

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, a division of McKesson Technologies Inc., with a principal place of business in 275 Grove Street, Suite 1-210, Newton, MA 02466 (hereafter called "Contractor"). The Contractor's form of business organization is a corporation. 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 a license agreement for access to a web based clinical library of guidelines with web based training for users of the license. The license and training provisions are set forth in Attachment A.
3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$220,464.42.
4. **Contract Term.** The period of Contractor's performance shall begin on 12/10/2014 and end on 12/9/2015. The Contract may be extended up to two (2) additional one (1) year renewal periods.
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 not 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 Contractor.
7. **Cancellation.** This contract may be cancelled by either party by giving written notice at least 30 days in advance. Notwithstanding this provision, if a governmental agency with due authority determines that a program or facility operated by the Contractor, wherein services authorized under this contract are provided, is not in compliance with State and Federal law or is operating with deficiencies the State may terminate this contract immediately and notify the Contractor accordingly. Also, in the event that federal funds supporting this contract become unavailable or are reduced, the State may cancel this contract with no obligation to pay the Contractor from State revenues and no fees shall be refunded.
8. **Attachments.** This contract consists of 52-pages including the following attachments, which are incorporated herein:  
Attachment A - Specifications of Work to be Performed  
Attachment B - Payment Provisions  
Attachment C - Customary State Contract provisions

Attachment D - Modifications of Insurance  
Attachment E - Business Associate Agreement  
Attachment F - Customary Contract Provisions of the Agency of Human Services

The order of precedence of documents shall be as follows:

- 1). This document
- 2). Attachment D (if any)
- 3). Attachment C
- 4). Attachment A
- 5). Attachment B
- 6). Attachment E (if any)
- 7). Attachment F
- 8). Other Attachments (if any)

**WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT.**

**BY THE STATE OF VERMONT:**

**BY THE CONTRACTOR:**

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MARK LARSON, COMMISSIONER  
312 Hurricane Lane, Suite 201  
Williston, VT 05495-2087  
Phone: 802-879-5901  
Email: [Mark.Larson@state.vt.us](mailto:Mark.Larson@state.vt.us)

DATE

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AUTHORIZED SIGNATORY, TITLE  
Doug Edwards, VP of Sales  
278 Grove Street  
Newton, MA 02466  
Phone: 857-231-1360  
Email: [doug.edwards@mckesson.com](mailto:doug.edwards@mckesson.com)

DATE

DVHA

**ATTACHMENT A  
SPECIFICATIONS OF WORK TO BE PERFORMED**

**I. Licensing 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 to the State is incorporated in this Exhibit SOW-1 to Attachment A.

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

1. Four (4) Virtual Instructor Led Trainings (VILT) and two (2) Web Based Trainings (WBT)
2. InterRater Reliability Training Tool

The Contractor will bill the State for 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.

**Exhibit SOW-1 to Attachment A: Contractor's Standard Form Master Agreement and License**

**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.

<b>Customer Number</b>	<b>VER503</b>
<b>Contract Number</b>	<b>15395</b>

**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

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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 reasonably foreseeable, or 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.

**Total Damages.** B THE CONTRACTOR'S LIABILITY TO THE STATE FOR THE WORK PERFORMED UNDER THIS CONTRACT SHALL NOT EXCEED TWO (2) TIMES THE ANNUAL CONTRACT AMOUNT AS THE SAME MAY BE AMENDED FROM TIME-TO-TIME. THIS LIMITATION SHALL NOT APPLY TO STATE CLAIMS ARISING OUT OF: (A) CONTRACTOR'S OBLIGATION TO INDEMNIFY THE STATE; (B) CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS TO THE STATE; (C) PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY; OR (D) CONTRACTOR'S GROSS NEGLIGENCE, FRAUD OR INTENTIONAL MISCONDUCT. IN NO EVENT SHALL THIS PROVISION BE CONSTRUED AS PERMITTING OR REQUIRING THE STATE TO ASSUME CONTRACTOR'S LIABILITY TO A THIRD PARTY

5.3.1 Exclusion of Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER UNDER, IN CONNECTION WITH, OR RELATED TO THIS MA FOR ANY, LOST PROFITS OR LOSS OF GOODWILL, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT THE PARTY IN BREACH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. NEITHER PARTY WILL BE LIABLE FOR BREACH OF CONTRACT DAMAGES WHICH ARE UNFORESEEABLE TO THE PARTIES AT THE TIME OF CONTRACTING, OR FOR DAMAGES WHICH ARE NOT PROXIMATELY CAUSED BY THE BREACHING PARTY. THIS SHALL NOT BE CONSTRUED AS A LIMITATION OF LIABILITY WITH REGARD TO THIRD PERSONS, NOT PARTIES TO THIS CONTRACT.

5.3.2 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 the Superior Court of the State of Vermont, Civil Division, Washington Unit. 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.

## EXHIBIT A-2

### CONTRACTOR'S STANDARD FORM GENERAL TERMS

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

#### **SECTION 6: 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, as well as for payment determinations; (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 and payment 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 ten 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 ten business days, then as soon as possible prior to such disclosure). Customer's or McKesson's disclosure of Clinical Content to comply with regulatory or legal requirements does not constitute a waiver of McKesson's intellectual property rights. In connection with each disclosure/distribution, all Clinical Content copies must prominently display on the cover page and/or introductory screen McKesson's trademark and copyright notices, as dictated by herein, and Customer shall 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 7: 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 8: Acquisitions**

8.1 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 shall 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 shall 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.

8.1.1 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 9: 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 10: TRANSITION**

SECTION 11: THE PARTIES ACKNOWLEDGE AND AGREE THAT MCKESSON CURRENTLY PROVIDES THE CLINICAL CONTENT IN A VARIETY OF FORMATS. MCKESSON RESERVES THE RIGHT TO CHANGE THE FORMAT AND TO PROVIDE SUCH CLINICAL CONTENT TO CUSTOMER IN A DIFFERENT MEDIUM AT MUTUALLY AGREED UPON LICENSE FEES.

#### **SECTION 12: Security**

Customer agrees to use commercially reasonable security measures to prevent unauthorized access to the Products. Customer agrees to be responsible for any breach of the MA or any other unauthorized dissemination of the Products or the content contained therein by any user accessing the Software Products via Customer’s Website.

**SECTION 13: Definitions**

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

13.2 "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.

13.3 "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.

13.4 "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.

13.5 "Provider" means (i) a healthcare professional who provides services to Customer's members, and (ii) such authorized employees of such Provider who are acting on behalf of the Provider. For purposes of the McKesson's InterQual<sup>®</sup> Transparency Solution, InterQual<sup>®</sup> SmartSheets<sup>™</sup>, Clear Orders<sup>™</sup> and Clear Coverage<sup>™</sup> only, the definition of Provider does not include hospitals, health centers or other treatment facilities. For purposes of Clear Orders only, the definition of Provider includes free-standing labs, but does not include labs within hospitals, health centers or other treatment facilities.

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

13.7 "Seat" means a unique physical device, such as a personal computer, work station, or terminal, utilized to access the Software, or the location of the entity that has a license to use the Clinical Content.

**EXHIBIT A-3**

**CONTRACTOR'S STANDARD DECISION MANAGEMENT TERMS FOR  
INTERQUAL® PRODUCTS**

The following terms apply only to the Decision Management Software, Clinical Content, and ASP Services, which for purposes of this Order Form includes the following Product(s): McKesson-hosted CareEnhance® Review Manager Enterprise, InterQual® Interrater Reliability Suite, InterQual® Content Customization Tool, and InterQual® Transparency Solution (collectively referred to herein as "Decision Management").

