

October 31, 2018

Sai Maddipoti

Applications Manager
Applications Manager, SAMH OITS
Department of Children and Families
1317 Winewood Blvd, Building 5, Room 102
Tallahassee, FL

Via E-Mail: sai.maddipoti@MyFLFamilies.com

Dear Sai:

Netsmart Technologies Inc. submits the following quote to Florida DCF to Maintenance and Support of your CHMH solution from 1/1/2019 – 12/31/2019. The maintenance and support is subject to the terms and conditions attached hereto.

Please sign and return this quote signaling your agreement.

State of Florida DCF - Florida State Hospital CHMC System Maintenance January 1, 2019 - December 31, 2019	
CHMC Support and Maintenance (January 1, 2019 - December 31, 2019)	\$38,332.00
Total Renewal	\$ 38,332.00

Sincerely,

Denise M. Cushaney
Client Development Executive – Public Sector

Agreed: Florida - DCF

**NETSMART TECHNOLOGIES, INC.
MAINTENANCE AND SUPPORT AGREEMENT**

Agreement made this 1st day of January 2019, (the "Effective Date") by and between Netsmart Technologies, Inc., a Delaware corporation with offices at 4950 College Boulevard, Overland Park, Kansas 66212 (hereinafter referred to as "Netsmart") and **Florida State Hospital**, a Corporation with offices at 100 N Main St, Chattahoochee, FL 32324 (hereinafter referred to as "Client").

1. SCOPE OF AGREEMENT

This Agreement states the terms and conditions under which Netsmart will provide Maintenance and Support services to Client.

2. DEFINITIONS

As used in this Agreement, the following definitions apply to capitalized terms:

- (a) "Charges" means the amounts to be paid by Client for Support Services under this Agreement as described Schedule A.
- (b) "Client Database" means a collection of data records that are maintained as a single logical area on a single computer system that is used, accessed, or acted upon by Licensed Programs.
- (c) "Licensed Programs" means both the Netsmart Programs and the Third Party Products.
- (d) "Netsmart Programs" means the Netsmart computer programs in object code form and their associated documentation. Schedule A lists separately the various modules of the Netsmart Programs licensed by Client.
- (e) "Problem or Defect" means any failure of the Licensed Programs to operate in substantial conformance with the Specifications.
- (f) "Specifications" means the description and features of the Licensed Programs as set forth in the documentation relating to the Licensed Programs. Those Netsmart Programs covered under the terms of this Agreement are identified in Schedule A.
- (g) "Support Services" means the maintenance and support services to be provided by Netsmart in accordance with Schedule B of this Agreement.
- (h) "Third Party Products" means any product acquired by Netsmart from an outside vendor on behalf of Client and covered under the terms of this Agreement. Third Party Products consisting of software are called Third Party Programs. Third Party Products are described in Schedule A.

3. INTELLECTUAL PROPERTY RIGHTS

- a) Nothing in this Agreement will be deemed to convey any title or ownership interest in the Licensed Programs to Client. Client acknowledges Netsmart's rights and the rights of the owner of the Third Party Programs in the Licensed Programs and agrees that the Licensed Programs are trade secrets and unpublished works on which Netsmart and such third party(s) hold and will hold the sole and exclusive copyright. Client will not dispute the rights of Netsmart and the third party(s) in the Licensed Programs and will not sell, disclose, lease, sublicense, lend or otherwise make the Licensed Programs available to others.
- b) No copies of the Licensed Programs may be made by Client without the prior written consent of Netsmart except for backup purposes in accordance with normal data processing practices. Client agrees to reproduce any copyright notices and/or other proprietary legends, regardless of form, contained in, affixed to, or appearing on the Licensed Programs.
- c) Client will not disassemble or reverse engineer any of the Licensed Programs nor attempt to access or modify the source code version of the Licensed Programs and will not make any derivations, adaptations, or translations of the Licensed Programs in whole or in part, nor use the Licensed Programs to develop functionally similar computer software or to otherwise compete with Netsmart.
- d) If suggestions made by Client are incorporated into subsequent versions of the Licensed Programs, Client hereby assigns to Netsmart all rights Client may have in and to any suggestions, concepts, or improvements concerning the Licensed Programs, or other products and services that may result from Client communications to Netsmart.

4. TERM OF AGREEMENT

After the initial term of this Agreement (as defined on Schedule A), Support Services shall not automatically renew on an annual basis as of each Anniversary Date ("Option Term").

