



myLearningPointe License Agreement

This is a license agreement (the "Agreement") made this 1st day of October, 2015, (the "Effective Date") by and between myLearningPointe, a division of Netsmart Technologies, Inc. ("MLP") having an office at 4950 College Boulevard Overland Park, KS 66211 and Fairfield County ADAMH Board with offices at 108 W. Main Street-Suite A, Lancaster, Ohio 43130 (hereinafter referred to as "Licensee") who uses myLearningPointe Training Products. It is understood that the ADAMH Board pays for use of the myLearningPointe Training Products that are used by agencies in its Network of Care Providers as listed on the signatory page. This Agreement gives Licensee the right to use MLP Training Products by installing, registering and using the myLearningPointe Training Products from myLearningPointe web sites, to access and to use the online storage facility for electronic training records (the "Online Data Storage") and any related content (the "Content") and services made available by myLearningPointe (collectively, the "Training Products"). The license myLearningPointe granted to Licensee is conditioned on Licensee agreeing to and abiding by all the terms and conditions in this Agreement. Each subsequent installation of or order placed by Licensee for the Training Products or Technical Data will also be subject to these terms and conditions.

1. DEFINITIONS

As used herein, the terms set forth below shall have the following respective meanings:

- 1.1. "MLP" shall mean myLearningPointe, a division of Netsmart Technologies, Inc., a Delaware corporation.
- 1.2. "Licensee" shall mean the entity or individual, who installs the Training Products or otherwise agrees to be bound by the terms and conditions contained in this Agreement. An individual representing an entity represents and warrants that he/she has the authority to bind the entity to the terms and conditions of this Agreement.

- 1.3. "Training Products" shall mean the software and/or other training products delivered by MLP or an MLP distributor ("Distributor") to Licensee and may include software licensed from third parties, together with other software and/or other products subsequently delivered to Licensee by MLP or a Distributor and all updates and upgrades of the same provided to Licensee by MLP or a Distributor, all as described on the Order Acknowledgment form delivered by Licensee to MLP or the Distributor.
- 1.4. "Technical Data" shall mean the published user manuals included with the Training Products, and any other materials provided to Licensee by MLP or a Distributor to supplement the published user manuals.
- 1.5. "Named User" shall mean an individual employed by Licensee who is authorized to use the Training Products.

2. LICENSE GRANT, AUDIT RIGHTS

- 2.1. MLP grants to Licensee, and Licensee accepts from MLP, a non-exclusive license, without right to sublicense, to use the Training Products and Technical Data; provided, however, that such use of the Training Products and Technical Data shall be limited to use by the type, edition and number of users or in the manner for which payment has been made.
- 2.2. Licensee shall not allow the unauthorized use of the Training Products and Technical Data and will first notify MLP and pay any additional charges pursuant to MLP's then current price list for any additional users.
- 2.3. Licensee agrees to maintain complete and accurate records relating to its use of the Training Products and Training Data licensed under this Agreement. MLP shall have the right, at reasonable times and upon reasonable notice and no more than annually, to audit only those books and records of Licensee relating to the number of users with respect to the Training Products and Technical Data for the preceding one-year period in order to verify the accuracy of the number of users and any

other information which forms the basis of Licensee's financial obligations under this Agreement.

3. **OWNERSHIP** - Title to and ownership of the Training Products, including all copies thereof, and all rights therein including trade secrets, trademarks, patents, and copyrights, shall be the sole and exclusive property of MLP or its licensors. No title or ownership of the Training Products or any part or modification thereof is transferred to Licensee. Licensee will take all steps reasonably required by MLP to perfect its copyright, trademark and other intellectual property rights in and to such intellectual property. Title to and ownership of any training products developed by the Licensee which do not infringe on the proprietary rights of MLP, including all copies thereof, and all rights therein including trade secrets, trademarks, patents, and copyrights, shall be the sole and exclusive property of the Licensee.

4. **PROPRIETARY NOTICES**

- 4.1. Licensee shall not remove or alter MLP's or any third party's ownership, trademark, copyright, or other proprietary notices on the Training Products or Technical Data.
- 4.2. Where applicable, the Training Products and Technical Data shall be marked with an appropriate legend under the Federal Acquisition Regulations (FAR) or other similar regulations.

