



Contract Number

19-582

SAP Number

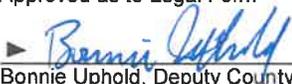
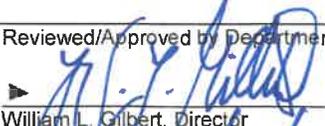
4400012457

Arrowhead Regional Medical Center

Department Contract Representative	William L. Gilbert
Telephone Number	(909) 580-6150
Contractor	National Decision Support Company, LLC
Contractor Representative	Jeff Brokaw
Telephone Number	(505) 450-7848
Contract Term	August 20, 2019 to August 19, 2022
Original Contract Amount	\$245,000
Amendment Amount	
Total Contract Amount	\$245,000
Cost Center	9184804200

Briefly describe the general nature of the contract: Agreement with National Decision Support Company, LLC in the amount of \$245,000 for the three-year period of August 20, 2019 to August 19, 2022, for CareSelect Subscription, which includes consult services for diagnosis of advanced diagnostic imaging exams.

FOR COUNTY USE ONLY

Approved as to Legal Form  Bonnie Uphold, Deputy County Counsel Date <u>8-13-19</u>	Reviewed for Contract Compliance _____ Date _____	Reviewed/Approved by Department  William L. Gilbert, Director Date <u>8/13/19</u>
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ORDER

Client: County of San Bernardino on behalf of Arrowhead Regional Medical Center		Order Date: Upon final signature, below
Bill To Address	400 N. Pepper Ave. Colton, CA 92324-1819	
Notice Address		

CareSelect Subscriptions

Subscription	CareSelect Imaging
<i>Content Source(s)</i>	ACR Select, ACC, NCCN, SNMMI
<i>Type</i>	Web services integrated with Meditech and Portal
<i>Subscription Start Date</i>	August 20, 2019

Order Term	This Agreement is effective upon the date of the final signature, below, but not later than August 20, 2019. The " <i>Order Term</i> " begins on the Subscription Start Date indicate above and ends on the 3 rd anniversary of that date.
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Fees and Payment

Content Access & Set Up Fee	\$20,000 Billed upon execution of this Order
CareSelect Subscription Fee	\$75,000 per year , billed on the Subscription Start Date and each anniversary of the Subscription Start Date during the Order Term.

The Terms and Conditions attached to this Order will govern this Order and, except as the Parties otherwise agree, all other orders the Parties may adopt.

Each individual executing this Order on behalf of a Party warrants that (a) he or she has read this Agreement and the Terms and Conditions, (b) he or she has authority to sign this Agreement and to bind the represented Party to this Agreement, and (c) all necessary corporate and legal action to authorize such signing has been obtained.

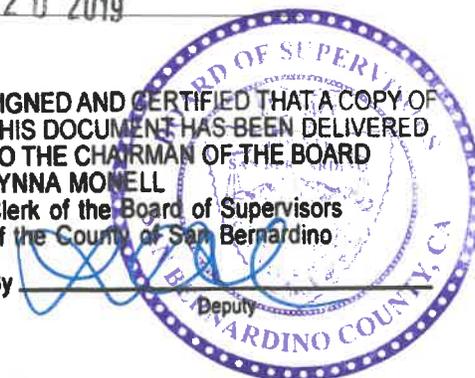
National Decision Support Company, LLC

By: 
 Name: Caroline Tustian
 Title: Chief Operating Officer
 Date: 8/6/19

County of San Bernardino on behalf of Arrowhead Regional Medical Center

By: 
 Name: Curt Hagman
 Title: **Chairman, Board of Supervisors**
 Date: AUG 20 2019

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD LYNNA MONELL Clerk of the Board of Supervisors of the County of San Bernardino



By:  Deputy

TERMS AND CONDITIONS

These Terms and Conditions (these “*Terms*”), including the attached exhibits, establish the rights and responsibilities of National Decision Support Company, LLC (“*NDSC*”) and Client under the Order to which these Terms are attached (the “*Initial Order*”) and, except as otherwise agreed, any other Orders the Parties adopt from time to time. Each such Order, together with these Terms, constitutes a separate agreement between the Parties, and the expiration or termination of an Order will not affect any other Order.

