VERMONT

Department of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, VT 05495
www.dvha.vermont.gov

Agency of Human Services
[phone] 802-879-5900

MEMORANDUM

TO: Jeb Spaulding, Secretary of AOA

VIA: Doug Racine, Secretary of AHS

FROM: Daljit Clark, Clinical Operations Director DC

DATE: January 12, 2011

SUBJECT: McKesson Health Solutions (Interqual) - Approval for Contract # 18623
Interqual Clinical Criteria Services Web-based Proprietary Software License
Proposed Duration is: Upon Execution – 11/09/2011
Proposed Value of Contract: $117,746.33

The Department of Vermont Health Access (DVHA) is requesting approval for a 1-year agreement for the above mentioned contract with McKesson for use of their Interqual clinical criteria set.

The DVHA Clinical Operations unit is responsible to assure that all services funded by Medicaid are medically necessary. The main processes that the DVHA utilizes to determine medical necessity are the prior, concurrent and retrospective reviews. Reviewers compare medical documentation from health care providers with evidence-based medicine (EBM) clinical criteria to determine if a threshold is met that indicates medical necessity. These clinical decisions are made by a team of healthcare professionals under the direction of our physician Medical Director.

Decisions based on strong sources of EBM will help the DVHA with the following goals: accomplish our mission, meet several Managed Care Entity (MCE) requirements, yield defensible clinical coverage determinations and appropriately incorporate scientific research into all decisions that require clinical input. It is important for our organization to make objective, evidence based and consistent clinical decisions. For the above mentioned reasons it is important for our organization to continue to utilize the Interqual clinical criteria set. The utilization of nationally recognized clinical criteria is common practice among insures in making sound and consistent medical determinations for services requested.

The original intent of this agreement was in the form of a one year amendment to contract # 13794 that began in 2008. Unfortunately, due to routing errors, the contract expired on 11/9/2010 before Amendment #3 could be approved. We were therefore required to create a new contract with similar language and deliverables from contract # 13794, but with added language for data usage (originally part of the failed Amendment #3), and an updated data usage request template. The contract start date is back-dated to 11/09/2010 to fit into the multi-year contract platform.

In accordance with State contracting procedures we must consider this a sole-source contract. However, McKesson Health Solutions was selected as our contractor via a simplified bid in 2008 as the best contractor to meet the Clinical Operations team's needs. Because our agreement with McKesson has year-specific discounts and work content, this new contract will be considered "year three" of the agreement. As a show of McKesson's good faith and commitment, they are allowing DVHA employees to continue to use their database without a valid contract in place. We at DVHA feel that it is important to continue to have access to McKesson's clinical library and to take advantage of the discounts offered for multiple years of collaboration.

There are no performance standards associated with this contract due to the fact that the agreement encompasses a simple software access purchase; McKesson is not "performing" for DVHA on any kind of measurable metric beyond the clinical library that they offer.

Vermont's funding for this amendment will be covered by the Global Commitment to Health Appropriations and complies with all mandatory provisions of AOA Bulletin 3.5.

DVHA looks forward to approval of this contract.

Signature: _____ Date: _____

Secretary of Administration Approval

STATE OF VERMONT
CONTRACT FOR SOFTWARE AND CLINICAL CONTENT
MCKESSON HEALTH SOLUTIONS

1. Parties This is a contract for personal services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and McKesson Health Solutions, LLC, with a principal place of business in 275 Grove Street, Suite 1-110, Newton, MA 02466 (hereafter called the "Contractor".) The Contractor's form of business is a limited liability company. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine, if by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. Subject Matter This Contract is license for access to a web based clinical library of guidelines with on site training for users of the license. The license and training provisions are set forth in Attachment A.

3. Maximum Amount In consideration of services to be performed by the Contractor, the State agrees to pay the Contractor, per payment provisions specified in Attachment B, a sum not to exceed $117,746.33.

4. Contract Term The period of the Contract shall begin upon execution of both parties, and end on November 9, 2011. Pre-award cost may be found allowable as related to the scope of work starting November 10,, 2010.

5. Prior Approvals If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this Contract nor any amendment to it is binding until it has been approved by either or both such persons:

   Approval by the Attorney General's Office is required.
   Approval by the Secretary of Administration is required.

6. Amendment No changes, modifications, or amendments in the terms and conditions of this Contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and the Contractor.

7. Cancellation This contract may be canceled by either party by giving written notice at least 60 days in advance; provided, however, that should the State terminate this Contract for convenience, no fees shall be refunded.

8. The parties agree that Master Agreement #13180 is hereby terminated and replaced with this Contract

9. Attachments This contract consists of 38 pages including the following attachments which are incorporated herein:

   Attachment A-- Scope of Work
   Attachment B - Payment Provisions
   Attachment C - Customary State Contract Provisions
   Attachment D - Modifications to Customary Contract Provisions
   Attachment F - Customary Contract Provisions of the Agency of Human Services

In the event of a conflict, the order of precedence of documents shall be as follows:

1.) The Contract
2.) Attachment D
3.) Attachment C
4.) Attachment B
5.) Attachment A
6.) Attachment F

WE THE UNDERSIGNED AGREE TO BE BOUND BY THE PROVISIONS OF THIS CONTRACT:

By the **STATE OF VERMONT**

Signature: Susan W Besio
Date: 2/11/11
Name: Susan Besio - Title: Commissioner

By the **CONTRACTOR**

Signature:
Date: 2-3-11
Name: Keith Andelman Title: VP of Gov. Services

ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED

Background Statement:

This agreement was originally intended to be an amendment to a contract that has now expired (Agreement #13794, which expired on 11/09/2010) as year three of the relationship between the State and the Contractor. This new contract is a result of its expired predecessor, but includes language that applies to years one and two of the previous agreement for reference purposes only.

Part I. License and Training

The Contractor will provide a license for proprietary software which is web-based to access a library of clinical guidelines. Contractor's license is incorporated in this Attachment A as Part II, Master Agreement.

The Contractor will provide training to State staff for the following, as set forth more fully below in Part II:

1. Two (2) onsite end user initial trainings
2. InterRater Reliability Training Tool

The Contractor will bill the State for actual travel expenses, for two onsite training and shipping charges for training manuals. The Contractor and the State will work together on setting trainings dates for the users of the licensed proprietary software. The Contractor must provide advance notice concerning any limitations on the Contractor's availability concerning training and the use of the licensed software.

Part II. Master Agreement

MCKESSON HEALTH SOLUTIONS MASTER AGREEMENT

MCKESSON HEALTH SOLUTIONS MASTER AGREEMENT (**"MA"**) effective as of the date executed by both parties (the **"Effective Date"**), between McKesson Health Solutions LLC (**"McKesson"**) or Contractor, and the customer identified below (**"Customer"**) or the State, consisting of the MA Terms and Conditions Order Forms, and Exhibits. This MA governs all Products and Services supplied by McKesson to Customer in the U.S. during the Term.

The term of this MA (**"Term"**) commences on the Effective Date and continues until termination or expiration of each Order Form executed hereunder, unless earlier terminated as set forth herein.

This MA is executed by an authorized representative of each party.

Customer Number	**VER503**
Contract Number	**14926**

CUSTOMER – For Execution

Please sign two copies and mail to the Sales Executive at the following address:

McKesson Health Solutions
275 Grove Street, Suite 1-110
Newton, MA 02466

MA TERMS AND CONDITIONS

SECTION 1: DEFINITIONS

1.1 Defined Terms. Capitalized terms in this MA or an Order Form have the meanings set forth below or in Exhibit A.

SECTION 2: ORDERING PROCESS

2.1 Order Forms. Order Forms will be used to process Customer's license and purchase Products and Services.

SECTION 3: PRODUCTS AND SERVICES

3.1 Software and Clinical Content.

3.1.1 Software License. Subject to the terms of this MA, McKesson grants to Customer, and Customer accepts, a limited, nonexclusive, nontransferable, non-sublicensable license to use the Software and Clinical Content identified on an Order Form for Customer's internal purposes for the license term specified in the Order Form (the "**License Term**"). The License Term will renew automatically as set forth in the Order Form unless otherwise set forth herein or in the Order Form and the license fee payable during any such renewal period will be at the Prevailing Rate. The license grant is expressly subject to the following conditions: (i) the Software may be installed only on equipment located at the Facilities or Data Center or on Portable Devices, (ii) the Software and Clinical Content may be accessed or used only by Permitted Users in the U.S., (iii) use of the Software and Clinical Content may be limited by Facilities or by any usage-based variable(s) specified in an Order Form, (iv) the Software and Clinical Content may be used to provide service bureau or other similar services only if expressly permitted in an Order Form, and (v) the Third Party Software is subject to the additional terms set forth in an Order Form. Customer may copy the Software and Clinical Content as reasonably necessary to exercise its license rights under this Section 3.1, including a reasonable number of copies for testing and backup purposes.

3.1.2 ASP Software License. Subject to the terms of this MA, McKesson grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable license to use the object code version of the ASP Software described herein for the Initial ASP Term and any Renewal ASP Term (each, as defined below) in accordance with the Documentation solely for the benefit of Permitted Users. Subject to the terms of this MA, McKesson grants Customer a limited, non-exclusive, non-transferable, non-sublicensable, license to install, operate and use the object code version of the Site Software, if any, solely in order to enable Customer to receive and use the ASP Services, on Customer's equipment that meets the minimum requirements identified by McKesson. The initial term of the ASP Services will be for the number of years set forth in the Order Form (the **"Initial ASP Term"**). Following the expiration of the Initial ASP Term, subject to Customer's continued payment of applicable fees, McKesson will continue to provide Customer with ASP Services for successive, automatically renewable periods of the length specified in the Order Form (each a **"Renewal ASP Term"**), unless either party provides the other party with written notice of termination no less than six months prior to the end of the Initial ASP Term or a Renewal ASP Term.

3.1.3 Software Warranties.

(a) Warranty. McKesson warrants that (i) McKesson Software will perform in all material respects in accordance with the functional specifications set forth in the Documentation, (ii) the McKesson Software will operate together with the versions of the applicable Third Party Software specified in the Order Form, and such operation will include the integration features described in the Documentation, and (iii) McKesson has the authority to license or sublicense the Software. These warranties will not apply in the following circumstances: (1) if Customer operates the Software on equipment other than equipment that McKesson specifies in the Documentation; (2) if anyone other than McKesson or its authorized third party supplier modifies the Software; (3) if Customer uses a version of the Software other than one of the two most current releases; or (4) during any period of time in which Customer has discontinued Software Maintenance Services or is past due on License, Software Maintenance Services or Implementation Services fees.

(b) No Viruses. McKesson warrants that the Software, as delivered, does not include any viruses or malicious code.

