

File No. 120245

Committee Item No. 2
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Sub-Committee Date: April 11, 2012

Board of Supervisors Meeting Date _____

Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ethics Form 126 |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
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Completed by: Victor Young
Completed by: Victor Young

Date: April 6, 2012
Date: _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Contract Amendment - Netsmart New York, Inc. - Not to Exceed \$31,786,819]

2
3 **Resolution authorizing the Department of Public Health to execute a contract**
4 **amendment with Netsmart New York, Inc. to acquire product enhancements and extend**
5 **the initial term of the agreement for an amended term of August 1, 2008, through June**
6 **30, 2018.**

7
8 WHEREAS, The Department of Public Health (DPH) wishes to extend the contract with
9 Netsmart New York, Inc. (Netsmart) in order to maintain user licenses, and provide systems
10 support new functionality and upgrades for the Netsmart clinical and financial systems
11 installed throughout the Department's Behavioral Health Division; and

12 WHEREAS, The current system implementation supports patient care revenue of over
13 \$120 million dollars on an annual basis. In addition, new software modules will be acquired to
14 address the Federal American Reinvestment and Recovery Act (ARRA) regulations for
15 "Meaningful Use" of Certified Electronic Medical Records; and

16 WHEREAS, The cost of the initial term of the amended contract would not exceed
17 Thirty One Million Seven Hundred Eighty Six Thousand Eight Hundred Nineteen Dollars
18 (\$31,786,819); and

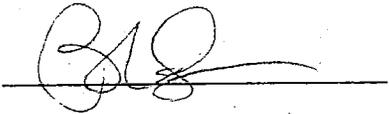
19 WHEREAS, Article IX, SEC. 9.118.B of the San Francisco Charter requires that
20 contracts that could require anticipated expenditures of the City and County in excess of Ten
21 Million (\$10,000,000) Dollars be approved by the Board of Supervisors; and

22 WHEREAS, When the contract amendment is fully signed and certified, a copy shall be
23 on file with the Clerk of the Board of Supervisors in File No. 120245, which is hereby declared
24 to be a part of this resolution as if set forth fully herein; now, therefore, be it

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RESOLVED, That the Board of Supervisors hereby authorizes the Department of Public Health and The Office of Contract Administration on behalf of the City and County of San Francisco to enter into the contract amendment with Netsmart New York, Inc.

APPROVED:



Barbara A. Garcia, MPA
Director of Health

APPROVED:



Health Commission

Item 2 File 12-0245	Department(s): Department of Public Health
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EXECUTIVE SUMMARY**Legislative Objective**

Resolution approving an amendment to the existing agreement between the Department of Public Health (DPH) and Netsmart New York, Inc. to (a) maintain user licenses, implement upgrades, and provide ongoing maintenance/support services for the Avatar Behavioral Health Information System, (b) acquire product enhancements, (c) increase the existing not-to-exceed \$9,968,828 agreement by \$21,817,991 to a not-to-exceed \$31,786,819, and (d) extend the term by four years and eleven months (59 months) or from July 1, 2013 through June 30, 2018.

Key Points

- In 2005, DPH conducted a competitive Request for Qualifications (RFQ) process, and selected Netsmart New York, Inc. (Netsmart), a private company, to license, implement, and provide maintenance/support services for the Avatar System for a five-year period from August 1, 2008 through July 30, 2013, for a not-to-exceed \$9,968,828 including a 12 percent contingency of \$1,068,089 on the base agreement amount of \$8,900,739.
- The Avatar System, which is a proprietary system of Netsmart, provides DPH with a fully integrated clinical, billing and financial Behavioral Health Information System for (a) Behavioral Health Patient Registration, (b) Scheduling, (c) Billing, (d) Accounts Receivable, (e) Managed Care, (f) Certified Electronic Medical Records, (g) Electronic Medication Prescriptions, and (h) Patient Access Portal.
- The proposed amendment to the existing agreement between DPH and Netsmart would authorize (a) the continuation of the existing agreement for an additional four years and eleven months through June 30, 2018, at an average annual cost, (excluding contingencies) for operations and maintenance of approximately \$1,698,919 or \$81,229 less than the average annual cost (excluding contingencies) of \$1,780,148 under the existing agreement, and (b) the provision of enhancements for increased capabilities for both the remainder of the existing agreement and the proposed extended term of the agreement.
- The proposed amendment includes new software to address the Federal American Reinvestment and Recovery Act (ARRA) regulations for "Meaningful Use" of Certified Electronic Medical Records, which could result in incentive payments to DPH for a maximum of \$63,750 per eligible provider. Such incentives payments to DPH would offset the cost of the proposed Avatar System enhancements for "Meaningful Use".

