

CONTRACT

by and between

Cuyahoga County, Ohio

and

CourtSmart Digital Systems, Inc.

THIS AGREEMENT is made and entered into this ____ day of ____, 2011, by and between Cuyahoga County, Ohio (the "County"), on behalf of the Cuyahoga County Juvenile Court and CourtSmart Digital Systems, Inc. ("CourtSmart"), a Massachusetts corporation with its principal place of business located at 51 Middlesex Street, Suite 128, North Chelmsford, MA 01863.

WHEREAS, the County has a present need for maintenance and support of the CourtSmart Recording System at the Cuyahoga County Juvenile Court; and

WHEREAS, CourtSmart has unique education, training and/or experience that allows them to provide the maintenance and support for the Recording System desired by the County; and

WHEREAS, CourtSmart is an authorized provider of the software, hardware, and maintenance services contemplated herein under CourtSmart's State Term Schedule Number 7706600209; and

WHEREAS, the County desires to avail itself of the maintenance and support services all upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CourtSmart and the County agree as follows:

ARTICLE 1 – AGREEMENT AND TERM

1.1 Scope of Agreement. During the term of this Contract, CourtSmart shall provide maintenance and support services for the CourtSmart Recording System as listed in the CourtSmart Quotes – CAR 102012 and CUY 060211 attached hereto as Schedule A, and incorporated by reference herein. In the event that a discrepancy exists between the terms of Schedule A and this agreement, the terms of this agreement will be controlling and binding.

1.2 Term. The initial term of this Agreement shall commence as of June 1, 2011; and unless earlier terminated in accordance with the provisions of this Agreement, shall continue in effect for a period of 19 months from the commencement date. (6/1/11 – 12/31/12)

ARTICLE II – SCOPE OF WORK

- 2.1 Rendering of Services. CourtSmart hereby agrees to render the services identified in Article 1.1 and Schedule A, at a total price which shall in no event exceed the amount of Seventy Eight Thousand Four Hundred Fifty One Dollars and Ninety Four Cents (\$78,451.94).

ARTICLE III – PAYMENT AND INVOICING

- 3.1 Price and Payment Terms. During the term of this Contract, the County shall pay CourtSmart for the maintenance services rendered, or to be rendered, to Cuyahoga County at the rate(s) authorized and set by the State Term Schedule Number 7706600209; and, in effect as of the effective date of this Contract and in accordance with the fees further identified in the attached Schedule A attached hereto and incorporated by reference herein but subject to the “Not to Exceed” limitation of this Agreement.
- 3.2 Invoicing. During the term of this Agreement, the County shall pay CourtSmart upon receipt of said invoices from CourtSmart and acceptance of deliverables outlined in Article 1.1 and Schedule A.

CourtSmart will issue an invoice to the County in accordance with terms and conditions set forth herein to the following:

Cuyahoga County Information Services Center
c/o Business Department
1255 Euclid Avenue, 4th floor
Cleveland, OH 44115

ARTICLE IV - INDEMNITIES AND LIABILITIES

- 4.1 Subcontracting. This Contract was awarded to CourtSmart based upon CourtSmart's unique qualifications and skills, and no task required to be performed under this contract by CourtSmart shall be subcontracted to third parties without the express written consent of Cuyahoga County.
- 4.2 Indemnification. CourtSmart shall agree to release, indemnify and to hold harmless Cuyahoga County and any and all officers, agents, servants or employees thereof, from any and all responsibility or liability unless the actions of the County, Officers, Agents, or employees commit gross negligence or willful misconduct under this contract. Further, all provisions relating to indemnities and warranties contained in the State Term Schedule contract shall inure to the benefit of Cuyahoga County.

- 4.3 Warranties. All of CourtSmart services will be performed by qualified personnel and will be of a professional quality conforming to best practices of the industry.

There is no implied or expressed warranty as to fit for a particular purpose or merchantability. The County having evaluated the CourtSmart product is the sole party to determine the fit for its particular purpose.

If any services do not conform to the standards set forth in this warranty, CourtSmart will make all reasonable efforts, without charge, to bring its services to a level conforming to the generally accepted best practices standards of the industry. In order to obtain warranty service, the problem must be reported to CourtSmart within 90 days of delivery of the system in question.