**SECTION 14: ASP Services. THE FOLLOWING TERMS AND CONDITIONS ONLY APPLY TO THE PROVISION OF ASP SERVICES BY MCKESSON FOR CUSTOMER:**

14.1 Internet Access and Use. Customer acknowledges and agrees that the ASP Services and/or Clinical Content will be accessed by Customer via the internet and the ASP Services and/or Clinical Content will be located on a remote server. Customer acknowledges and agrees that the use of the ASP Services, Software, and/or Clinical Content are strictly for Customer's use solely related to the McKesson Clinical Content, and for no other purpose.

14.2 Interruption. MCKESSON DOES NOT WARRANT THAT THE INTERNET ACCESS WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE. MCKESSON DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM MCKESSON, CUSTOMER'S NETWORK, AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). MCKESSON CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, MCKESSON DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS UNLESS CAUSED SOLELY BY OR OCCURS SOLELY AS A RESULT OF ANY ACT OR OMISSION BY MCKESSON, ITS EMPLOYEES OR AGENTS.

14.3 Security. Customer is solely responsible for acquiring, servicing, maintaining, and updating all equipment, computers and software (including anti-virus software) not owned or operated by or on behalf of McKesson, that allows Customer and its Permitted Users to access the Software, Clinical Content and ASP Services. Customer agrees to use commercially reasonable security measures to prevent unauthorized access to the Software and/or Clinical Content. Customer agrees to be responsible 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 accessing the Software and/or Clinical Content via Customer's Website.

14.4 Proprietary Rights. Customer acknowledges that the ASP Services, including all applicable rights to patents, copyrights, trademarks, and trade secrets inherent therein and appurtenant thereto, is the sole and exclusive property of McKesson or Third Party Vendors who have licensed such rights to McKesson. Customer agrees and acknowledges that under this Order Form, Customer is not purchasing title to the ASP Services but is only being granted

a license to use the ASP Services during the term of the license. Customer agrees (a) that all rights, title, and interest in the ASP Services will be deemed to vest and remain vested in McKesson, including, but not limited to, patents, copyrights, trade secrets, and other intellectual property rights, and (b) to hereby assign any and all rights that Customer may have in such ASP Services to McKesson and to execute all further documents reasonably requested by McKesson to evidence such assignment.

14.5 Location. McKesson may provide the ASP Services from any Data Center and may from time to time transfer any or all of the ASP Services being provided hereunder to any new Data Center or relocate the personnel, equipment and other resources used in providing the ASP Services.

14.6 Customer's Website. In operation of Customer's Website, Customer will comply with all applicable laws and regulations.

**SECTION 15: MCKESSON-HOSTED CareEnhance<sup>®</sup> Review Manager Enterprise Software.**

The following terms apply only to the McKesson-hosted CareEnhance<sup>®</sup> Review Manager Enterprise Software, Clinical Content, and corresponding ASP Services ("Hosted Review Manager"):

15.1 Additional Services Offerings. The annual license fees for Hosted Review Manager do not include training services, project management services, provider data loads or any other services unless otherwise specifically included in this Order Form. If Customer desires McKesson to provide such services, the parties shall enter into an Additional Services Offering which will set out the applicable terms and conditions as well as additional cost(s) associated therewith.

15.2 Permitted Users. Customer represents and warrants that only Customer and its Permitted Users may access Hosted Review Manager and only for the uses described herein. Each Permitted User must register and receive a login ID and password before accessing Hosted Review Manager. After the initial registration, Customer shall ensure that all additional Permitted Users are authorized and receive login IDs and passwords. Customer shall take all measures necessary to ensure compliance by all Permitted Users with all terms and conditions of the MA and this Order Form. McKesson may terminate the access of any Permitted User to Hosted Review Manager in the event of any such violation, in addition to other remedies allowed under the MA or this Order Form. Customer shall (i) be responsible for determining and identifying the Permitted Users who will be granted access to Hosted Review Manager; (ii) provide a list of those authorized Permitted Users to McKesson; and (iii) update this list as needed. If there is change to a specific Permitted User (termination of employment, change of job status, etc.), Customer shall notify McKesson of such change within 30 days from the date of occurrence in order for McKesson to disallow access for such Permitted User. Additionally, Customer shall not provide access to any Permitted User until such time as notification has been provided to McKesson.

15.3 Display of CPT Codes. McKesson and Customer acknowledge and agree that the display and search functionality of the CPT within Hosted Review Manager is for Customer's internal use only.

15.4 Customer Data/McKesson Analysis. To the extent permitted by law, and by the Confidentiality Provisions of the MA and this Order Form, McKesson will create aggregate, detailed electronic data from multiple sources of customer data, including Customer Data (defined in Section 3.4.1 below), that will be the trade secret property, copyright property (to the extent it is copyrightable), and Confidential Information of McKesson (the “McKesson Analysis”).

15.4.1 Customer Data. “Customer Data” consists of Customer’s Confidential Information and PHI that Customer provides to McKesson pursuant to this Order Form. Customer Data is and will remain the trade secret property, copyright property (to the extent it is copyrightable), and Confidential Information of Customer.

15.4.2 McKesson Analysis. Notwithstanding anything to the contrary in any Business Associate Agreement between the parties or elsewhere in this Order Form or the MA, Customer authorizes McKesson to (a) de-identify PHI contained in the Customer Data in accordance with 45 C.F.R. 164.514(b) or (b) perform Data Aggregation (as defined in those regulations relating to the privacy of protected health information at 45 C.F.R. parts 160 and 164, as may be amended from time to time), for statistical compilations, reports, research and all other purposes allowed under applicable laws.

#### **SECTION 16: INTERQUAL<sup>®</sup> INTERRATER RELIABILITY SUITE**

The following terms apply only to the licensure of the InterQual<sup>®</sup> Interrater Reliability Suite Software, Clinical Content, and corresponding ASP Services (“InterQual Interrater Reliability Suite”):

16.1 Data. Customer acknowledges that McKesson may use the data collected from Customer’s use and customization of the InterQual Interrater Reliability Suite 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 provisions of the MA and this Product Schedule.

16.2 Limitation on License Grant. Customer may not use the InterQual Interrater Reliability Suite to prepare tests unrelated to the Clinical Content.

16.3 Permitted Access. Customer represents and warrants that only Customer and its Permitted Users will be permitted access to the InterQual Interrater Reliability Suite and only for the uses described herein. Each Permitted User must be required to register and receive a login ID and password before accessing the InterQual Interrater Reliability Suite. After the initial registration, Customer shall ensure that all additional Permitted Users are authorized and receive login IDs and passwords. Customer shall take all measures necessary to ensure compliance by all Permitted Users with all terms and conditions of the MA and this Order Form. McKesson may terminate the access of any Permitted User to the InterQual Interrater Reliability Suite in the event of any such violation, in addition to other remedies allowed under the MA or this Order Form. McKesson may rely upon the certification, statement, or electronic representation thereof, in providing the InterQual Interrater Reliability Suite to Customer and its Permitted Users. Customer shall (i) be responsible for determining and identifying the Permitted Users who will be granted access to the InterQual Interrater

Reliability Suite; (ii) provide a list of those authorized Permitted Users to McKesson; and (iii) update this list as needed. Should there be a change to a specific Permitted User (termination of employment, change of job status, etc.), Customer shall notify McKesson of such change within 30 days from the date of occurrence in order for McKesson to disallow access for such Permitted User. Additionally, Customer shall not provide access to any Permitted User until such time as notification has been provided to McKesson.

**SECTION 17: INTERQUAL<sup>®</sup> Content customization tool**

The following terms apply only to the InterQual<sup>®</sup> Content Customization Tool Software and corresponding ASP Services (hereinafter the “Customization Tool”):

17.1 ASP Software License. The Customization Tool is ASP Software and will not be installed at Customer’s Facility(ies) or Data Center(s).

