2022		Agency Tracking # 34360-24920		Edison Record ID 64512	
Contractor Legal Entity Name NetSmart Technologies, Inc.						Edison Vendor ID 123622	
Goods or Services Caption (one line only) Computer Software Services (PTBMIS)							
Contractor <input checked="" type="checkbox"/> Contractor				CFDA # 10.557, 10.565, 93.268			
Funding —							
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount		
2020	\$973,280.00	\$146,208.00			\$1,119,488.00		
2021	\$1,021,589.00	\$161,143.00			\$1,182,732.00		
2022	\$1,039,209.00	\$167,950.00			\$1,207,159.00		
2023	\$978,027.00	\$280,827.00			\$1,258,854.00		
2024	\$1,130,753.00	\$182,601.00			\$1,313,354.00		
TOTAL:	\$5,142,858.00	\$938,729.00			\$6,081,587.00		
Contractor Ownership Characteristics:							
<input type="checkbox"/> Minority Business Enterprise (MBE):							
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American							
<input type="checkbox"/> Woman Business Enterprise (WBE)							
<input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE)							
<input type="checkbox"/> Disabled Owned Business (DSBE)							
<input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.							
<input type="checkbox"/> Government <input checked="" type="checkbox"/> Non-Minority/Disadvantaged <input type="checkbox"/> Other:							
Selection Method & Process Summary (mark the correct response to confirm the associated summary)							
<input type="checkbox"/> Competitive Selection				Describe the competitive selection process used			
<input checked="" type="checkbox"/> Other				The non-competitive contractor selection was completed as approved and the procurement process included a negotiation of best possible terms & price			
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations						FA2064512	
Speed Chart (optional) HL00011979		Account Code (optional) 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 ("State") and Netsmart Technologies, Inc., ("Contractor"), is for the provision of computer software goods or services, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is Special Purpose Corporation Or Association.
Contractor Place of Incorporation or Organization: Delaware
Contractor Edison Registration ID # 123622

A. SCOPE:

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

A.2. Definitions. For purposes of this Contract, definitions shall be as follows and as set forth in the Contract:

- a. Delivery: The time at which the Contractor installs a software product or changes on the State network (or physically delivers an "install" tape or other computer readable media with the software product or change). Software Deliveries: (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.

A.3. Description of Services.

Patient Care Management System ("PCMS") known in Tennessee as Patient Tracking Billing Management Information System ("PTBMIS"). The parties acknowledge that PCMS is a legacy product no longer commercially sold or supported by Contractor. Under this Agreement, Contractor agrees to use commercially reasonable efforts to support the State instance of the PCMS while the State pursues a replacement solution. The parties acknowledge that there are hardware, operating system, software tools and technical limitations that may limit Contractors or State's ability to utilize and maintain PCMS.

a. The Contractor shall:

- (1) Provide for software maintenance, as described below, to the PCMS, specifically including the modules listed below:

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

EPIINFORMATION	██████████ PC TRANSFER
PHARMACY	DRUG ISSUANCE ECS HOME
TIME AND ACTIVITY	ERP HOME HEALTH
SYSTEM SWUPPORT	RX DRUG-DRUG INTERACTIVE
DENTAL BILLING	STATE IMMUNIZATION REGISTRY
HEALTH	STEP DOWN BILLING
PHARMACY/MEDI-SPAN	POMRISOAP MEDICAL RECORD
TENNCARE	LAB REQUISITION SYSTEM
ECS MEDICARE	LAB ORDER ENTRY
MCO/HMO BILLING	ST. CENTRAL CLIENT INDEX
WIC-TN (VOUCHER ISSUE)	PANDEMIC FLU
WIC-TN (CENTRAL SITE)	SPLIT
COMMODITY SURPLUS	PRE-NAIAL (PTBMISVE)
ACCOUNT WRITEOFF	STD TENNESSEE
HUGS	WIC – TENNESSEE