(c) Third Party Software. Third Party Software is subject to, and Customer agrees to be bound by, the Third Party Terms. Third Party Software is licensed for use only in connection with the related McKesson Software. McKesson may substitute different Software for any Third Party Software licensed to Customer, if McKesson reasonably demonstrates the need to do so.

3.1.4 Software License Restrictions.

(a) Copying and Modification. Customer will not copy or modify the Software except as set forth in this MA. Customer will not alter any trademark, copyright notice, or other proprietary notice on the Software or Documentation, and will duplicate each such trademark or notice on each copy of the Software and Documentation.

(b) Facility Limitation. The Software will only be installed at the Facility or Data Center, except that the Software may be installed on a temporary basis at an alternate location in the U.S if Customer is unable to use the Software at such Facility or Data Center due to equipment malfunction or Force Majeure Event. Customer will promptly notify McKesson of such alternate location if such temporary use continues for longer than 30 days.

(c) Government Customers-Restricted Rights. Under this MA, McKesson will supply only commercial computer software, commercial computer software documentation or technical data customarily provided to the public with a commercial item or process. Accordingly, McKesson asserts the rights described in 48 C.F.R. §§ 12.211-12. Alternatively, should the Government determine that this license is inconsistent with Federal law or otherwise fails to satisfy the Government's needs, McKesson then asserts restricted rights as prescribed by the Restricted Rights Notice (JUN 1987) contained in 48 C.F.R. § 52.227-14(g)(3). Moreover, if for any reason, 48 C.F.R. § 12.211 is determined to be inapplicable to the technical data delivered under this license, then, at a minimum, McKesson asserts those rights contained in 48 C.F.R. § 252.227-7015(b)(2). In this regard, the Government will not use technical data to manufacture additional quantities of any item (except as provided in 48 C.F.R. § 252.227-7015(b)(1)), nor will the Government release, perform, display, disclose, or authorize use of such technical data outside the Government, without first obtaining McKesson's written permission.

3.2 Size Representation. Customer will furnish to McKesson a written report detailing the volume of Customer's usage-based variable as set forth in each applicable Order Form at least 60 days prior to each anniversary of the Order Form Effective Date, as of such date.

3.3 Services.

3.3.1 Software Maintenance Services. McKesson will provide Software Maintenance Services to Customer in accordance with the McKesson Support Manual. The fees for Software Maintenance Services are included in the license fees for the applicable Software.

3.3.2 Implementation Services. Implementation Services, if any, will be identified on the Order Form, and are further described in, and will be performed by McKesson in accordance with, the McKesson Implementation and Training Guide. Customer acknowledges and agrees that Customer is responsible for, and the Implementation Services are conditioned upon, Customer's provision of the required Customer resources and performance of the Customer responsibilities as described in the McKesson Implementation and Training Guide. McKesson may change the Implementation Services and associated fees to reflect additional costs to McKesson caused by Customer's delay in complying with the foregoing implementation obligations or an incorrect implementation assumption set forth in an Order Form. Unless otherwise expressly set forth in an Order Form, Implementation Services associated with a specific Software product must be used within 18 months after the Order Form Effective Date. After such 18-month period, any unused Implementation Services will be deemed forfeited, and no refunds or credits will be due to Customer for any such forfeited Implementation Services. If Customer does not purchase Implementation Services for the relevant Products, Services and Facilities under an Order Form, then McKesson will have no obligation to implement the Products or Services at such Facilities. McKesson will not grant any credits, refunds, or rights of exchange for Software or Services related to any Products or Services that are not implemented.

3.3.3 Professional Services. Any Professional Services to be provided by McKesson will be described on statements of work attached to an Order Form. Nothing will preclude or limit McKesson from providing Professional Services or developing software or materials for itself or other customers, irrespective of the possible similarity of screen formats, structure, organization and sequence to materials which might be delivered to Customer.

3.3.4 Scope Change. All changes in the scope of Services will be made in accordance with the Change Control Process. The **"Change Control Process"** is as follows: McKesson will prepare a written proposal for change(s) to the scope of any Services. If Customer agrees to such proposal, then the parties will execute a written amendment to the Order Form documenting such change(s). If Customer does not agree to such proposal, or the parties otherwise fail

to execute the amendment, then such change(s) will not take effect.

3.3.5 Services Warranty. McKesson warrants that all Services will be performed in a professional manner consistent with industry standards by trained and skilled personnel.

3.3.6 Excluded Provider Warranty. McKesson warrants that neither it nor any of its employees assigned to perform material Services under this MA have been convicted of a criminal offense related to health care or been listed as debarred, excluded, or otherwise ineligible for participation in a federal health care program. McKesson will notify Customer if McKesson becomes aware that it or any of its employees assigned to perform material Services under this MA have been excluded or is otherwise ineligible for participation in a federal health care program.

3.3.7 Suspension of Services for Nonpayment. McKesson reserves the right to suspend provision of any Services (a) 15 days after notice to Customer of nonpayment of undisputed sums owed to McKesson that are 30 days or more past due, where such breach remains uncured or (b) if McKesson determines in its reasonable discretion that such suspension is necessary to comply with any applicable law or order of any governmental authority.

3.4 Customer Information. McKesson configures the Products and the Implementation Services according to the information provided by Customer, so that the Products included in the Order Form are sufficient so that the Software will operate in accordance with the functional specifications set forth in their respective Documentation. If the information provided by Customer is incorrect, then Customer may need to purchase additional Products to achieve full Software functionality.

3.5 Use of Products and Services. Customer will use all Products and Services in accordance with the Documentation and in compliance with applicable laws, ordinances, rules and regulations. This MA is subject to governmental laws, orders, and other restrictions regarding the export, import, re-export, or use (**"Control Laws"**) of the Products and Documentation, including technical data and related information (**"Regulated Materials"**). Customer agrees to comply with all Control Laws pertaining to the Regulated Materials in effect in, or which may be imposed from time to time by, the United States or any country into which any Regulated Materials are shipped, transferred, or released. Customer may permit use of the Products or Services by any outsourcing or facility management service provider only with McKesson's prior written consent.

3.6 Disclaimer; Exclusive Remedy. THE WARRANTIES IN THIS MA ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH WARRANTIES ARE HEREBY SPECIFICALLY DISCLAIMED. MCKESSON DOES NOT WARRANT THAT THE PRODUCTS OR SERVICES WILL YIELD ANY PARTICULAR BUSINESS OR FINANCIAL RESULT OR THAT THE SERVICES WILL BE PERFORMED WITHOUT ERROR OR INTERRUPTION. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR MCKESSON'S BREACH OF ANY WARRANTY WILL BE THE REPAIR, REPLACEMENT, OR RE-PERFORMANCE BY MCKESSON OF THE NONCONFORMING PRODUCT OR SERVICE. IF MCKESSON FAILS TO DELIVER THIS REMEDY, THEN CUSTOMER MAY PURSUE ANY OTHER REMEDY THAT IS OTHERWISE PERMITTED UNDER THIS MA.

3.7 Clinical Content Disclaimer. THE CLINICAL CONTENT (WITHOUT REGARD TO THE MEDIA IN WHICH IT IS EMBODIED OR EXPRESSED), IS PROVIDED ON AN **"AS-IS"** BASIS. With respect to a material defect in material or workmanship, written notice and an explanation of the circumstances of any claim that the Clinical Content has proved materially defective in material or workmanship will be given promptly by Customer to McKesson. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF A MATERIAL DEFECT IN THE CLINICAL CONTENT IS EXPRESSLY LIMITED TO THE CORRECTION OF SUCH BY MCKESSON AT ITS SOLE EXPENSE.

SECTION 4: PAYMENT

4.1 Payment Terms. Customer will pay all fees and other charges in U.S. dollars within 35 days after invoice date.

4.2 Expenses. Prices do not include packing, delivery, and insurance charges, or fees charged by communications common carriers or timesharing suppliers with respect to Processing Services, which will be separately invoiced and paid by Customer. Customer will reimburse McKesson for all other reasonable out-of-pocket expenses incurred in the course of providing Services, including travel and living expenses.

4.3 Taxes.

Customer and McKesson acknowledge that at the time of the execution of this Agreement, Customer is a tax exempt entity and shall provide proof of such status to McKesson in the form of exemption certificates or other documentation acceptable to McKesson. If at any time during the Term of this Agreement, Customer's tax exempt status should change, Customer agrees to promptly notify McKesson of such change in status.

4.4 Reserved.

4.5 Audit. Upon reasonable advance notice and no more than twice per year, McKesson may conduct an audit to ensure that Customer is in compliance with this MA. Such audit will be conducted during regular business hours, and Customer will provide McKesson with reasonable access to all relevant equipment and records. If an audit reveals that Customer's use of any Product or Service during the period being audited has exceeded the number of Facility(ies), transactions, or usage-based variables described in the Order Form, then McKesson may invoice Customer for all such excess use based on McKesson's list price in effect at the time the audit is completed, and Customer will pay any such invoice. If such excess use exceeds five percent of the licensed use, then Customer will also pay McKesson's reasonable costs of conducting the audit.

SECTION 5: GENERAL TERMS

5.1 Confidentiality and Proprietary Rights.

5.1.1 Use and Disclosure of Confidential Information. Each party may disclose to the other party Confidential Information. Except as expressly permitted by this MA, neither party will: (a) disclose the other party's Confidential Information except (i) to its employees or contractors who have a need to know and are bound by confidentiality terms no less restrictive than those contained in this Section 5.1; or (ii) to the extent required by law following prompt notice of such obligation to the other party; or (b) use the other party's Confidential Information for any purpose other than performing its obligations under this MA. Each party will use all reasonable care in handling and securing the other party's Confidential Information and will employ all security measures used for its own proprietary information of similar nature. Following the termination of this MA, each party will, upon written request, return or destroy all of the other party's tangible Confidential Information in its possession and will promptly certify in writing to the other party that it has done so.

5.1.2 Period of Confidentiality. The restrictions on use, disclosure and reproduction of Confidential Information set forth in this Section will, with respect to Confidential Information that constitutes a "trade secret" (as that term is defined under applicable law), be perpetual, and will, with respect to other Confidential Information, remain in full force and effect during the term of this MA and for three years following the termination of this MA.

5.1.3 Injunctive Relief. The parties agree that the breach, or threatened breach, of any provision of this Section 5.1 may cause irreparable harm without adequate remedy at law. Upon any such breach or threatened breach, a party will be entitled to injunctive relief to prevent the other party from commencing or continuing any action constituting such breach, without having to post a bond or other security and without having to prove the inadequacy of other available remedies. Nothing in this paragraph will limit any other remedy available to either party.