17.2 Clinical Content. Throughout the Term of this Order Form, Customer shall continue to license all Clinical Content in which it uses the Customization Tool to create a Derivative Work (as defined below). If Customer terminates its license to any Clinical Content, Customer will be charged for its continued use of the Clinical Content in conjunction with the Customization Tool at McKesson’s Prevailing Rate.

17.3 Software. Customer’s continued license of the McKesson-hosted CareEnhance<sup>®</sup> Review Manager Enterprise Software (hereinafter, “Review Manager”) is required for Customer’s use of the Customization Tool licensed hereunder. If Customer terminates its license to the Review Manager Software, Customer shall pay additional license fees for such Software at McKesson’s Prevailing Rate.

17.4 Permitted Access. Customer represents and warrants that only Customer and its Permitted Users will be permitted access to the Customization Tool and only for the uses described herein. Each Permitted User will be required to register and receive a login ID and password before accessing the Customization Tool. After the initial registration, Customer will ensure that all additional Permitted Users are authorized and receive login IDs and passwords. Customer shall take all measures necessary to ensure compliance by all Permitted Users with all terms and conditions of the MA and this Order Form. McKesson reserves the right to terminate the access of any Permitted User to the Customization Tool in the event of any such violation, in addition to other remedies allowed under the MA and this Order Form. McKesson is entitled to rely upon the certification, statement, or electronic representation thereof, in providing the Customization Tool to Customer and its Permitted Users. Customer will (i) be responsible for determining and identifying the Permitted Users who will be granted access to the Customization Tool; (ii) provide a list of those authorized Permitted Users; and (iii) update this list as needed. Customer acknowledges and agrees that should there be a change to a specific Permitted User (termination of employment, change of job status, etc.), Customer will notify McKesson of such change within 30 days from the date of occurrence in order for McKesson to disallow access for such Permitted User. Additionally, Customer shall not provide access to any Permitted User until such time as notification has been provided to McKesson.

**17.5 Derivative Works.** The Clinical Content belongs exclusively to McKesson, and McKesson retains all ownership rights to the Clinical Content not expressly granted herein. Customer may prepare customizations and modifications of the Clinical Content pursuant to this Order Form only using the Customization Tool and the Clinical Content currently licensed by Customer (“Derivative Works”). Derivative Works are only for Customer’s internal business use and not for further sublicensing or distribution except as expressly permitted herein. Customer is strictly prohibited from using any third party content in conjunction with the Customization Tool or from preparing any works unrelated to the Clinical Content. Customer shall provide to McKesson on an annual basis the names of any Derivative Works developed using the Customization Tool. Customer hereby grants to McKesson the perpetual, worldwide, royalty-free right to use, reproduce, distribute, display, modify and otherwise incorporate the Derivative Works into McKesson Products, and further to prepare and/or create additional works or Products based upon the Derivative Works, or to permit any other person to do the foregoing on McKesson’s behalf, without any additional permission from or accounting to Customer.

**17.6 Copyright Notice.** Customer agrees to prominently display the following disclosure on all Derivative Works: “Portions copyrighted by McKesson Corporation or its subsidiaries. All Rights Reserved.” Said copyright notice must appear as a footer on all Derivative Works in a bolded font no smaller than the equivalent of Arial 10.5pt.

**17.7 Distribution of Derivative Works.** In addition to the ad hoc disclosure pursuant to Section 3.1.5(a) of the MA, as applicable, Customer may only authorize the distribution of the Derivative Works to Permitted Users, Providers or individuals considered as one of Customer’s Covered Lives. If for any reason Customer ceases to have a valid license to the Clinical Content or the Customization Tool, then Customer’s right to use and distribute Derivative Works will automatically terminate as of the day that Customer ceases to have a valid license for the Clinical Content or Customization Tool. Additionally, at such time Customer must immediately notify its Permitted Users, Providers and individuals considered as one of Customer’s members that any further use of the Derivative Works is thereby prohibited.

**17.8 Customer Authored Works.** Customer may create additional clinical content that does not incorporate and is not otherwise based on the Clinical Content using the Customization Tool licensed hereunder (“Customer Authored Works”), but only for Customer’s internal business use and not for further sublicensing. Customer owns all right, title and interest in Customer Authored Works, and that nothing in this Order Form or the MA shall confer in McKesson any right of ownership in Customer Authored Works. Customer hereby acknowledges that it is permitted to use and/or distribute Customer Authored Works via the Review Manager Software only and that a valid license to the Review Manager, Software, the Customization Tool is required for Customer’s continued use and/or distribution of such Customer Authored Works. Notwithstanding the foregoing, Customer hereby grants to McKesson the perpetual, worldwide, royalty-free right to use, reproduce, distribute, modify display and otherwise incorporate Customer Authored Works into McKesson Products, and further to prepare and/or create additional derivative works or Products based upon the Customer Authored Works, or to permit any other person to do any of the foregoing on McKesson’s behalf, without any additional permission from or accounting to Customer. In the

event McKesson uses Customer Authored Works to create derivative works or Products, McKesson will own all right, title and interest in such derivative works or Products.

17.9 Support. McKesson shall support Customer's use of the Customization Tool as part of the Software Maintenance Services. McKesson further shall support Customer's import of the Derivative Works and Customer Authored Works into the Review Manager Software although McKesson will not support the Derivative Works or Customer Authored Works being used in the Review Manager. However, McKesson is not responsible for any training, repair, or support of the Derivative Works or Customer Authored Works except as set forth herein.

17.10 Third Party Terms. Third Party Terms for Applied Pathways apply to the Customization Tool. Such Third Party Terms are found on the customer portal as set forth in Exhibit E-1.

## **SECTION 18: INTERQUAL<sup>®</sup> TRANSPARENCY SOLUTION**

Below are the Pass Through Terms and Conditions to be used by Customer when using the InterQual<sup>®</sup> Transparency Solution ("Transparency Solution") to provide access to Clinical Content on the internet pursuant to the terms and conditions contained herein.

18.1 CPT Codes. Customer shall suppress the AMA CPT within the Software and Clinical Content that Customer will make available over the internet via a global setting within the CareEnhance<sup>®</sup> Review Manager Administration Module. Additionally Customer warrants that such parameters will continue to be in place for so long as the Software and Clinical Content is made available over the internet. Customer's integration to the Clinical Content must be set up in such a way as to use a specific product identifier and unique subset identifier to lead to a specific Clinical Content result, and not allow for general open search functionality as detailed in the InterQual Transparency Solution Documentation. Clinical Content. Customer acknowledges and agrees that the Clinical Content includes: all Clinical Content licensed as of the OF Effective Date. The Clinical Content may be accessed by Customer's Providers via the internet, and the Clinical Content must be located on a section of Customer's Website accessible only by Customer's Providers and not the general public. The Clinical Content must be installed via integration of the InterQual Book View option of the CareEnhance Review Manager Enterprise Software into Customer's Website. The use of the Clinical Content is strictly limited to use by Customer's Providers for the limited purpose of reviewing the criteria used by Customer in utilization management activities related to Customer's Covered Lives treated by Customer's Providers.

18.2 Reporting and Requirements. On each anniversary of the OF Effective Date, Customer shall furnish to McKesson a description of the specific Clinical Content that Customer's Providers have access to via Customer's Website, as well as a written report confirming the number of Users with access to the Clinical Content. Additionally, prior to placing any Clinical Content on Customer's Website, Customer agrees to employ and maintain the following requirements with regard to limiting access to the Clinical Content on Customer's Website:

Each Provider will be assigned a unique password and user ID (i.e., no two Providers will use the same password or user ID to access the Clinical Content).

No less than 128 bit encryption level security will be utilized.

Customer shall retain a log, for a rolling 12 month period, documenting which Providers accessed the Clinical Content and when (e.g. web server activity log).

Clinical Content must be located on a section of Customer's Website dedicated to Providers and not accessible by the general public.

