

# Helper Software Support Agreement

This support agreement ("Agreement") states the terms on which Therapist Helper, Inc. a subsidiary of NETSMART New York, Inc. ("NETSMART") will support you ("CUSTOMER") in the use of the NETSMART software programs provided with this Agreement.

Payment of the "Helper Assurance" invoice signifies the acceptance of the terms stated in this agreement and any provided supplemental support agreement terms (collectively, the "Agreement"). **Assurance contracts and upgrades are non-refundable.**

## 1. TERMS OF AGREEMENT AND ITEMS COVERED

NETSMART shall render services for a term of one year from the effective date. This agreement is limited to 40 support incidents in a one year period. Additional charges may be incurred after the 40 incident limit has been met. Due to the length of time required, Helper support is not meant to be a tutorial / training service for the Helper program. Either party may terminate this agreement at the end of the first year. NETSMART reserves the right to refuse the renewal of the "Agreement". If this agreement is not terminated as provided, it shall be renewed automatically for an additional year at the end of each term and pricing and coverage will apply using the then current pricing and "System Support Agreement Schedule".

## 2. NORMAL BUSINESS HOURS

For purposes of this agreement, "normal business hours" will be 9:00 am to 5:00 pm EST, Monday through Thursday, and 9:00 am to 4:00 pm on Friday, excluding holidays observed by NETSMART.

## 3. SOFTWARE SUPPORT

- 3.1 If chosen by CUSTOMER, and agreed to by NETSMART, and the software item is listed on the attached "System Support Agreement Schedule", NETSMART shall provide software support as described below during the term of this agreement. NETSMART reserves the right to accept or decline each item scheduled on the "System Support Agreement Schedule" due to the life cycle or supportability of products.
- 3.2 **CUSTOMER SUPPORT.** Consult with, and advise the CUSTOMER with respect to performance of the system, improved utilization of the system and problems encountered by the utilization of the system will be provided over the phone or via e-mail and the internet during normal business hours. This support is limited to programs written by NETSMART. Networking issues are the responsibility of the CUSTOMER.
- 3.3 **UPDATES/UPGRADES.** All NETSMART updates and upgrades for items listed as covered on a current "System Support Agreement Schedule" will be provided at no additional charge, providing the update is part of the normal version release and is not a new feature released as a separately priced product support. A current support contract is required for continued use and service of all "Plug- in software" which includes but is not limited to ClaimsConnect, Therapist Traveler, and Expedite Credit Card Processing. If NETSMART determines it is necessary for the CUSTOMER's operating system or software to be upgraded to the new version in order to continue to warranty the correct operation of the application software, CUSTOMER agrees to have the upgrade done and shall pay any upgrade and license fees as stated in EXCLUDING COVERAGE.
- 3.5 **SOFTWARE CUSTOMIZATION.** NETSMART will not provide support on any software that has been customized by the CUSTOMER or a contractor to the CUSTOMER. Any customized software that NETSMART provides for CUSTOMER will be treated on a time and materials basis, and any future upgrades to this NETSMART customized software will also be treated on a time and materials basis, and will not be covered under the standard Software Support Agreement for Upgrades and Updates.
- 3.6 **OTHER NON-COVERED ITEMS.** NETSMART will not provide support on CUSTOMER hardware, operating systems, networking, or 3<sup>rd</sup> party software systems.
- 3.7 **DATABASE REPAIRS.** Database repair is not covered under the support contract. The fee to repair a corrupted database will be determined by NETSMART, and repaired on a first come, first serve basis, with no guarantee of a specific repair date.
- 3.8 **PASSWORD RECOVERY.** Lost passwords for both Therapist Helper and ClaimsConnect are the responsibility of the user and not covered under the service agreement. NETSMART will determine the charge to recover lost passwords.

## 4. CHARGES

- 4.1 **PAYMENT OF SUPPORT CONTRACT.** The support contract shall be paid annually. Automatic renewals will be charged to the credit card which was used to pay for the original support contract. The support contract and paid upgrades are non-refundable.
- 4.4 **INCREASE OF SUPPORT FEES.** NETSMART will not increase Software Support Agreement fees during the Initial Term of this agreement. On the renewal date of the agreement, NETSMART has the option of adjusting the acceptance of products and the support pricing structure listed on the System Support Agreement Schedule.
- 4.5 **SOFTWARE PRODUCTS.** NETSMART may routinely introduce new software products that are sold as a separately priced product, which incorporate features, functions, and program support. CUSTOMER will be offered the opportunity to purchase a license for the new software product. Any program change, which in NETSMART's sole judgment is a

Software Product, is specifically not included in this agreement and will not be provided to the CUSTOMER except as a purchasable license.

**4.6 ABILITY TO ADD ITEMS TO SYSTEM SUPPORT AGREEMENT SCHEDULE.** On occasion, customer will purchase additional components to their system, or upgrade existing components in capability or number of users. In this case, at NETSMART's option, the "System Support Agreement Schedule" will be modified to reflect the change in product coverage, and billing will be modified to accommodate the incremental products covered during the agreement period.

**4.7 RE-INSTATEMENT.** Re-instatement of a Software Support Agreement to be current on coverage in the event coverage has been dropped will require the purchase of an Upgrade. The customer may then purchase a Software Support Agreement and resume support. Paid upgrades are non-refundable.