5. CHARGES AND PAYMENT TERMS

- a) In consideration of the commitment by Netsmart to provide Support Services, Client agrees to pay Netsmart the Charges in the amounts set forth in Schedule A.
- b) With the exception of the initial invoice which is due upon contract signing, any subsequent invoices are payable net thirty (30) days after invoice date. Thereafter, interest may accrue as specified in s. 215.422, Florida Statutes.
- c) Netsmart agrees that it will not revise the Charges for Support Services during the first year of this Agreement.

6. TAXES

The Charges set forth in this Agreement do not include any taxes. Where applicable, there will be added to such Charges, and Client will pay, amounts equal to any taxes (however designated, levied, or based) on such Charges including, but not limited to, state and local sales, privilege, property, use or excise taxes, but not including taxes based on the net income of Netsmart. If Client

claims a tax exemption, Client will provide to Netsmart a certificate of exemption from taxes, or other evidence sufficient to permit Netsmart to exclude taxes from Charges.

7. **NETSMART OBLIGATIONS**

- a) If a Problem or Defect occurs while Client is receiving Support Services, Netsmart will correct the Problem or Defect in accordance with the Support Services provisions set forth in Schedule B.
- b) Netsmart will make both mandatory and optional upgrades to the Licensed Programs available to Client at no charge while this Agreement is in effect.

8. **CLIENT OBLIGATIONS**

- a) If Client requires assistance from Netsmart to install and configure any update, Netsmart will provide support as a separate charge in addition to the annual Support Services fees. If Client fails to implement any mandatory updates Netsmart may decline to renew this Agreement on the next Anniversary Date unless Client brings the Licensed Programs up to the then current level. Netsmart may charge, and Client will pay, for software and services necessary to bring the Licensed Programs up to Netsmart's then-current level before Netsmart will certify that Client is again eligible for maintenance hereunder.
- b) Priority 1 issues must be called in directly to the Netsmart Support department. Client will make requests for Support Services by giving Netsmart written notice specifying a Problem or Defect in the Licensed Programs. In making a verbal request for Support Services, Client will provide Netsmart within twenty four (24) hours after such verbal notice with such written information and documentation as may be reasonably prescribed by Netsmart.
- c) Client will provide and maintain, at its expense, hardware and/or software to allow Netsmart to access Client's system remotely. Client will provide Netsmart with appropriate access credentials.
- d) Client will immediately inform Netsmart in writing of any modifications, additions or alterations to the Licensed Programs. If any modifications, additions or alterations of any kind or nature are made to the Licensed Programs by Client or anyone acting with the consent of or under the direction of Client, Netsmart shall have no obligation or liability to Client (i) with respect to any Problem or Defect caused by such modifications, additions or alterations, and (ii) with respect to any third party claim of patent, copyright or trade secret infringement or misappropriation arising from such modifications, additions or alterations. Netsmart may immediately terminate this Agreement without further obligation or liability to Client.
- e) Client understands and agrees that it is and will be solely responsible for establishing and maintaining a procedure for backing up its data in accordance with industry standards, and for maintaining procedures for reconstruction and/or recompilation of any and all data lost or destroyed during the use of the Licensed Programs, or storage of the data. Netsmart will not be liable under any circumstances for any damages caused by or arising from such lost or destroyed data. Netsmart will use commercially reasonable efforts, on a time and material basis to assist Client in reconstruction and/or recompilation of such data.

9. **LIMITATION OF WARRANTY.**

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THERE ARE NO OTHER WARRANTIES AND CONDITIONS EXPRESS OR IMPLIED, WHETHER IN RELATION TO THE LICENSED PROGRAMS, HARDWARE OR THE PROVISION OF ANY SERVICES INCLUDING, BUT NOT LIMITED TO, THOSE CONCERNING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ARISING BY TRADE USAGE OR COURSE OF DEALING. CLIENT'S EXCLUSIVE REMEDY IN THE EVENT OF A FAILURE TO PROVIDE SUPPORT SERVICES AS REQUIRED IN THIS AGREEMENT AND NETSMART'S SOLE OBLIGATION IS TO MODIFY THE SOFTWARE TO ELIMINATE THE PROBLEM OR DEFECT.

10. **LIMITATION OF LIABILITY**

- a) **LIMITATION ON SPECIFIED DAMAGES** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES (INCLUDING DAMAGES RELATED TO DELAYS, LOSS OF DATA, INTERRUPTION OF SERVICE OR LOSS OF BUSINESS OR PROFITS OR REVENUE), EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY THIRD PARTY CLAIM.
- b) **LIMITATION ON CUMULATIVE LIABILITY.** THE CUMULATIVE LIABILITY OF NETSMART TO CLIENT FOR ANY ACTUAL OR ALLEGED DAMAGES ARISING OUT OF, BASED ON OR RELATING TO THIS AGREEMENT, WHETHER BASED UPON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY OR ANY OTHER LEGAL THEORY, WILL NOT EXCEED THE AMOUNT OF THE MOST RECENT TWELVE (12) MONTHS OF SERVICE FEES PAID TO NETSMART UNDER THIS AGREEMENT.