Fiscal Impact

- The proposed amendment would authorize DPH to pay Netsmart an amount not-to-exceed \$31,786,819, which is a \$21,817,991 more than the current not-to-exceed amount of \$9,968,828.
- Of the \$21,817,991 requested increase to the existing agreement, \$8,494,596 reflects the operations and maintenance costs, excluding contingencies, for the additional four years and eleven months extension (Years 6-10) of the agreement, from July 1, 2013 through June 30, 2018, or an average cost of \$1,698,919 annually. The balance of \$13,323,395 (\$21,817,991

less \$8,494,596) would be expended on project enhancements for optional licenses, services and subscriptions, and also provides for a \$3,405,731 12 percent contingency on the base agreement amount of \$28,381,088 (see Table 3 below).

Recommendation

- Approve the proposed resolution.

DETAILS OF PROPOSED LEGISLATION

Mandate Statement

In accordance with Charter Section 9.118, any contract (a) for more than \$10,000,000, (b) that extends for longer than ten years, or (c) with an amendment of more than \$500,000, is subject to Board of Supervisors approval.

Background

In 2005, the Department of Public Health (DPH) conducted a competitive Request for Qualifications (RFQ) process, and selected Netsmart New York, Inc. (Netsmart), a private company, to license, implement, and provide maintenance/support services for DPH's new integrated clinical, billing and financial Behavioral Health Information System. DPH's Community Behavioral Health Services (CBHS) programs encompass Mental Health and Substance Abuse patient treatment programs. The purpose of DPH's Behavioral Health Information System is to provide effective and secure electronic operations that facilitate mental health and substance abuse services through the Department's information system for the various private and public agencies that comprise CBHS.

The Netsmart's Avatar System, which is a proprietary system of Netsmart, replaced DPH's obsolete ECHO Management Group/Insyst application which utilized software and hardware components which were over 20 years old, were no longer supported by the vendor and contained no Electronic Medical Records capabilities. Netsmart's Avatar System provides DPH with a fully integrated Behavioral Health Information System for clinical, billing and financial needs, including (a) Behavioral Health Patient Registration, (b) Eligibility, (c) Billing, (d) Accounts Receivable, (e) Managed Care, (f) Certified Electronic Medical Records, (g) Electronic Medication Prescriptions, and (h) Quality Indicator reporting. According to Mr. Dave Counter, DPH's IT Director, DPH's existing Behavioral Health Information System (the Avatar System) provides a fully integrated and secure information system that combines the functionality of a billing information system with an electronic clinical patient record to optimize efficiency and eliminate redundancy in operations and data entry, which is accessed by DPH users over the Internet via secure connections.

DPH entered into a five-year agreement with Netsmart to license, implement, and provide maintenance/support services for the Avatar System for the period from August 1, 2008 through July 30, 2013, for a not-to-exceed \$9,968,828 that included a 12 percent contingency of \$1,068,089, as shown in Table 1 below. The agreement did not require approval by the Board of Supervisors because the agreement was less than the \$10,000,000 and less than the ten-year Charter thresholds.

Table 1: Existing Agreement Funding of Netsmart's Avatar System

Project Amount	\$8,900,739
12 Percent Contingency	\$1,068,089
Total Not-To-Exceed Amount	\$9,968,828

Ms. Jacquie Hale, DPH Director of Office of Contract Management and Compliance, notes that the Avatar System is currently utilized by DPH for over 2,500 Behavioral Health clinical providers and supports approximately \$120 million in annual patient care revenue.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize an amendment to the existing agreement between DPH and Netsmart to (a) maintain user licenses, implement upgrades, and provide ongoing maintenance/support services for the Avatar Behavioral Health Information System, (b) acquire product enhancements, (c) increase the existing not-to-exceed \$9,968,828 agreement by \$21,817,991 to a not-to-exceed amount of \$31,786,819, and (d) extend the term of the agreement by four years and eleven months or from July 1, 2013¹ through June 30, 2018.