Background

Healthcare providers, in determining the care to provide their patients, routinely consult detailed sets of criteria published by the American College of Radiology, the American College of Cardiology and other experts. Each CareSelect Subscription is a decision support service that NDSC hosts, and that automates the process by which Client may query one or more of these criteria sets for recommendations. Unless expressly provided by the Order, NDSC does not process or store Protected Health Information (PHI) or other personally identifiable information for Client. NDSC personnel do not enter upon Client’s premises or interact with any of Client’s computers, networks, systems or software.

1. **Definitions.** Capitalized terms not otherwise defined by these Terms have the meanings given by the Order. In addition:

“*Affiliate*” of a Party means an entity controlling, controlled by or under common control with the Party.

“*Agreement*” means the Order together with these Terms.

“*Fees*” means the fees and charges established by the Order.

“*Order*” means as applicable (a) the Initial Order, or (b) any paper or electronic order or purchase order for a CareSelect Subscription that Client submits and NDSC countersigns or otherwise accepts in writing.

“*Party*” means NDSC or Client, and “*Parties*” means both NDSC and Client.

“*Third Party*” means a person other than NDSC, Client.

2. **Subscriptions; Related Provisions.**

2.1. **CareSelect Subscriptions.** NDSC, subject to these Terms and during the Order Term, will provide Client with access to and use of the CareSelect Subscriptions specified by the Order for the internal purposes of Client and not for resale or redistribution.

2.2. **Implementation.** NDSC, subject to these Terms and Client’s timely performance of the tasks assigned to it by the Order, will perform the Implementation services specified by the Order substantially on the time schedule established by the Order.

2.3. **Support Services.** NDSC will provide to Client reasonable technical support for the CareSelect Subscriptions under NDSC’s then-current policies. Exhibit A sets forth the NDSC policies in effect as of the date of the Initial Order.

2.4. **Restrictions.** Client will limit access to the CareSelect Subscriptions solely to authorized employees and contractors using them for the benefit of Client. Client will inform users of the restrictions and requirements of this Agreement, and Client will remain solely responsible for each user’s compliance with all the terms and conditions of this Agreement. Except as otherwise provided in this Agreement, Client will not, and will not assist, authorize or permit any user or other Third Party to, (a) grant any Third Party access to, possession of or use of any CareSelect Subscription or its

content, (b) reverse engineer, decompile, disassemble, decrypt or derive or attempt to derive source code of the CareSelect Subscriptions, (c) scrape, extract or download content of a CareSelect Subscription or otherwise acquire content of a CareSelect Subscription other than as implemented for Client by NDSC; (d) modify any CareSelect Subscription or its content, (e) develop a derivative work from or a product or service competitive with a CareSelect Subscription, (f) disclose any password, security, or authentication device to any person other than an authorized user with a valid need for the information, (g) use a CareSelect Subscription in a manner not contemplated in the documentation provided by NDSC or in violation of any applicable law, rule or regulation, or (h) remove, conceal or alter any identification, copyright or other proprietary rights notice or label on a CareSelect Subscription or its content or any report it delivers.

3. **Fees and Payment.** Client will pay NDSC the Fees on the date specified by the Order or, if the Order does not specify a date, within sixty (60) calendar days following the date of Client’s receipt of NDSC’s invoice. The Fees do not include sales, use, property, value-added, or other federal, state or local taxes based on the services provided under this Agreement (excluding taxes based on NDSC’s net income), all of which will be the responsibility of Client to the extent they apply. Client is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on NDSC or on any taxes levied on employee wages. Client shall only pay for any State or local sales or use taxes on the Services rendered supplied to Client pursuant to an Order. NDSC shall accept all payments from Client via electronic funds transfer (EFT) directly deposited into the NDSC’s designated checking or other bank account. NDSC shall promptly comply with directions and accurately complete forms reasonably provided by Client required to process EFT payments.

4. **Breach and Termination.**

4.1. **Termination.** Either Party may terminate the Order by written notice if the other Party commits a material breach of this Agreement and fails to cure the breach within thirty (30) calendar days (in cases of nonpayment) or thirty (30) calendar days (in the case of any other breach) after receiving written notice of such breach. Client and NDSC each reserve the right

to terminate the Order for any reason, with a thirty (30) day written notice of termination.