11. **TERMINATION**

- a)

- b) If either party is in default of any of its material obligations hereunder, and has not commenced cure within ten (10) days and effected cure within thirty (30) days of receipt of written notice of default from the other party (the "non-defaulting party"), then the non-defaulting party may terminate the Agreement on written notice to the defaulting party.
- c) Notwithstanding any termination of this Agreement for any reason, the terms and conditions set forth in the following Sections of this Agreement will survive and will be binding on the representatives, successors, heirs and assignees of the parties:
 - i) Section 9 "Limitation of Warranty"
 - ii) Section 12 "Confidentiality"
 - iii) Section 13 "Non-Solicitation"
 - iv) Section 15 "General Provisions"

12. CONFIDENTIALITY

- a) Each party (including its employees and agents) will use the same standard of care, but in no event less than reasonable care, that it uses to protect its own confidential information to protect any confidential information of the other party that is disclosed during negotiation or performance of this Agreement.
- b) Netsmart recognizes and acknowledges the sensitive and confidential nature of information it may obtain with regard to Client's customers and their treatment, and agrees that information with respect to Client's customers and their treatment will be kept in strict confidence in perpetuity by Netsmart. Netsmart agrees to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d ("HIPAA") and any current and future regulations promulgated thereunder including without limitation the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Part 142 (the "Federal Security Regulations"), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162 (all collectively referred to herein as "HIPAA Requirements"). Netsmart agrees not to use or further disclose any Protected Health Information (as defined in 45 C.F.R. Section 164.501) or Individually Identifiable Health Information (as defined in 42 U.S.C. Section 1320d), other than as permitted by HIPAA Requirements and the terms of this Agreement. Netsmart will make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary of Health and Human Services to the extent required for determining compliance with the Federal Privacy Regulations.
- c) Client will take adequate steps and security precautions to prevent unauthorized disclosure of information which is proprietary to Netsmart and/or the owner of the Third Party Programs including, without limitation the Licensed Programs and to maintain the confidentiality of such information, including but not limited to: (i) instructing its employees having access to such information not to copy or duplicate the same or any part thereof and to withhold disclosure or access or reference thereto from unauthorized third parties; (ii) effecting sufficient security measures including, at the request of Netsmart, non-disclosure agreements with its employees, to safeguard such information from theft or from access by unauthorized parties.

13. NON-SOLICITATION

During the term of this Agreement and for a period of one (1) year following its termination, neither party will directly or indirectly solicit for employment or as a consultant, an employee or consultant of the other party, or any person who was an employee or consultant of the other party at any time during the twelve (12) month period immediately prior to the date such employee or consultant is solicited, hired or retained.

14. FORCE MAJEURE

Neither party will be responsible for delays or failures in performance resulting from acts or events beyond its reasonable control, including but not limited to, acts of nature, governmental actions, acts of terrorism, fire, labor difficulties or shortages, civil disturbances, transportation problems, interruptions of power supply or communications or natural disasters, provided such party takes reasonable efforts to minimize the effect of such acts or events.

15. GENERAL PROVISIONS

- (a) Governing Law. This Agreement will be construed in accordance with the laws of the State of Florida, without giving effect to the conflict of law rules thereof. Both parties agree this Agreement does not constitute a consumer transaction.
- (b) Entire Agreement. This Agreement and the schedules and exhibits attached hereto contain the entire understanding of the parties with respect to the matters contained herein. There are no promises, covenants or undertakings contained in any other writing or oral communication. In the event of any conflict between or among the documents comprising this Agreement, the latest dated document will prevail.
- (c) Modifications. This Agreement may not be modified except in a writing signed by authorized representatives of the parties.
- (d) Notices. Any notices required or permitted to be sent hereunder will be in writing and will be sent, Certified Mail, Return Receipt Requested, or by a recognized international courier. Notices will be sent to the addresses first set forth above or to such other address as a party may designate by notice pursuant hereto. Notices to Netsmart will be sent "Attention: Chief Financial Officer". Notices will be effective upon the date when delivery is either effected or refused.