ARTICLE V - DISPUTE RESOLUTION AND TERMINATION

5.1 Dispute Resolution.

a) In the event of any dispute or disagreement between CourtSmart and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by CourtSmart or the County hereunder, which cannot be resolved in the normal course of business, then upon written notice of either party, each party will appoint a designated officer whose task it will be to meet for the purpose of endeavoring in good faith to resolve such dispute or to negotiate for an adjustment to such section or provision of this Contract. The designated officers shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. Such officers will discuss the problem and/or negotiate the applicable section or provision without the necessity of any formal proceedings relating thereto. During the course of such negotiation, all reasonable requests made by one party to the other for information will be honored in order that each of the parties may be fully advised in the negotiations. The specific format for such discussions will be left to the discretion of the designated officers but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party. No formal proceedings for the binding arbitration of such dispute may be commenced until (i) resolution as contemplated in this clause has been unsuccessful and (ii) either of the parties concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other party.

(b) The rights and obligations of the parties under this provision shall not limit either party's right to terminate this Contract as may be otherwise permitted hereunder.

- 5.2 Termination for Default. Either party may terminate this Contract, in whole or in part, whenever such party determines that the other has failed satisfactorily to fulfill its obligations and responsibilities hereunder and is unable to cure such failure within a reasonable period of time, not to exceed thirty (30) calendar days or such longer period of time as may be specified in writing by the terminating party, taking into consideration the gravity and nature of the default. Such termination shall be referred to as "Termination for Default". Upon determination by either party hereto that the other has failed to satisfactorily perform its obligations and responsibilities hereunder, the party seeking termination shall notify the defaulting party in writing of the failure and of the time period that has been established to cure such failure, which time period shall be not less than ten (10) days. If the defaulting party is unable to cure the failure within the specified time period, the party seeking to terminate may, by giving written notice thereof to the defaulting party, terminate this Contract, in full or in part, as of the date specified in the notice of termination. CourtSmart, however, shall be paid for all services and/or materials provided on or prior to the date of termination.
- 5.3 Termination for Financial Instability. In the event that CourtSmart becomes financially unstable to the point of (i) ceasing to conduct business in the normal course, (ii) making a general assignment for the benefit of creditors, or (iii) suffering or permitting the appointment of a receiver for its business or its assets, or there is a filing by or against CourtSmart of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, and CourtSmart as a result of this filing is no longer able or willing to support this contract, the County may, at its option, immediately terminate this Contract under Section 5.2, the "Termination for Default" clause, by giving written notice thereof.

ARTICLE VI – ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

- 6.1. By entering into this Contract, CourtSmart, its officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by Cuyahoga County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document.
- 6.2 CourtSmart further agrees to be bound by the provisions of Chapter 304 and 1306 of the Ohio Revised Code as they pertain to Electronic Transactions and to comply with the electronic signature policy of Cuyahoga County.

ARTICLE VII – MISCELLANEOUS

- 7.1 Notices. Wherever one party is required or permitted to give notice to the other pursuant to this Contract, such notice shall be deemed given when delivered by hand,

via certified mail with return receipt requested, via overnight courier with signature required, and addressed as follows:

In the case of the County:

Cuyahoga County Juvenile Court
ATTN: Kal Alnazer
9300 Quincy Avenue
Cleveland, Ohio 44106

In the case of CourtSmart:

Andrew J. Treinis
CourtSmart Digital Systems
51 Middlesex Street, Suite 128
N. Chelmsford, MA 01863

Either party may from time to time change its designated recipient or address for notification purposes by giving the other party written notice of the new designated recipient or address and the date upon which it will become effective.

