

## Assurance Plan Member Services Agreement

Assurance plan membership includes access to Support Services and product updates as described below. The Support Services described in this Schedule ("Support Schedule") will be performed by Netsmart subject to the terms and conditions of this License and Service Master Agreement. ("NETSMART") will support you ("CLIENT") in the use of the NETSMART software programs provided with this Agreement.

### **1. TERMS OF AGREEMENT AND ITEMS COVERED**

NETSMART shall render Support Services for a term of one year from the Effective Date. This includes up to 40 support incidents initiated by Client in a given one year period. Additional charges may be incurred by Client after the 40 incident limit has been exceeded in such period. Due to the length of time required, Helper support is not meant to be a tutorial / training service for the Helper program. Resolving a support incident is the responsibility of both parties working together in good faith to reach a common resolution as specified herein. As such, Netsmart reserves the right to deny Support Services should Client not uphold their responsibility in resolving such incident and no refund shall be issued.

Either party may terminate this Support Schedule at the end of the first year upon 30 days advance written notice to Netsmart. If this Support Schedule is not terminated as provided herein, it shall be automatically renewed for additional one year periods at the anniversary of each term. Pricing and coverage will apply using the then-current Netsmart pricing. NETSMART reserves the right to refuse the renewal of this Support Schedule.

### **2. NORMAL BUSINESS HOURS**

For purposes of this Support Schedule, "normal business hours" will be 8:00 am to 5:00 pm CST, Monday through Friday, excluding holidays observed by NETSMART and periodic all-team meetings.

### **3. SOFTWARE SUPPORT**

- 3.1. If Client opts for Support Services and has paid in full for the one year period, and agreed to by NETSMART, NETSMART shall provide software support as described below during the term of this Support Schedule.
- 3.2. CLIENT SUPPORT. Netsmart shall consult with and advise the CLIENT 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 contained in the Master Agreement. Networking issues are the responsibility of the CLIENT.
- 3.3. UPDATES/UPGRADES. All NETSMART updates and upgrades for items listed as covered in the Master Agreement 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, and Expedite Credit Card Processing. If NETSMART determines it is necessary for the CLIENT'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, CLIENT agrees to have the upgrade done and shall pay any upgrade and license fees as stated in Section 6.
- 3.4. SOFTWARE CUSTOMIZATION. NETSMART will not provide support on any software that has been customized by the CLIENT or a contractor to the CLIENT. Any customized software that NETSMART provides for CLIENT 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 this Support Services Schedule for Upgrades and Updates.
- 3.5. OTHER NON-COVERED ITEMS. NETSMART will not provide support on CLIENT hardware, operating systems, networking, or 3rd party software systems.
- 3.6. 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.

- 3.7. **PASSWORD RECOVERY.** Lost passwords for both Therapist Helper and ClaimsConnect are the responsibility of the user and not covered under this Support Schedule. NETSMART will determine the charge to recover lost passwords.

#### **4. CHARGES**

- 4.1. **PAYMENT OF SUPPORT CONTRACT.** The support contract shall be paid annually in advance. Automatic renewals will be charged to the credit card provided to pay for the original License(s) and Support Services unless otherwise terminated by Client pursuant to Section 1. Charges paid under this Support Schedule and the Master Agreement are non-refundable.
- 4.2. **INCREASE OF SUPPORT FEES.** NETSMART will not increase the charges for Support Services during the initial one year term of this Support Schedule. On the renewal date of the Support Schedule, pricing for Support Services may be subject to up to 5% increases at Netsmart's discretion.
- 4.3. **SOFTWARE PRODUCTS.** NETSMART may routinely introduce new software products that are sold as a separately priced product, which incorporate features, functions, and program support. CLIENT 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 CLIENT except as a purchasable license.
- 4.4. **ABILITY TO ADD ITEMS TO THE MASTER AGREEMENT.** As Client's sole discretion, Client may purchase additional components to their system, or upgrade existing components in capability or number of users. In this case, at NETSMART's option, the Master Agreement will be modified by both parties to reflect the change in product coverage, and billing will be modified to accommodate the incremental products covered during the agreement period.
- 4.5. **REINSTATEMENT.** Reinstatement of Support Services to be current on coverage in the event coverage has been dropped or terminated will require the purchase of an Upgrade package. This package will be priced according to the amount of time Support Service coverage has been lapsed, and includes a standard one year support agreement at Netsmart's then-current pricing.

#### **5. RESPONSIBILITIES OF CLIENT**

- 5.1. **SOFTWARE VERSION.** CLIENT is responsible for maintaining a current version (up to three major releases) of the software, via updates and upgrades as provided by NETSMART, in order to continue obtaining Support Services. The helper.com website will be updated to specify which versions of the software are supported.
- 5.2. **UNAUTHORIZED CHANGES.** The CLIENT 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 CLIENT shall pay for repairs or changes at the rates as defined in CHARGES (section 4).
- 5.3. **BACKUP SYSTEM.** CLIENT 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.
- 5.4. **REPORTING OF ERRORS.** CLIENT 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.
- 5.5. **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 7).

#### **6. EXCLUDED FROM COVERAGE**

If corrections, modifications or other services are required as a result of the willful misconduct, carelessness or negligence of CLIENT, or abnormal usage, or CLIENT's breach of any provision of the Support Schedule, 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 sole option to perform the work, but the CLIENT 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 CLIENT.
- f. 3rd PARTY SOFTWARE MALFUNCTIONS. Problems that are caused by a 3rd party operating system or 3rd party application software.
- g. NOT LISTED ON THE MASTER AGREEMENT. Any product item that is supported or requires support that is not listed on the Master Agreement.

## **7. DEFAULT**

Default will occur if any of the terms and conditions of this Support Schedule are violated or if CLIENT fails to provide full payment or is delinquent in payment for these services or any services provided to Client by Netsmart. If CLIENT defaults under the Software Support Agreement or any agreement between the parties:

- a. NETSMART may refuse to continue to provide Support Services and any other service(s) provided to CLIENT by NETSMART; and
- b. CLIENT agrees to pay NETSMART costs and expenses of collection including reasonable attorneys' fees, providing NETSMART is the prevailing party.

## **8. EXCUSED PERFORMANCE**

NETSMART shall not be liable for any failure to perform or delayed performance of any obligation under this Support Schedule 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.