5.1.4 Retained Rights. Customer's rights in the Products and Services will be limited to those expressly granted in this MA. McKesson and its suppliers reserve all intellectual property rights not expressly granted to Customer. All changes, modifications, improvements or new modules made or developed with regard to the Products, whether or not (a) made or developed at Customer's request, (b) made or developed in cooperation with Customer, or (c) made or developed by Customer, will be solely owned by McKesson or its suppliers. Customer acknowledges that the Products contain trade secrets of McKesson, and Customer agrees not to take any step to derive a source code equivalent of the Software (e.g., disassemble, decompile, or reverse engineer the Software) or to permit any third party to do so. McKesson retains title to all material, originated or prepared for the Customer under this MA. Customer is granted a license to use such materials in accordance with this MA.

5.2 Intellectual Property Infringement.

5.2.1 Duty to Defend. McKesson will defend, indemnify, and hold Customer harmless from any action or other proceeding brought against Customer to the extent that it is based on a claim that (a) the use of any McKesson Software (other than Third Party Software) delivered under this MA infringes any U.S. copyright or U.S. patent or (b) the McKesson Software (other than Third Party Software) incorporates any misappropriated trade secrets. McKesson will pay costs and damages finally awarded against Customer as a result thereof; provided, that Customer (i) notifies McKesson of the claim within ten business days,

(ii) provides McKesson with all reasonably requested cooperation, information and assistance, and (iii) gives McKesson sole authority to defend and settle the claim.

5.2.2 Exclusions. McKesson will have no obligations under Section 5.2.1 above with respect to claims arising from: (a) McKesson Software modifications that were not performed by McKesson or authorized by McKesson in writing; (b) custom interfaces, file conversions, or other programming for which McKesson does not exclusively develop the specifications or instructions; (c) use of any McKesson Software in combination with products or services not provided by McKesson, if use of the McKesson Software alone would not result in liability under Section 5.2.1; or (d) any use of the McKesson Software not authorized by this MA or the Documentation.

5.2.3 Injunctions. If a claim of infringement or misappropriation for which Customer is entitled to be indemnified under Section 5.2.1 above arises, McKesson may, at its sole option and expense: (a) obtain for Customer the right to continue using such McKesson Software; (b) replace or modify such McKesson Software to avoid such a claim, provided that the replaced or modified McKesson Software is substantially equivalent in function to the affected McKesson Software; or (c) take possession of the affected McKesson Software and terminate Customer's rights and McKesson's obligations under this MA with respect to such McKesson Software. Upon any such termination, McKesson will refund to Customer a portion of the fees paid for that McKesson Software based upon a five year straight-line depreciation, with depreciation deemed to have commenced on the corresponding Software Installation Date, if any, or the corresponding date of delivery.

5.2.4 Exclusive Remedy. THE FOREGOING ARE MCKESSON'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INTELLECTUAL PROPERTY INFRINGEMENT OR TRADE SECRET MISAPPROPRIATION.

5.3 Limitation of Liability.

5.3.1 Total Damages. MCKESSON'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER UNDER, IN CONNECTION WITH, OR RELATED TO THIS MA WILL BE LIMITED TO (A) THE TOTAL FEES PAID (LESS ANY REFUNDS OR CREDITS) BY CUSTOMER TO MCKESSON UNDER THE APPLICABLE ORDER FORM FOR THE PRODUCT GIVING RISE TO THE CLAIM OR (B) THE TOTAL FEES PAID (LESS ANY REFUNDS OR CREDITS) BY CUSTOMER TO MCKESSON UNDER THE APPLICABLE ORDER FORM FOR THE SERVICE GIVING RISE TO THE CLAIM DURING THE 12 MONTH PERIOD PRECEDING THE DATE OF THE CLAIM, AS APPLICABLE, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY, OR OTHERWISE.

5.3.2 Exclusion of Damages. IN NO EVENT WILL MCKESSON BE LIABLE TO CUSTOMER UNDER, IN CONNECTION WITH, OR RELATED TO THIS MA FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOSS OF GOODWILL, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT MCKESSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THIS SHALL NOT BE CONSTRUED AS A LIMITATION OF LIABILITY WITH REGARD TO THIRD PERSONS, NOT PARTIES TO THIS CONTRACT.

5.3.3 Material Consideration. THE PARTIES ACKNOWLEDGE THAT THE FOREGOING LIMITATIONS ARE A MATERIAL CONDITION FOR THEIR ENTRY INTO THIS MA.

5.4 Disclaimer. CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY CLINICAL CONTENT FURNISHED BY MCKESSON HEREUNDER (WHETHER SEPARATELY OR INCLUDED WITHIN A PRODUCT) IS AN INFORMATION MANAGEMENT AND DIAGNOSTIC TOOL ONLY AND THAT ITS USE CONTEMPLATES AND REQUIRES THE INVOLVEMENT OF TRAINED INDIVIDUALS. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT MCKESSON HAS NOT REPRESENTED ITS PRODUCTS AS HAVING THE ABILITY TO DIAGNOSE DISEASE, PRESCRIBE TREATMENT, OR PERFORM ANY OTHER TASKS THAT CONSTITUTE THE PRACTICE OF MEDICINE. The parties understand that all ultimate care and payment decisions are strictly and solely the obligation and responsibility of Customer and its providers and reviewers with McKesson having no right or standing to direct or control their uses of the Software and/or Clinical Content.

5.5 Internet Disclaimer. CERTAIN PRODUCTS AND SERVICES PROVIDED BY MCKESSON UTILIZE THE INTERNET. MCKESSON DOES NOT

WARRANT THAT SUCH SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE. MCKESSON DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM MCKESSON'S OR CUSTOMER'S NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ACCORDINGLY, MCKESSON DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

5.6 Termination.

5.6.1 Termination. Notwithstanding paragraph 7 of this Contract, providing for termination upon 60 days notice without cause, a party may terminate this MA or any Order Form issued under this MA immediately upon notice to the other party if the other party: (a) materially breaches this MA or such Order Form and fails to remedy, or fails to commence reasonable efforts to remedy, that breach within 60 days after receiving notice of the breach from the terminating party; (b) infringes the terminating party's intellectual property rights and fails to remedy, or fails to commence reasonable efforts to remedy, that breach within ten days after receiving notice of the breach from the terminating party; (c) materially breaches this MA or such Order Form in a manner that cannot be remedied; or (d) commences dissolution proceedings or ceases to operate in the ordinary course of business. Termination of this MA or any Order Form will not affect the parties' rights and obligations under any other Order Forms executed by the parties prior to such termination or expiration, and all such other Order Forms will remain in full force and effect, unless and until terminated in accordance with these terms.

5.6.2 Obligations upon Termination or Expiration. Upon the termination or expiration of this MA or an Order Form, Customer will promptly (a) cease using all Software and Clinical Content, (b) purge all Software and Clinical Content from all computer systems (including servers and personal computers), (c) return to McKesson or destroy all copies (including partial copies) of the Software and Clinical Content, and (d) deliver to McKesson written certification of an officer of Customer that Customer has complied with its obligations under this Section. Notwithstanding the above, one hardcopy of the InterQual Clinical Content may be retained in Customer's compliance office for archiving purposes only, provided that the MA or Order Form has not been terminated for Customer's default.

5.6.3 Survival of Provisions. Those provisions of this MA that, by their nature, are intended to survive termination or expiration of this MA will remain in full force and effect, including, without limitation, the following Sections of this MA: 4 (Payment), 5.1 (Confidentiality and Proprietary Rights), 5.2 (Intellectual Property Infringement), 5.3 (Limitation of Liability), 5.6.2 (Obligations upon Termination), 5.6.3 (Survival of Provisions), 5.7 (Books and Records), 5.8 (Business Associate) and 5.11 - 5.24 (Governing Law – Entire Agreement).

5.7 Books and Records. The parties agree to make available, upon the written request of the Secretary of Health and Human Services, the Comptroller General, or their representatives, this MA and such books, documents, and records as may be necessary to verify the nature and extent of the costs of Services rendered hereunder to the full extent required by the Centers for Medicare and Medicaid Services implementing Section 952 of the Omnibus Reconciliation Act of 1980, 42 U.S.C. Section 1395x(v)(1)(1).

5.8 Reserved.

5.9 Discount Reporting. An Order Form may contain a discount that Customer may be required to report in its cost reports or another appropriate manner under applicable federal and state anti-kickback laws, including U.S.C. Sec. 1320a-7b (b) (3) and the regulations found at 42 C.F.R. Sec. 1001.952(h). Customer will be responsible for reporting, disclosing and maintaining appropriate records with respect to the discount and making those records available under Medicare, Medicaid or other applicable government health care programs.

5.10 Disposition of Existing Agreements. Any and all existing agreements between Customer and McKesson (**"Existing Agreements"**) will continue in full force and effect in accordance with their terms. The Existing Agreements will not apply to any Products or Services acquired by Customer on or after the Effective Date, all of which will be governed by this MA, except as otherwise agreed by the parties.

5.11 Governing Law. This MA is governed by and will be construed in accordance with the laws of the State of Vermont, exclusive of its rules governing choice of law and conflict of laws and any version of the Uniform Commercial Code; each party agrees that exclusive venue for all actions, relating in any manner to this MA will be in a federal or state court of

competent jurisdiction. Any action relating to this MA, other than collection of outstanding payments, must be commenced within one year of the date upon which the cause of action accrued.

5.12 Assignment and Subcontracts. Customer will not assign this MA without the written consent of McKesson, which will not be unreasonably withheld. McKesson may, upon notice to Customer, assign this MA to any affiliate or to any entity resulting from the transfer of all or substantially all of McKesson's assets or capital stock or from any other corporate reorganization. McKesson may subcontract its obligations under this MA.

5.13 Severability. If any part of a provision of this MA is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the remainder of that provision and all other provisions of this MA will not be affected.

5.14 Notices. All notices relating to the parties' legal rights and remedies under this MA will be provided in writing and will reference this MA. Such notices will be deemed given if sent by: (a) postage prepaid registered or certified U.S. Post mail, then five working days after sending; or (b) commercial courier, then at the time of receipt confirmed by the recipient to the courier on delivery. All notices to a party will be sent to its address set forth on the cover page hereto, or to such other address as may be designated by that party by notice to the sending party.

5.15 Waiver. Failure to exercise or enforce any right under this MA will not act as a waiver of such right.

5.16 Force Majeure. Except for the obligation to pay money, a party will not be liable to the other party for any failure or delay caused by a Force Majeure Event, whether or not such matters were foreseeable, and such failure or delay will not constitute a material breach of this MA.

5.17 Amendment. This MA may be modified, or any rights under it waived, only by a written document executed by the authorized representatives of both parties.