- 7.2 Severability. If, and only to the extent that, any provision of this Contract is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, it being the intent and agreement of the parties that this Contract shall be deemed amended by modifying such provision to the extent CourtSmart necessary to make it legal and enforceable while preserving its intent. If that is not possible, another provision that is legal and enforceable and achieves the same objective shall be substituted. If the remainder of this Contract is not affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.
- 7.3 Waiver. No delay or omission by either party in the exercise of any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained. No change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver, or discharge is sought to be enforced.
- 7.4 Survival of Terms. Termination or expiration of this Contract for any reason shall not release either party from any liabilities or obligations set forth in this Contract which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

- 7.5 Record Audit Retention. CourtSmart agrees to make all pertinent contractual books and records and other documents pertaining to this Contract available at its primary place of business, 51 Middlesex Street, North Chelmsford, MA, to the County and its designated agents for purpose of audit and examination upon reasonable request during the term of this Contract and if said documents are retained by CourtSmart beyond the expiration of the Contract, for a period of two (2) years from the expiration date or final payment under this Contract, whichever is later; provided however, that should CourtSmart be notified that an audit has been commenced pursuant to Ohio Revised Code Sec. 117.11 during said period, for which the aforesaid books and records are material, the aforesaid records shall be retained pending the completion of said audit.
- 7.6 Headings and Interpretation. The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.
- 7.7 Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio.
- 7.8 Social Security Act. CourtSmart shall be and remain an independent CourtSmart with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any Local, State or Federal Law which are measured by the wages, salaries, or other remuneration paid to persons employed by the CourtSmart for work performed under the terms of this contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by and duly authorized State or Federal officials; and said CourtSmart also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability for which it has exclusive liability for.
- 7.9 Assignment. CourtSmart shall not assign, transfer, convey or otherwise dispose of this Contract, or its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Contract without approval of the County Chief Executive by resolution.
- 7.10 Contract Processing. CourtSmart shall submit one (1) original contractual agreement with original signature to the following:

Cuyahoga County Information Services Center
ATTN: Business Department
1255 Euclid Avenue, 4th Floor
Cleveland, Ohio 44115

all prior performance under this contract shall be deemed ratified and said performance shall be deemed to be included in this contract. Payment(s) for said prior performance shall not increase the amount of the contract limit.

- 7.12 Entire Agreement and Modification. This Contract, including any Schedules and documents referred to in this Contract or attached hereto, each of which is incorporated herein, constitutes the entire and exclusive statement of the agreement between the parties with respect to its subject matter and there are no oral or written representations, understandings or agreements relating to this Contract which are not fully expressed herein. The parties agree that any other terms or conditions included in any quotes, acknowledgments, bills of lading or other forms utilized or exchanged by the parties shall not be incorporated herein or be binding unless expressly agreed upon in writing by authorized representatives of the parties. No modification, change or amendment hereof shall be valid unless such is in writing and signed by the authorized representative of the party against which such modification, change or amendment is sought to be enforced.

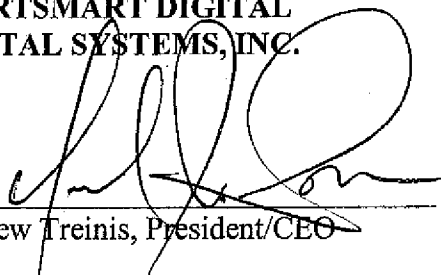
- 7.13 Schedules Incorporated by Reference. The following Schedules are attached hereto and are incorporated herein:

Schedule A: CourtSmart Quotes CUY060211 and CAR 102012.

- 7.14 Relationship of Parties. CourtSmart Inc. is performing pursuant to this Agreement only as an independent contractor. CourtSmart Inc. has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed its obligations set forth in this Agreement, except as otherwise agreed upon by the parties. Nothing set forth in this Agreement shall be construed to create the relationship of principal and agent between CourtSmart Inc. and the County. Neither party shall act or attempt to act or represent itself, directly or by implication, as an agent of the other party or its affiliates or in any manner assume or create any obligation on behalf of, or in the name of the other party or its affiliates.

IN WITNESS WHEREOF, the County and CourtSmart have each caused this Agreement to be signed and delivered by its duly authorized representative as of the date first written above.

**COURTSMART DIGITAL
DIGITAL SYSTEMS, INC.**

BY: 

Andrew Treinis, President/CEO



CUYAHOGA COUNTY, OHIO

Edward FitzGerald, County Executive

BY: 

2012-05-03 09:30:00
Edward FitzGerald, Chief Executive