Each time a Provider enters the section of Customer's Website containing the Clinical Content he/she must agree to abide by the Pass Through Terms and Conditions, which will be posted by Customer for review by the Providers, and the Provider must be able to demonstrate his/her agreement with the Pass Through Terms and Conditions by clicking their mouse on a button labeled "I agree". If the "I agree" button is not clicked, then access to the Clinical Content must be denied. Customer will provide McKesson visual evidence that such functionality has been put in place.

Without limiting any other requirements herein, Customer must use commercially reasonable security measures to prevent unauthorized access to the Clinical Content.

Customer is responsible for providing all support to Providers.

Customer is responsible for training the Providers on use of the Clinical Content.

Customer is responsible for any breach of the MA or this Order Form or any other unauthorized dissemination of any portion of the Clinical Content by any Provider accessing the Content via Customer's Website.

18.3 Updates to Pass Through Terms. Customer will be periodically notified of required versions for the Pass Through Terms and Conditions, via Documentation, due to Upgrades and/or other Third Party Vendor requirements. All agreements between Customer and Providers must include the following Pass Through Terms and Conditions or language substantially similar to the language below, as approved by McKesson:

Customer<sup>1</sup> provides access to utilization management criteria and associated clinical content ("Criteria/Content") to its Providers subject to the terms and conditions contained in this 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 Criteria/Content is non-transferable, nonexclusive, and is for the sole purpose of providing care for Customer's members.

Provider shall limit access to the Criteria/Content only to (i) employees and agents of Provider and further (ii) the extent necessary to review/evaluate the Criteria/Content relevant to the

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<sup>1</sup> References to "Customer" should be replaced by Customer's name or other appropriate term as determined by Customer in their click-through agreement with Providers.

Provider's specialty area or related to the care of a specific member's condition.

Provider shall protect the confidentiality of the information contained in and provided by the Criteria/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 shall not modify, translate, decompile, disclose, create nor attempt to create any derivative work of the Criteria/Content.

Provider acknowledges that the Criteria/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 shall exercise its own independent judgment in its use of the Criteria/Content and shall be solely responsible for such use. Provider shall 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 Criteria/Content or from its violation of the intellectual property rights or confidentiality obligations contained in this agreement.

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

THE CRITERIA/CONTENT ARE 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 shall look solely to Customer for the performance of any obligations due to Provider hereunder.

CUSTOMER, ITS AFFILIATES, AGENTS AND LICENSORS CANNOT AND DO NOT (i) WARRANT THE ACCURACY, COMPLETENESS, CURRENTNESS, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE MATERIALS, INFORMATION AND SERVICES AVAILABLE THROUGH THE WEBSITE, OR (ii) 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 Criteria/Content at any time or for any reason, including but not limited to Provider's violation of any terms of this agreement.

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U.S. Pat. No. 6049794

**EXHIBIT B-1**

**IMPLEMENTATION, EDUCATION, and CONSULTING SERVICES**

**CareEnhance® Review Manager Enterprise (“Review Manager”) Transparency  
 Implementation Services and InterQual® Learning Source (“ILS”) Training**

**1.0 SERVICE PRICING**

Table 1 (MHS10332-M): Services for Department of Vermont Health Access

<b>InterQual® Services</b>	<b>Number of Participants</b>	<b>Fee (Year 1)</b>	<b>Annual Fee (Years 2-3)</b>
<u>Transparency Implementation Services with Review Manager Standalone</u> <ul style="list-style-type: none"> <li>Remote Project Management Support</li> <li>Remote Technical Installation Services</li> <li>Remote Transparency Solution Integration consulting</li> <li>Remote Transparency Solution Integration Validation</li> </ul>		\$6,400.00	
<u>Review Manager Technical Services</u> McKesson will provide Customer with a one-time Member load into Review Manager.	Material: 74009648	\$0.00	
<u>ILS: Review Manager Stand-Alone for System Administrators (Transparency)</u> <ul style="list-style-type: none"> <li>VILT - Review Manager System Administration (Non Integrated)</li> </ul>	Up to 4 participants  Material: 75005576	\$800.00	
<u>ILS LOC: InterQual® Acute Criteria with Review Manager (Transparency)</u> <ul style="list-style-type: none"> <li>ILT - LOC: InterQual® Acute Criteria (Review Manager)</li> </ul>	Up to 4 participants annually  Material: 75005605	\$4,000.00	\$4,000.00
<u>ILS LOC: InterQual® Post Acute Outpatient (ORC) Review Manager (Transparency)</u> <ul style="list-style-type: none"> <li>ILT - LOC: Post Acute Outpatient - ORC (Review Manager)</li> </ul>	Up to 9 participants annually  Material: 75005611	\$1,440.00	\$1,440.00
<u>ILS CP: InterQual® Procedures Review Manager (Transparency)</u> <ul style="list-style-type: none"> <li>ILT - Ask the Expert Webinar - CP: InterQual® Procedures Criteria</li> </ul>	Up to 9 participants annually  Material: 75005602	\$4,000.00	\$4,000.00

<b>InterQual® Services</b>	<b>Number of Participants</b>	<b>Fee (Year 1)</b>	<b>Annual Fee (Years 2-3)</b>
<u>ILS CP: InterQual® DME Review Manager (Transparency)</u> <ul style="list-style-type: none"> <li>• ILT - Ask the Expert Webinar - CP: InterQual® DME Criteria</li> </ul>	Up to 9 participants annually  Material: 75005701	\$1,440.00	\$1,440.00
<u>ILS BH: InterQual® Behavioral Health Review Manager/Transparency (Child, Adolescent, Adult, Geriatric, Residential, Substance Use Disorders &amp; Dual Diagnosis)</u> <ul style="list-style-type: none"> <li>• ILT - BH: InterQual® Behavioral Health (Review Manager)</li> </ul>	Up to 20 participants annually  Material: 75005599	\$9,600.00	\$9,600.00
<u>ILS: InterQual® Content Customization Tool (ICCT) Implementation Services</u> <ul style="list-style-type: none"> <li>• VILT: ICCT Tenant Administration</li> <li>• ILT: InterQual® Content Customization Tool</li> </ul>	Up to 8 participants  Material: 75006044	\$4,000.00	
<u>Travel Expenses</u> <ul style="list-style-type: none"> <li>• Travel estimate based on five days for end user criteria training and mentoring - \$2,800.00 (Year 1)</li> <li>• Travel estimate based on two days for ICCT training - \$1,600.00 (Years 2-3)</li> </ul>		\$4,400.00	\$2,800.00
<b>Fixed Fee Total:</b>		<b>\$36,080.00</b>	<b>\$23,280.00</b>

**SECTION 19:**

**SECTION 20: Payment Terms - Services Fees**

**\$36,080.00\*** due on the OF Effective Date. Such fee includes a 20% discount.

Optional Renewal  
Terms for contract  
year two and  
contract year three

**\$23,280.00\*** due on the first anniversary of the OF Effective Date for contract year two. Such fee includes a 20% discount.

**\$23,280.00\*** due on the second anniversary of the OF Effective Date for contract year three. Such fee includes a 20% discount.

\* plus any applicable taxes and \$100.00 shipping & handling fee for all Services

## 2.0 STATEMENT OF PROJECT SCOPE

The Services listed in this Exhibit include Implementation and Training Services in accordance with the **McKesson Health Solutions Guide to Standard Implementation and Training Services** (“Services Guide”). The technical components of the InterQual® Transparency solution will aid Customer in integrating reference only InterQual® criteria into their web portal.