5. **RESTRICTIONS**

- 5.1. Licensee shall not copy Training Products or Technical Data except as required for use of the Training Products or Technical Data as provided in this Agreement, and for archival storage to assure against loss. Licensee must reproduce and include all copyright notices and other proprietary notices on each copy. In no event shall Licensee provide copies of, or access to, the Training Products or Technical Data to any third party.
- 5.2. Licensee shall not modify, reverse compile, reverse engineer or disassemble the Training Products, in whole or in part.

6. **CONFIDENTIALITY**

- 6.1. The Training Products and Technical Data constitute highly valuable property of MLP

and contain trade secrets and confidential information owned by MLP. Licensee shall observe complete confidentiality with respect to the Training Products, Technical Data and all performance data. Licensee also understands and acknowledges that it will receive confidential information from MLP in connection with this Agreement related to the Training Products, which is marked as "confidential" by MLP. Licensee shall not disclose such information to any third party, except for its employees with a need for access to the information, or use the information for any purpose not contemplated or permitted under this Agreement. Licensee shall take reasonable steps to insure that its employees who receive the information understand and acknowledge the obligations of confidentiality. The obligations of confidentiality imposed upon Licensee under this Agreement shall survive the termination or cancellation of this Agreement. If an employee, former employee or any other person affiliated with Licensee breaches the obligations of confidentiality provided for in this section, Licensee agrees to give MLP reasonable assistance in enforcing its rights against such person.

- 6.2. Notwithstanding the foregoing, Licensee shall have no obligation to hold any information in confidence to the extent that Licensee can show by documentary evidence that such information: (a) is already known to Licensee at the time it is obtained by Licensee from MLP, free from any obligations to hold such information in confidence; (b) is or becomes publicly known through no wrongful act of Licensee; (c) is rightfully received from a third party without restriction and without breach of any obligation to MLP or its suppliers; or (d) is independently developed by Licensee without use of any confidential information of MLP or its suppliers; (e) was lawfully conducted by an Governmental Entity authorized to conduct such; or (f) is subject to disclosure under Ohio's public records law, Revised Code Section 149.43.

7. CHARGES AND PAYMENT

- 7.1. If Training Products are ordered through a Distributor, Licensee shall pay Distributor for the Training Products in accordance with the payment and delivery terms established by Distributor. Otherwise, full payment is due to MLP per the terms set in Schedule I, attached here. Amounts are payable in U.S. Dollars or a currency previously agreed to between the parties in writing, by check, money order, or by electronic funds transfer payable to MLP as instructed. MLP reserves the right to modify the credit terms applicable to this Agreement at any time.
- 7.2. Unless specified above, prices exclude the cost of required hardware, operating system software, database software, communications, taxes and shipping charges. Taxes and shipping charges, where applicable, will be invoiced separately.
- 7.3. Prices for maintenance and support or professional services do not include travel, living and travel time expenses incurred in the provision of on-site services. Netsmart travel and per diem expenses will be billed and payable monthly at cost as incurred. Travel time will be billed at a rate of \$150 per hour. Any such additional expenses must be preapproved by the Executive Director of the Licensee to be liable for them.
- 7.4. The Charges set forth in this Agreement do not include any taxes. 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. Otherwise, there shall be added to such charges, and Licensee shall pay, amounts equal to any taxes however designated, levied or based excluding Netsmart's income taxes on such changes including, but not limited to, state and local sales, privilege, property, use or excise taxes, but not including taxes based on the net income.
- 7.5. The initial term for each subscription service will begin on the contract execution date and will continue for the total duration of the Initial Term. Netsmart agrees that it will not revise prices for the subscription

services during the Initial Term. Beyond the Initial Term, all renewal terms will be at the Client's sole discretion. Netsmart will give Client not less than sixty (60) days written notice prior to the anniversary date of any revised schedule of subscription services prices. If prices for renewal terms are not fixed, pricing will not be increased for any renewal term by more than the most recent increase in the US Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U)-Medical Care or 4%, whichever is higher. After the Initial Term, Support Services will be automatically renewed on an annual basis as of each Anniversary Date ("Option Term") unless Client gives Netsmart written notice of termination not less than thirty (30) days prior to the next Anniversary Date, or in accordance with other provisions of this Agreement.