The Attachment, provided by Mr. Counter, identifies the proposed product enhancements, and maintenance and support services that would be included under the subject amendment to the existing agreement between DPH and Netsmart for the continued operations of the Avatar System. According to Mr. Counter, the proposed product enhancements, and continued maintenance and support services under the proposed four years and eleven months extended term of the existing agreement were not subject to a separate competitive process because Netsmart has the proprietary rights to maintain its own computer hardware and software.²

The proposed amendment to the existing agreement also provides for new software to address the Federal American Reinvestment and Recovery Act (ARRA) regulation for "Meaningful Use" of Certified Electronic Medical Records. According to Mr. Counter, the ARRA regulations contain a provision known as Health Information Technology for Economic and Clinical Health (HITECH) which provides incentive payments to eligible hospitals and providers for the "Meaningful Use" of Certified Electronic Medical Records.³ Mr. Counter advises that it is anticipated that the DPH's Behavioral Health medical providers, or psychiatrists and nurse

¹ The existing agreement term extends through July 30, 2013. The proposed amended agreement would commence July 1, 2013, or a month prior to the termination of the existing agreement, because DPH wants to coincide the proposed agreement and enhancements with the City's existing budget.

² The hardware included for the electronic signature function is certified by Netsmart as part of the Avatar System product line, and is configured by Netsmart in accordance with contract warranties.

³ System vendors must meet certification criterion established by the Office of the National Coordinator (ONC) for achieving Core Objectives relating to "Meaningful Use". The Core Objectives for "Meaningful Use" include (a) the transition from paper to electronic records for data capture and sharing, (b) the development of advanced clinical processes for quality indicator reporting, and (c) eventual specific reporting criteria to demonstrate improved clinical outcomes. A summary of the Health Information Technology for Economic and Clinical Health (HITECH) Incentive program, as well as, "Meaningful Use" objectives and measures may be found at the Federal Center for Medicare and Medicaid Services (CMS) website at www.cms.gov.

practitioners who work either for DPH or non-profit Community-Based Organizations, will qualify for Eligible Provider incentive payments by the Center for Medicare and Medicaid Services (CMS) over the next fiscal year as the required enhancements to the Avatar System are fully implemented.

Mr. Counter further noted that Federal program mandates have established complex and comprehensive criteria which are constantly changing as the program evolves. According to Mr. Counter, it is both expensive and complex to create and maintain software to meet these criteria. However, Mr. Counter advises that Netsmart was the first to be certified as a HITECH meaningful user, Netsmart is responsible for maintaining compliance with the required criteria to maintain its Federal certification, and is one of a few vendors determined by DPH to be available to provide these fully integrated clinical, billing and financial services.

FISCAL IMPACTS

Based on a competitive Request for Qualifications (RFQ) process, DPH entered into an agreement with Netsmart to license, implement, and provide maintenance and support services for Netsmart's proprietary Avatar System for the five-year period from August 1, 2008 through July 30, 2013, for a not-to-exceed \$9,968,828 that included a project budget of \$8,900,739 and a 12 percent contingency of \$1,068,089 (see Table 1 above).

Ms. Hale advises that both the previous and proposed Netsmart agreement will be funded with General Fund revenues, subject to appropriation approval by the Board of Supervisors.

As shown in Table 2 below, the total not-to-exceed \$9,968,828 amount authorized under the existing agreement includes \$8,249,801 in expenditures incurred through February, 2012 plus \$1,719,027 for expenditures anticipated to occur from March 2012 through approximately June 30, 2013. According to Mr. Counter, DPH plans to expend the full contingency amount allowed of \$1,068,089 for additional Netsmart services for system customizations, training and implementation support for over 2,500 DPH and Community-Based Provider Organization users. Mr. Counter notes that the 12 percent contingency is standard in DPH contracts to allow flexibility in funding changes when DPH has received additional funding and needs to reallocate funds from one contract to another contract.