- (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) Use commercially reasonable efforts to make 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, ██████████ versions ██████████ for the Term.
- (5) Use commercially reasonable efforts to maintain a copy of the State's current production version of software on the Contractor's computer.
- (6) Provide goods or services between the hours of 8:00 a.m. and 4:30 p.m. Central Time (CT), Monday through Friday, excluding State holidays.
- (7) 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) Shall test modifications and enhancements within thirty (30) days of the later of Delivery or Notice of Delivery.
- (2) May request technical assistance after hours and/or on weekends under special circumstances. There shall be no additional charges for the provision of technical advice as described herein.
- (3) Shall install PCMS software releases provided by the Contractor in a reasonable timeframe and ensure the currently installed version on the State network is not more than one (1) year behind the most current Contractor PCMS software release. Equipment and Operating Sstems shall be maintained to allow for installation of required PCMS software releases.
- (4) Shall provide the Contractor necessary access to the PCMS software and equipment on which it runs in order to effect necessary adjustments and repairs.

A.4. Change Order.

The State may, at its sole discretion and with written notice to the Contractor, request changes in the Scope that are necessary but were inadvertently unspecified in this Contract.

a. **Change Order Creation**— After receipt of a written request for additional services from the State, the Contractor shall respond to the State, within a maximum of ten (10) business days, with a written proposal for completing the service. Contractor's proposal must specify:

- (1) the effect, if any, of implementing the requested change(s) on all other services required under this Contract;
- (2) the specific effort involved in completing the change(s);
- (3) the expected schedule for completing the change(s);
- (4) the maximum number of person hours required for the change(s); and
- (5) the maximum cost for the change(s)— this maximum cost shall in no instance exceed the product of the person hours required multiplied by the appropriate payment rate proposed for such work.

The Contractor shall not perform any additional service until the State has approved the proposal. If approved, the State will sign the proposal, and it shall constitute a Change Order between the Contract Parties pertaining to the specified change(s) and shall be incorporated, hereby, as a part of this Contract.

b. **Change Order Performance**— Subsequent to creation of a Change Order, the Contractor shall complete the required services. The State will be the sole judge of the acceptable completion of work and, upon such determination, shall provide the Contractor written approval.

c. **Change Order Remuneration**— The State will remunerate the Contractor only for acceptable work. All acceptable work performed pursuant to an approved Change Order, without a formal amendment of this Contract, shall be remunerated in accordance with and further limited by Contract Section C.3.c., PROVIDED THAT, the State shall be liable to the Contractor only for the cost of the actual goods or services provided to complete the necessary work, not to exceed the maximum cost for the change detailed in the Change Order. In no instance shall the State be liable to the Contractor for any amount exceeding the maximum cost specified by the Change Order authorizing the goods or services. Upon State approval of the work, the Contractor shall invoice the State in accordance with the relevant provisions of this Contract.

A.5. Transition.

At its then current time and materials rate for professional services, the Contractor shall provide commercially reasonable assistance to the State in the turnover of Netsmart services to a new contractor prior to the end of the Term or in the event of termination of the Contract for any reason.

The Contractor shall:

a. Cooperate with the State and the incoming contractor to ensure a smooth transition of services;

- b. Collaborate with the State and the incoming contractor to create and implement a turnover plan; and
 - c. Provide to the State any non-proprietary Netsmart files, applications, documentation, and other pertinent information that will facilitate an orderly transition of services.
- A.6. As they may apply to the services contemplated by this Agreement, subject to the limitations presented by the parties running and supporting a legacy solution, the Contractor shall make commercially reasonable efforts to comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL: <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.
- A.7. Warranty. For new products or deliverables, outside of the legacy PCMS software maintenance and support services provided under this Agreement, Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

- A.8. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

- B.1. This Contract shall be effective for the period beginning on October 1, 2019 ("Effective Date") and ending on September 30, 2022, ("Term"). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.
- B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