4.2. Subscription Suspension. In addition to any other rights granted to NDSC or available at law or in equity, NDSC may suspend the CareSelect Subscriptions and other services by written notice to Client if Client (a) has not paid Fees when payment is due, or (b) has breached Section 2.4.

4.3. Effect of Termination. On termination or expiration of this Agreement, (a) Client will immediately stop using the CareSelect Subscriptions; (b) NDSC shall promptly discontinue services unless the notice directs otherwise and (c) Client will make payment to NDSC for services rendered and expenses reasonably incurred prior to the effective date of termination. Sections 5, 6, 7 and 8 will survive the expiration or termination of this Agreement for any reason, and neither the expiration nor termination of this Agreement will excuse either Party from payment or other obligations accruing before the effective date of expiration or termination.

5. Confidentiality.

5.1. "Confidential Information" means all tangible and intangible confidential and proprietary information and trade secrets (whether or not patentable or copyrightable), owned or possessed by one Party (the "Disclosing Party") and disclosed before or during the term of this Agreement to the other Party (the "Receiving Party") or to which the Receiving Party gains or has gained access in connection with this Agreement, including the Disclosing Party's and its Affiliates' business/customer information, business practices, data processes, computer or software products or programs and all related documentation, cost and pricing data, know-how, marketing or business plans, analytical methods and procedures, hardware design, technology, financial information, patient information or personnel or end user data.

5.2. Exclusions. The obligations to preserve the confidential nature of any of the Confidential Information will not apply to information that: (a) was previously known to the Receiving Party free of any obligation to keep it confidential; (b) is or becomes generally known to the public or is obtainable from public sources other than because of an act or omission of the Receiving Party; (c) the Receiving Party can document was independently developed by or on behalf of the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; or (d) is required to be disclosed under any open meetings, public records or similar laws, rules and regulations applicable to Client.

5.3. Nondisclosure.

5.3.1. The Receiving Party will (a) hold the Disclosing Party's Confidential Information in strict confidence, and apply at least the standard of care used by the Receiving Party in protecting its own similar Confidential Information, and not to disclose the Disclosing Party's Confidential Information to any Third Party, and (b) not use any Confidential Information of the Disclosing Party other than to accomplish the purposes of this Agreement.

5.3.2. The Receiving Party will limit disclosure of the Disclosing Party's Confidential Information to those employees and advisors who need to know it to accomplish the purposes of this Agreement.

5.3.3. Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party's Confidential Information as required by the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the Receiving Party, unless prohibited by law, will provide the Disclosing Party sufficient notice to allow the Disclosing Party to seek a protective order or similar relief. The Receiving Party will limit disclosure under this Section 5.3 to the portion of the Disclosing Party's Confidential Information it reasonably believes it is required to disclose.

5.4. Protected Health Information. Except as expressly specified by the Order, Client will not provide NDSC with access to, and NDSC will not store or process, Protected Health Information or other personally identifiable information.

5.5. Usage Data. NDSC may collect data (excluding Protected Health Information) regarding Client's use of the CareSelect Subscriptions and use it for internal benchmarking, monitoring and improving the CareSelect Subscriptions, performing studies and research and other lawful purposes.

6. Ownership. All right, title and interest in and to the intellectual property associated with the CareSelect Subscriptions and, subject to Client's rights in its Confidential Information, the results of NDSC's Implementation and other services under this Agreement are and will remain exclusively with NDSC, its licensors and their respective successors and assigns. Client is not granted any right, title or interest in the CareSelect Subscriptions, other confidential and proprietary information of NDSC, or any intellectual property rights associated with any of the foregoing.

7. Warranties; Disclaimers.

7.1. Mutual Warranties. Client represents and warrants that (a) it is a political subdivision organized and existing under the constitution and the laws of the State of California. NDSC represents and warrants that it is a duly organized and validly existing limited liability company in good standing under the laws of the jurisdiction in which it was formed, and that it has the right and capacity to enter into this Agreement. Each Party represents and warrants that (a) it has full power and authority to grant the rights it is granting under this Agreement and there are no outstanding obligations or agreements that conflict with this Agreement; (b) this Agreement, when the Order is signed by its duly authorized representative, constitutes a valid and legally binding obligation on that Party enforceable under the terms of this Agreement; and (c) it is solvent and that no insolvency or bankruptcy decision, nor any decision to wind-up its affairs has been filed, no petition has been filed to initiate proceedings to issue such decision, no resolution has been adopted by a competent body regarding the winding up of its affairs which petition or resolution has not been withdrawn, and that as of the Order Date, no legal grounds exist for such a decision, petition or resolution.