5.18 No Third Party Beneficiaries. Except as specifically set forth in an Order Form, nothing in this MA will confer any right, remedy, or obligation upon anyone other than Customer and McKesson.

5.19 Relationship of Parties. Each party is an independent contractor of the other party. This MA will not be construed as constituting a relationship of employment, agency, partnership, joint venture or any other form of legal association. Neither party has any power to bind the other party or to assume or to create any obligation or responsibility on behalf of the other party or in the other party's name.

5.20 Non-solicitation of Employees. Neither party will directly or indirectly solicit for employment any employee of the other party during the term of the applicable Order Form and for a period of one year thereafter without the prior written consent of the other party. This prohibition will not apply if an employee answers a party's notice of a job listing or opening, advertisement or similar general publication of a job search or availability for employment.

5.21 Publicity. The parties may publicly announce that they have entered into this MA and describe their relationship in general terms, excluding financial terms. Neither party will make any other public announcement or press release regarding this MA or any activities performed hereunder without the prior written consent of the other party.

5.22 Construction of Agreement. This MA will not be presumptively construed for or against either party. Section titles are for convenience only. As used in this MA, "will" means "shall," and "include" means "include without limitation." The parties may execute this MA and each Order Form in one or more counterparts, each of which will be deemed an original and one and the same instrument.

ATTACHMENT B

PAYMENT PROVISIONS

Part I. General Provisions

The maximum dollar amount payable under this Contract is not intended as any form of a guaranteed amount. The contracted amount will not exceed $117,746.33 for the license and services specified in Attachment A, Parts I and II, or services actually performed up to the maximum allowable amount. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this Attachment. It is understood that this is YEAR THREE of the working relationship between the State and the Contractor, and that the applicable payment schedule, rates, and any additional reimbursements for YEAR THREE apply to this contract.

Reimbursable items in the agreement beginning November 9th, 2010 are allowed for submittal to DVHA for payment, if applicable to the deliverables outlined in this contract.

Part II. Order Form (begins on the following page)

ORDER FORM

This ORDER FORM amends the McKesson Health Solutions Master Agreement No. 13180, incorporating all referenced Exhibit, Schedules, and Attachments (**"Order Form"**) and is effective as of the date executed by both parties (**"OF Effective Date"**).

Exhibits

A	**Fees Summary, Payment Schedule, Term and Administration**
A-1	**McKesson Software, Clinical Content, and ASP Services**
A-2	**General Terms**
A-3	**Medical Management Terms**
B-1	**Implementation, Education, and Consulting Services**
C-1	**Third Party Software and Clinical Content**
C-2	**Third Party Terms**

By signing this Order Form, Customer acknowledges and agrees that (a) McKesson has made no warranty or commitment with regard to any functionality not Generally Available as of the OF Effective Date, whether or not included as part of Software Maintenance Services, for any of the Software licensed by this Order Form; and (b) Customer has not relied on the availability of any future version of the purchased Product or any other future Product in executing this Order Form.

Each signatory hereto represents and warrants that it is duly authorized to sign, execute, and deliver this Order Form on behalf of the party it represents and the applicable Facilities.

CUSTOMER – For Execution

Please sign two copies and mail to the Sales Executive at the following address:

McKesson Health Solutions
275 Grove Street, Suite 1-110
Newton, MA 02466

Customer Number	**VER503**
SAP Number	**TBA**
Contract Number	**18337**

FOR MCKESSON INTERNAL USE ONLY

Submit fully executed contract to:
McKesson Health Solutions
Attn. Account Management
275 Grove St.
Suite 1-110
Newton, MA 02466
Fax: 617-273-3777

EXHIBIT A

FEES SUMMARY, PAYMENT SCHEDULE, TERM AND ADMINISTRATION

PAYMENT SCHEDULE: SOFTWARE, CLINICAL CONTENT, AND ASP SERVICES LICENSE FEES

Notwithstanding anything to the contrary in the MA, the annual payments for the Software and Clinical Content and the number of Covered Lives set forth herein are not subject to decrease.

$ 81,153.98*	This fee represents $78,903.98 for the criteria and software fees and includes a 34% discount and $2,250.00 for the InterQual Interrater Reliability Tool and includes a 10% discount.
Optional Renewal Terms for Contract Year two and Contract Year three.	
$103,868.76*	This fee represents $101,618.76 for the criteria and software fees and includes a 15% discount and $2,250.00 for the InterQual Interrater Reliability Tool and includes a 10% discount.
$109,846.33*	This fee represents $107,596.33 for the criteria and software fees and includes a 10% discount and $2,250.00 for the InterQual Interrater Reliability Tool and includes a 10% discount.

*Plus applicable taxes.

SERVICES FEES:

*$9,000.00	
Optional Renewal Terms for Contract Year two and Contract Year three.	due once Services are rendered. Such fee includes a 10 percent (10%) discount.
*$5,400.00	due once Services are rendered. Such fee includes a 10 percent (10%) discount.
*$5,400.00	due once Services are rendered. Such fee includes a 10 percent (10%) discount.

*Plus applicable taxes and $2,500 shipping & handling fee for all services.

TERM: The License Term of this Order Form is one year from the OF Effective Date (the "Initial Term") with additional 2-1 year options to renew as further described in the Exhibit A-2 General Terms, Section 6. The Initial Term of this Order Form will not renew automatically.

Customer is solely responsible for reporting all discounts or appropriate net prices received from McKesson pursuant to this Order Form on cost reports filed by Customer with any government entity.

Unless Customer provides McKesson prior to the OF Effective Date satisfactory evidence of exemption (including evidence of renewal if applicable) from applicable sales, use, value-added, or other similar taxes or duties, McKesson will invoice Customer for all such taxes applicable to the transactions under this Order Form.

ADMINISTRATION:

Sold To:	**Bill To:**
Department of Vermont Health Access	Department of Vermont Health Access
312 Hurricane Lane	312 Hurricane Lane
Suite 201	Suite 201
Williston, VT 05495-2806	Williston, VT 05495-2806
	Attention: Kate Jones, Financial Manager
Tax Exempt Id No.*:	Telephone: (802) 879-5958
Taxable: ☐ Yes ☒ No	E-mail: Kate.Jones@ahs.state.vt.us
Ship To: See Exhibit A-1.	**Download Central Administrator:**
	Daljit Clark, Director, Clinical Unit
	E-mail: Daljit.Clark@ahs.state.vt.us
	Customer IRR Administrator:
	Daljit Clark, Director, Clinical Unit
	E-mail: Daljit.Clark@ahs.state.vt.us

*Customer hereby covenants and warrants that each ship to location is covered by the Tax Exempt Id Number referenced above. If a Facility has a different Tax Exempt Id Number, such number must be provided to McKesson.

DVHA's Contact Representative:

Daljit Clark, Director of Clinical Operations
Department of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, VT 05495
Email: Daljit.Clark@ahs.state.vt.us
Tel: 802-879-5915

McKesson will submit a bill/invoices for license and training under this contract to:

Kate Jones, Financial Manager
Department of Vermont Health Access
312 Hurricane Lane, Suite 201
Williston, VT 05495

The State will remit all payments to:

McKesson Health Solutions
22423 Network Place
Chicago, IL 60673-1224

EXHIBIT A-1

MCKESSON SOFTWARE, CLINICAL CONTENT, AND ASP SERVICES

As of the OF Effective Date, Customer is granted a license to the following:

FACILITIES (name / address)	NO OF COPIES	TERM/ PERPETUAL SOFTWARE	SOFTWARE/ CLINICAL CONTENT/ ASP SERVICES	COVERED LIVES
			MEDICAL MANAGEMENT SOFTWARE AND CLINICAL CONTENT	
Department of Vermont Health Access 312 Hurricane Lane – Ste.201 Williston, VT 05495-2086			**InterQual® Clinical Content**	
	Included in Software	Term	InterQual® Clinical Evidence Summaries	134,650
	Included in Software	Term	InterQual® SmartSheets™	134,650
			InterQual® Level of Care Criteria:	
	6	Term	Acute Adult	134,650
	6	Term	Acute Pediatric	134,650
	6	Term	Outpatient Rehabilitation and Chiropractic	134,650
			InterQual® Care Planning Criteria:	
	6	Term	Procedures Adult (Includes CPT Index)	134,650
	6	Term	Procedures Pediatric (Includes CPT Index)	134,650
	6	Term	Durable Medical Equipment	134,650
			MEDICAL MANAGEMENT ASP SERVICES	
			InterQual® Interrater Reliability Tools:	
	Available Online	Term	Standard Tests	134,650
			CareEnhance® Clinical Management Application Hosting Services(CCMS®):	
	Available Online	Term	InterQual® Online Anonymous Review – Standard*	134,650

*also referred to as "Unidentified Patient Review Tool"

EXHIBIT A-2

GENERAL TERMS

The following terms apply to all Software, Clinical Content, and ASP Services licensed in this Order Form.

SECTION 1: COPYING OF CLINICAL CONTENT

Customer may copy the Clinical Content on an ad-hoc basis in the smallest increments or portions feasible under the circumstances or as legally required for disclosure: (a) to a Provider who has submitted a Claim to Customer for reimbursement and is questioning the rationale to support Customer's decisions and solely for use for Claim specific discussions with Customer; (b) to a Provider of health care service subject to Customer's medical necessity review and solely for use for case specific medical necessity discussions with Customer; (c) to a Provider in support of legislative and/or regulatory requirements for notification of material changes in payment policy and/or coding practices; (d) to a person included as one of Customer's Covered Lives under this MA or to such person's representative when the Clinical Content have been referenced in the process of denying, limiting, or discontinuing authorization of services for said person; (e) to a Provider for the sole purpose of marketing Customer's services; (f) to a public agency or independent review organization in connection with conducting an independent external review of or conducting an appeal of Customer's medical necessity determination in a specific case when the Clinical Content have been referenced in the process of making said determination; (g) to a public agency to comply with a statutory or regulatory mandate requiring the Clinical Content be filed with said agency (copy to be furnished to McKesson as soon as practicable prior to any such disclosure so that McKesson may, at its option, object to or dispute same); and (h) pursuant to a judicial order or subpoena (copy to be furnished to McKesson at least 5 business days notice prior to any such disclosure so that McKesson may, at its option, object to or dispute same, or, if the scheduled time for such disclosure is less than 5 business days, then as soon as possible prior to such disclosure). In connection with each disclosure/distribution, all Clinical Content copies will prominently display on the cover page and/or introductory screen McKesson's trademark and copyright notices, as dictated by herein, and Customer will maintain and furnish the disclosure/distribution to McKesson upon request.