- B.3. Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Six Million Eighty-One Thousand Five Hundred Eighty-Seven Dollars (\$6,081,587.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
 - b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Service Description	Amount (per compensable increment)
Year One – FY2020	
PCMS Milestones – Regional and Local Health	
PCMS Event 1 – System Maintenance and Support	\$656,617
PCMS Event 2 – System Modifications and Enhancements Hourly rate at \$250.17 not to exceed 800 hours	\$200,136
WIC Milestones (October 1, 2019- June 30, 2020)	
WIC Event 1 – System Maintenance and Support	\$112,743
WIC Event 2 – System Modifications and Enhancements Hourly Contract rate at \$250.17 not to exceed 75 hours	\$18,763
CSFP Milestones (October 1, 2019- June 30, 2020)	
CSFP Event 1 – System Maintenance and Support	\$16,901
CSFP Event 1 – System Modification and Enhancements Hourly contract rate at \$250.17 not to exceed 25 hours	\$6,254
MPI Milestones	
MPI Event 1 – System Maintenance and Support	\$89,311

MPI Event 2 – System Modification and Enhancements Hourly contract rate at \$250.17 not to exceed 75 hours	\$18,763
Year One Total	\$1,119,488

Service Description	Amount (per compensable increment)
Year Two – FY2021	
PCMS Milestones – Regional and Local Health	
PCMS Event 1 – System Maintenance and Support	\$750,423
PCMS Event 2 – System Modifications and Enhancements Hourly rate at \$250.17 not to exceed 600 hours	\$150,102
WIC Milestones	
WIC Event 1 – System Maintenance and Support	\$118,380
WIC Event 1 – System Modifications and Enhancements Hourly Contract rate at \$250.17 not to exceed 75 hours	\$18,763
CSFP Milestones	
CSFP Event 1 – System Maintenance and Support	\$17,746
CSFP Event 1 – System Modification and Enhancements Hourly contract rate at \$250.17 not to exceed 25 hours	\$6,254
MPI Milestones	
MPI Event 1 – System Maintenance and Support	\$102,301
MPI Event 2 – System Modification and Enhancements Hourly contract rate at \$250.17 not to exceed 75 hours	\$18,763
Year Two Total	\$1,182,732

Service Description	Amount (per compensable increment)
Year Three – FY2022	
PCMS Milestones – Regional and Local Health	
PCMS Event 1 – System Maintenance and Support	\$787,945
PCMS Event 2 – System Modifications and Enhancements Hourly rate at \$250.17 not to exceed 500 hours	\$125,085
WIC Milestones	
WIC Event 1 – System Maintenance and Support	\$124,299
WIC Event 1 – System Modifications and Enhancements Hourly Contract rate at \$250.17 not to exceed 75 hours	\$18,763
CSFP Milestones	
CSFP Event 1 – System Maintenance and Support	\$18,634

CSFP Event 1 – System Modification and Enhancements Hourly contract rate at \$250.17 not to exceed 25 hours	\$6,254
MPI Milestones	
MPI Event 1 – System Maintenance and Support	\$107,416
MPI Event 2 – System Modification and Enhancements Hourly contract rate at \$250.17 not to exceed 75 hours	\$18,763
Year Three Total	\$1,207,159

Service Description	Amount (per compensable increment)
Year Four – FY2023 (Pursuant to B.2. being exercised)	
PCMS Milestones – Regional and Local Health	
PCMS Event 1 – System Maintenance and Support	\$827,123
PCMS Event 2 – System Modifications and Enhancements Hourly rate at \$250.17 not to exceed 500 hours	\$125,085
WIC Milestones	
WIC Event 1 – System Maintenance and Support	\$130,514
WIC Event 1 – System Modifications and Enhancements Hourly Contract rate at \$250.17 not to exceed 75 hours	\$18,763
CSFP Milestones	
CSFP Event 1 – System Maintenance and Support	\$19,565
CSFP Event 1 – System Modification and Enhancements Hourly contract rate at \$250.17 not to exceed 25 hours	\$6,254
MPI Milestones	
MPI Event 1 – System Maintenance and Support	\$112,787
MPI Event 2 – System Modification and Enhancements Hourly contract rate at \$250.17 not to exceed 75 hours	\$18,763
Year Four Total	\$1,258,854

Service Description	Amount (per compensable increment)
Year Five – FY2024 (Pursuant to B.2. being exercised)	
PCMS Milestones – Regional and Local Health	
PCMS Event 1 – System Maintenance and Support	\$868,479
PCMS Event 2 – System Modifications and Enhancements Hourly rate at \$250.17 not to exceed 500 hours	\$125,085
WIC Milestones	