### **McKesson Project Management Services (remote support):**

- Act as liaison between McKesson and project team members
- Work collaboratively with McKesson Project Manager to develop and maintain the Transparency Integration project
- Assign implementation tasks
- Identify need for the participation of other affected areas/departments (such as Claims Analyst, Enrollment, Provider Relations, etc) and extend invites as necessary
- Work with Customer to manages time lines
- Facilitate resolution of project and integration issues
- Ensure communication flow between Project Team members

### **InterQual® Transparency Solution Integration consulting services:**

McKesson will provide remote technical product consulting services designed to educate the Customer on McKesson integration tools enabling them to create integration to their portal.

- Remote services during standard business hours
- Design redirect page and war file
- Deploy war file to server
- Test deployment, InterQual® display and submit required parameters to customer

### **InterQual® Transparency Solution Integration Validation:**

McKesson will provide remote technical product consulting services designed to validate a Customer’s InterQual® Transparency Solution integration. This service will test various scenarios utilizing the Customer’s environment to validate the Customer’s integration.

- Validate criteria subset selection and display
- Validate proprietary notice
- Validate CPT code use
- Validate redirecting from portal to Review Manager

## 3.0 ASSUMPTIONS

- 3.1 The Services provided hereunder will be in accordance with the **McKesson Health Solutions Implementation Services and Training Guide** (“Services Guide”), which may be amended from time to time at McKesson’s discretion and is incorporated herein by reference. To obtain the most current version of the Services Guide, contact your McKesson Sales Executive, Account Manager or download from Customer Hub.

- 3.2 The Services fee does not include McKesson travel-related expenses. Customer is responsible for all reasonable travel-related expenses incurred in connection with the Services as per the Services Guide.
- 3.3 Customer will incur additional fees and training material costs for each additional participant beyond the agreed upon maximum number of participants identified herein and/or each additional instructor-led session requested beyond the McKesson recommended number of session(s). Customer will be billed separately for additional participants attending an instructor-led session without pre-registering and/or being covered by this Order Form.
- 3.4 Customer acknowledges that Services will be provided only for Facilities licensed under the MA.
- 3.5 Training Services will not be carried over from prior years.
- 3.6 Training includes all applicable self paced trainings.
- 3.7 All applicable self paced trainings should be completed prior to any ILT and/or VILT session(s).
- 3.8 Data Load Assumptions
  - 3.8.1 Source data will be in a flat file pipe delimited
  - 3.8.2 Destination DBMS would be SQL
  - 3.8.3 Sample files would be need to build SSIS packages
  - 3.8.4 Scheduling of the SSIS package would be responsibility of Customer
  - 3.8.5 Deliver One Deployment package for Members
- 3.9 Transparency Assumptions
  - 3.9.1 Customer will be responsible for coding related to the Transparency Integration.
  - 3.9.2 There are no services related to the Customer's portal in this package.
  - 3.9.3 A report of validation results will be provided to the Customer upon completion of the validation testing.
  - 3.9.4 Services assume that Review Manager is being used in a standalone environment.
  - 3.9.5 All Services will be provided remotely during standard business hours. Should Customer need on-site support, the service price does not include related travel and expenses incurred to provide Project services. Customer would be responsible for all travel related expenses.

#### 4.0 DEFINITIONS

“CareEnhance<sup>®</sup> Review Manager Enterprise” (“Review Manager”) also referred to as “the Software.”

“Fixed Fee (“FF”)” means that the 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 Services.

“ILT” means on-site instructor-led training at Customer's site.

“VILT” means virtual instructor-led training. This method of delivering traditional classroom courses using the Internet and teleconferencing technologies whereby the instructor and students are at independent locations.

## EXHIBIT E-1

### PRODUCTS AND ASP SERVICES

1. Products and ASP Services. The licenses in this Order Form for the Products and ASP Services set forth on the following page begin on the OF Effective Date.

2. Copies. On the following pages, any Product for which the “No. of Copies” is blank or “0” is either available online or included in another Product.

3. Requirements. Customer shall maintain the associated licenses, hardware and software set forth in the Certified Environments Guide / Technical Configurations, for the Software and ASP Services, as applicable.

4. Addition of Products to Facilities. The following Products will be added to Department of Vermont Health Access Facility as of the OF Effective Date:

InterQual® Content Customization Tool

InterQua® Transparency Solution – Integraton Toolkit

McKesson-hosted CareEnhance® Review Manager

Applied Pathways IQ

5. All other Products set forth on the following page will be renewed as of the OF Effective Date.

6. ASP Services. The InterQual Interrater Reliability Software, McKesson-hosted CareEnhance® Review Manger Enterprise Software and InterQual Content Customization Tool Software set forth on the following page are part of the ASP Services.

#### 7. THIRD PARTY TERMS.

20.1 The portal referenced below contains Third Party Terms that may apply to the Products under this Order Form. In addition, with respect to Third Party Products included in the Products, Customer shall comply with the Third Party Terms (including attributions and notices) contained in or referenced in the Product Documentation or which McKesson otherwise makes available to Customer. To the extent the Third Party Terms conflict with this Order Form or the MA, then the Third Party Terms control solely with respect to the Third Party Product to which they apply. This Agreement does not prevent modification or reverse engineering of Third Party Software if and only to the extent Third Party Terms expressly permit modification or reverse engineering of that Third Party Software. However, Customer shall notify McKesson before modifying any Third Party Software, and McKesson’s support, warranty and indemnification obligations (if any) do not apply where Third Party Software has been modified. Unless specifically set forth in this Order Form or the Third Party Terms, the warranty, support, or other obligations or liability created by this Order Form or MA are not the responsibility of the Third Party Product developer or licensor.

As indicated on the following page, Customer agrees to the applicable Third Party Terms, as set

forth at <http://customerportal.mckesson.com>, which Customer may access using the following confidential login information:

User ID: contractprovisions@mckesson.com  
Password (case sensitive): Portal!Access

In the event that a Third Party Vendor raises its licensing fees of such Third Party Products, McKesson may increase its annual license fees upon the next anniversary of this Order Form.

**Facility**

Department of Vermont Health Access  
 312 Hurricane Lane  
 Suite 201  
 Williston, VT 05495

Attn: Daljit Clark, Director, Clinical Unit  
 Tel: +1 (802) 879-5915  
 E-Mail: Daljit.Clark@state.vt.us

	Size / Type	Users	No. of Copies
<b>InterQual® Clinical Content</b>			
Acute Adult Criteria	180,000 / CL	0	6
Acute Pediatric Criteria	180,000 / CL	0	6
Adolescent Psychiatry	180,000 / CL	0	1
Adult Psychiatry	180,000 / CL	0	1
Child Psychiatry	180,000 / CL	0	1
Durable Medical Equipment	180,000 / CL	0	
Geriatric Psychiatry	180,000 / CL	0	1
InterQual® Procedures Criteria	180,000 / CL	0	
Outpatient Rehabilitation and Chiropractic Criteria	180,000 / CL	0	1
Residential & Community-Based Treatment	180,000 / CL	0	1
Substance Use Disorders & Dual Diagnosis	180,000 / CL	0	1
<b>Software</b>			
InterQual® Content Customization Tool	180,000 / CL	0	
InterQual® Transparency Solution -- Integration Toolkit	180,000 / CL	0	
InterQual® View (Access)	180,000 / CL	0	
InterQual® View (SQL)	180,000 / CL	0	
Interrater Reliability Standard Tests	180,000 / CL	0	
McKesson-hosted CareEnhance® Review Manager	180,000 / CL	0	
Enterprise Software			
<b>3rd Party</b>			
AMA CPT Codes IQ	180,000 / CL	0	
Applied Pathways IQ	180,000 / CL	0	
Business Objects Crystal Reports	180,000 / CL	0	

**ATTACHMENT B  
PAYMENT PROVISIONS**

**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 \$220,464.42 for the license and services specified in Attachment A, Section I and the Exhibits to Attachment A, 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.