7.2. NDSC Warranties. NDSC represents and warrants that:

7.2.1. It will provide the CareSelect Subscriptions and other services contemplated by the Order with reasonable care and skill by means of appropriately qualified and skilled personnel; and

7.2.2. NDSC has sufficient rights in the CareSelect Subscriptions and their content to enter into and perform this Agreement and, to the best of NDSC's knowledge, neither those items nor Client's use of any of them as contemplated by this Agreement, will infringe the patent, trademark, copyright or other intellectual property rights of any Third Party.

7.3. Disclaimers. EXCEPT AS PROVIDED IN SECTION 7.2, THE CARESELECT SUBSCRIPTIONS AND OTHER SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS-IS", "WHERE-IS" AND "AS-AVAILABLE," WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, NDSC HEREBY EXPRESSLY DISCLAIMS ON BEHALF OF ITSELF AND ITS SUPPLIERS ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT. NEITHER NDSC NOR ANY NDSC SUPPLIER REPRESENTS OR WARRANTS THAT ACCESS TO THE CARESELECT SUBSCRIPTIONS WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS (IF ANY) WILL BE CORRECTED, OR THAT THE CARESELECT SUBSCRIPTIONS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; NOR DOES NDSC OR ANY OF THE NDSC PARTIES MAKE ANY REPRESENTATIONS OR WARRANTIES ABOUT THE ACCURACY, RELIABILITY, CURRENCY, QUALITY, PERFORMANCE OR SUITABILITY OF THE CARESELECT SUBSCRIPTIONS OR OTHER SERVICES. IN THE EVENT OF ANY PROBLEM WITH A CARESELECT SUBSCRIPTION, CLIENT'S SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT IS LIMITED TO CEASING USE OF THE CARESELECT SUBSCRIPTION.

THE CARESELECT SUBSCRIPTIONS ARE PROVIDED VIA THE INTERNET AND CLIENT ACKNOWLEDGES THAT NEITHER NDSC NOR ITS SUPPLIERS OPERATE OR CONTROL THE INTERNET. AS SUCH, THE CARESELECT SUBSCRIPTIONS MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. NEITHER NDSC NOR ANY OF THE NDSC PARTIES ARE RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. CLIENT ACKNOWLEDGES AND AGREES THAT CLIENT IS SOLELY RESPONSIBLE FOR ITS USE OF ALL DATA AND OUTPUT FROM THE CARESELECT SUBSCRIPTIONS, INCLUDING CONFIRMING THE

CONDITION, QUALITY, ACCURACY, RELIABILITY, SUITABILITY AND FUNCTIONALITY OF THE CARESELECT SUBSCRIPTIONS.

NDSC IS NOT ENGAGED IN THE PRACTICE OF MEDICINE, AND NEITHER THE CARESELECT SUBSCRIPTIONS NOR ANY OTHER SERVICE PROVIDED UNDER THIS AGREEMENT CONSTITUTES MEDICAL ADVICE OR A TOOL FOR MEDICAL DIAGNOSIS. THE CARESELECT SUBSCRIPTIONS WILL NOT BE USED IN CONNECTION WITH RENDERING PATIENT CARE BY ANYONE OTHER THAN AN APPROPRIATELY LICENSED MEDICAL PROFESSIONAL EXERCISING PROFESSIONAL JUDGMENT. Without limiting the generality of the foregoing, NDSC will not be responsible under this Agreement for: (a) any Third Party software or services used with the CareSelect Subscriptions; (b) modification or improvements by Client to the CareSelect Subscriptions; or (c) the correction of errors resulting from modification CareSelect Subscriptions at the request of Client or Client's failure to use the CareSelect Subscriptions in accordance with documentation provided by NDSC.

8. Indemnification; Limitation of Liability.

8.1. Indemnification by Client. Client, except to the extent prohibited by applicable law, will indemnify, defend and hold harmless NDSC and any of its officers, directors, managers, employees, agents and other advisors and representatives, and successors and assigns against all claims, actions, damages, obligations, losses, liabilities, costs and expenses (including reasonable attorneys' fees, costs of collection, and other costs of defense), arising from Client's use of the CareSelect Subscriptions or otherwise arising from health care products and services offered by or through Client.