Table 2: Authorized Amount Under the Existing Agreement for Netsmart's Avatar System

<i>Contract Year</i>	<i>Term Period</i>	<i>Project Cost</i>
Expenditures to Date		
Year 1	8/1/2008 6/30/2009	\$2,397,500
Year 2	7/1/2009 6/30/2010	3,087,306
Year 3	7/1/2010 6/30/2011	1,205,375
Year 4 (current FY)*	7/1/2011 2/29/2012	1,559,620
Subtotal of Expenditures to Date		\$8,249,801
Anticipated Expenditures		
Year 4 (current FY)*	3/1/2012 6/30/2012	118,288
Year 5	7/1/2012 6/30/2013	1,600,739
Subtotal of Anticipated Expenditures		1,719,027
Project Total**		\$9,968,828

Notes: *Total expenditures budgeted in the current FY 11-12 are \$1,677,908

**Includes expenditure of the \$1,068,089 Contingency

As shown in Table 3 below, the proposed amendment to the existing agreement with Netsmart would authorize DPH to pay Netsmart an amount not-to-exceed \$31,786,819, which is a \$21,817,991 increase from the current not-to-exceed amount of \$9,968,828.

Table 3: Proposed Amendment Budget of Netsmart's Avatar System

<i>Contract Year</i>	<i>Term Period</i>	<i>Project Cost</i>
Year 1	8/1/2008 6/30/2009	\$2,397,500
Year 2	7/1/2009 6/30/2010	3,087,306
Year 3	7/1/2010 6/30/2011	1,205,375
Year 4	7/1/2011 6/30/2012	2,623,738
Year 5	7/1/2012 6/30/2013	1,967,300
Year 6	7/1/2013 6/30/2014	1,700,000*
Year 7	7/1/2014 6/30/2015	1,700,000*
Year 8	7/1/2015 6/30/2016	1,700,000*
Year 9	7/1/2016 6/30/2017	1,694,596*
Year 10	7/1/2018 6/30/2018	1,700,000*
Project Total		\$19,775,815
Optional Licenses, Services and Subscriptions		\$8,605,273
Project Subtotal		\$28,381,088
12 Percent Contingency		3,405,731
Total Not-to-Exceed Amount		\$31,786,819

Note: *Total of \$8,494,596 for ongoing operations and maintenance costs for the approximate five year (4 years and 11 months) under the proposed extended term of the existing agreement.

The proposed amended agreement primarily has two functions, (a) to continue the existing agreement for an additional four years and eleven months at an average annual cost \$1,698,919 for operations and maintenance costs (excluding contingencies), or \$81,229 less than the average annual cost of \$1,780,148 for operations and maintenance costs (excluding contingencies) under the existing agreement; and (b) to provide enhancements for increased capabilities for both the remaining term of the existing agreement through July 30, 2013 and a five-year extension through June 30, 2018. Of the \$21,817,991 requested increase to the existing agreement, (a) \$1,312,391 reflects the increased cost for the proposed enhancements that are planned to be implemented in the remaining initial term through July 30, 2013; (b) \$8,494,596 reflects the Project operations and maintenance costs for the additional four years and eleven months, from July 1, 2013 through June 30, 2018 to maintain user licenses and provide ongoing maintenance/support service; (c) \$8,605,273 reflects the cost for optional licenses, services and subscriptions; and (d) \$3,405,731 reflects a 12 percent contingency.

As shown in Table 3 above, and detailed in Table 4 below, the proposed amendment to the existing agreement contains \$8,605,273 for Optional Licenses, Services and Subscriptions, including \$3,625,030 related to "Meaningful Use" components of Netsmart's Avatar System.

Table 4: Proposed Contract Amendment Budget for
Optional Licenses, Services and Subscriptions

<i>Optional Licenses, Services and Subscriptions</i>	<i>Cost</i>
Meaningful Use Components	\$3,625,030
Web Services	586,051
Additional RADplus and Cache Licenses	1,715,957
Professional Services	
Additional Onsite Resources	2,611,935
My Avatar Upgrade	66,300
Optional Totals	\$8,605,273