- 7.5. For professional service orders: 100% of the contract amount for services will be due upon execution of this Agreement. Unless specified otherwise above, professional services will be delivered by remote access during Netsmart normal business hours. Additional fees will be incurred if services are required after hours or on weekends. All professional services and maintenance and support services will be provided under the management and control of Netsmart Technologies by Netsmart associates, Netsmart certified contracted consultants, or some combination thereof.
- 7.7. The initial MLP System Administrator Training series equaling 270 minutes, not to exceed 5 training series sessions or 1,350 minutes, is included in the initial setup and training fees per the terms set in Schedule I, attached hereto. Additional sessions in excess of 5 System Administrator Trainings will incur a fee of \$500 per training session series. Licensor will give Licensee advance written notice of the potential for it incurring these additional fees and will obtain Licensee's written consent for same from its Executive Director before Licensee have financial liability for these additional fees.

8. TERM AND TERMINATION

- 8.1. The term of this Agreement shall commence upon the Effective Date and shall continue for a term of 36 months thereafter (the "Initial Term").
- 8.2. Either party may, by written notice, terminate this Agreement if the other party fails to remedy any default under this Agreement within 30 days of receipt of written notice specifying such default; provided, however, that failure to make timely payment is not subject to this cure.
- 8.3. Upon termination of this Agreement for any reason, all licenses granted hereunder shall terminate, and Licensee shall immediately cease use of and shall return to MLP all copies of the Training Products and Technical Data, and delete any electronic records of the Training Products and Technical Data in their possession or control.
9. **WARRANTY; LIMITATION OF LIABILITY**
 - 9.1. MLP warrants that the Training Products will perform reasonably in accordance with the specifications published in the documentation supplied with the Training Products. MLP does not warrant that the Training Products will meet Licensee's requirements or that its operation will be uninterrupted or error free.
 - 9.2. MLP shall attempt to diagnose, verify and correct errors or defects in the Training Products that are identified in writing by notice to MLP, and any corrections for errors or defects may, at MLP's election, be delivered directly to Licensee by means of a patch, workaround or similar fix or be incorporated in subsequent updates delivered to Licensee provided that Licensee has purchased maintenance and support services.
 - 9.3. MLP's warranty obligations shall not apply with respect to problems caused by modification to the Training Products by Licensee or if Licensee has not purchased maintenance and support services from MLP or Distributor. Nothing in this section will relieve Licensee of its obligation to pay any maintenance and support fees for which it has contracted.
 - 9.4. MLP's liability to the Licensee for all damages, costs, claims, or demands incurred or suffered by or awarded against Licensee arising directly or indirectly out of the performance or any breach of this license shall in no event exceed the total amount paid to MLP under this Agreement.
 - 9.5. **THE WARRANTY CONTAINED IN THIS SECTION IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MLP SHALL NOT BE RESPONSIBLE TO LICENSEE OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT OR TORT, DUE TO ANY FORESEEN OR UNFORESEEN ACTION BY LICENSEE'S OR DUE ANY THIRD PARTY'S USE OF THE TRAINING PRODUCT, OR THE PERFORMANCE OF THE TRAINING PRODUCTS UNDER THIS AGREEMENT.**
 - 9.6. **INDEMNITY BY MLP**
MLP agrees to indemnify Licensee, as limited by this paragraph, with respect to any suit, claim or proceeding brought against Licensee alleging that the Training Products constitutes an infringement of any valid United States copyright. MLP agrees to defend Licensee against any such claims and to pay litigation costs, reasonable attorney's fees, and damages awarded by a court of competent jurisdiction if, and only if, Licensee promptly gives notice to MLP of any such suit, claim or proceeding and cooperates with MLP in the defense or settlement of such suit, claim or proceeding; and provided that MLP shall have sole control thereof.
 - 9.7. If use of the Training Products is enjoined or, in the opinion of counsel reasonably satisfactory to both parties, is likely to be enjoined as a result of a claim of infringement, Licensee agrees that MLP may, at MLP's option, (i) procure for Licensee the right to continue using the portion of the Training Products enjoined

from use; (ii) replace or modify the Training Products so that Licensee's use is not subject to any such injunction; or (iii) accept return of the infringing Training Products to MLP, and in the event of such return, refund the license fee paid for such Training Products, reduced by 1/12th for each month of use of the Training Product by Licensee. MLP shall have no further liability or obligations arising from copyrights under this Agreement.

- 9.8. The indemnity obligations under this Section 9 shall not apply to claims to the extent that they arise from any modification or alteration of the Training Products by any party other than MLP.