8.2. Indemnification by NDSC. NDSC will indemnify, defend, and hold harmless Client and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by the CareSelect Subscription and its content ("Services").

8.3. Process. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against either Party (the "Indemnified Party"), or the Indemnified Party receives a demand or notice making claims the other Party (the "Indemnitor") is obligated by this Agreement to defend, the Indemnified Party will use reasonable efforts to notify the Indemnitor promptly of such lawsuit, claim or election. However, the Indemnified Party's failure to provide or delay in providing such notice will relieve the Indemnitor of its obligations only if and to the extent that such delay or failure materially prejudices the Indemnitor's ability to defend such lawsuit or claim. The Indemnified Party will give the Indemnitor sole control of the defense (with counsel reasonably acceptable to Indemnified Party) and settlement of such claim; provided that the Indemnitor may not settle the claim or suit absent the written consent of the Indemnified Party unless such

settlement (a) includes a release of all Claims pending against the Indemnified Party for which the Indemnitor has an indemnity obligation, (b) contains no admission of liability or wrongdoing by the Indemnified Party, and (c) imposes no obligations upon the Indemnified Party other than an obligation to stop using the Services that are the subject of the Claim. In the event that the Indemnitor fails to or elects not to defend the Indemnified Party against any claim for which the Indemnified Party is entitled to indemnity by Indemnitor, then the Indemnitor shall reimburse Indemnified Party for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from Indemnified Party.

8.4. Alternative Action. If, in NDSC's opinion, any Services become, or are likely to become, the subject of a claim of infringement of Intellectual Property Rights, NDSC may, at its option: (i) procure for Client the right to continue receiving the Services; (ii) replace or modify Services to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is feasible, in the reasonable judgment of NDSC, Client shall cease use of the Services upon written notice from NDSC, and NDSC shall provide Client with a pro-rata refund of the unearned fees paid by Client to NDSC for the Services.

8.5. Limitations of Liability. NEITHER PARTY NOR ANY OF ITS MEMBERS, STOCKHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND LICENSORS WILL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, INDIRECT OR SPECIAL DAMAGES OF ANY NATURE ARISING FROM BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OR ANY OTHER LEGAL THEORY, WHETHER IN TORT OR CONTRACT, EVEN IF SUCH PARTY HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING, INCLUDING DAMAGES FROM INTERRUPTION OF BUSINESS, LOSS OF INCOME OR OPPORTUNITIES, LOSS OF USE OF SERVICE, LOSS OF DATA, COST OF RECREATING DATA OR COST OF CAPITAL. IN NO EVENT WILL EITHER PARTY OR ANY OF ITS MEMBERS, STOCKHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND LICENSORS BE LIABLE FOR ANY DIRECT DAMAGES IN EXCESS OF THE FEES PAID BY OR PAYABLE BY CLIENT UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS OF LIABILITY WILL NOT APPLY TO (a) CLIENT'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT, (b) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, (c) EITHER PARTY'S OBLIGATIONS WITH RESPECT TO CONFIDENTIAL INFORMATION, OR (d) THE EXTENT PROHIBITED BY APPLICABLE LAW.

9. Insurance.

9.1. NDSC during the Order Term will maintain with reputable companies the following insurance policies or their commercial equivalents:

<i>Commercial General Liability</i>	\$1 million each occurrence / \$2 million aggregate
<i>Automobile Liability</i>	\$1 million each occurrence
<i>Workers' Compensation</i>	Statutory Limits
<i>Employers' Liability</i>	\$1 million each accident
<i>Professional Liability</i>	\$4 million per claim
<i>Errors & Omissions and Cyber Liability</i>	\$4 million aggregate

9.2. Additional Insured. The Commercial General Liability policy will include an additional endorsement naming Client and its officers and employees, as additional named insured with respect to liabilities arising out of the performance of services hereunder.

9.3. Policies Primary and Non-Contributory. All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by Client.

9.4. Proof of Coverage. NDSC shall furnish Certificates of Insurance to Client Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder. NDSC shall maintain such insurance from the time NDSC commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, NDSC shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements within thirty (30) days of Client's request.