According to Mr. Counter, the \$8,605,273 for optional licenses, services and subscriptions provides for the acquisition of system components at a cost of \$3,625,030 as shown in Table 4 above, in order to comply with the ARRA regulations as well as for the expansion of the system to a greater number of Behavioral Health Information System users as Behavioral Health patient treatment programs evolve. In addition, the proposed Avatar System includes a \$586,051 Web Services module which will provide a technical platform to link the DPH Avatar System with other proprietary systems which have been developed by or in use by DPH's contracted Community Based Provider organizations. Mr. Counter notes that additional RADplus and Cache Licenses at a cost of \$1,715,957 are fees for anticipated additional end users of the Avatar application for the Rapid Application Development (RADplus) toolset for screen-building and reporting as well as the Cache relational database upon which the Avatar System is constructed. Ms. Anne Okubo, DPH Deputy Financial Officer, reports that although DPH cannot provide an estimate at this time due to the fluid environment of Health Care Reform, DPH expects to finance the \$8,605,273 cost of such optional licenses, services and

subscriptions with additional revenues anticipated to be obtained by DPH, instead of City General Fund revenues.

As discussed above, the proposed amendment to the existing agreement between DPH and Netsmart includes new software to address the Federal American Reinvestment and Recovery Act (ARRA) regulation for "Meaningful Use" of Certified Electronic Medical Records which could provide incentive payments to eligible hospitals and providers. As such, according to Mr. Counter, DPH could receive estimated Eligible Providers Incentive Payments of \$21,250 in the first year and \$8,500 in the subsequent years, with a maximum cap of \$63,750 per eligible psychiatrist or nurse practitioner. Such incentive payments to DPH of up to \$63,750 per psychiatrist or nurse practitioner are estimated to total \$1,900,000 over the first three years of ARRA compliance, which would offset a portion of the \$3,625,030 Meaningful Use cost of the proposed Avatar System enhancements.

RECOMMENDATION

Approve the proposed resolution.

**AVATAR SYSTEM PRODUCT ENHANCEMENTS AND MAINTENANCE AND SUPPORT SERVICES INCLUDED IN
THE PROPOSED CONTRACT AMENDMENT**

Software

Electronic Signature
Document Management (Point of Service and Batch Scanning)
Three Interfaces:
Labs
Hospitals/Primary Care
Service Providers/Jail

Subscription

Consumer Connect

Implementation Services

Project Manager (Mar 2012 thru Nov 2012)
Billing Specialist (Sep 2011 thru Jun 2012)
Clinical Specialist (Sep 2011 thru Nov 2011)

Third Party Software

90 Additional InterSystems Cache Enterprise Licenses

Hardware

50 T-LBK755-HSB Electronic Signature Pads
62 T-S460-HSB Electronic Signature Pads
1 Dell OptiPlex 360 Minitower to be used with Batch Scanner
1 Batch Scanner
2 TB NAS Device (Storage for approximately 4,000,000 - 500 KB Images)
5 Point of Service (POS) Scanners

Optional Services

Optional Licenses, Services and Subscriptions

Meaningful Use Components
Order Connect: 152 User Subscriptions
Meaningful Use Stage 1 including Care Connect
Meaningful Use Stage 2
Web Services
RADplus and Cache Licenses
Professional Services Additional Onsite Resources
Professional Services My Avatar Upgrade

Optional Meaningful Use Components

Order Connect: 152 User Subscriptions
Meaningful Use Stage One (Includes Care Connect)
Meaningful Use Stage Two

Optional Products and Services

Web Services
100 RADplus and 25 Cache Licenses Additional Annually
Additional 6 Months Clinical Analyst and 6 Months Billing Analyst Annually
My Avatar Upgrade

** Complete copy of document is located in

File No. 120245

City and County of San Francisco
Office of Contract Administration
Purchasing Division

COPY

First Amendment

THIS AMENDMENT (this "Amendment") is made as of 30th day of January 2012, in San Francisco, California, by and between Netsmart New York, Inc. ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the contract term, increase the contract amount, and update standard contractual clause;

WHEREAS, approval for this Amendment was obtained when the Board of Supervisors approved the following resolution _____;

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved Contract number 4064-07/08 on 12/3/2007 and revised on 12/5/2011;

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

a. **Agreement.** The term "Agreement" shall mean the Agreement dated August 1, 2008 (BPHC09000093) between Contractor and City.

b. **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

2a. **Section 3.** Section 3 Term of the Agreement currently reads as follows:

3. Term of the Agreement

Subject to Section 5, the software license granted under this Agreement shall commence upon installation of the Licensed Software and shall continue in perpetuity unless sooner terminated in accordance with the provisions of this Agreement. Subject to Section 5, the Application licenses granted under this Agreement shall commence upon on July 1, 2010 and expire on July 30, 2013.