**II. Contractor's Standard Order Form**

**ORDER FORM**

This **ORDER FORM** amends the McKesson Health Solutions Master Agreement No. 15395, dated November 10, 2011 and incorporating all referenced Exhibits, Schedules, and Attachments ("**Order Form**") and is made binding as of the latest date in the signature block below.

**Exhibits**

<b>A-1</b>	<b>Fees Summary, Payment Schedule, Term and Administration</b>
<b>A-2</b>	<b>General Terms</b>
<b>A-3</b>	<b>Decision Management Terms for InterQual® Products</b>
<b>B-1</b>	<b>Implementation, Education, and Consulting Services</b>
<b>C-1</b>	<b>Reserved</b>
<b>D-1</b>	<b>Reserved</b>
<b>E-1</b>	<b>Products and ASP Services</b>

**AUTHORIZATION.** The pricing in this Order Form and McKesson's corresponding offer to Customer expires unless McKesson receives this Order Form signed by Customer on or before December 31, 2014.

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 Product licensed by this Order Form; and (b) Customer is not relying on the availability of any future version of the purchased Product or any other future Product in executing this Order Form.

**TERMINATION OF PRIOR AGREEMENTS.** Upon this OF Effective Date, Customer's right to use the following Software and/or Clinical Content is hereby terminated: at Customer's Department of Vermont Health Access Facility, InterQual® Online Anonymous Review-Standard, MSS for IQ On-Line - Third Party Product and any related support or other applicable services.

**TERMINATION OF PRIOR ORDER FORM(S).** Except for outstanding payment and confidentiality obligations, Order Form No. 20729 and 24872, are hereby terminated and replaced with this Order Form as of the OF Effective date.

<p><b>CUSTOMER – For Execution:</b> McKesson no longer requires the exchanging and signing of hard copy contracts. Please fax or email (scanned document) the signed agreement to your sales executive or account manager.</p>
--

<b>Customer Number</b>	<b>VER503</b>
<b>Service Contract Number</b>	<b>MHS10332</b>
<b>SAP Number</b>	<b>1069309</b>
<b>Contract Number</b>	<b>26042</b>
<b>Quote Number</b>	<b>122132</b>

**EXHIBIT A-1**

**FEES SUMMARY, PAYMENT SCHEDULE, TERM AND ADMINISTRATION**

**PAYMENT SCHEDULE FOR PRODUCTS AND ASP SERVICES LICENSE FEES.**

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

**\$184,384.42\*** Due on the OF Effective Date for the Criteria and Software fees. Such fee includes a 37% discount.

Optional Renewal  
Terms for contract  
year two and  
contract year three

**\$190,004.82\*** Due on the first anniversary of the OF Effective Date for contract year two. Such fee includes a 35% discount.

**\$190,004.82\*** Due on the second anniversary of the OF Effective Date for contract year two. Such fee includes a 35% discount.

\*Plus applicable taxes.

**PAYMENT SCHEDULE FOR SERVICES FEES.**

**\$36,080.00\*** due on the OF Effective Date. Such fee includes a 20% discount.

Optional Renewal  
Terms for contract  
year two and  
contract year three

**\$23,280.00\*** due on the first anniversary of the OF Effective Date for contract year two. Such fee includes a 20% discount.

**\$23,280.00\*** due on the second anniversary of the OF Effective Date for contract year three. Such fee includes a 20% discount.

\*Plus applicable taxes and \$100.00 shipping & handling fee for all Services.

**TERM.** The initial term of this Order Form begins on December 10, 2014 (the **"OF Effective Date"**) and shall continue for one year (the **"Initial Term"**) with additional two (2) - one year options to renew as further described below.

**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 above by

notifying McKesson in writing no less than sixty (60) days prior to the date on which this Order Form is scheduled to expire that Customer desires to exercise the option.

**UPGRADES.** Installation and/or implementation of the Software by McKesson as a result of Upgrades to the Software and/or new Releases of the Software are beyond the scope of the Services outlined hereunder. Unless otherwise addressed by this Order Form, such additional services shall be contracted for separately and additional fees will apply. McKesson and Customer will determine the scope of the additional services to be provided and the terms and conditions pursuant to which such additional services shall be provided by McKesson.

Upgrades to the ASP Software are included within the ASP Services contemplated herein. Notwithstanding the foregoing, the parties agree to execute an amendment to this Order Form for additional services in the event of any Customer-specific integrations, data mapping or configuration of any business rules, or additional training that may be needed as a result of such Upgrades, and additional fees will apply. McKesson and Customer will determine the scope of the additional services to be provided and the terms and conditions pursuant to which such additional services shall be provided by McKesson.

**DISCOUNT REPORTING.** 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.

**TAXES.** Unless prior to the OF Effective Date Customer provides McKesson with 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.**

<b>Sold To:</b>	<b>Bill To:</b>
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: Daljit Clark, Director, Clinical Unit
Tax Exempt Id No.*: on file	Telephone: 802-879-5915
Taxable: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	E-mail: daljit.clark.@state.vt.us
<b>Ship To:</b> See Exhibit E-1.	
	<b>Download Central Administrator:</b>
<b>Customer IRR Administrator:</b>	Daljit Clark
Kristen Allard	E-mail: daljit.clark.@state.vt.us
E-mail: Kristen.allard@state.vt.us	

**TAX EXEMPT.** \*Customer hereby covenants and warrants that each ship to location is covered by the Tax Exempt Id Number referenced on file. 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's Contact Representative:**

Doug Edwards, VP of Sales  
278 Grove Street  
Newton, MA 02466  
Email:doug.edwards@mckesson.com  
Tel: 857-231-1360

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

Michelle A. Mosher, Contracts & Grants Administrator  
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 60673-122

**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 (July 1 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 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.

Professional Liability: Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for any and all services performed under this Agreement, with minimum coverage of **\$2,000,000** per occurrence, and **\$2,000,000** aggregate.

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, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

- 10. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law 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.
- 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, as amended, 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 this 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.
- 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.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

- 19. Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

**ATTACHMENT D  
MODIFICATION OF CUSTOMARY PROVISIONS  
OF  
ATTACHMENT C OR ATTACHMENT F**

**1. Requirements of other Sections in Attachment C are hereby modified:**

Attachment C Section 20 is hereby added to read:

**1. ORDER OF PRECEDENCE; CONTRACTOR DOCUMENTATION.**

The parties specifically agree that any language or provisions contained in a Contractor Document, included as exhibits to Attachments A and B of this contract, are of no force and effect if such language or provisions conflict with the terms of Attachment C or Attachment D to this Contract. Further, in no event shall any Contractor Document: (a) require indemnification by the State of the Contractor; (b) waive the State's right to a jury trial; (c) establish jurisdiction in any venue other than the Superior Court of the State of Vermont, Civil Division, Washington Unit; (d) designate a governing law other than the laws of the State of Vermont; (e) constitute an implied or deemed waiver of the immunities, defenses, rights or actions arising out of State's sovereign status or under the Eleventh Amendment to the United States Constitution; or (f) limit the time within which an action may be brought hereunder.

For purposes of this Attachment D, "Contractor Document" shall mean one or more document, agreement or other instrument required by the Contractor in connection with the performance of the services set forth in Attachment A hereto, regardless of format, including Contractor's Master Agreement and Order Form, attached hereto as Exhibit SOW-1, A-2, B-1, E-1 to Attachment A, and Exhibit A-1 to Attachment B, and any other paper or "shrinkwrap," "clickwrap" or other electronic version thereof.

No modification or addition to the limited warranties set forth in this Agreement is authorized unless it is set forth in writing, references this Contract, and is signed on behalf of the State by an organization head or her/his agent duly authorized to sign documents on behalf of the organization head in accordance with the State's Agency of Administration Bulletin No. 3.3.