9.5. Acceptability of Insurance Carrier. Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

9.6. Deductibles and Self-Insured Retention. Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

9.7. Failure to Procure Coverage. In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, Client has the right but not the obligation or duty to cancel the contract.

9.8. Insurance Review. Insurance requirements are subject to periodic review by Client. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of Client.

9.9. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract.

9.10. Any failure, actual or alleged, on the part of Client to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of Client.

10. Legal Compliance.

10.1. Employment Laws. NDSC, in providing services under this Agreement, will comply with applicable wage and hour laws and other employment laws, and without limiting the foregoing, will not discriminate against any employee or other person because of age, race, religion, color, handicap, gender, physical condition, disability, sexual orientation, or national origin.

10.2. Debarment. Neither NDSC nor, to the best of its knowledge, any of its personnel or subcontractors performing services for Client is listed by any agency as excluded, debarred, suspended or ineligible to participate in federal or state healthcare programs. If NDSC learns of any such listing, it will promptly take all reasonable actions to cure such listing and will inform Client of such occurrence. If such a listing occurs, Client, as its sole remedy, may either terminate the Order for convenience or require NDSC to replace any such listed subcontractor or person.

10.3. Government Audits. At Client's reasonable request, occasioned by any examination or audit by any state or federal agency, or upon the direct audit or examination request of any state or federal agency, NDSC will cooperate in such examination or audit and, subject to redactions to not interfere with any Third Party's privacy rights, will provide to the examiners all relevant financial and other records requested.

11. Miscellaneous.

11.1. Nonexclusive Services. Nothing in this Agreement will be construed as to create an exclusive relationship between Client and NDSC beyond those terms and conditions explicitly agreed to in this Agreement. Client acknowledges that NDSC solicits (or may solicit) and performs (or may perform) similar subscriptions and services for or on behalf of other clients of NDSC.

11.2. Interpretation. In this Agreement, (a) any terms defined in this Agreement may, unless the context otherwise requires, be used in the singular or the plural, (b) any use of the masculine, feminine or neuter will be deemed to include a reference to each of the other genders, (c) the words "includes" or "including" will be construed as followed by the words "without limitation," and (d) references to section numbers or schedules are to sections of and schedules to this Agreement unless the context otherwise requires.

11.3. Construction of Agreement. This Agreement has been negotiated by the Parties and its provisions will not be presumptively construed for or against either Party. The headings and subheadings in this Agreement are for convenience and ease of reference only. They have no legal significance and do not limit any other clause.

11.4. Force Majeure. Neither Party will be liable for any failure or delay in performance due in whole or in part to an act of nature or any cause beyond the reasonable control of the Party. The affected Party will notify the unaffected Party of such force majeure event and the estimated duration thereof.

11.5. Modification. This Agreement may be rescinded or modified only by a writing signed by both Parties.

11.6. Waiver. No delay or omission by either Party in exercising any of its rights and remedies will operate as a waiver. To be enforceable, the waiver of a breach of this Agreement must be in writing signed by the waiving Party. No waiver of any breach of any term of this Agreement may be construed as a waiver of any breach of a different term or a waiver of any succeeding breach of the same or other term.

11.7. Assignment. Neither Party will assign any of its rights under this Agreement without the other Party's prior written consent, which shall not be unreasonably withheld. Any attempted assignment without the required consent is void.

11.8. Notices. All notices, demands and other communications regarding this Agreement will be in writing, and will be deemed properly given if sent (i) by hand delivery, (ii) by reputable next business day courier, or (iii) by registered or certified U.S. mail, return receipt requested, postage prepaid, to the address set forth below or such other address as the Party designates by notice to the other Party and will be deemed given upon receipt or refusal of delivery. Notices will be sent to:

If to Client: To the Notice Address specified by the affected Orders

If to NDSC:
215 South Broadway, #412
Salem, NH 03079

11.9. Severability. If any provision of this Agreement or its application to any person or circumstances is to any extent invalid or unenforceable, the remainder of this Agreement, or the application thereof to any person or circumstances other than those as to which it is invalid or unenforceable, will not be affected, and each provision of this Agreement will be valid and enforced to the fullest extent of the law.