> "McKesson's Statement of Disclosure: The Clinical Content you are receiving is confidential and proprietary information and is being provided to you solely as it pertains to the information requested. Under copyright law, the Clinical Content may not be copied, distributed, or otherwise reproduced. The Clinical Content may contain advanced clinical knowledge which we recommend you discuss with your physician upon disclosure to you.
>
> The Clinical Content reflects clinical interpretations and analyses and cannot alone either (a) resolve medical ambiguities of particular situations; or (b) provide the sole basis for definitive decisions. The Clinical Content is intended solely for use as screening guidelines with respect to medical appropriateness of healthcare services and not for final clinical or payment determinations concerning the type or level of medical care provided, or proposed to be provided, to a patient; all ultimate care decisions are strictly and solely the obligation and responsibility of your health care provider."

SECTION 2: INTERFACE/INTEGRATION

Customer may not install any interface and/or integration to the Software without the prior written consent of McKesson, not to be unreasonably withheld.

SECTION 3: INCREASE IN USAGE-BASED VARIABLES

3.1 Acquisitions. If Customer acquires a health plan or health care facility (**"Acquired Entity"**) that entered into a license for Software, Clinical Content, or ASP Services (**"Pre-Existing Contract"**) prior to such acquisition, that Pre-Existing Contract will remain in effect until its termination. Upon the termination of the Pre-Existing Contract, or upon Customer's acquisition of an Acquired Entity that does not have a Pre-Existing Contract,

Customer will pay McKesson for any additional usage-based variables specified in the applicable Order Form, including, but not limited to Covered Lives, Beds, Users, Seats, etc. (**"Usage-Based Variables"**), regardless of location, resulting from the acquisition of the Acquired Entity in accordance with this Order Form. Customer will disclose to McKesson the increase in the Usage-Based Variables it gained through the Acquired Entity within 30 days after such acquisition. If the Acquired Entity will not use the Software, Clinical Content, and ASP Services, no additional license fees will be due.

3.2 Natural Growth. If, during the Initial term, Customer's Usage-Based Variables increase above the limitation set forth herein, or in an Order Form, for any reason other than Customer's acquisition of another entity (**"Natural Growth"**), Customer will pay the Prevailing Rates for such increased Usage-Based Variables.

SECTION 4: CLINICAL CONTENT

The authority and responsibility to determine whether to adopt any Clinical Content, how and when to apply Clinical Content, and the final determination with respect to such Clinical Content will rest entirely and solely with Customer.

SECTION 5: SECURITY

Customer agrees to use reasonable security measures to prevent unauthorized access to the Software and/or Clinical Content. Customer acknowledges and agrees that it is liable for any breach of the MA or any other unauthorized dissemination of the Software and/or Clinical Content or the content contained therein by any user (i.e., employee of Customer) accessing the Software and/or Clinical Content via Customer's Website.

SECTION 6: OPTIONAL RENEWAL TERMS

6.1 Option For Renewal Terms: The parties acknowledge and agree that this Order Form shall not automatically renew. Should both parties desire to renew this Order Form, such Order Form may be renewed for up to two-one year options based upon the fees provided in Exhibit A.

SECTION 7: DEFINITIONS

7.1 **"Beds"** means the number of hospital beds regularly maintained (set up and staffed for use) for inpatients by Customer or a Facility.

7.2 **"Claim"** means a request for payment or a reported encounter received by Customer from a Provider, or from a Covered Life seeking reimbursement for such services, comprised of any number of lines.

7.3 **"Covered Lives"** means a primary member, subscriber or eligible dependent covered under a health plan or member who is included under a delegated risk arrangement under an agreement with Customer.

7.4 **"Customer's Website"** means Customer's secured website, to which access is limited to Providers who present a unique identifier and a password that corroborates the binding between the Provider and the unique identifier.

7.5 **"Provider"** means (a) a healthcare professional who provides services to Customer's members, and (b) such authorized employees of such Provider who are acting on behalf of the Provider. For purposes of the McKesson's Transparency and SmartSheet Software only, the definition of Provider will not include hospitals, health centers or other treatment facilities.

7.6 **"Release"** means an updated version of the Software which contains Software changes and/or Configuration Change(s), as applicable.

7.7 **"Seat"** means a unique physical device such as a personal computer, work station, or terminal utilized to access the Software, either directly or at the physical device on which the Software is located or the location of the entity that has a license to use the Clinical Content.

EXHIBIT A-3

MEDICAL MANAGEMENT TERMS

GENERAL TERMS

SECTION 1: INTERQUAL ONLINE

The following terms apply to the InterQual Online Software, Clinical Content, and ASP Services:

1.1 Internet Access. McKesson will provide Internet enabled access to the Software and Clinical Content using the BookView functionality only of the CareEnhance Review Manager Software in an application hosted environment.

SECTION 2: INTERRATER RELIABILITY

The following terms apply to the Interrater Reliability Tools Software, Clinical Content, and ASP Services:

2.1 Data. Customer acknowledges that McKesson may use the data collected from the Customer's use and customization of the InterQual® Interrater Reliability Tools for various internal purposes, including, but not limited to product development and improvement, marketing, benchmark reporting and identifying additional Customer specific training opportunities. All information collected will be used and maintained in accordance with the confidentiality provisions of the MA.

SECTION 3: POSTING SMARTSHEETS TO THE WEB

McKesson acknowledges that Customer has engaged HP Enterprise Services ("Fiscal Agent") to provide services to Customer, including the hosting of McKesson Software and Clinical Content on Fiscal Agent's Website (as defined below).

3.1 **"Fiscal Agent's Website"** means the secured website of Fiscal Agent to which access is limited to Providers who present a unique identifier and a password that corroborates the binding between the Provider and the unique identifier.

3.2 Before any Provider is allowed access to McKesson Software and Clinical Content on Fiscal Agent's Website, Customer shall obtain Fiscal Agent's agreement in writing to the following: i) to use commercially reasonable security measures to prevent unauthorized access to the Software and/or Clinical Content; ii) to be responsible for any unauthorized dissemination of the Software and/or Clinical Content or the content contained therein by any user accessing the Software and/or Clinical Content via Fiscal Agent's Website; and iii) to post the following terms on Fiscal Agent's Website in a "click-through" format in which users must agree to such terms before being allowed access to the Software and/or Clinical Content. Customer will be periodically notified of required revisions for the pass-through terms and conditions, via Documentation, due to updates and other third party requirements. All agreements between Customer and Providers will include the following pass-through terms and conditions or language substantially similar to the language below, as approved by McKesson:

> Customer provides access to utilization management criteria and associated clinical content (**"Content"**) to its enrolled Providers subject to the terms and conditions contained in this agreement (**"Agreement"**), which may be updated from time to time at Customer's or its licensors' sole discretion without notice.
>
> Provider's right to access and use the content is non-transferable, nonexclusive, and is for the sole purpose of providing care for Customer's members.
>
> Provider will limit access to the content to (a) employees and agents of Provider and further (b) to the extent necessary to review the content relevant to the Provider's specialty area or related to the care of a specific member's condition.
>
> Provider will protect the confidentiality of the information contained in and provided by the content and to which it has access to under this Agreement, by using at least the degree of care and security it uses to

protect its own confidential information. Provider acknowledges and agrees that any unauthorized disclosure or distribution of the confidential information may result in irreparable injury to Customer or Customer's licensor(s), entitling the injured entity to obtain immediate injunctive relief in addition to any other legal remedies available.

Provider will not modify, translate, decompile, disclose, create nor attempt to create any derivative work of the content.

Provider acknowledges that the content is in no way intended to prescribe, designate or limit medical care to be provided or procedures to be performed. Provider accepts responsibility for and acknowledges that it will exercise its own independent judgment in its use of the criteria/content and will be solely responsible for such use.

Provider acknowledges that the content, including all applicable rights to patents, copyrights, trademarks and trade secrets inherent therein and appurtenant thereto, is the sole and exclusive property of third parties, including Customer's licensors, who have licensed such rights to Customer. Provider agrees that no rights in the content are hereby conveyed to Provider except to the extent that Provider has the right to access the content.

THE CONTENT IS PROVIDED TO PROVIDERS "AS IS," "WITH ALL FAULTS," AND "AS AVAILABLE." In addition, Customer's licensors will not for any reason be deemed a party to this Agreement, and Provider will look solely to Customer for the performance of any obligations due Provider hereunder.

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U.S. Pat. No. 6049794

3.3 The Fiscal Agent's agreement, pursuant to Paragraph 3.2.iii, also may include any or all of the following terms, at Customer's option:

Provider agrees to indemnify and hold Customer, and its affiliates, officers, agents, licensors or other partners, and employees, harmless from any claim, demand or damages, including reasonable attorneys' fees, arising out of Provider's use of the content or from its violation of intellectual property rights or the confidentiality obligations contained in this Agreement.

CUSTOMER, ITS AFFILIATES, AGENTS AND LICENSORS CANNOT AND DO NOT (a) WARRANT THE ACCURACY, COMPLETENESS, CURRENTNESS, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE MATERIALS, INFORMATION AND SERVICES AVAILABLE THROUGH THE WEBSITE, OR (b) GUARANTEE THAT THE MATERIALS, INFORMATION OR SERVICES WILL BE ERROR-FREE, OR CONTINUOUSLY AVAILABLE, OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

Customer has the right to modify or terminate Provider's access to the Software at any time or for any reason, including but not limited to Provider's violation of any terms of this Agreement.

3.4 Notwithstanding any other provision of this contract, Customer may send patient specific InterQual SmartSheets to a provider who is requesting services, for the purpose of explaining or clarifying Customer's criteria for approval. Customer will not send InterQual SmartSheets to a provider if Customer's copy of InterQual SmartSheets contains the American Medical Association's CPT (Current Procedural Terminology) codes. When Customer sends an InterQual SmartSheet to a provider, it will use the cover sheet on page 31 (Exhibit B) of this agreement.