Subject to Section 2, the term of the configuration, training, and maintenance services in this Agreement shall be from August 1, 2008 through July 30, 2013 as further detailed in Appendices A, B and C.

Such section is hereby amended in its entirety to read as follows:

3. Term of the Agreement

Subject to Section 5, the software license granted under this Agreement shall commence upon installation of the Licensed Software and shall continue in perpetuity unless sooner terminated in accordance with the provisions of this Agreement. Subject to Section 5, the Application licenses granted under this Agreement shall commence upon on July 1, 2010 and expire on June 30, 2018.

Subject to Section 2, the term of the configuration, training, and maintenance services in this Agreement shall be from August 1, 2008 through June 30, 2018 as further detailed in Appendices A, B and C.

2b. Section 15. Section 15 Payment of the Agreement currently reads as follows:

15. Payment

Compensation shall be due and payable within 45 days of the date of invoice. In no event shall the amount of this Agreement exceed Nine Million Nine Hundred and Sixty-Eight Thousand Eight Hundred and Twenty-Eight Dollars (**\$ 9,968,828**). The breakdown of costs associated with this Agreement is provided for in Appendix B.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until Licensed Software, Licensed Applications, Hardware, and services, required under this Agreement are received from Contractor and approved by **Department of Public Health** as being in accordance with this Agreement.

In no event shall City be liable for interest or late charges for any late payments.

Such section is hereby amended in its entirety to read as follows:

15. Payment

Compensation shall be due and payable within 45 days of the date of invoice. In no event shall the amount of this Agreement exceed Thirty One Million Seven Hundred Eighty Six Thousand Eight Hundred Nineteen Dollars (**\$31,786,819**). The breakdown of costs associated with this Agreement is provided for in Appendix B.

Contractor understands that, of the maximum dollar obligation listed in Section 5 of this Agreement, **\$3,405,731** is included as a contingency amount and is neither to be used in Program Budgets attached to this Appendix, or available to Contractor without a modification to this Agreement executed in the same manner as this Agreement or a revision to the Program Budgets of Appendix B, which has been approved by Contract Administrator. Contractor further understands that no payment of any portion of this contingency amount will be made unless and until such modification or budget revision has been fully approved and executed in accordance with applicable City and Department of Public Health laws, regulations and policies/procedures and certification as to the availability of funds by Controller. Contractor agrees to fully comply with these laws, regulations, and policies/procedures.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until Licensed Software, Licensed Applications, Hardware, and services, required under this Agreement are received from Contractor and approved by Department of Public Health as being in accordance with this Agreement.

In no event shall City be liable for interest or late charges for any late payments.

2c. Insurance. Section 24 is hereby replaced in its entirety to read as follows:

24. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- (1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- (2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence, \$2,000,000 aggregate for bodily injury, property damage, contractual liability, personal injury, products and completed operations.
- (3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (4) Technology Errors and Omissions Liability. CONTRACTOR shall obtain and maintain throughout the duration of the contract technology errors and omissions liability coverage with limits of \$1,000,000 per occurrence/loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:
 - 1) Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, stored or transmitted in electronic form.
 - 2) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks.
 - 3) Liability arising from the introduction of a computer virus into, or otherwise causing damage to the District's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

If coverage is maintained on a claims-made basis, CONTRACTOR shall maintain such coverage for an additional period of three (3) years following termination of the contract.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

- (1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
- (2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

d. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

e. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

f. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

g. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

h. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

2d. Limitations on Contributions. Section 38. is hereby replaced in its entirety as follows:

38. Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual

value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

2e. Protection of Private Information. Section 30 is hereby replaced in its entirety, as follows:

30. Protection of Private Information. contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

2f. Food Service Waste Reduction Requirements. Section 48 is hereby added to the Agreement, as follows:

48. Food Service Waste Reduction Requirements. Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

2g. Cooperative Drafting. Section 51 is hereby added to the Agreement, as follows:

51. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

2h. Replace Appendix B of the original Agreement with the attached Appendix B dated January 30, 2012.