11.10. Choice of Law; Venue. This Agreement will be governed by and interpreted under the laws of New York. The United Nations Convention on Contracts for the International Sale of Goods (UNCCISG) will not apply to this Agreement. The Parties agree that the venue of any action or claim brought by any Party to this Agreement will be the state or federal courts in the State of New York. Each Party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any legal action is instituted to enforce any Party's rights hereunder, each Party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a Party hereto and payable under Indemnification and Insurance requirements.

11.11. Complete Agreement. This Agreement, inclusive of any exhibits, constitutes the final expression of all the terms of agreement regarding the Order and is a complete and exclusive statement of those terms. This Agreement may not be modified or supplemented by the preprinted terms on any purchase order, acknowledgment form or other business form supplied by either Party. Any alterations, variations, modifications, or waivers of the provisions of this Agreement, shall be valid only when reduced to writing, executed and attached to the original Agreement and approved by the person(s) authorized to do so on behalf of NDSC and Client.

11.12. Relationship of Parties. The Parties are and will act as independent contractors. Nothing in this Agreement may be construed or implied to create an agency, association,

partnership or joint venture. At no time will either Party make any commitments or incur any charge or expense for or in the name of the other.

11.13. Publicity Reference. No news releases, advertisements, public announcements or photographs arising out of this Agreement or NDSC's relationship with Client may be made or used without prior written approval of the Client.

11.14. Counterparts: Electronic Signatures and Electronic Transmittal. The Order (a) may be executed in two or more counterparts, each of which is deemed an original, but all of which together will constitute one and the same instrument, and (b) may be executed by electronic signature. Either Party may also sign by hand and transmit its signed counterpart in its entirety to the other Party by electronic mail.

EXHIBIT A
SUPPORT POLICY

Support Services. NDSC provides telephone and email standard Support Services to clients with active CareSelect Subscriptions on ordinary business days between the hours of 8:00 a.m. and 5:00 p.m. Eastern Time. Emergency support is available 24x7. NDSC may change the hours of availability of support and all other conditions applicable to support in its reasonable discretion. NDSC provides Support Services only under its then-standard support service practices.

This policy is subject to change. Upon a material change to the policy, NDSC will notify subscriber by way of email or by posting the updated policy on its website.

I. MAINTENANCE

NDSC will: (i) provide Client with at least five (5) days' prior notice of such scheduled maintenance, (ii) cooperate with Client to minimize any disruption in the CareSelect Subscription that may be caused by such scheduled maintenance, and (iii) perform such scheduled maintenance during non-peak hours.

Emergency Maintenance: "*Emergency Maintenance*" is defined as efforts to correct application or network conditions of the CareSelect Subscription likely to cause a material outage; requiring immediate action. NDSC will perform Emergency Maintenance deemed necessary, but will make best efforts, to notify Client before the event.

NDSC makes commercially reasonable efforts to update the content of the CareSelect Subscription within a reasonable time after the source of the content publishes the update. Content updates may be included as a part of any routine or emergency maintenance.

II. CLIENT SUPPORT & SERVICE LEVEL RESPONSE

Technical call and email support for the CareSelect Subscriptions are available business days between the hours of 8:00 a.m. and 5:00 p.m. Eastern Time. Emergency issues defined as Severity 1, may be reported and acted upon 24x7.

Support Phone: 855-475-2500

Support Email: support@nationaldecisionsupport.com

Severity Levels: Client sets the initial severity level of an incident in reporting to NDSC. NDSC may downgrade the severity level according to Client's information and NDSC's discoveries during the problem resolution efforts. The incident severity will determine the response levels within NDSC. The description, response times and responsibilities are as follows:

NDSC will use commercially reasonable efforts to provide response(s) based on the severity of the problem:

Severity 1: CareSelect Subscriptions are down and workflow is in jeopardy and/or not functioning. Initial response time will be within two (2) hours; the target resolution timeframe will be within twenty-four (24) hours.

Severity 2: Important issue, but CareSelect Subscriptions are functioning. Initial response time will be within one (1) business day; the targeted resolution timeframe will be within three (3) business days.

Severity 3: Help request defined as assistance with configuring the system and/or general questions. Initial response time will be within three (3) business days; disposition timeframe will be within five (5) business days.

Severity 4: Feedback regarding clinical content. Initial response time will be within five (5) business days; targeted resolution, if any, timeframe will be the next application update.