- (e) Waiver. A waiver of a breach or default under this Agreement will not be a waiver of any subsequent breach or default. Failure of either party to enforce compliance with any term or condition of this Agreement will not constitute a waiver of such term or condition.
- (f) Insolvency. In the event that either party will cease conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under a Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then (at the option of the other party) this Agreement will terminate and be of no further force and effect and any property or rights of such other party, whether tangible or intangible, will forthwith be returned to it.
- (g) Assignment. Client may assign all of its rights under this Agreement to an assignee who acquires all or substantially all of the assets of Client, is not a competitor of Netsmart, and has financial resources at least equal to those of Client. Any permitted assignee will assume in writing, all obligations of the assignor.
- (h) Publicity. Client authorizes Netsmart to identify Client as a client, and to use Client's name and logo in any of Netsmart's advertising copy, promotional material or press releases.
- (i) Equitable Relief. It is specifically agreed that the breach of this Agreement, and in particular the provisions concerning non-disclosure of proprietary information may result in irreparable injury and the party who claims such a breach will be entitled to seek specific performance and injunctive relief to correct and enjoin such breach in addition to all other remedies which might be available.
- (j) Dispute Resolution. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement by negotiation. In the event they are unable to resolve the dispute, the parties agree to submit the dispute to confidential mediation under the then current CPR Mediation Procedure <http://www.cpradr.org> before resorting to litigation. If a trial results from any dispute not resolved by mediation, the parties waive their right to a jury trial. No action, regardless of form, arising out of this Agreement will be brought more than one (1) year after the cause of action accrues.
- (k) Severability. If any provision of this Agreement is found to be invalid, illegal or unenforceable under any applicable statute or law, it is to that extent deemed to be omitted, and the remaining provisions of this Agreement will not be affected in any way.
- (l) This Agreement may be executed in two or more counterparts, each of which will be deemed an original.
- (m) Electronic Signature. This Agreement may be executed by electronic signature as follows:
 - (i) a fax copy of this Agreements with a signature page that displays the image of a handwritten signature; or
 - (ii) a digital file that is transmitted by one party to the other which, when displayed on an electronic video display terminal, presents an image of this Agreement with a signature page bearing the image of a handwritten signature.
 - (iii) a PO is issued by the Client
- (n) Headings. The headings of the paragraphs and sections of this Agreement are for convenience only and will not control or affect the meaning or construction of any provision of this Agreement.
- (o) Compliance with Laws. Client agrees to comply with all laws and regulations, including all United States and multilateral export laws and regulations, to assure that the Licensed Programs are not exported, directly or indirectly, in violation of law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

<p>Netsmart Technologies Inc.</p> <p>BY: _____</p> <p>_____</p> <p style="text-align: center;">(PRINTED NAME)</p> <p>TITLE: _____</p> <p>DATE: _____</p>	<p>BY: _____</p> <p>_____</p> <p style="text-align: center;">(PRINTED NAME)</p> <p>TITLE: _____</p> <p>DATE: _____</p>
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Schedule A
Description of Netsmart Programs & Third Party Products and Charges

Netsmart Programs
CHMC

Third Party Products

User Count (if applicable):	
Term of Agreement:	January 1, 2019 – December 31, 2019
Annual Fee (due on contract signing):	\$ 38,332.00

Netsmart is not a distributor for the AMA CPT Licenses. Client is required by the AMA to license and pay all applicable fees for the right to use the AMA CPT codes.

Travel Policy: Not applicable as services performed under this Agreement will be performed remotely

Schedule B
Support Services

The Support Services described in this Schedule will be performed by Netsmart subject to the terms and conditions of this Agreement.