- 2i. Replace Appendix B-1 with the attached Appendix B-1 dated January 30, 2012.
 - 2j. Replace Appendix B-2 with the attached Appendix B-2 dated January 30, 2012.
 - 2k. Replace Appendix B Attachment 3 of the original Agreement with the attached Appendix B-3 dated January 30, 2012.
 - 2l. Replace Appendix E of the original Agreement with the attached Appendix E dated January 30, 2012.
 - 2m. Add Attachment 1 entitled "Additional Products and Services" dated January 30, 2012 to Appendix G of the Original Agreement.
 - 2n. Add Attachment 1 entitled "Additional Third Party Subscriptions" dated January 30, 2012 to Appendix H of the original Agreement.
 - 2o. Add Attachment 1 entitled "Additional Hardware" dated January 30, 2012 to Appendix K of the Original Agreement.
 - 2p. Attach Attachment 1 entitled "Additional Optional Services" dated January 30, 2012 to Appendix L of the Original Agreement
3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.
4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

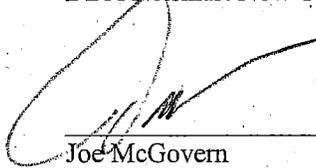
CITY

Recommended by:


Barbara A. Garcia, MPA
Director of Public Health
Department of Public Health

CONTRACTOR

Netsmart Technologies, Inc.
DBA Netsmart New York Inc.


Joe McGovern
Executive Vice President
3500 Sunrise Highway, Suite D122
Great River, NY 11739

City vendor number: 73298

Approved as to Form:

Dennis J. Herrera
City Attorney

By: 
Kathy Murphy
Deputy City Attorney

Approved:

Naomi Kelly
Director of the Office of Contract Administration,
and Purchaser

** Complete copy of document is located in

File No. 120245

City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685

**SOFTWARE AND APPLICATION LICENSE AND SERVICES AGREEMENT
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND**

Netsmart New York, Inc

This agreement (the "Agreement") is made this **1st** day of **August, 2008**, in the City and County of San Francisco, State of California; by and between: **Netsmart New York, Inc. 3500 Sunrise Highway, Suite D122, Great River, NY 11739**, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration, hereinafter referred to as "Purchasing."

Recitals

WHEREAS, the City **Department of Public Health** wishes to license from Contractor certain software and the use of certain applications, and have Contractor configure and maintain such software and applications and provide certain hardware and training; and,

WHEREAS, Contractor represents and warrants that it is qualified to provide such software, applications and services required by City as set forth under this Agreement; and

Now, THEREFORE, the parties agree as follows:

1. Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

ACCEPTANCE	Notice from the City to Contractor that the Licensed Software and Applications meet the specifications contained in the Documentation. City's Acceptance of the Licensed Software and Applications shall be governed by the procedures set forth in Section 7.
AGREEMENT	This document and any attached appendices and exhibits, including any future written and executed amendments.
ANNIVERSARY DATE	Each annual anniversary of the Effective Date.
AUTHORIZATION; or AUTHORIZATION DOCUMENT	This Agreement, a Blanket Purchase Order, Contract Order, or Purchase Order of the City, properly executed by the Department of Public Health

CMS # 6193

P-545 (4-07)

1 of 27

August 1, 2008

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, San Francisco Board of Supervisors	City elective office(s) held: Members, San Francisco Board of Supervisors
Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: Netsmart Technologies, Inc., fka Netsmart New York, Inc.	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.	
1. Board of Directors Mark Hanson, Chairman Michael G. Valentine, Director Roman Margolin, Director	
2. Michael G. Valentine, Chief Executive Officer Anthony F. Grisanti, Chief Financial Officer Tom Herzog, Chief Operating Officer	
3. Genstar Capital Partners V, L.P. 4 Embarcadero Center, Suite 1900 San Francisco, CA 94111-4191	
4. No subcontractors	
5. None	
Contractor address: 3500 Sunrise Highway, Suite D122, Great River, NY 11739	
Date that contract was approved:	Amount of contract: \$31,786,819
Describe the nature of the contract that was approved: Software Licenses, support and maintenance services for clinical and billing applications in use by the Department of Public Health.	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Clerk of the San Francisco Board of Supervisors	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: bos.legislation@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