EXHIBIT B-1

IMPLEMENTATION, EDUCATION, AND CONSULTING SERVICES

SERVICE PRICING – InterQual (IQ) Unidentified Patient Review Tool Training

Service Description	Fees
InterQual® Online Anonymous Review – Standard* Training for the Department of Vermont Health Access. * also referred to as "Unidentified Patient Review Tool".	
Year One: On-site initial IQ training 1. 2 training sessions (2.5 days per session); Customer site; maximum number of Customer participants is 10; covers the following criteria: ▪ Acute Care Criteria ▪ Outpatient Rehabilitation & Chiropractic Criteria ▪ Procedures Criteria ▪ Durable Medical Equipment. Criteria Using InterQual Unidentified Patient Review Tool *Note: Pricing is based on a combined training for all above criteria. If separate InterQual Criteria Sessions are needed, additional days may be required to complete the training.*	$10,000.00 ($5,000.00 per session)
Years Two and Three: On-site IQ *refresher* training 2. 2 training sessions (1.5 days per session); Customer site; maximum number of Customer participants is 10; covers the following criteria: ▪ Acute Care Criteria ▪ Outpatient Rehabilitation & Chiropractic Criteria ▪ Procedures Criteria ▪ Durable Medical Equipment. Criteria Using InterQual Unidentified Patient Review Tool *Note: Pricing is based on a combined training for all above criteria. If separate InterQual Criteria Sessions are needed, additional days may be required to complete the training.*	$6,000.00 ($3,000.00 per session)
Year One:	**$9,000.00**
First Contract Year:	**$5,400.00**
Second Contract Year:	**$5,400.00**

Estimated Travel and Shipping:

- $3,000 for the initial trainings in year 1
- $2,500 for the refresher trainings in each of the out years. (optional if contract is renewed in year two and year three)

SECTION 1: DEFINITIONS

Fixed Fee (FF) - Fixed Fee means that the Project Services will be delivered by McKesson at a set price determined by McKesson taking into account the project scope, and the time and resources necessary to complete the project scope.

Time and Materials Fees (T&M) - Time and Materials means that the Project Services will be delivered by McKesson on a time and materials basis such that the fees payable by Customer will be based on the hours spent by McKesson multiplied by the applicable hourly rate. McKesson may estimate the amount of hours and/or days necessary to provide the services.

Additional Service Offering (ASO) – An agreement to add additional services.

Change of Scope (COS) – An agreement outlining a change in the Project Service Terms.

SECTION 2: PAYMENT TERMS - SERVICES

*$9,000.00	
Optional Renewal Terms for Contract Year two and Contract Year three.	due once Services are rendered. Such fee includes a 10 percent (10%) discount.
*$5,400.00	due once Services are rendered. Such fee includes a 10 percent (10%) discount.
*$5,400.00	due once Services are rendered. Such fee includes a 10 percent (10%) discount.

* plus any applicable taxes

SECTION 3: TRAINING OVERVIEW ** PLEASE NOTE THAT ALL PARTICIPANTS MUST BE LICENSED INTERQUAL® CUSTOMERS **

Once McKesson has scheduled dates, program materials will be shipped to you in two separate UPS shipments either the week before or the week of your program. One shipment will contain spiral bound training manuals, and one will contain all other training materials. After receiving the program materials, please keep them sealed and delivered to the training room either the day before the program or approximately one hour before the start time of the training, as the instructor will arrive early to set up.

Your participants should be seated at tables that allow for plenty of room, as they will be given training materials. If possible, we recommend no more than two people per 8-foot table. We also suggest that the room be set up in a classroom format (all tables facing directly front, with participants sitting only on one side). This helps to provide participants with optimal viewing of the instructor's presentation.

Included in the program materials will be an Attendance sign-in sheet. At the start of the program, the attendees will be asked to enter their names clearly and to sign next to their names. The McKesson Trainer will issue certificates of attendance from that roster and distribute the certificates to the participants after the program. Certificates of attendance will not be issued for those who haven't provided their signatures. Additionally, on the sign-in sheet, we will need the license number of the nursing participants in order to issue continuing education hours. Certificates of attendance cannot be issued to nursing participants without their license numbers. We also issue CCMC and CME certificates. Please notify McKesson Business Services regarding the number of participants who will need certificates.

SECTION 4: ASSUMPTIONS

4.1 Project Assumptions:

4.1.1 The Project Service Fees do not include related travel and expenses incurred to provide Project Services. Customer is responsible for all reasonable travel-related expenses incurred in connection with the Project Services. If McKesson conducts services at Customer's location, Customer shall reimburse McKesson for all reasonable travel, living and out-of-pocket expenses incurred by McKesson.

4.1.2 Customer will coordinate the facilities (including projector, screen, white board and power supply), in addition to the hardware and software installation required for any meetings or training sessions held at Customer site. Customer must provide appropriate classroom setting with one computer for each attendee (For training, McKesson recommends a classroom format with all tables and participants facing forward).

4.1.3 Customer will identify a single Customer executive to serve as a single point of contact for the McKesson Educator and to expedite decisions on all critical issues that impact the schedule, costs and scope boundaries.

4.2 Training Assumptions:

4.2.1 McKesson delivers training and consulting related to McKesson developed products only.

4.2.2 Pricing for the InterQual® Criteria training programs assumes an end-user training methodology for user education unless otherwise specified.

4.2.3 Customer is responsible for all shipping costs for training materials.

4.2.4 Customer is responsible for creating customized ad hoc reports.

4.2.5 All end user training will be performed using the InterQual® Criteria Training Database unless otherwise specified;

4.2.6 Continuing education credits will be issued for qualified courses and to those participants who provide nursing license numbers and signatures.

4.2.7 Prior to training, Customer must have training room set up with workstations for each participant and the appropriate McKesson software loaded and tested.

SECTION 5: CANCELLATION POLICY

5.1 Cancellation Policy

McKesson will not cancel, but may reschedule training dates due to circumstances beyond our control such as: trainer extreme illness, accident, terrorism and/or system failure. In the event of such occurrence, there will be no financial penalty.

5.2 Onsite Training Cancellation Policy

Should Customer decide to cancel the on-site training program within 21 days of the scheduled training, Customer will need to sign a separate ASO for the rescheduled training. Fees for the cancelled training will not be refunded if cancelled within 21 days of the training: however should a Force Majeure Event occur, Customer may reschedule training without additional penalty

SECTION 6: PROCEDURE FOR CHANGE OF SCOPE

6.1 Customer may request changes to the project at any time. Since a change could affect the estimated completion, estimated effort or project scope, all changes must be submitted, evaluated and approved by the Customer and the McKesson teams prior to altering the Project Service Terms.

6.2 Any change will be subject to review by the project team. The team will evaluate whether the change is within the scope of this Project. If it is not within the scope and requires additional resources to complete, the change may be subject to McKesson consulting fees at the consulting rate on the following page:

Table 2: Hourly Consulting Rates for Additional Services or Out of Scope Services

Hourly Rate	Resource
$200.00	Technical Consultant
$200.00	Clinical Consultant
$200.00	Analytical Consultant

Hourly Rate	Resource
$200.00	Project Manager
$250.00	Senior Clinical, Senior Technical, DBA
$300/hour	Director Level

6.3 Change requests may impact the project as their evaluation will take project team members time away from project tasks. The following steps will be followed prior to implementing a change:

- The party requesting the change will complete a *Change Request* Form provided by the McKesson. The Request Form must describe the change, rationale for the change and the effect the change will have on the project. The completed request form will be submitted to McKesson.
- The Project Team will review the proposed change to determine its impact to the project. McKesson and Customer will provide written approval or rejection.
- If the team approves the change, the Project Service Terms will be updated to reflect the change and its impact to the project. The change will also be communicated through the Status Report.

6.4 If a change is rejected, it will be maintained in the Change Request Log and re-evaluated for completion during the next phase of the project.

EXHIBIT C-1

THIRD PARTY SOFTWARE AND CLINICAL CONTENT

Third Party Software/Clinical Content for CCMS (including CERME):

Facilities (name/address)	SOFTWARE/CLINICAL CONTENT
Department of Vermont Health Access 312 Hurricane Lane – Ste.201 Williston, VT 05495-2086	AMA – CPT™

CCMS Users: 12

EXHIBIT C-2

THIRD PARTY TERMS

AMA CPT CODES PASS-THROUGH TERMS

The following definition will apply solely for purposes of permitting Customer's use of CPT ("CPT"):

"User" is an individual who:

accesses, uses, and/or manipulates CPT codes and/or descriptions contained in the Software either at the input (the point at which data is entered into the Software), the output (the point at which data, reports, or the like are received from the Software), or both phases of using the Software; or

accesses, uses, and/or manipulates the Software to produce or enable an output that could not have been created without CPT embedded in the Software even though CPT may not be visible or directly accessible; or

makes use of an output of the Software that relies on or could not have been created without the CPT embedded in the Software even though CPT may not be visible or directly accessible (excepting that which would constitute fair use, internal reports, and claim forms for specific patients).

The Clinical Content and/or Software listed in the Exhibit may incorporate the CPT terminology developed and copyrighted by the American Medical Association ("AMA"). The CPT codes and terminology are provided pursuant to a license agreement between McKesson and the AMA.

Customer acknowledges that the AMA reserves all rights, whether statutory or common-law, in the CPT terminology and that no rights therein are hereby conveyed to Customer except to the extent that Customer has been granted a license to the Software. THE AMA MAKES NO REPRESENTATIONS OR WARRANTIES EXPRESS OR IMPLIED, WITH RESPECT TO CPT, INCLUDING, WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER FURTHER ACKNOWLEDGES THAT THE AMA WILL NOT BE LIABLE TO CUSTOMER FOR ANY DAMAGES OF ANY NATURE WHETHER DIRECT, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL, ARISING FROM THIS AGREEMENT. The AMA will not by reason of the incorporation of the CPT terminology in the Software or by any other reason be deemed a party to this Agreement and Customer will look solely to McKesson for the performance of any obligations due Customer hereunder.

In the event that one or more of the provisions contained in the Agreement will for any reason be held invalid or unenforceable in any respect, such invalidity or unenforceability will not affect the validity or enforceability of this Exhibit.

CPT only © 2008, etc. American Medical Association. All Rights Reserved. No fees schedules, basic units, relative values or related listings are included in CPT. AMA does not directly or indirectly practice medicine or dispense medical services. AMA assumes no liability for data contained or not contained herein.

CPT is commercial technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation, as applicable which were developed exclusively at private expense by the American Medical Association, 515 North State Street, Chicago, Illinois, 60610. U.S. Government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.227-7015(b)(2) (June 1995) and/or subject to the restrictions of DFARS 227.7202-1(a)(June 1995) and DFARS 227.7202-3(a)(June 1995), as applicable for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (June 1987) and/or subject to the restricted rights provisions of FAR 52.227-14 (1987) and FAR 52.227-19 (June 1987), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.

EXHIBITS

The following Exhibits are incorporated into the terms of the MA:

Exhibit A	Definitions
Exhibit B	Smart Sheet

EXHIBIT A

DEFINITIONS

"ASP" means Application Service Provider.

"ASP Services" means the ASP Software and related McKesson hardware, Software Maintenance Services and Implementation Services.

"ASP Software" means any McKesson Software licensed to Customer for use remotely by accessing the Software located on the McKesson hardware, as indicated on the Order Form.