**2. TERM OF CONTRACTOR'S DOCUMENTS.**

Contractor acknowledges and agrees that, to the extent a Contractor Document provides for alternate term or termination provisions, including automatic renewals, such sections shall be waived and shall have no force and effect. All Contractor Documents shall run concurrently with the term of this Contract.

**APPROVAL:**

E-SIGNED by Jared Bianchi  
on 2014-12-05 20:23:01 GMT

\_\_\_\_\_  
ASSISTANT ATTORNEY GENERAL

DATE: December 05, 2014  
\_\_\_\_\_

*State of Vermont – Attachment D  
Revised AHS – 12-08-09*

**ATTACHMENT E  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) is entered into by and between the **State of Vermont Agency of Human Services operating by and through its Department of Vermont Health Access** (“Covered Entity”) and **McKesson Technologies, Inc.** (“Business Associate”). This Agreement supplements and is made a part of the contract to which it is an attachment (the “Contract”) and shall be effective upon execution of the Contract (Effective Date).

Covered Entity and Business Associate enter into this Agreement to comply with standards promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Part 160 and Part 164, Subparts A and E (“Privacy Rule”), and the Security Standards, at 45 CFR Part 160 and Part 164, Subparts A and C (“Security Rule”), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (“HITECH”), and regulations promulgated thereunder, including the HIPAA Omnibus Final Rule.

The parties agree as follows:

**1. Definitions.** All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and regulations promulgated thereunder.

“Agent” means those person(s) who are agents(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).

“Breach” shall have the meaning given in 45 CFR § 164.402 and generally means the acquisition, access, use or disclosure of Protected Health Information (PHI) in a manner not permitted by the Privacy Rule which compromises the security or privacy of the PHI; except as excluded in the definition of Breach in 45 CFR § 164.402.

“Business Associate” shall have the meaning given in 45 CFR § 160.103.

“Individual” shall have the meaning given in 45 CFR § 160.103 and includes a person who qualifies as a Personal Representative in accordance with 45 CFR § 164.502(g).

“Protected Health Information” or “PHI” shall have the meaning given in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

“Security Incident” shall have the meaning given in 45 CFR § 164.304 and generally means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.

“Services” includes all work performed by the Business Associate for or on behalf of Covered Entity that requires the use and/or disclosure of Protected Health Information to perform a business associate function described in 45 CFR § 160.103 under the definition of Business Associate.

“Subcontractor” shall have the meaning given in 45 CFR § 160.103 and generally means a person or organization to whom a Business Associate delegates a function, activity or service, other than in the capacity of a member of the workforce of the Business Associate.

2. **Identification and Disclosure of Privacy and Security Officers.** Business Associate and its Subcontractors (if applicable) shall provide, within ten (10) business days of the execution of this Agreement, written notice to the Covered Entity's contract manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer. This information must be updated any time either of these contacts changes.

3. **Permitted and Required Uses/Disclosures of PHI.**

3.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to perform Services, as specified in the Contract with Covered Entity. The uses and disclosures of PHI by Business Associate are limited to the minimum necessary, to complete the tasks or to provide the Services associated with the terms of the Contract. Business Associate shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule if used or disclosed by Covered Entity in that manner. Business Associate may not use or disclose PHI other than as permitted or required by the Contract, this Agreement or as Required by Law.

3.2 Business Associate may make PHI available to its employees who need access to perform Services; provided that Business Associate makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Associate may only disclose PHI for the purposes authorized by this Agreement: (a) to its Agents and Subcontractors in accordance with Sections 9 and 17 or, (b) as otherwise permitted by Section 3 of this Agreement.

3.3 In accordance with the Privacy and Security Rules, Business Associate shall be directly liable under HIPAA for impermissible uses and disclosures of the PHI it creates, receives, maintains, or transmits on behalf of Covered Entity, and for impermissible uses and disclosures, by Business Associate's Subcontractor(s), of the PHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity and that it passes on to Subcontractors.

4. **Business Activities.** Business Associate may use PHI received in its capacity as a Business Associate to Covered Entity if necessary for Business Associate's proper management and administration or to carry out its legal responsibilities. Business Associate may disclose PHI received in its capacity as Business Associate to Covered Entity for Business Associate's proper management and administration or to carry out its legal responsibilities if: (a) the disclosure is Required by Law or (b) if Business Associate obtains reasonable assurances via a written agreement from the person to whom the information is to be disclosed that the PHI shall remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the agreement requires the person or entity to notify Business Associate, who in turn will notify Covered Entity as specified in Section 6.1 of this Agreement, of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in Section 3 must be of the minimum amount of PHI necessary to accomplish such purposes.

5. **Safeguards.** Business Associate, its Agent(s) and Subcontractor(s), if applicable, shall implement and use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. With respect to any PHI that is maintained in or transmitted by electronic media, Business Associate or its Subcontractor(s), if applicable, shall comply with 45 CFR sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements). Business Associate, its Agent(s) and Subcontractor(s) shall identify in writing upon request from Covered Entity all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.

6. **Documenting and Reporting Breaches.**

6.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI, including Breaches reported to it by a Subcontractor, of which it (or any of its employees or Agents) becomes aware, as soon as practicable and without unreasonable delay but in no case later than three (3) business days after it becomes aware of the Breach for a verbal report and no later than five (5) business days after it becomes aware of the Breach for a written report; except, however, when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

6.2 Business Associate shall provide Covered Entity, to the extent possible, with the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected Individuals, as set forth in 45 CFR § 164.404(c), and, if reasonably requested by Covered Entity, information necessary for Covered Entity to investigate the impermissible use or disclosure. Business Associate shall continue to provide to Covered Entity information concerning the Breach as it becomes available to it.

6.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce is not a Breach, as that term is defined in 45 CFR § 164.402, and therefore does not necessitate notice to the impacted Individual(s), it shall document its assessment of risk, conducted as set forth in 45 CFR § 164.402(2). When requested by Covered Entity, Business Associate shall make the results of its risk assessment available to Covered Entity which shall include: 1) the name of the person(s) responsible for the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the PHI had been compromised. When a Breach is the responsibility of a member of its Subcontractor's workforce, Business Associate shall either: 1) conduct its own risk assessment and draft a summary of the event and assessment or 2) require its Subcontractor to conduct the assessment and draft a summary of the event. In either case, Business Associate shall make these assessment results and reports available to Covered Entity.

6.4 Business Associate shall require, by contract, a Subcontractor to report to Business Associate and Covered Entity any Breach, of which the Subcontractor becomes aware, no later than three (3) business days after it becomes aware of the Breach.

7. **Mitigation and Corrective Action.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of an impermissible use or disclosure of PHI by Business Associate, even if the impermissible use or disclosure does not constitute a Breach. Business Associate shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by Covered Entity, Business Associate shall make its mitigation and corrective action plans available to Covered Entity.

8. **Providing Notice of Breaches.**

8.1 If Covered Entity determines that an impermissible acquisition, access, use or disclosure of PHI, for which Business Associate or one of Business Associate's Agents or Subcontractors was responsible, constitutes a Breach as defined in 45 CFR § 164.402 and 45 CFR §§ 164.404 and 164.406 require notice to Individuals for such Breach, Business Associate, at its expense, shall provide notice to the Individual(s) whose PHI has been the subject of the Breach. Business Associate shall consult with Covered Entity about the timeliness, content and method of notice. Business Associate will provide Covered Entity with an advance copy of the proposed letter for review and approval prior to sending to the affected Individuals.