## **5. RESPONSIBILITIES OF CUSTOMER**

**5.1 UNAUTHORIZED CHANGES.** The CUSTOMER shall not authorize, cause or permit changes to be made or attempted on the software during the term of this agreement, except as provided by NETSMART under this agreement or as specified and approved in writing by NETSMART. NETSMART shall have no liability for any unauthorized repairs or changes to the system or any services performed by NETSMART because of such unauthorized changes. If such UNAUTHORIZED CHANGES are performed, then the CUSTOMER shall pay for repairs or changes at the rates as defined in CHARGES (section 4).

**5.2 BACKUP SYSTEM.** CUSTOMER shall take reasonable steps to protect its own data from system failure, including daily creation of backup copies of data and creation of processes to insure continued business operation in case of system failure.

**5.3 REPORTING OF ERRORS.** CUSTOMER will make every effort to comply with sound computer data management principles including, but not limited to: notification to NETSMART in the event of system errors, routine financial audit and reconciliation to assure the accuracy of entered information, regular review of coding and other data entry procedures and the prompt input of essential billing information.

**5.4 ENVIRONMENT.** Failure to adhere to any of the NETSMART specifications for hardware, software, and application software shall constitute a default and this contract and conditions will be in default as defined in DEFAULT (section 9).

## **6. EXCLUDED FROM COVERAGE**

If corrections, modifications or other services are required as a result of the carelessness or negligence of CUSTOMER, or abnormal usage, or CUSTOMER's breach of any provision of the software support agreement, or perils such as fire, theft, lightning or water damage or any other cause external to the system but uncontrollable by NETSMART, NETSMART may correct or modify the system, at NETSMART's option to perform the work, but the CUSTOMER shall pay for all work at hourly rates as listed in CHARGES (section 4). Those items excluded from coverage (but not limited by the list below) are:

- a. **ELECTRICAL WORK.** Electrical work external to any hardware.
- b. **RELATED HARDWARE SUPPORT.** Repair or replacement of magnetic media, platens, supplies or accessories; painting or refinishing connected with relocation of hardware; or adding or removing accessories, attachments or other devices not furnished by NETSMART.
- c. **SERVICE, WHICH IS IMPRACTICAL.** Such service which is impractical for NETSMART to render because of connections by mechanical and/or electrical means to hardware not approved by NETSMART.
- d. NETSMART does not support Wireless Networks or Peer-to-Peer Networks.
- e. **NON-NETSMART UPGRADES AND SUPPORT.** Updates and support to non-NETSMART software will NOT be provided by NETSMART under this agreement. Upgrading these software programs is at the cost of the CUSTOMER.
- f. **3<sup>rd</sup> PARTY SOFTWARE MALFUNCTIONS.** Problems that are caused by a 3<sup>rd</sup> party operating system or 3<sup>rd</sup> party application software.
- g. **NOT LISTED ON "SYSTEM SUPPORT AGREEMENT SCHEDULE".** Any product item that is supported or requires support that is not listed on the "System Support Agreement Schedule".

## **7. LIMITATION OF LIABILITY**

NETSMART shall not be liable for any failure or delay in performance of services under this agreement due in whole or in part to any cause beyond NETSMART's control. NETSMART shall not be liable for loss, destruction or damage of programmed information or data, unless such loss, destruction or damage is due to the gross negligence of NETSMART, in which event its liability shall be limited to restoring the lost, destroyed or damaged programs or data, provided such restoration can be reasonably performed by NETSMART. The sole remedy for NETSMART's liability, if any, under this agreement, other than the remedy mentioned above, shall be limited to re-performance of any service provided by NETSMART or a refund not to exceed the amount paid by the CUSTOMER to NETSMART for the applicable service.

## **8. DEFAULT**

Default will occur if any of the terms and conditions of this agreement is violated or if CUSTOMER fails to provide payment or is delinquent in payment for these services. If CUSTOMER defaults under the Software Support Agreement:

- a. NETSMART may refuse to continue to service the software; and
- b. CUSTOMER agrees to pay NETSMART costs and expenses of collection including reasonable attorneys' fees, providing NETSMART is the prevailing party.

## **9. GENERAL**

The laws of the State of Massachusetts shall govern the Software Support Agreement. The Software Support Agreement may not be modified except by a written agreement signed by the CUSTOMER and the Vice President of Client Services or President of NETSMART.

## **10. EXCUSED PERFORMANCE**

NETSMART shall not be liable for any failure to perform or delayed performance of any obligation under this Support Agreement if such performance is prevented, hindered, or delayed by reason of any cause beyond the reasonable control of NETSMART, including, without limitation, any labor dispute, strike, or other industrial disturbance, Act of God, flood, shortage of materials, earthquake, casualty, war, act of public enemy, riot, insurrection, embargo, law, blockage, action, restriction and regulation or order of any government, government agency or subdivision thereof.

## **11. INDEMNIFICATION**

CUSTOMER will indemnify and hold harmless NETSMART from any loss, claim or damage to persons or property arising out of this agreement or CUSTOMER's possession of the system or use thereof, which indemnity will survive the termination of this by the gross negligence of NETSMART.

## **12. ASSIGNMENT**

CUSTOMER rights and obligations under this Agreement shall not be assignable by CUSTOMER in whole or part, by operation of law or otherwise, without the prior written consent of NETSMART. NETSMART may at any time, without notice to CUSTOMER, assign to any other person or entity any or all of its rights and interests under this Agreement and any such assignee may assign the same.