10. GENERAL

- 10.1. This Agreement and the other documents referred to in this Agreement constitute the entire agreement between the parties and supersede all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may be amended only by a written instrument stating an intention to modify this Agreement and signed by duly authorized representatives of the parties to be bound.
- 10.2. Failure by either party at any time to require performance by the other party or to claim a breach of any term or condition of this Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto.
- 10.3. Licensee may not assign this Agreement without the prior written permission of MLP.
- 10.4. If any provision in this Agreement may be held to be invalid or unenforceable in any jurisdiction in which this Agreement is being performed, the meaning of such provision shall be construed so as to render it enforceable to the extent feasible. If no feasible interpretation would save such provision, it shall be severed from this Agreement and the remainder shall remain

in full force and effect. However, in the event such provision is considered an essential element of this Agreement, the parties shall promptly negotiate alternative, reasonable equivalent, enforceable terms.

- 10.5. For all Agreements between MLP and a Licensee, the rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of Ohio without regard to rules concerning the conflict of laws. Section headings are inserted for convenience only and shall not be used in any way to construe the terms of this Agreement.
- 10.6. In the event that suit or other action is instituted to interpret or enforce this Agreement, such suit or action shall be brought only in either the Fairfield County Ohio Common Pleas Court or the Fairfield County Municipal Court and shall not be brought in any other state or federal court, and each party hereto agrees to be subject to the jurisdiction of the Common Pleas and Municipal Courts of Fairfield County, Ohio.
- 10.7. All notices permitted or required by this Agreement shall be delivered by a recognized courier service or by certified US mail, return receipt requested. Notices to MLP shall be sent to the headquarters office of Netsmart Technologies, Inc., at 3500 Sunrise Highway, Suite D-122, Great River, NY 11739, and notices to Licensee shall be delivered at the location to which the Training Products were delivered.
- 10.8. In the event of a breach of any of the provisions of Sections 2, 4, 5, or 6 of this Agreement, Licensee agrees that MLP will not have an adequate remedy at law, and accordingly Licensee agrees that MLP, in addition to any other available legal or equitable remedies, is entitled to seek injunctive relief against such breach.

Signature page to follow.

By signing this Agreement, Licensee acknowledges that it or its representative has read this Agreement, understands it, and Licensee agrees to be bound by it.

<p>AGREED: Fairfield County ADAMH Board</p> <p>x <u>Rhonda Myers</u></p> <p>Printed Name <u>Rhonda Myers</u></p> <p>Date: <u>09-09-15</u></p>	<p>AGREED: Netsmart Technologies, Inc.</p> <p>x <u>Stephanie Sasser</u></p> <p>Printed Name <u>Stephanie Sasser</u></p> <p>Date: <u>11/12/15</u></p>
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APPROVED AS TO FORM ONLY:
Jason M. Dolin, Asst. Prosecutor
Jason M. Dolin, Asst. Prosecutor
Fairfield County, Ohio
Date: 9/4/14

SCHEDULE I: SERVICES AND PRODUCTS

10/01/2015 – 09/30/2018

CUSTOMER NAME	<u>Fairfield County ADAMH Board</u>
CONTACT NAME	<u>Patti Waits</u>
ADDRESS	<u>108 W. Main Street, Suite A, Lancaster, Ohio 43130</u>
PHONE/FAX	<u>740-654-0829, ext 225; 740-654-7621</u>
EMAIL ADDRESS	<u>pawaits@ohiopps.org</u>

myLearningPointe (Yearly Subscription fee)..... \$5,568.00

- 160 Premier Library Access Seat Licenses at \$34.80 per named users
 - myLearningPointe ASP-hosted Learning Management System (LMS)
 - Limited Report Generation
 - Supervisor-level Access Management
 - Classroom Course Management
 - Course Builder and Upload Functionality
- Content Library Includes:
 - Clinical, HR, Regulatory, Compliance, Supervisory, Soft Skills Online Course Libraries
 - Netsmart Solution Training (if applicable)
- ASP-hosted Hardware at Netsmart Facility
- Toll-free phone-based technical support

Setup & Training Included

Includes 5 System Administrator Training Series Sessions equal to 1,350 minutes (270 minutes per Training Series) (\$500 fee incurred per Training Series Session thereafter)

Number of contract years **3**

Total First Year Contract value	\$5,568.00	
Total Second Year Contract value	\$5,568.00	
Total Third Year Contract value	\$5,568.00	
Total Contract.....		\$16,704.00

Payment Terms:

- First year amount due upon contract signing.
- Subsequent years due each year on anniversary date.