"Clinical Content" means medical or clinical information such as terminology, vocabularies, decision support rules, alerts, drug interaction knowledge, care pathway knowledge, standard ranges of normal or expected result values, and any other clinical content or rules provided to Customer under an Order Form, together with any related Documentation and Upgrades. Depending on the intended usage, Clinical Content may be provided in either paper or electronic formats. Examples of Clinical Content include the InterQual Clinical Decision Support Criteria, Clinical Evidence Summaries, InterQual SmartSheets, KnowledgePacks, and Medical Necessity Content. Clinical Content may be either (i) owned by McKesson, or (ii) Third Party Clinical Content.

"Concurrent User" means a Permitted User identified by a unique user ID issued by Customer that is one user out of a maximum number of users permitted to access the Software simultaneously.

"Confidential Information" means any non-public information, including technical, marketing, financial, personnel, planning, and other information that is marked confidential or which the receiving party should reasonably know to be confidential, and will also include the terms of this MA. Confidential Information will not include: (a) information lawfully obtained or created by the receiving party independently of the disclosing party's Confidential Information without breach of any obligation of confidence; (b) information that enters the public domain without breach of any obligation of confidence; or (c) Protected Health Information.

"Data Center" means a data center facility located in the U.S. and operated by Customer, McKesson or an approved third party so identified in an Order Form.

"Documentation" means user guides, operating manuals, which contain the functional specifications for the Products that McKesson provides to Customer, as may be reasonably modified from time to time by McKesson.

"Enhancements" means enhancements or new releases of the Software, Documentation, Clinical Content, or Services providing new or different functionality that are separately priced and marketed by McKesson.

"Exhibits" means any exhibit or attachment to this MA or an Order Form.

"Facility" means a healthcare facility or health plan located in the U.S. and operated by Customer that is identified in an Order Form.

"Force Majeure Event" means any cause beyond the reasonable control of a party that could not, by reasonable diligence, be avoided, including acts of God, acts of war, terrorism, riots, embargoes, acts of civil or military authorities, denial of or delays in processing of export license applications, fire, floods, earthquakes, accidents, strikes, or a fuel crisis.

"Generally Available" means available as a non-development product, licensed by McKesson in the general commercial marketplace.

"Implementation Services" means the implementation services, training and education listed in an Order Form to be performed by McKesson for Customer in accordance with the McKesson Implementation and Training Guide, which may include, but are not limited to, software loading, data conversion, software interface services, software testing assistance, , and services set-up.

"McKesson Implementation and Training Guide" means McKesson's written Implementation Services and training procedures for the applicable Product or Service as contained in the applicable implementation and training guide, incorporated herein by reference, as may be reasonably modified from time to time.

"McKesson Support Manual" means McKesson's written Software Maintenance Services procedures for the applicable Product or Service as contained in the applicable support manual, incorporated herein by reference, as may be reasonably modified from time to time.

"McKesson Software" means any McKesson-owned Software licensed to Customer under an Order Form.

"Medical Necessity Content" means McKesson-created decision support rules, including diagnosis and procedure code pairs developed by the Centers for Medicare and Medicaid Services and Medicare Administrative Contractors, related to Medicare payment eligibility for medical services, treatment procedures, and medical technologies, including medical necessity determination.

"Order Form" means McKesson's form addendum to this MA, duly executed by both parties, pursuant to which Customer may order specific Products and Services.

"Order Form Effective Date" means the effective date of an Order Form, as set forth therein.

"Portable Devices" means, with respect to Software that is licensed on a per device basis, the number of laptops, PDAs, handhelds or other similar portable devices for which the applicable Software is licensed, as indicated on an Order Form.

"Permitted User" means any individual (a) Customer employee; (b) consultant or independent contractor who has need to use the Software based upon a contractual relationship with Customer, so long as (i) such consultant or contractor is not a McKesson competitor, (ii) Customer remains responsible for use of the Software by such consultant or contractor, and (iii) such consultant or contractor is subject to confidentiality and use restrictions at least as strict as those contained in this MA; (c) physician with admitting privileges at a Facility; (d) employee of such physician; and (e) medical professional authorized to perform services at a Facility.

"Prevailing Rates" means the McKesson standard rates in effect for the applicable Software, Clinical Content, or Services, on the date that the Software, Clinical Content, or Services are to be provided.

"Products" means Software, Clinical Content and any other products that McKesson provides to Customer pursuant to an Order Form.

"Professional Services" means any consulting, programming or other professional services that McKesson provides to Customer pursuant to an Order Form.

"Protected Health Information (PHI)" means information transmitted or maintained in any form or medium, including demographic information collected from an individual, that: (a) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (b) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (i) identifies the individual or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

"Services" means Software Maintenance Services, Implementation Services, Professional Services, Processing Services, ASP Services, and any other services that McKesson provides to Customer under an Order Form.

"Site Preparation Guide" means McKesson's applicable written guide or written instructions as to the preparation of Customer's Facility or Data Center prior to installation and the maintenance of Customer's Facility or Data Center following installation.

"Site Software" means, the client portion of the Software (e.g., set-up executable) provided by McKesson to Customer, if any, for installation at Customer's site and required for Customer to access the ASP Services.

"Software" means software in object code form only (and related Documentation) identified in an Order Form or otherwise provided by McKesson to Customer, including any Upgrades that McKesson provides to Customer.

"Software Maintenance Services" means support services for only the two most current releases of the Software and Clinical Content consisting of telephone support, problem resolution, and Upgrades delivered by McKesson, all in accordance with the McKesson Support Manual. Software Maintenance Services do not include: (a) development of custom code or customizations for any Software, (b) support of Software modifications generated by anyone other than McKesson, (c) services to implement Upgrades or to correct improper installation or integration of the Software that was not performed by McKesson-authorized personnel, (d) system administrator functions, (e) help desk services, and (f) Enhancements. Software Maintenance Services do not include services required as a result of (a) improper use, abuse, accident or neglect, including Customer's failure to maintain appropriate environmental conditions for the Products, or (b) modifications or additions to the Products.

"Third Party Clinical Content" means any Clinical Content that is owned by a third party and sublicensed to Customer under an Order Form.

"Third Party Product" means any Product identified in an Order Form as **"Third Party Product,"** which may contain Third Party Clinical Content and Third Party Software.

"Third Party Software" means any software that is owned by a third party and sublicensed to Customer under an Order Form.

"Third Party Terms" means any additional contractual terms and conditions that are applicable to Third Party Software, including those referenced in or attached to an Order Form.

"Third Party Vendor" means a vendor other than McKesson from whom McKesson or Customer (with prior written approval from McKesson) obtains Third Party Product, Third Party Clinical Content or Third Party Software.

"Upgrades" means corrections, modifications, improvements, updates or releases of the Software, Documentation, Clinical Content, or Services designated by McKesson as **"Upgrades,"** which are Generally Available and generally provided to customers as part of Software Maintenance Services. Upgrades do not include Enhancements.

Exhibit B – Smart Sheet:

DVHA

Department of Vermont Health Access
312 Hurricane Lane Suite 201
Williston, Vermont 05495
Clinical Phone: 802 879-5903
Fax: 802 879-5963

Date: _____ **Page 1 of** _____

To: _____

Location: _____

Fax: _____

From: _____

Phone: _____

HIPAA regulations require that personal/private/protected health information be faxed only to "secure" faxes

Vermont Health Access (**"Customer"**) provides access to the InterQual® SmartSheets™ criteria and associated clinical content (**"Content"**) to its Providers subject to the terms and conditions contained in this agreement (**"Agreement"**), which may be updated from time to time at Customer's or its licensors', McKesson Health Solution, sole discretion without notice. Provider, by using the Content, affirmatively accepts the terms contained herein.

Provider's right to access and use the Content is non-transferable, nonexclusive, and is for the sole purpose of providing care for the Customer's members.

Provider will limit access to the Content to (a) employees and agents of Provider and further (b) to the extent necessary to review the Content relevant to the Provider's specialty area or related to the care of a specific member's condition.

Provider will protect the confidentiality of the information contained in and provided by the Content and to which it has access to under this Agreement, by using at least the degree of care and security it uses to protect its own confidential information. Provider acknowledges and agrees that any unauthorized disclosure or distribution of the confidential information may result in irreparable injury to Customer or Customer's licensor(s), entitling the injured entity to obtain immediate injunctive relief in addition to any other legal remedies available.

Provider will not modify, translate, decompile, disclose, create nor attempt to create any derivative work of the Content.

Provider acknowledges that the Content is in no way intended to prescribe, designate or limit medical care to be provided or procedures to be performed. Provider accepts responsibility for and acknowledges that it will exercise its own independent judgment in its use of the Content and will be solely responsible for such use

Provider acknowledges that the Content, including all applicable rights to patents, copyrights, trademarks and trade secrets are the sole and exclusive property of McKesson Corporation and/or one of its subsidiaries. Provider agrees that no rights in the Content are hereby conveyed to Provider except to the extent that Provider has the right to access the Content.

THE CONTENT IS PROVIDED TO PROVIDERS "AS IS," "WITH ALL FAULTS," AND "AS AVAILABLE." In addition, Customer's licensors will not for any reason be deemed a party to this Agreement, and Provider will look solely to Customer for the performance of any obligations due Provider hereunder.

CONFIDENTIALITY NOTICE

This fax is intended only for use by the addressee and may contain confidential or legally privileged information. If you are not the intended recipient, you are hereby notified that any review, disclosure, copying, distribution or the taking of any action regarding

these contents is prohibited. If you have received this fax in error, please notify the sender immediately by telephone and destroy this information.
McKesson Interqual Fax Form 010809

ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS

1. Entire Agreement: This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

2. Applicable Law: This Agreement will be governed by the laws of the State of Vermont.

3. Definitions: For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.

4. Appropriations: If this Agreement extends into more than one fiscal year of the State (July1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. Independence, Liability: The Party will act in an independent capacity and not as officers or employees of the State. The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party. The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

7. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverages and limits listed State of Vermont – Attachment C_1/08/09 Page 2 of 4 herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the contract, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations
Products and Completed Operations

Personal Injury Liability
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:
$1,000,000 Per Occurrence
$1,000,000 General Aggregate
$1,000,000 Products/Completed Operations Aggregate
$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: $1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

8. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.

9. Requirement to Have a Single Audit: In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and if this Subrecipient expends $500,000 or more in federal assistance during its fiscal year, the Subrecipient is required to have a single audit conducted in accordance with the Single Audit Act, except when it elects to have a program specific audit.

The Subrecipient may elect to have a program specific audit if it expends funds under only one federal program and the federal program's laws, regulating or grant agreements do not require a financial statement audit of the Party.

A Subrecipient is exempt if the Party expends less than $500,000 in total federal assistance in one year.