WIC Event 1 – System Maintenance and Support	\$137,040
WIC Event 2 – System Modifications and Enhancements Hourly Contract rate at \$250.17 not to exceed 75 hours	\$18,763
CSFP Milestones	
CSFP Event 1 – System Maintenance and Support	\$20,544
CSFP Event 1 – System Modification and Enhancements Hourly contract rate at \$250.17 not to exceed 25 hours	\$6,254
MPI Milestones	
MPI Event 1 – System Maintenance and Support	\$118,426
MPI Event 2 – System Modification and Enhancements Hourly contract rate at \$250.17 not to exceed 75 hours	\$18,763
Year Five Total	\$1,313,354

- c. The Contractor shall be compensated for changes requested and performed pursuant to Contract Section A.4., without a formal amendment of this Contract based upon the payment rates detailed in the schedule below and as agreed pursuant to Section A.4. PROVIDED THAT compensation to the Contractor for such "change order" work shall not exceed seven percent (7%) of the sum of milestone payment rates detailed in Section C.3.b., above (which is the total cost for the milestones and associated deliverables set forth in Contract Sections A.3., through A.8.). If, at any point during the Term, the State determines that the cost of necessary "change order" work would exceed the maximum amount, the State may amend this Contract to address the need.

Service Description	Amount (per compensable increment)
Change Order	\$250.17 per hour

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than ninety (90) days after goods or services have been provided to the following address:

LeeAnne Kelley, Director of Administrative Services
 Tennessee Department of Health
 710 James Robertson Parkway
 Nashville, TN 37243
 leeanne.kelley@tn.gov
 (615) 770-0472

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following 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;
- (8) Contractor contact for invoice questions (name, phone, or email);
- (9) Contractor remittance address;
- (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
- (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that 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 other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services 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 that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- 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 that 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, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State,

payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and

- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

LeeAnne Kelley, Director of Administrative Services
Tennessee Department of Health
710 James Robertson Parkway
Nashville, TN 37243
leeanne.kelley@tn.gov
(615) 770-0472

The Contractor:

Netsmart Technologies, Inc.
4950 College Boulevard
Overland Park, KS 66211
ATTN: Contract Notice
Contract_Notices@ntst.com
Telephone # (800) 421-7503

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State

and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.

- D.5. Termination for Convenience. Either Party may terminate this Contract without cause for any reason. A party's exercise of its right to terminate this Contract for convenience shall not be deemed a breach of contract by either Party. The terminating Party shall give the other Party at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.
- The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.
- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party

to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.

- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to one (1) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all third party claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.
- In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.
- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.

- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's

duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:

- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
- b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment 1;
- c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
- d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
- e. any technical specifications provided to proposers during the procurement process to award this Contract; and
- f. the Contractor's response seeking this Contract.

D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance

Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

The insurance obligations under this Contract shall be: the minimum insurance coverage requirements and policy limits shown in this Contract. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability ("CGL") Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than One Million Dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers' compensation in an amount not less than One Million Dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, One Million Dollars (\$1,000,000) policy limit by disease, and One Million Dollars (\$1,000,000) per employee for bodily injury by disease.

- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
- i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a state or local government; or
 - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than One Million Dollars (\$1,000,000) per occurrence or combined single limit.

d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than five million dollars (\$5,000,000) per occurrence or claim and five million dollars (\$5,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.
- 2) Such coverage shall include data breach response expenses, in an amount not less than five million dollars (\$5,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

D.33. **Major Procurement Contract Sales and Use Tax.** Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

D.34. Equal Opportunity. The Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
 - (1) Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
 - (2) Layoff or termination;
 - (3) Rates of pay or other forms of compensation; and
 - (4) Selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.

In addition, to the extent applicable the Contractor agrees to comply with 41 C.F. R. § 60-1.4, as that section is amended from time to time during the term.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. 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 that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, 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. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.
- E.3. Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, 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.4. 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 Contractor, 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 any 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 31 U.S.C. § 1352.