- a) Netsmart will maintain the then-current version of the Licensed Programs in substantial conformance with its Specifications as amended from time to time by Netsmart, and with applicable Federal regulatory requirements and laws. Netsmart will either:
 - (i) Correct any reproducible Problems or Defects in the Licensed Programs by Netsmart which prevent it from operating in substantial conformance with the Specifications and applicable Federal regulatory requirements; or
 - (ii) Provide a commercially reasonable alternative that will substantially conform with the Specifications and applicable Federal regulatory requirements and laws.
- b) Priority 1 issues must be called in directly to the Netsmart Support department. Client will make requests for Support Services by giving Netsmart written notice specifying a Problem or Defect in the Licensed Programs. In making a verbal request for Support Services, Client will provide Netsmart within twenty four (24) hours after such verbal notice with such written information and documentation as may be reasonably prescribed by Netsmart.
- c) Client will provide and maintain, at its expense, hardware and/or software to allow Netsmart to access Client's system remotely.
- d) On a timely basis Netsmart will also provide Client with:
 - (i) such updates as are distributed without charge to other similar Clients which reflect modifications and incremental improvements made to the Licensed Programs by Netsmart;
 - (ii) an opportunity to obtain enhancements to the Licensed Programs for which charges are imposed on the same terms as such enhancements are generally made available to other Clients.
- e) Netsmart will make technical support personnel available from 9:00 a.m. to 6:00 p.m., Client's local time Monday through Friday, exclusive of Federal holidays.
- f) Client hereby grants Netsmart access to the Licensed Programs on Client's system(s) for the sole purpose of performing Netsmart's obligations under this Agreement. Netsmart will ensure all connectivity to Client's system is through the NetsmartCares single point of connectivity utility which audits Netsmart's activity on Client's system(s) when Netsmart is connected to Client's system(s). These audit logs are retained for 90 days.
- g) If reasonable analysis by Netsmart indicates that a reported Problem or Defect is caused by a problem related to Hardware used by Client, the hardware's system software, or applicable software other than Licensed Programs, or Client's misuse or modification of the Licensed Programs, Netsmart's responsibility will be limited to the correction of the portion, if any, of the problem caused by a Problem or Defect in the Licensed Programs.
- h) Absent a bona fide dispute, if Client fails to pay for Support Services when due, Netsmart may refuse to provide Support Services until Client makes payment of all Charges due. If Client has missed any mandatory upgrades Netsmart will also charge, and Client will pay, for software and services necessary to bring the Licensed Programs up to Netsmart's then-current level before Netsmart will certify that Client is again eligible for maintenance hereunder.
- i) The Guardian software diagnostic tool is included, configured, and maintained at no additional charge provided Client is current on maintenance. The Guardian software monitors the health of Client's instance of the Licensed Programs, and provides information technology personnel with the ability to review technical configuration and metric data including: configuration changes, support case activities, system usage, application events, licensing, user activity, and installed updates in a dashboard view.

j) If analysis by Netsmart indicates that a reported problem is caused by a reproducible Problem or Defect, Netsmart will use commercially reasonable efforts to provide Support Services in accordance with the following prioritization of reported problems:

Priority	Definition
1 - Critical	<p>Priority 1: will be assigned when the Netsmart Program or a material Netsmart Program Function component is non-operational as a result of a defect [in Production environment only] such as the Production system cannot be accessed or utilized in any capacity, a direct patient safety issue is present, or a HIPAA compliance violation as a result of a server incident or Netsmart application defect. Best efforts will be made to correct Priority 1 problems, or to provide a plan for such correction, within two (2) business days. Notwithstanding the above, Netsmart will work continuously toward resolution.</p> <p><u>Client's Commitment:</u></p> <ul style="list-style-type: none"> • This case Priority must be called in directly to the Netsmart Support department. • Client provides specific, detailed information required for troubleshooting/investigation. • Client provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate client resources, the case will be downgraded to Priority 2 after three (3) business days.
2 – High	<p>Priority 2: will be assigned to defects in the live production environment that have a significant negative impact on daily operations but do not cause a “System Down”. A workaround may be available and/or the capacity to maintain daily business functionality. Commercially reasonable efforts will be made to correct Priority 2 problems, or to provide a plan for such correction, within five (5) business days.</p> <p><u>Client's Commitment:</u></p> <ul style="list-style-type: none"> • Client provides specific, detailed information required for troubleshooting/investigation. • Client provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate client resources, the case will be downgraded to Priority 3 after six (6) business days.
3-Medium	<p>Priority 3: will be assigned for system defects that result in functions that have no major impact on daily operations. An issue that allows the continuation of function, including issues in which a reasonable workaround is available. Commercially reasonable efforts will be made to correct Priority 3 problems, or to provide a plan for such correction, within ten (10) business day.</p> <p><u>Client's Commitment:</u></p> <ul style="list-style-type: none"> • Client provides specific, detailed information required for troubleshooting/investigation. • Client provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate client resources, the case will be downgraded to Priority 4 after eleven (11) business days.
4 – Low	<p>Priority 4: will be assigned to cosmetic defects that do not affect system usability or non-defect related requests including, but not limited to, system set up/configuration, training, functionality questions, documentation, portal access, and upgrade requests. Commercially reasonable efforts will be made to address Priority 4 issues, or to provide a plan for such correction, within fifteen (15) business day.</p> <p><u>Client's Commitment:</u></p> <ul style="list-style-type: none"> • Client provides specific, detailed information required for troubleshooting/investigation. • Client provides appropriate staff and resources to sustain continuous communication and work effort as required. • Without appropriate client resources, the case will be closed following our Case Closure Notification policy.