8.2 The notice to affected Individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to Covered Entity.

8.3 The notice to affected Individuals shall be written in plain language and shall include, to the extent possible: 1) a brief description of what happened, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps Individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business Associate is doing to investigate the Breach, to mitigate harm to Individuals and to protect against further Breaches, and 5) contact procedures for Individuals to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

8.4 Business Associate shall notify Individuals of Breaches as specified in 45 CFR § 164.404(d) (methods of Individual notice). In addition, when a Breach involves more than 500 residents of Vermont, Business Associate shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

9. **Agreements with Subcontractors.** The parties do not intend to utilize Subcontractors to perform Services pursuant to the Contract. However, in the event the parties agree otherwise, Business Associate shall enter into a Business Associate Agreement with any Subcontractor to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity in which the Subcontractor agrees to the same, or substantially similar, restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. Business Associate must enter into this Business Associate Agreement before any use by or disclosure of PHI to such Agent. Business Associate shall provide a copy of the Business Associate Agreement it enters into with a Subcontractor to Covered Entity upon request. Business associate may not make any disclosure of PHI to any Subcontractor without prior written consent of Covered Entity.

10. **Access to PHI.** To the extent Business Associate possesses PHI in a Designated Record Set, Business Associate shall upon receipt of a written request from Covered Entity, provide access to such PHI to Covered Entity to meet the requirements under 45 CFR § 164.524. Business Associate shall provide such access in the time and manner reasonably designated by Covered Entity. Within five (5) business days, Business Associate shall forward to Covered Entity for handling any request for access to PHI that Business Associate directly receives from an Individual.

11. **Amendment of PHI.** To the extent Business Associate possesses PHI in a Designated Record Set, Business Associate shall make such information available to Covered Entity for amendment pursuant to 45 C.F.R. § 164.526 in the time and manner reasonably designated by Covered Entity. Within five (5) business days, Business Associate shall forward to Covered Entity for handling any request for amendment to PHI that Business Associate directly receives from an Individual.

12. **Accounting of Disclosures.** Business Associate shall document disclosures of PHI and all information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate shall provide such information to Covered Entity to permit Covered Entity to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by Covered Entity. Within ten (10) business days, Business Associate shall forward to Covered Entity for handling any request for an accounting of disclosures that Business Associate directly receives from an Individual.

13. **Books and Records.** Subject to the attorney-client and other applicable legal privileges, Business

Associate shall make its internal practices, books, and records (including policies and procedures and PHI) relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity available to the Secretary of the Department of Health and Human Services in the time and manner designated by the Secretary. Business Associate shall make summaries of its policies and procedures available to Covered Entity, upon Covered Entity's request, in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether Business Associate is in compliance with this Agreement.

**14. Termination.**

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 15.

14.2 If either party breaches any material term of this Agreement, the non-breaching party shall: (a) provide an opportunity for the breaching party to cure the breach; (b) immediately terminate the contract without liability or penalty if the non-breaching party believes that cure is not reasonably possible; or (c) if neither termination nor cure are feasible, the non-breaching party shall report the breach to the Secretary. The non-breaching party has the right to seek to cure any breach by the breaching party and this right, regardless of whether the non-breaching party cures such breach, does not lessen any right or remedy available to the non-breaching party at law, in equity, or under the Contract, nor does it lessen the breaching party's responsibility for such breach or its duty to cure such breach.

**15. Return/Destruction of PHI.**

15.1 Business Associate, in connection with the expiration or termination of the contract, shall return or destroy, at the discretion of the Covered Entity, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity pursuant to this contract that Business Associate still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. Business Associate shall not retain any copies of the PHI. Business Associate shall certify in writing for Covered Entity: (1) when all PHI has been returned or destroyed and (2) that Business Associate does not continue to maintain any PHI. Business Associate is to provide this certification during this thirty (30) day period.

15.2 Business Associate shall provide to Covered Entity notification of any conditions that Business Associate believes make the return or destruction of PHI infeasible. If Covered Entity agrees that return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible for so long as Business Associate maintains such PHI. This shall also apply to PHI received from or created on behalf of Covered Entity in the possession of Business Associate's Agents and Subcontractors.

**16. Training.** Business Associate will provide training to its employees regarding the requirements of the Privacy and Security Standards, as applicable. The training shall be updated periodically, as the laws and regulations evolve.

**17. Security Rule Obligations.** The following provisions of this section apply to the extent that Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.

17.1 Business Associate shall implement and use administrative, physical, and technical safeguards in

compliance with 45 CFR sections 164.308, 164.310, and 164.312 with respect to the Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity.

17.2 The parties do not intend to utilize Subcontractors to perform Services pursuant to the Contract. However, in the event the parties agree otherwise, Business Associate shall ensure that any Agent or Subcontractor to whom it provides Electronic PHI agrees in a written agreement to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic PHI. Business Associate must enter into this written agreement before any use or disclosure of Electronic PHI by such Agent or Subcontractor. Business Associate shall provide a copy of the written agreement to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any Agent or Subcontractor without the prior written consent of Covered Entity.

17.3 Business Associate shall report, in writing, to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an Agent or Subcontractor). Business Associate shall provide this written report as soon as it becomes aware of any such Security Incident without unreasonable delay but in no case later than three (3) business days after it becomes aware of the incident for a verbal report and five (5) business days after it becomes aware of the incident for a written report; provided, however, that the Parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below). "Unsuccessful Security Incidents" will include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.

17.4 **Policies and Procedures.** Business Associate shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications, and other requirements of the HIPAA Security Rule as required by 45 CFR § 164.316. This obligation is not to be construed to permit or excuse an action that violates any other requirement under HIPAA.

18. **Miscellaneous.**

18.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the contract, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the contract continue in effect.

18.2 Business Associate shall cooperate with Covered Entity to amend this Agreement from time to time as is necessary for Covered Entity to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA.

18.3 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.

18.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule and Security Rule, and the HIPAA Omnibus Final Rule) in construing the meaning and effect of this Agreement.

18.5 As between Business Associate and Covered Entity, Business Associate acknowledges and agrees that it has no ownership rights with respect to PHI provided by Covered Entity to Business

Associate or created or received by Business Associate on behalf of Covered Entity.

18.6 Business Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an Individual's PHI. Business Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Reports or data containing the PHI may not be sold without Agency's or the affected Individual's written consent.

18.7 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for Business Associate to return or destroy PHI as provided in Section 14.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 11 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

(Rev: 9/21/13)

**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 United Way/Vermont 211. 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](http://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 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.

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 Department 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.

Federal Medicaid System Security Requirements Compliance: All contractors and subcontractors must provide a security plan, risk assessment, and security controls review document within three months of the start date of this agreement (and update it annually thereafter) to support audit compliance with 45CFR95.621 subpart F, *ADP (Automated Data Processing) System Security Requirements and Review Process*.

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 Protection 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:

1. 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.
2. 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.

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.
- The Contractor will also not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity under Title 9 V.S.A. Chapter 139.
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.

### Department of Vermont Health Access Request for Approval to Subcontract

Date of Request: \_\_\_\_\_

Original Grantee Name:	_____	Grantee #:	_____
Address:	_____		
Phone Number:	_____		
Contact Person:	_____		
Agreement #:	_____	Signature:	_____

Subcontractor Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Scope of Subcontracted Services: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Is any portion of the work being outsourced outside of the United States?**      **YES**      **NO**  
(Note to Business Office: If Yes, do not proceed further with approval until reviewed with Finance & Mgmt)

Dollar Amount of Subcontracted Services: \$ \_\_\_\_\_

Date Range for Subcontracted Services:      Start: \_\_\_\_\_      End: \_\_\_\_\_

DVHA Program Manager:	_____	Signature:	_____
Phone Number:	_____		

Business Office Review

Comments: \_\_\_\_\_

Approval: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

**8. Required: Contractor cannot subcontract until they receive this signed approval from the State of Vermont. On the reverse side of this form there is language that must be included by the contractor in all subcontracting agreements.**

**Language to be included from State of Vermont Bulletin 3.5 in all subcontracting agreements:**

**10. 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.

**11. 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.

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.

**20. 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
- c. that obligation; or
- d. 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.

**21. 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 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.