- E.5. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies 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. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

As defined in 2 C.F.R. § 170.315, "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 C.F.R. § 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 the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension 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.6. Additional lines, items, or options. At its sole discretion, the State may make written requests to the Contractor to add lines, items, or options that are needed and within the Scope but were not included in the original Contract. Such lines, items, or options will be added to the Contract through a Memorandum of Understanding ("MOU"), not an amendment.
- a. After the Contractor receives a written request to add lines, items, or options, the Contractor shall have ten (10) business days to respond with a written proposal. The Contractor's written proposal shall include:
 - (1) The effect, if any, of adding the lines, items, or options on the other goods or services required under the Contract;
 - (2) Any pricing related to the new lines, items, or options;
 - (3) The expected effective date for the availability of the new lines, items, or options; and
 - (4) Any additional information requested by the State.
 - b. The State may negotiate the terms of the Contractor's proposal by requesting revisions to the proposal.

- c. To indicate acceptance of a proposal, the State will sign it. The signed proposal shall constitute a MOU between the Parties, and the lines, items, or options shall be incorporated into the Contract as if set forth verbatim.

Only after a MOU has been executed shall the Contractor perform or deliver the new lines, items, or options.

- E.7. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- E.8. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- E.9. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.
- E.10. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.
- E.11. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used

to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law. The obligations set forth in this Section shall survive the termination of this Contract

IN WITNESS WHEREOF,

NETSMART TECHNOLOGIES, INC:



09 - 27 - 2019

CONTRACTOR SIGNATURE

DATE

Joseph McGovern, EVP

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TENNESSEE DEPARTMENT OF HEALTH:

Lisa Piercey MD-LO

Digitally signed by Lisa Piercey MD-LO
 DN: cn=Lisa Piercey MD-LO, o, ou,
 email=Lindsay.R.Oliveras@tn.gov, c=US
 Date: 2019.09.27 13:57:27 -05'00'

LISA PIERCEY, MD, MBA, FAAP, COMMISSIONER

DATE

ATTACHMENT 1

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

<p>If the attestation applies to more than one contract, modify this row accordingly.</p> <p>SUBJECT CONTRACT NUMBER:</p>	64512
<p>CONTRACTOR LEGAL ENTITY NAME:</p>	NETSMART TECHNOLOGIES, INC.
<p>EDISON VENDOR IDENTIFICATION NUMBER:</p>	123622

If the attestation applies to more than one contract, modify the following paragraph accordingly.

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. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

Joseph McGovern, EVP

PRINTED NAME AND TITLE OF SIGNATORY

09 - 27 - 2019

DATE OF ATTESTATION

Contract 64512 Spend By Fiscal Year

Unit	Sum Amt	Contract	Vendor Name	PO ID	Voucher	Invoice	Date	FY
34301	\$ 77,601.00	64512	Netsmart Technologies Inc	0000204717	01174594	11132019-A	12/16/2019	2020
34301	\$ 77,601.00	64512	Netsmart Technologies Inc	0000204717	01174596	11132019-B	12/17/2019	2020
34301	\$ 77,601.19	64512	Netsmart Technologies Inc	0000204717	01177422	321926	12/30/2019	2020
34301	\$ 77,601.19	64512	Netsmart Technologies Inc	0000204717	01184821	325525	1/27/2020	2020
34301	\$ 77,601.19	64512	Netsmart Technologies Inc	0000204717	01191427	331998	2/12/2020	2020
34301	\$ 77,601.19	64512	Netsmart Technologies Inc	0000204717	01209380	338121	3/30/2020	2020
34301	\$ 77,601.19	64512	Netsmart Technologies Inc	0000204717	01219599	344119	5/8/2020	2020
34301	\$ 1,751.19	64512	Netsmart Technologies Inc	0000204717	01223926	350959	5/15/2020	2020
34301	\$ 5,753.91	64512	Netsmart Technologies Inc	0000204717	01223936	351006	5/20/2020	2020
34301	\$ 77,601.19	64512	Netsmart Technologies Inc	0000204717	01223925	350165	5/20/2020	2020
34301	\$ 77,601.19	64512	Netsmart Technologies Inc	0000204717	01228845	355831	6/11/2020	2020

\$ 705,915.43