The Subrecipient will complete the Certification of Audit Requirement annually within 45 days after its fiscal year end. If a single audit is required, the sub-recipient will submit a copy of the audit report to the primary pass-through Party and any other pass-through Party that requests it within 9 months. If a single audit is not required, the Subrecipient will submit the Schedule of Federal Expenditures within 45 days. These forms will be mailed to the Subrecipient by the Department of Finance and Management near the end of its fiscal year. These forms are also available on the Finance & Management Web page at: http://finance.vermont.gov/forms

10. Records Available for Audit: The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

11. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of Title 21V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990 that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.

12. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

13. Taxes Due to the State:

a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

14. Child Support: (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

a. is not under any obligation to pay child support; or

b. is under such an obligation and is in good standing with respect to that obligation; or

c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

15. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of his Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in all subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

Notwithstanding the foregoing, the State agrees that the Party may assign this agreement, including all of the Party's rights and obligations hereunder, to any successor in interest to the Party arising out of the sale of or reorganization of the Party.

16. No Gifts or Gratuities: Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

17. Copies: All written reports prepared under this Agreement will be printed using both sides of the paper.

18. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs or programs supported in whole or in part by federal funds.

ATTACHMENT D
MODIFICATIONS TO CUSTOMARY CONTRACT PROVISIONS OF ATTACHMENT C OR ATTACHMENT F

1. Notwithstanding any other provision of this Contract, particularly Attachment C, Paragraph 6, the Contractor will endeavor to notify the State within 30 days after receiving cancellation notice of any required insurance policy.

2. Notwithstanding Attachment C. Paragraph 6, the Contractor's general liability insurance policy may be on a claims made basis. If general liability coverage is on "claims made" basis, contractor shall ensure continuity of coverage for any claims or legal obligations arising under this Agreement which may be presented for 10 years following the expiry of this Agreement.

3. Attachment C, Paragraph 8 is modified by adding the following sentence to the end: "Customer is not entitled to audit if such audit will violate confidentiality obligations of any third party."

4. The requirements of Attachment C, Paragraph 12 are not applicable to this Contract.

5. The first two sentences of Attachment C, Paragraph 13 shall not apply to any services provided by the Contractor under this Contract, other than training services.

6. The requirements of Attachment F, Paragraphs 2, 5, 8 and 9 shall not apply to Contractor, unless and until Contractor has staff or facilities based in Vermont.

7. Paragraph 5.7 of the McKesson Master Agreement, incorporated herein as Attachment A, Part II, shall take precedence over the following sentence of Attachment F, Paragraph 3: "The Contractor agrees to make available upon request to the Agency of Human Services; the Department of Vermont Health Access; the Department of Disabilities, Aging and Independent Living; and the Center for Medicare and Medicaid Services (CMS) all contracts and subcontracts between the Contractor and service providers."

8. The subparagraphs of Attachment F, Paragraph 3 headed "Medicaid Notification of Termination Requirements" and "Encounter Data" do not apply to this contract.

9. The requirements of Attachment F, Paragraph 7, do not apply to this Contract, in so far as Contractor shall not acquire or be provided Protected Health Information, Substance Abuse Treatment Information, Other Confidential Consumer Information or Social Security numbers under this Contract.

10. Notwithstanding Attachment F, Paragraph 10, the Contractor shall retain its proprietary interests in all data, technical information, materials gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement, excepting only that all data and technical information provided by the State to the Contractor shall be and remain the property of the State of Vermont, and that such items shall be returned to the State of Vermont upon 30 days prior written notice by the State.

11. Attachment C, Paragraph 9 does not apply to this Contract.

12. Attachment F, Paragraph 12 does not apply to this Contract.

Approval:

Assistant Attorney General: _____

Date: _____

ATTACHMENT F
AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT PROVISIONS

1. **Agency of Human Services – Field Services Directors** will share oversight with the department (or field office) that is a party to the contract for provider performance using outcomes, processes, terms and conditions agreed to under this contract.

2. **2-1-1 Data Base:** The Contractor providing a health or human services within Vermont, or near the border that is readily accessible to residents of Vermont, will provide relevant descriptive information regarding its agency, programs and/or contact and will adhere to the "Inclusion/Exclusion" policy of Vermont's 2-1-1. If included, the Contractor will provide accurate and up to date information to their data base as needed. The "Inclusion/Exclusion" policy can be found at www.vermont211.org

3. **Medicaid Program Contractors**:

   Inspection of Records: Any contracts accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid program must fulfill state and federal legal requirements to enable the Agency of Human Services (AHS), the United States Department of Health and Human Services (DHHS) and the Government Accounting Office (GAO) to:

   > Evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed; and Inspect and audit any financial records of such Contractor or subcontractor.

   Subcontracting for Medicaid Services: Having a subcontract does not terminate the Contractor, receiving funds under Vermont's Medicaid program, from its responsibility to ensure that all activities under this agreement are carried out. Subcontracts must specify the activities and reporting responsibilities of the Contractor or subcontractor and provide for revoking delegation or imposing other sanctions if the Contractor or subcontractor's performance is inadequate. The Contractor agrees to make available upon request to the Agency of Human Services; the Office of Vermont Health Access; the Department of Disabilities, Aging and Independent Living; and the Center for Medicare and Medicaid Services (CMS) all contracts and subcontracts between the Contractor and service providers.

   Medicaid Notification of Termination Requirements: Any Contractor accessing payments for services under the Global Commitment to Health Waiver and Medicaid programs who terminates their practice will follow the Office of Vermont Health Access, Managed Care Organization enrollee notification requirements.

   Encounter Data: Any Contractor accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid programs must provide encounter data to the Agency of Human Services and/or its departments and ensure that it can be linked to enrollee eligibility files maintained by the State.

4. **Non-discrimination Based on National Origin as evidenced by Limited English Proficiency**. The Contractor agrees to comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, which require that contractors and subcontractors receiving federal funds must assure that persons with limited English proficiency can meaningfully access services. To the extent the Contractor provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services in compliance with this requirement, such individuals cannot be required to pay for such services.

5. **Voter Registration**. When designated by the Secretary of State, the Contractor agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.

6. **Drug Free Workplace Act.** The Contractor will assure a drug-free workplace in accordance with 45 CFR Part 76.

7. **Privacy and Security Standards.**

Protected Health Information: The Contractor shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this contract. The Contractor shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

Substance Abuse Treatment Information: The confidentiality of any alcohol and drug abuse treatment information acquired by or provided to the Contractor or subcontractor shall be maintained in compliance with any applicable state or federal laws or regulations and specifically set out in 42 CFR Part 2.

Other Confidential Consumer Information: The Contractor agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to information. The Contractor agrees to comply with any applicable Vermont State Statute, including but not limited to 12 VSA §1612 and any applicable Board of Health confidentiality regulations. The Contractor shall ensure that all of its employees and subcontractors performing services under this agreement understand the sensitive nature of the information that they may have access to and sign an affirmation of understanding regarding the information's confidential and non-public nature.

Social Security numbers: The Contractor agrees to comply with all applicable Vermont State Statutes to assure protection and security of personal information, including protection from identity theft as outlined in Title 9, Vermont Statutes Annotated, Ch. 62.

8. **Abuse Registry.** The Contractor agrees not to employ any individual, use any volunteer, or otherwise provide reimbursement to any individual in the performance of services connected with this agreement, who provides care, custody, treatment, transportation, or supervision to children or vulnerable adults if there is a substantiation of abuse or neglect or exploitation against that individual. The Contractor will check the Adult Abuse Registry in the Department of Disabilities, Aging and Independent Living. Unless the Contractor holds a valid child care license or registration from the Division of Child Development, Department for Children and Families, the Contractor shall also check the Central Child Abuse Registry. (See 33 V.S.A. §4919(a)(3) & 33 V.S.A. §6911 (c)(3)).

9. **Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, any agent or employee of a Contractor who, in the performance of services connected with this agreement, has contact with clients or is a caregiver and who has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall make a report involving children to the Commissioner of the Department for Children and Families within 24 hours or a report involving vulnerable adults to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. This requirement applies except in those instances where particular roles and functions are exempt from reporting under state and federal law. Reports involving children shall contain the information required by 33 V.S.A. §4914. Reports involving vulnerable adults shall contain the information required by 33 V.S.A. §6904. The Contractor will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

10. **Intellectual Property/Work Product Ownership.** All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement - including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically for this agreement - or are a result of the services required under this grant - shall be considered "work for hire" and remain the property of the State of Vermont, regardless of the state of completion - unless otherwise specified in this agreement. Such items shall be delivered to the State of Vermont upon 30 days notice by the State. With respect to software computer programs and / or source codes first developed for the State, all the work shall be considered "work for hire," i.e., the State, not the Contractor or subcontractor, shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

    The Contractor shall not sell or copyright a work product or item produced under this agreement without explicit permission from the State.

If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor's materials.

11. **Security and Data Transfers.** The State shall work with the Contractor to ensure compliance with all applicable State and Agency of Human Services' policies and standards, especially those related to privacy and security. The State will advise the Contractor of any new policies, procedures, or protocols developed during the term of this agreement as they are issued and will work with the Contractor to implement any required.

    The Contractor will ensure the physical and data security associated with computer equipment - including desktops, notebooks, and other portable devices - used in connection with this agreement. The Contractor will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. The Contractor will make every reasonable effort to ensure media or data files transferred to the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, the Contractor shall securely delete data (including archival backups) from the Contractor's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

12. **Computing and Communication:** The Contractor shall select, in consultation with the Agency of Human Services' Information Technology unit, one of the approved methods for secure access to the State's systems and data, if required. Approved methods are based on the type of work performed by the Contractor as part of this agreement. Options include, but are not limited to:

    a) Contractor's provision of certified computing equipment, peripherals and mobile devices, on a separate Contractor's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.

    b) State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

    The State will not supply e-mail accounts to the Contractor.

    If these options are not acceptable to either party, the parties will work together in good faith to come to a mutual agreement on an approved method for access. The State retains the right to cancel the contract under paragraph 7 on page 1 of this agreement.

13. **Lobbying.** No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.

14. **Non–discrimination.** The Contractor will prohibit discrimination on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, or on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. No person shall on the grounds of sex (including, in the case of a woman, on the grounds that the woman is pregnant) or on the grounds of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by state and/or federal funds.

15. **Environmental Tobacco Smoke.** Public Law 103-227, also known as the Pro-children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, child care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds.

The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

Contractors are prohibited from promoting the use of tobacco products for all clients. Facilities supported by state and federal funds are prohibited from making tobacco products available to minors.

Attachment F - Revised AHS -12-08-09